

**MAUI PLANNING COMMISSION  
REGULAR MINUTES  
MAY 26, 2015**

**A. CALL TO ORDER**

The regular meeting of the Maui Planning Commission was called to order by Chairperson Keone Ball at approximately 9:05 a.m., Tuesday, May 26, 2015, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

A quorum of the Commission was present. (See Record of Attendance.)

Chair Ball: Good morning, everyone. Call this meeting to order of May 26, 2015, Planning Commission. We will start with public testimony.

- 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.

Chair Ball: Anyone that wishes to testify at this time may do so on any agenda item. However, you may not testify again on the agenda item later on in the day. Seeing...would you like to testify, sir?

Unidentified Speaker: I'd like to wait till that item comes up.

Chair Ball: That's fine. Thank you. We will start with Item C, Public Hearing. Director?

Mr. Spence: Good morning, Mr. Chairman and Commission Members. The first public hearing item is a proposed bill for amendments to Chapter 19.52, Maui County Code related to architectural and sign design in the Historic District.

**C. PUBLIC HEARINGS** (Action to be taken after each public hearing.)

- 1. MR. WILLIAM SPENCE, Planning Director, transmitting to the Maui Planning Commission a draft bill for an ordinance proposing amendments to Chapter 19.52, Maui County Code, relating to architectural and sign design in Maui County Historic Districts 1 and 2. (A. Kehler)**

Mr. Joe Alueta: Good morning, Commissioners. My name is Joe Alueta. I'm your Administrative Planning Officer. Couple new faces since I was last here. I pretty much handle ordinances that are changes to Title 19 as well as your rule amendments for the commissions as well as some other duties.

I'm just gonna give you a brief overview. Annalise will handle the, I guess the meat and potatoes of the bill itself. Primarily there's two methodologies in which you can amend Title 19. One is director initiated which is what this is in which we would go before the planning commissions and then make a, send your comments and recommendations up to the County Council. The other method is it would be a resolution from the County Council in which they will send it down to us, and

then we will have a certain amount of time to review and give comments back to the planning commissions. Today is a bill that is basically being introduced by the Department to provide for some basic rule authority for the Cultural Resources Commission dealing with it. And at that, I'll turn it over to Annalise who handles our historic district. Thank you.

Ms. Annalise Kehler: Good Morning. My name is Annalise...(inaudible)...

Chair Ball: Hold on Annalise, let's try to get your mic up.

Ms. Kehler: Is it working? Okay. So there are...first of all, let me just explain the historic districts. There's three County Historic Districts. There's two in Lahaina and one in Wailuku. And this amendment deals only with the ones in Lahaina which are Historic District 1 and 2. One and two are within a larger historic district known as the Lahaina National Historic Landmark District and that's a Federal District. In the staff report there's a map on the back page that shows where Historic Districts 1 and 2 are. One is shown in green and two is shown in gold.

The general purpose of this amendment is to allow for three things. It's to allow the Cultural Resources Commission to adopt rules relating to architectural and sign design. It's also to allow the CRC to amend these rules in the future without having to go through another Code amendment. And then the third thing, it would allow for is to have the CRC hear variances for signs. Currently CRC is not allowed to hear variances for signs, and this would be...this would allow for them to do that.

So now, I'm just gonna go through the specific subsections and sections of 19.52 where we're proposing amendments. So, Subsection 19.52.010(c), we're just adding in language for architectural design guidelines that they may be amended in that they may...the CRC may make rules to clarify and implement this section of the Code.

Subsection 19.52.030, just kind of clearing up some language that was sort of old school and making it more current and then just allowing us to implement the recent document that we just changed, it's the sign design guidelines, and that would just allow us to enforce them as rules.

And then 19.52.070, would allow for variances for signs to be heard by the CRC. And that is all of the changes that we are proposing to 19.52. I'll turn it over to the Commission for questions.

Chair Ball: Thank you for that. Any questions from the Commission?

Mr. Robinson: What is CRC?

Ms. Kehler: It's the Cultural Resources Commission. It's the commission that handles applications, permit applications for the County Historic Districts.

Mr. Robinson: And is that an appointed commission, is that one of our regular commissions or is that...

Ms. Kehler: Yeah.

Mr. Robinson: Sort of like us? Okay, thank you so much.

Chair Ball: Commissioner Hedani?

Mr. Hedani: I guess this question is for Joe? Why does signage guidelines fall within the Cultural Resources Commission instead of the Urban Design Review Board?

Mr. Alueta: I think it's kind of a two-way question that both of us could answer that and that is basically the CRC has a little more cultural and historic framework. It's more orientated toward that as opposed to Urban Design is more of a general review of signage as well as building design whereas the Historic District has specific guidelines on the fenestration of both the architecture as well as for signage. And so currently we have...we already have a design guideline that we do use for signs that's handled administratively right now, and so this would basically formally adopt those design guidelines or the updated design guidelines for historic district. So it's more specific. They have the expertise basically. You wanna put the...those who are best suited to do the review, should be doing that review and that's...we feel that the CRC is best suited to that type of review for those historic districts.

Mr. Hedani: Follow up?

Chair Ball: Commissioner Hedani?

Mr. Hedani: So the proposed amendments are not...it's already in place that the Cultural Resources Commission reviews the sign guidelines?

Mr. Alueta: Pretty much, yes. Yes, this is basically formalizing through the rule...adoption of the rule amendments for them to be doing it.

Mr. Hedani: Okay. I just find it curious because I don't think the Cultural Resources Commission has any professional training in architecture or design, and to me that would relate more to signage and the architecture of the area than the cultural practices.

Ms. Kehler: If I may? I staff the Cultural Resources Commission and I am trained, and I did my degree in architecture as well as historic preservation so I'm able to make these recommendations to the Commission based on my experience and knowledge.

Mr. Hedani: Okay, my concern is that the rest of the Commission doesn't have any training in architecture, yeah? If you as a staff person disappear and somebody comes in that has no architectural guidelines...well, I'm not arguing about...against the amendments that are proposed. If it's for variances, I think that's good and it gives it more flexibility. And if the design guidelines were professionally prepared and it's something that they can administer easily then maybe this is something works. But I guess my comments may not be appropriate under the circumstances if it's already a done deal.

Mr. Alueta: I think if I can, the Urban Design Review Board is pretty much a recommending body to the Director for many of the signage except...and then they do have authority to grant some variances with regards to specifically signage. If...I think your comments are legitimate in that

aspect because the Urban Design Review Board does have the requirement for architectural professional on the board. The Director if he...at any time can send any sign for comment. And so there is still that ability by the Director even with these rules to send it to Urban Design Review Board for review and comment and then sending it...before sending it over to Urban Design, I mean, CRC for final approval. I think what this does is more or less just allows for CRC to have adopt the rules, their rules and formally adopt the design guidelines that will for the most part will be administered administratively. And so I think that's, that's pretty much it.

Chair Ball: Director?

Mr. Spence: Annalise, do you recall the requirements to be on the Cultural Resources Commission? ....(inaudible)...

Ms. Kehler: Yeah, there is a requirement. We have to have an archaeologist, and an architect, and a historian. So we do have professional qualifications that would, you know, the Commission is able to make recommendations that are sound because of their professional qualifications. And then also, the guidelines are there to help them form recommendations and to, you know, make decisions based on those guidelines.

Chair Ball: Corporation Counsel?

Mr. Hopper: Well, I was basically going to echo that, but the first thing is that the regular commercial sign ordinance it specifically exempts the historic districts so that's why we're into the CRC there because of the design of the Code. And also the Code section on the Cultural Resources Commission states that the majority of the commission members shall be professionals or persons with demonstrated experience in the disciplines of archaeology, planning, architecture or architectural history or Hawaiian culture or history. And so it's...it may not have the mandatory requirements of the Urban Design Review Board, but those...and I think they're consistent with Federal guidelines for establishing such a commission do have those professional qualifications as part of the kind of the mandate of that commission to have them. But I think as Joe stated, the Department can bring anything to the Urban Design Review Board if they want an extra set of eyes on it, but the actual Code section that has them here, sign variances and other review for commercial signs in general, that section exempts signs in the historic district specifically and that was by Code design. So again, that's something that suppose the Council could look at, but that's how it's been designed specifically for historic districts for a while I think since the CRC was established. So that's some background I think that's helpful.

Chair Ball: Anyone else? Very good. Thank you. Do you we want some action for that or? Oh, we did at beginning.

**a) Public Hearing**

Chair Ball: Anyone would like to testify on Item C-1 may do so at this time. You have three minutes. Seeing none, we will move onto Item C-2? Oh, to adopt that?

Mr. Hopper: Well, you have to make recommendation.

**b) Action**

Mr. Alueta: I guess the Department is recommending approval of the proposed amendments as presented. Your other options are to make recommendations with amendments, to recommend against the amendments as proposed or defer action if you find just cause.

Chair Ball: Okay, so do we have any amendments to that? Or any additions, changes, anything, comments? Commissioner Tsai?

Vice-Chair Tsai: I move to approve as recommended.

Mr. Hudson: Second.

Chair Ball: Any discussion on that? Okay, all in favor say, "aye"?

Commission Members: Aye.

Chair Ball: Any opposed? Motion carried.

Mr. Alueta: Thank you, Commission.

Chair Ball: Thank you.

**It was moved by Mr. Tsai, seconded by Mr. Hudson, then**

**VOTED: To Approve as Recommended by the Department.**  
**Assenting: W. Hedani, R. Higashi, L. Hudson, K. Robinson, M. Tsai**  
**Excused: S. Duvauchelle, I. Lay, J. Medeiros**

Chair Ball: Let's see, Item C-2?

Mr. Spence: Okay, Commissioners, your second public hearing item for today is Amanda and Cathleen Wilson and Mike and Roxanne Whitehurst requesting a Land Use Commission Special Use Permit for a Short-Term Rental of six bedrooms in the State Ag District. And our Staff Planner this morning is Ms. Gina Flammer.

- 2. AMANDA and CATHLEEN WILSON and MIKE and ROXANNE WHITEHURST requesting a State Land Use Commission Special Use Permit and a Short-Term Rental Home Permit in order to operate a six (6) bedroom short-term rental home operation in two dwellings located in the State Agricultural District at 562 Kai Hele Ku Street, TMK: 4-7-009: 044, Lahaina, Island of Maui. (SUP2 2015/0001) (STWM T2015/0001) (G. Flammer)**

**This short-term rental home application is being referred to the Maui Planning Commission for review and action because there are less than forty lots within 500 feet of the proposed short-term rental home and 30 percent or more submitted written protests to the director.**

Ms. Gina Flammer: Good morning, Commission Members. I'm gonna give a Power Point that's gonna take you through the project, though I know you all got the report in your packet earlier. Okay, so this is for a six-bedroom short-term rental home in two different dwellings. We're reviewing both the Short-Term Rental Home Permit and the State Land Use Special Use Permit today. Hold on a second.

The project is located in Launiupoko specifically on Kai Hele Ku Street. It's the main access road into Launiupoko. Again, we're reviewing both permits today. The first one was triggered by neighbor protest and the State Land Use Special Use Permit is because the property is located in the State Agricultural District.

I know you folks don't see too many of the Short-Term Rental Home Permits themselves. You usually see the ag permit that comes with it. I think when I did the training, I think we had five in 2013, and I don't think we had any in last year, so this is kind of a rare thing for you today. Now that was done, the trigger due to the protest provision specifically 30 percent, and that's when there's more than 40 lots, we have that 30 percent.

So we had a total of nine protest letters submitted. However, Launiupoko many of the lots are subject to a condominium property regime which separates the property for ownership interest. The Department still considers it one lot however. It's not an official subdivision. So when we took a look at the nine protest letters they do represent six of the lots. There were 17 total lots not including the CPR separate ownerships. So that gave us a 30 percent of six. So they hit exactly the six. Also in your packet is three letters of support from the immediate neighbors and all of these letters are included. And I wanted you to see the testimony map. It's in your report. It's Exhibit 4. The orange are the protest letters. The yellow's the subject property. And then the pink are the support letters that came from the immediate neighbors. So what are we looking at today?

We're looking at a total of six bedrooms in two separate dwellings. You can see the yellow...there's two pools on each sections of the property. You got an outdoor cabana and then all the green is the agriculture that's on there. So I'm gonna deal with both permits criteria a little bit separately. Okay, so first I'm gonna show you the four-bedroom main farm dwelling that's owned by the Wilsons, and then next I'll show you pictures of the second farm dwelling with the two bedrooms. So the main four-bedroom house kinda exemplifies Hawaii outdoor living. And then we can go inside the house and take a look. So these photos are also in the staff report. And then we have the two-bedroom farm dwelling.

And then I just wanted to show you some pictures of the neighborhood just so you get a sense of where this is located. This is the main access road, Kai Hele Ku Street. The first driveway that takes you into the property. That's all the way over on the Wilson's property. That's the house directly behind them. I know the consultant did an open house for neighbors and there had been some complaints about that particular house that's right there. I believe that house has changed ownership. And that shows you the west side, you can see some of the houses right there. Go back. That shows you the gulch. Some of the letters mentioned the gulch to the left of the property, the south of the property where noise sometimes travels down. So these to show you what that gulch looks like and where the houses are located.

And then the agriculture because we're dealing with the State Ag District I wanted to show you there's actually quite a bit of agriculture. So you have the photos, but just so you can see. The main agriculture is the plumeria trees. There's almost 90 of them. They are picked regularly. And then they have been expanding as well. Here you can see one of the lei pickers. So they planted some smaller ones, it's kinda dark, but they've been expanded with production as you can see. One of the letters from the neighbors say they come every Monday and pick. And when I did the site visit there weren't any flowers so they probably been recently picked. Here's some of the newer crop that was planted. And then there's also fruit trees that are there. Kind of a wide variety, you see mango, that be some mac nut, citrus.

Okay, so typically we end our presentation here and come back and give you the analysis, but I know there's been some discussions with you folks on the order that we're gonna do. So I'm gonna give you the Department's analysis now, then we're gonna have the applicant speak, and then we turn it back over to you, and then I come and give my recommendations before you take the vote.

So in terms of the analysis, this is all...everything that's in the report. The State Land Use Permit, you're very familiar with that. The rules are spelled out in the Administrative Rules that the State gives us. These are the rules, and then just to go through them very quickly. The use shall not be contrary to the objectives sought by Hawaii Revised Statute. Those are State laws. The Department's response is there is an implemented and verified farm plan in place. The rental use is not anticipated to negatively effect the existing agriculture on the property. The desired use will not adversely affect surrounding property. There were nine letters of protest. Some of those did cite past noise on the property. Some just said it...it cited noise within the neighborhood for other rentals. One letter did talk about noise traveling down the gulch. Again, there were three letters of support from the immediate neighbors. Our Short-Term Rental Home rules do prohibit parties. I know there had been some in the past. I'm not sure if it was the homeowners or friends that were there. Outdoor speakers have been disabled. The applicants were made aware of the trouble with that so they're not on any more.

Again, this is a project where we're not looking at adding any extra density so there's no need for wider roads or more sewer or water...sewer and water's all private also up there. The drainage has already been done and addressed when they were building the home. And Police and Fire don't see any problems with this use.

Unusual conditions and trends have risen since the District Boundary Rules were established. Well, that was done in the early '60s so a lot has changed especially in regards to the visitor industry. And then even more recently the visitor industry has changed again with the trend of the VRBO, Airbnb, where individual homeowners can market directly to tourists and they're looking for homes for their families as opposed to a hotel room.

And then the land upon which the proposed used is sought is unsuited for the uses permitted within the district. So a literal interpretation is that the land that we're talking about is where the houses are so you can't farm because there's existing dwellings on there. But we do talk about the fact that there is an active plumeria farm, a Maui County approved implemented farm plan, and again, we're not anticipating that the rental use will negatively affect the agriculture on the property.

So the permit criteria for the short-term rental home we have quite a bit. It's on Page 4, I just list

them and then our analysis is later in there. These are the minimum standards for accepting an application. You can only have two dwellings, a maximum of six bedrooms. What the manager requirements are...just a whole host, but we don't even accept an application unless these minimums are met. What you do want to review are some additional criteria that was placed into the law, and they gave us...Council gave us some specific factors.

First, they wanna look at the number, in terms of the character of the neighborhood, how many are there existing in the neighborhood and how far are they? In this case there are two other short-term rental homes in Launiupoko, but none are located right in this specific subdivision.

What are the number and substance of protests for the application? There were enough protests to trigger this public hearing. Most of the letters cited concerns about excessive noise, some spoke specifically to this property, others were more general. There was an open house that was held for neighbors and during that open house the consultant did learn that the home behind the parcel was rented and did create a lot of noise. That house has since been sold. All the outdoor speakers have been disabled. There were support letters from the immediate adjacent neighbors and these neighbors state that the applicants are respectful and responsible neighbors.

Again, another one of our criteria is are there existing or past complaints about rental operations on this property? So a request for service was filed in September for operations. Three letters from neighbors did state complaints about the previous operations on the property. The applicant did respond. They spoke with their neighbors as many that had put in telephone numbers. They did get three letters from the most immediate neighbors. They also state that they have a professional manager who's responsible for addressing neighbor concerns when there is a problem. And again, they understand that no parties are allowed on the property.

There's also the criteria that existing or past noncompliance with requirements and the degree of cooperation by the applicant to come into compliance. So as soon as the applicants received a Notice of Warning from the County, they did remove all their website advertising and work with the County. They were given a certain amount of time to finish up their operations, their reservations and they did comply with that period. According to the applicants they were in the process of preparing the application when they were contacted by the County. I know it does take quite some time to put these applications together and they have ceased all operations and submitted this application so that they can come into compliance with the Code.

In December when the farm plan inspection which is part of their requirements for this permit was conducted it was discovered that the smaller dwelling was using a mud room as a garage. However, once the applicant learned about that the house was only permitted for two bedrooms because it's an accessory dwelling, and the applicant has since returned that room to a permitted use so they're now in compliance.

And correspondence received, and that's the homeowners association. We often look at that as a testament to the character of the neighborhood. So the homeowner's association covenants in this subdivision do not restrict short-term rentals. I do know the board is considering it and discussing it right now, but at this point in time there are no restrictions on it. You'll find a letter in there from the management company that states this.



So I just wanted to end with the agricultural analysis that we provide in all of our reports. There's over 90 plumeria trees. The letter from the neighbor states that they lei pickers do come. And one of the lei pickers did submit a letter explaining she's been picking flowers for the past four years and that they. They do use these groves for their business. There's also avocado, citrus, banana and other fruit trees on the property. They do have their approved farm plan. It has been inspected and also the State Office of Planning did not have any comments on the State Land Use Permit application.

So next I'm gonna turn it over to the applicants. They're gonna speak briefly to you and then we can move onto...(inaudible)...

Ms. Amanda Wilson: Good morning. Hi, my name's Amanda Wilson and I'm here with my partner, Cathleen Wilson. I'd like to take this opportunity to thank you all for your time and your willingness to meet with us and to hear our thoughts on the short-term rental. I'd also like to take a moment to especially thank Gina Flammer and Kai Wright for their guidance and support and their assistance throughout this whole process. We endeavored to come into immediate compliance as soon as we had any concerns raised and we really wanted to address, you know, their thoughts and they've been really supportive of us and we appreciate that very much.

So I wanted to get a chance to just share with you a little bit about our interest and what we feel about Maui and where we come from and who we are so that you can understand where we're...you know, what we're applying for. About seven years ago, my partner and I started coming here pretty regularly and bringing our kids here. We have a teenager, 15-years-old, and a 21-year-old daughter in college at this point. When we started coming every year, year over year because we just totally fell in love with it and we started staying in Launiupoko actually specifically we found that area to be really lovely and conducive for family life and we were renting an ohana there. So we started staying there about maybe seven years ago as I said. We'd come for about two weeks at a time and we found about three or four years into that we kept looking at real estate over and over again, and thinking this is where we need to be. You know, this is a second home to us. And so ultimately it's our intent to retire here actually.

So we bought this home about 18 months ago, and we've been staying here about two to three weeks every quarter now since then. And ultimately, we plan to be here about six months of the year. Our other home is in Massachusetts, so it's quite a commute but it's totally worth it to us 'cause we really love this place. I'm a physician and my partner's a nurse practitioner and as a team we decided about 5 ½ years ago to create a...to found an organization that provides care for patients who suffer with addiction. And it's really challenging line of work and it's sadly, you may have seen in the *USA Today* report that just came out, but a growing area in this country of concern and devastation. So we're working pretty much around the clock back home. And so, I have to say that coming to Maui is really our source of respite. You know, we come here to recoup and recover and to restore ourselves. And I continue to work when I'm here, but I'm able to you know, really enjoy our agricultural land, and enjoy the views, and enjoy the space, and it's very restorative for us as a family. So while it's really, you know, rewarding work, it's really the only place that we travel to now is to come here and recuperate. So we're here about two to three weeks every quarter as I mentioned. It's our intent to be working here from half...about half time. So in about 18 months or so, my hope is to be living here half-time when our daughter's...our youngest daughter is off to college and then she would be here with us as well. And then ultimately when we retire a few years from then, our hope is to really be, you know, splitting our lives between here and Massachusetts.

So it is our hope to be here.

So should the Commission allow us this permit, you know our intent actually for rentals is actually fairly short-term. We really just would like to be able to offer this families and enjoy it the way we did when we first started coming to the island and fell in love with it. So that's, that's who we would be renting to. Again, we hope to retire here once our kids are out of college and high school.

I wanna mention that we were deeply concerned about what our neighbors raised, and you know, I was pleased that our immediate neighbors did not have the same concerns, but that the adjacent neighbors had concerns was very concerning to us. I very much wanna be a neighborly person. We, you know, really deeply care about everyone's, you know, ability to have enjoyment of the property and to be able to be there and have, you know, peace and quiet. Everyone deserves that. So it was something we were immediately attendful about attending to. So I actually first really made phone calls to as many of those neighbors as I could reach.

I spoke specifically for example with Dr. Nutter who's a few properties near us, and we had a wonderful conversation. It turns out he's also a physician from near where I was, where I practice so we had a fair amount in common. And he understood that because the property that is immediately behind us was actually... it was actually being long-term rented out...so you know, a permitted a use of the property. They would rent it out for six months. And the people who were there who rented it from the prior owners unfortunately were incredibly loud. We found them to be that way as well, and there were frequent parties there at all hours. They were starting early in the morning, sometimes late into the night. You know, other people in letters have mentioned things like car alarms and other things. We found that also, and we consistently found it to be from this property behind us, and gleefully since they've moved out which was about three or four months ago, we have found our property to also be much quieter and the neighborhood to be much quieter. And when we held the open house, we asked our neighbors about that who came and they said, yes, that since that home which is immediately behind us, the one that Gina showed a photo of, since they have changed then the whole neighborhood has a different feel to it, and we're glad that they've moved on.

So Dr. Nutter expressed that he was sad in some ways we are probably are being lumped in with that house, you know, that people are making some assumptions that we're probably contributing to that or we're a part of that when we really weren't and he felt bad about that, and other people expressed that same, that same concern. So we deeply care about everyone else's peaceful enjoyment and we will be respectful. We will be attentive. We have a very excellent property manager who actually lives just down the street. He's also on Kai Hele Ku Street literally six or seven properties away. So he will be immediately attentive to anyone's needs and to any of our neighbors should they have concerns, he would be immediately present to them as he literally lives right there. So we feel grateful to have this beautiful home. We're looking forward to retiring here soon, but we appreciate your consideration for the opportunity to share this with other families who might come and love being here as we have. Thank you for your time.

Chair Ball: Thank you. Is that...your presentation?

Mr. Mike Whitehurst: Good morning, thank you. We appreciate this. We respect greatly that we are requesting a one-year opportunity.

Mr. Spence: Sir, can you identify yourself please?

Mr. Whitehurst: My name is Mike Whitehurst. I own the cottage at 562 Kai Hele Ku. I was born in Hawaii. I was born in Queens Hospital. My father was a Captain in the Marine Corp. Born in Waikiki before it became a State, this lovely State here. Our family has always had property here, and for years of course with my parents. And I gotta tell you, for the past many years that I've owned our lovely cottage it's fun to actually offer something to your parents to come stay at you place instead of the other way around. It's a beautiful property. We respect it and we love it. It's our family's intent, my intent to retire here in Hawaii.

I'd like to tell you a little bit about how we feel about the property please. We love our property. We have over 90 plumeria plants. We have dozens of papaya plants that we...that I recently had replanted. We have grapefruit, we have apple bananas, we have lemons and limes. This is the lower portion of our property, our crop. In our front yard we have mangoes and avocados, dozens of coconut trees. Last summer my daughter, my 10-year-old daughter found out how to core the coconut. She keeps me hydrated on coconut water when I work the land.

We are...this is very exciting for me. I have a 23-year-old daughter, 22-year-old daughter. We should be retiring to this home today, but we also have a 10-year-old daughter, and that kinda had a hiccup in the giddy up. And so I'm very excited this summer, my daughter, Lindsey my youngest daughter we're going to be making leis and going down on Saturdays to the Launiupoko, the farm market, they have once a week, and my daughter is going to sell leis. I have the required State license numbers, tax numbers, and I'm just excited to have this opportunity.

We are...we feel that we've learned a great deal of the aloha spirit and we're really, really somewhat honored to share our plumeria crop with one of the local families, the ...(inaudible)...you saw a picture of Anna, and they come every Monday and they harvest the plumeria for free and we're very proud of that.

So you know, my time in Launiupoko is truly based upon the...my daughter's vacation time. So we come several...a couple of times a year. We're able to spend a great deal of time here in the summer. It's our plan to be here full-time after my daughter graduates to live here, retire here. We would greatly appreciate the opportunity to rent our home to help pay for the cost of the property maintenance. We don't, we won't rent out our home for any long -term as we are here as often as we can make it, so that just doesn't really work for us I'm sorry to say.

We are all very respectful of our land, our neighbors, and our community. We're very proud that we come here before you today with our three closest neighbors giving letters of support. And I know two of those neighbors intimately, I've spent time with them and I'm very, very proud of that. I think that that really speaks volumes. We would like the opportunity to offer our home to guests that will appreciate vacationing in an agricultural region. We will encourage our guests to enjoy our farm crops, our homes and our unique agricultural community. I thank you very much.

Chair Ball: Thank you.

Mr. Whitehurst: Thank you.

Chair Ball: Gina, does that conclude your presentation? At this time, we will open the floor for public testimony. Anyone wishing to testify on this item at this time may come forward and do so. You have three minutes. Please identify yourself when doing so.

**a) Public Hearing**

Mr. Tom Croly: Aloha, Commission.

Chair Ball: Aloha.

Mr. Croly: I'm Tom Croly, and you know me well. I'm not acquainted at all with the applicants, and I'm not here to make comment on the substance of their application specifically but rather to comment on the short-term rental permitting process and the role played by the Commission in this process.

As many of you know I was involved in the formulation of the bed and breakfast and short-term rental permitting processes for over eight years. It's important to understand that after these processes were established, these uses are now permitted uses in almost all the districts of Maui. This is in distinct difference from a Conditional Permit which sometimes come past you for you to make comment to County Council on where it's specifically a prohibited use or not allowed use and then someone is coming and saying I want to make this use. And in that case, you need to evaluate what will the impacts of this unique use be? These specific uses are now permitted uses.

The short-term rental and B&B uses are conditioned by the specific conditions conceived by the Council to ensure that these uses do not affect surrounding uses and do not adversely affect neighbors. The occupancy is limited to a certain amount. The cars all must be parked on site. There are specific quiet hours that have to be in place. The point being that when someone is in compliance with a short-term rental permit, this property is not having any additional impact on the neighborhood than would a resident. In fact, because they have these conditions it should have less impact on the neighborhood than a full-time resident would have. When an application gets referred to this Commission for approval it's because a particular trigger has been activated. In this case, it's that the neighbors have shown some objection to the application.

When this went past the County Council, the question came up how do we determine whether an objection is reasonable or not? And that's where the County Council felt that the Planning Commission would be able to weigh in on it and determine whether, whether an objection is something that is someone's fear that might happen or whether an objection is a real thing that maybe has happened in the past or whether an objection is because the neighbors have a dispute over who cut the trees or whose view was blocked or something like that. And that's where they hoped that the Commission could weigh in and become an arbiter if you will, and perhaps conceive a mitigating condition that might be added to the permit.

Should a neighbor's application...should the neighbors's objection simply be-

Ms. Ramoran-Quemado: Three minutes.

Mr. Croly: –thank you– a matter of noise or one of the things that's already dealt with, hopefully the Commission understands that the conditions that are put in place already will address that. Thank you.

Chair Ball: Thank you, Tom. Any questions for the testifier?

Mr. Croly: Thank you.

Chair Ball: Seeing none, thank you. Anyone else who would like to testify at this time?

Mr. David Neary: I am David Neary. I am an owner and Committee Chair for the Mahanaluani Homeowner's Association. I own Lot 26A which happens to be right in the middle of this flurry. I appreciate Ms. Flammer, Ms. Wilson, and Mr. Whitehurst answering a number of my questions and concerns, but nonetheless I feel, bear with me I'll run through what I came to say here.

The purpose of the homeowner's association, the BOD, the declaration, the CC&Rs is to give that community its personality and what values and you know, enforce and support what they have there. They say in short-term they're to preserve, protect and enhance. Protect the property, protect the interest and the value that the owners have in that place. That's why I'm serving on the board of the directors. That's why we have a committee really looking into the short-term rentals. And that's why our approach at this time is we don't see any value in them for anybody but the owner in spite of what Mr. Croly just told us here.

Who are we? At least for the past 12 years I have lived there. Our association is a great little farm community. We're friendly. We're courteous, a little old fashioned maybe, considerate. Most of our women walk the narrow streets in the morning not worried too much about anything except dogs on the loose. We're not a gated community. We're not exclusive. Most people are the working class. Most people go to work in the day, if nothing else on their property. Many are, myself included have built their own dwellings, grown their own landscaping plants. We were green before it became en vogue. We have always been and this is where I'm gonna go back a little contrary, we've always zoned Agricultural. When Jo and I came over and also fell in love with the place, we found out that the developers original story to the Maui community was not to worry we're an agricultural community. We're gonna have big lots and be quiet and behave ourselves. The buyers were made aware of what's called a farm land agreement before they ever put any money down. This is binding on all per the revised Hawaiian State Statutes, Maui County Code, which I'll read in just a minute. And you can't even get a building permit there unless the County has approved your ag plan. Well, I understand this particular party has already taken care of that.

Want to read to you the end of this statement is, in May 4, 2007, our board of directors put out to our management company a reminder memo to our owners. Skip down, it says, dwellings....dwelling are only permitted in connection with farm and agriculture activities. Restrictions on rentals long-term and short...Long-term rentals are the only ones permitted and that's for a 160 days or more and it gives the codes on that. Short-term rentals for a period of less than six months including vacation rentals are not permitted under any circumstance. See Maui County Code, 19.30A and 19.37.

Chair Ball: Please conclude your testimony.

Mr. Neary: Pardon?

Chair Ball: Please conclude your testimony.

Mr. Neary: My testimony?

Chair Ball: Yes, you're testifying right now, please conclude your testimony.

Mr. Neary: Oh conclude it?

Chair Ball: Yes.

Mr. Neary: Okay. Anyhow I just think we're converting it from a very nice neighborhood to one that it's not gonna be beneficial and hope...well, enough said.

Chair Ball: Thank you. Any questions for the testifier? Commissioner Robinson? Sir? You're on the hot seat now.

Mr. Neary: I'm sorry folks. I'm probably the only nonprofessional here.

Mr. Robinson: I'm sorry, I forgot your name.

Mr. Neary: I am Dave Neary.

Mr. Robinson: Hi, Dave. Dave, you're on the board of the directors for the...

Mr. Neary: No, I'm just appointed as a committee chair.

Mr. Robinson: A committee chair?

Mr. Neary: This year.

Mr. Robinson: This year, okay. So you say that you disagree with the man's previously assessment of impact towards your property?

Mr. Neary: I do, and it's not conjecture. We have a lot more noise issues including the horns. We have seen light pollution. Basically the people come over here to enjoy a wedding, a vacation, whatever and they rent...I don't want to take away people's freedom at all, that's not what I'm saying. It's things we have seen, the loud parties that last most of the night, rap music at 8 o'clock on Saturday morning having coffee with my 11-year-old granddaughter and my 90-year-old mother-in-law and the most disgusting lyrics broadcast over speaker you've ever heard. Cars, rental cars, mustang convertibles, driving much, much too fast. I don't think it's that they're purposely disobeying the rules because they have no skin in the game, I just think they're not be apprised of them.

Chair Ball: Commissioner Robinson?

Mr. Robinson: Are you familiar because you're on the committee now with the other short-term rentals that are inside the subdivision?

Mr. Neary: Am I familiar with, absolutely. Here is a map of the two existing ones which by the way the bed and breakfast has been great 'cause the people live there and they curtail this sorta nonsense. Have no problem with that. But right now, there is one, two, three, four, five, six in work and if you draw a 500-foot circle around that they're all within...these are within the circle you could throw a rock far enough to \_\_\_\_\_ of them there. It's the proliferation, it's the density, it's the fact that it is changing the personality of our community for not for the better.

Chair Ball: Commissioner Robinson?

Mr. Robinson: When you purchased your property you mentioned that you had that letter that you, that you detailed to us?

Mr. Neary: Actually no, I bought before that. This came out later to remind all of us because there was some illegal activity going on and still is.

Mr. Robinson: Okay, so when you purchased the property that type of information was not produced to owners or was that produced to owners?

Mr. Neary: Oh it was certainly produced to us. I did not canvas the neighborhood but I would assume by law...

Mr. Robinson: No, no, no, but the...so the thing you read from 207 that's not something that's to owners, that's something that...I don't understand what that letter is? Yes, right there, that right there.

Mr. Neary: Yes, would you like a copy of it?

Mr. Robinson: Well, no...could you explain what it is? Where does that letter come from?

Mr. Neary: It says, Dear Mahanaluani Homeowners, it is from the...signed by the Board of Directors and it's through the management company.

Mr. Robinson: So I guess, I'm trying to, I'm trying to assume that if, if I was to purchase a home today, I might not never get that letter because it was one time sent out to the board orders in 207. I mean, are we to assume that every, every new person that would purchase a home...we're trying to, you know, make sure everybody's aware of before they a purchase a home.

Mr. Neary: Yeah, you wouldn't necessarily get the letter, but you should be aware of the fact that you got to have ag land, that you are an agricultural community. All the things that I stated in my introduction I think that was made aware to everybody. I did note we had...that had been circumvented by the County's permitting policy. And that's how we feel, we feel like we're losing our community because anybody that wants to can get into a much more lucrative line of business, more like the resorts and the hotels, when we were there to grow plumeria. I've got more than 90

on my place.

Mr. Robinson: Thank you so much for your testimony.

Mr. Neary: You're welcome.

Chair Ball: Sir?

Mr. Higashi: Sir, I have a question.

Mr. Neary: Sorry.

Chair Ball: Commissioner Higashi?

Mr. Higashi: Yes, this question is in relation to your ownership of your property. Are you located below or above the owners that are doing the application?

Mr. Neary: I'm actually located right beside them. Joe would you give me the one with the diamonds on it? Okay, can you do that? I've got all these drawn up and labeled. My lot number is 26A, Phase 1. You need the one that's...(inaudible)... Our lot is in the center of that circle.

Mr. Higashi: So basically you're above, you're above the...(inaudible)...

Mr. Neary: No, I'm actually downhill just a little and one lot over.

Mr. Higashi: You're below?

Mr. Neary: Yes.

Mr. Higashi: So you're saying that you have a problem with sound.

Mr. Neary: Oh, all over that. That's a mountainside and it's amazing how much you can hear. We're one mile from the ocean and we can hear the waves like nothing. We can hear people talk two lots over. The sound carries and we love that aspect as long as other people are aware of that.

Mr. Higashi: I'm just trying to get the relationship between the idea about sound...usually sound travels up rather than down—

Mr. Neary: Or travels...(inaudible)...

Mr. Higashi: So if you're below more than likely the sound would not affect you like the ocean would affect you because it's coming down, up.

Mr. Neary: When the wind's not blowing you can hear the entire what's going on everywhere up there, up, down, sideways.

Mr. Higashi: Okay, well, thank you.



Chair Ball: Any other questions for the testifier? Seeing none, thank you. Anyone else would like to testify at this time? Please identify yourself?

Ms. Katherine Larson: I'm Katherine Larson. I live and own at 633 Kai Hele Ku Street. I'd like to first address the issue of the sound movement. It goes up and down. There are gullies that go down, make the sound go down and sideways as well as up. It's just the nature of Launiupoko and the hillside.

I'm here to vehemently protest against the permitting of a short-term rental. When I bought the property two years ago, and it's my full-time residence now, my realtor showed me where the other short-term rentals were on a map. I knew they weren't around my house, and that is a major reason that I bought the property.

I'm sympathetic to the owners having great intent and having a dream of living in such a nice area, but I think that the way they're going about it to...trying to get their properties to be short-term rental is actually defeating what the dream is, and they're injuring the dream of everyone else in the neighborhood and in all of Launiupoko to enjoy the beauty and everything that Maui has to offer. So there must be another way that they can reach their dream that wouldn't take away the nature of the property and the neighborhood.

I think that there's just a vast difference between the use of a property by vacationers versus homeowners or long-term tenants. To think otherwise is in my opinion is naive. To say that they can't party is naive because that's...that is based on a scale of subjectivity. There will be increased activity. When I looked at the property itself and where the parking will be, it's like it's...they're crushing those cars into that space. Yes, they have all the area around and the plumeria trees and all, but where it will be parking and living in those two houses and how many bedrooms they're allowed to use it's packing it in. It looks very crowded to me.

Once the permit is given then we lose all power and control of the situation for the noise level and increased activity and traffic.

Ms. Ramoran-Quemado: Three minutes.

Ms. Larson: Okay, thank you very. I appreciate...you have any questions?

Chair Ball: Thank you. Any questions for the testifier? Seeing none, thank you. Anyone else who would like to testify at this time? Please identify yourself?

Mr. Steve Hensley: Aloha.

Chair Ball: Aloha.

Mr. Hensley: My name is Steve Hensley and I have been struggling to stay on the West side since after Hurricane Iniki. Rentals are the issue for the most of the working class people on the West side. I have been living in Olowalu for the past nearly five years. And for the last two years, I have been cultivating a relationship with the folks that own 605 Kai Hele Ku. Now today, I—

Chair Ball: Hold before you...just identify and then come back and testify into the microphone.

Ms. Flammer: ...(inaudible)....

Mr. Hensley: Oh, okay.

Chair Ball: Thank you.

Mr. Hensley: So I have submitted their written testimony which is against this permit. They have a cottage that's right across the street. One of the white lots which should be colored orange. Is that what you called that? What is the negative?

Ms. Flammer: Orange.

Mr. Hensley: Orange, okay.

Ms. Flammer: We didn't get the letter?

Mr. Hensley: Huh? I just submitted it today.

Ms. Flammer: Oh, okay.

Mr. Hensley: Here you can have mine. All right, so they're building the main house on that property they bought with a cottage. Now, you know, I just read the newspaper so that's all I know from is what I read in the newspaper. And I know that in February the Maui Planning Commission cited a lack of affordable rental housing and called for a moratorium on all new short-term vacation rentals. Now, the people that live in the property above, now above is that direction. Up the hill is this direction. So the property above, the people that were living there were recently, you know, evicted by the owners. I mean, that's not really the right term. The owners decided to reside in the place that they had been renting. So the people that had been renting then contacted the people I am gonna be renting from in August and made a high bid. And so now the people that I'm gonna be renting from have this high opinion of the property that I'm gonna be renting. And those people were not able to find anything on the West side. They're now renting here in Wailuku and working on the West side. And so this approval if you were to approve this short-term, it's moving the West side higher and higher in rent and the people that live on the West side are struggling to stay where they work. And so, I am totally against, although, I am a pool cleaner and I don't wanna be...(inaudible)...you know, I'd really like to clean your pool.

Chair Ball: Thank you. Any questions for the testifier? Commissioner Robinson? Hold on, sir.

Mr. Robinson: Could I have a copy of that letter, please?

Mr. Hensley: Sure.

Chair Ball: If you have copies for everyone you can hand those and we can pass them around.

Mr. Hensley: If you'd like a copy.

Mr. Robinson: We'll pass it around.

Mr. Hensley: Okay.

Chair Ball: You can give it to the Staff.

Mr. Robinson: Excuse me, sir? If you could clarify the statement that you made where you're renting a place but somebody is gonna rent it from you, they're in Wailuku. I didn't follow that trail.

Mr. Hensley: No, see I work as a scuba instructor, bartender, pool cleaner on the West side and I'm renting in Olowalu, but that was not a forever rental. So I am at the end of my allowed stay in Olowalu. And in looking for a place on West side, it's tough.

Mr. Robinson: So, but you put a bid in to rent this place or you talked to him about renting?

Mr. Hensley: Well, I'm cleaning the pool at 605, and so I have been cleaning the pool for two years, and they've gotten the permits and they're building the house. The house is, the main house is gonna be finished in August and then, the owners will be using the main house and the cottage will be for rent. Now that's another thing, the cottages in Launiupoko, I never knew that a lot in Launiupoko could be subdivided so it seems--

Mr. Robinson: Okay, sir--

Mr. Hensley: --that's kinda strange that the cottage and the house are owned--

Mr. Robinson: So, so--

Mr. Hensley: But anyway I'm gonna rent in August the cottage right across the street, and--

Mr. Robinson: Across the street or above?

Mr. Hensley: Across the street.

Mr. Robinson: Or is across the street and above the same thing?

Mr. Hensley: Well, I mean, it's 20 feet higher to go across the street this way because the--

Chair Ball: Let's use the mic to--

Mr. Spence: The reason we want you to use the microphone is because we take verbatim minutes and they're typed out, and if you're speaking up against the screen, she can't hear you, then it's inaudible.

Mr. Hensley: It's negligibly higher. It's a little bit higher, you know, from the cottage that I will be renting, I will be looking down on the property at some time.

Mr. Robinson: Yeah, I just got more confused because I saw you testifying for the property below...I mean, higher, but then now you're...but then you're gonna rent from another property?

Mr. Hensley: No, I'm gonna be renting--

Mr. Robinson: One was supposed to be in orange, but then you pointed to another lot that's--

Mr. Hensley: No, because the written negative testimony just came in today. So this map does not recognize--

Mr. Robinson: That's not where you're planning to rent? That's another property is what you're saying? We're talking about two properties?

Mr. Hensley: No.

Mr. Robinson: Can you help?

Ms. Flammer: Okay, because the Department didn't receive the protest letter before today's meeting I didn't color-in the parcel in orange. So the color where Mr. Hensley will be moving in August is where he's pointing right now.

Mr. Hensley: The cottage is here and the main pad is there where the house is being is being built and the property --

Chair Ball: Gina, can you give him the microphone when he's talking?

Ms. Flammer: Okay.

Mr. Hensley: All right, so there's this...605, the cottage is right here. The main house is right here, it's being built. It will be finished in August. So my...I am projected to rent this property in August or September, you know, something like that.

Mr. Robinson: But isn't that below/

Chair Ball: Commissioner Robinson?

Mr. Robinson: Isn't that below?

Mr. Hensley: The road is going up this way. This is up. And so it's--

Mr. Robinson: Oh, and we're looking this way that's why.

Mr. Hensley: So the...you know, from the cottage it is a slight downhill to the property in question, but only like 20 or 50 feet downhill.

Mr. Robinson: I was looking at the map the wrong way. I was looking at it from top to bottom

instead of sideways. I apologize.

Mr. Hensley: Okay, and so then this is where people just recently moved out in the last six months because the owner re-occupied that unit and those people made a really high bid on the cottage I will be moving into. Are you the lady back there?

Chair Ball: Let's not go there, sir, sir?

Mr. Hensley: Okay, sorry.

Mr. Robinson: Thank you so much.

Chair Ball: Thank you for your testimony. Ma'am.

Mr. Robinson: Thank you for answering my question. I'm sorry.

Chair Ball: All right. Stirred that up good, nice and good. Sir, would you like to testify?

Mr. Bob Fisher: Yes, thank you. My name is Bob Fisher. I reside at 823 Kanui Circle in Lahaina. I'm the consultant on this project. I would like to thank you for hearing and taking the time to hear this application.

I'd like to respond just briefly to the public comment because I think everybody can relate to problems with noise in their neighborhood. Most of us have experienced those types of issues and I want to tell you that these applicants are sincerely serious about not disrupting their neighbor...the quality of their neighborhood. I've met with them on numerous occasions and we've discussed it over and over as how we can be proactive in making sure the neighborhood is not disrupted.

The applicants asked me to do an open house of which I sent letters to all residents within the 500-foot radius and I got a couple...we had two couples in attendance and then a number of phones of which we took all of those...the issues that they had into consideration when went ahead and put together the application.

Mr. Croly I think did a really good job in identifying the positive aspects of having a licensed short-term rental as opposed to the many, many, many unlicensed short-term rentals. The licensed short-term rentals have guidelines that they need to follow. And if those guidelines aren't followed they have to be renewed periodically either the first renewal either in one or two years, and then periodically thereafter. And I think that there are things that the neighborhood can do you know as far as affecting those renewals if the house isn't run professionally.

The applicants furthermore called every, every neighbor they could that had written a letter of opposition and you know, tried to talk to them about their concerns. I think that these applicants will do a good job in running a professional operation. Thank you.

Chair Ball: Any questions for the testifier? Seeing none, thank you. Anyone else would like to testify at this time?

Mr. Keeaumoku Kapu: Good morning.

Chair Ball: Good morning.

Mr. Kapu: Keeaumoku Kapu from Lahaina. I don't know whether or not anybody knows who I am, but it's kinda interesting that I kinda drove by today and just wanted to be mahaioi, but I end up in this meeting on this discussion about Launiupoko. In 2004, about 2003-2004, we were the ones that filed the declaratory ruling with the State Land Use Commission. Our organization is Kuleana Ku'ikahi LLC. I hope...I don't know whether or not people realize how long this battle has been for us. We live adjacent in the valley known as Kauaula and basically the reason why we filed the declaratory ruling because we knew that these lands was eventually gonna be turned into the subject gated communities, condominiumization of homes, bed and breakfasts, so we filed a declaratory ruling with the State.

One of the conditions that came out from that I would say probably about maybe three years later 'cause we filed a lawsuit against this county because of another pending development which was agricultural and not in the Launiupoko area but down on the bottom. It's kinda interesting to me that I sit here and I listen to a lot of the testimony that I knew that somewhere throughout the years, and it's been I would say maybe 11 years now that all of a sudden that the neighbors are gonna have problems with each other. It was always our intent to make sure these lands were properly used especially a 156 archaeological sites that were found in this area. I sat on the Cultural Resources Commission to address these issues. I was the Chair of the Maui, Lanai Island Burial Council and also addressing these issues at that time. It's good to see that, you know, a lot of the covenants that is put together by the neighborhood board associations to make sure that a lot of the people do fall in compliant to these properties. But you know, the whole mission here today is to make sure that what our mission and goal was 11 years ago was to make sure that these lands are used for what it was purpose to use for. And what we see as the years go by, a little bit of amenities here, a little bit of amenities there, the next thing you know, all these lands get totally, drastically changed. You know, I don't know how for say, I mean, 11 years later and we still picturing and talking about whether or not these lands are being utilized for its purpose.

We were the original applicants from the beginning when we came in front of the State Land Use Commission and the County to make sure that you guys did your due diligence. Stay tight, let's not change things because it's gonna get worse. Thank you.

Chair Ball: Any questions for the testifier? Seeing none...

Mr. Robinson: I have a question for the Director.

Chair Ball: Question for the Director. Commissioner Robinson?

Mr. Robinson: Director, can you speak towards the lawsuit of-

Chair Ball: Let's not...we're still in public testimony.

Mr. Robinson: Oh, is that what it is.

Chair Ball: Let's do that. Any other public that wants to testify come forward please?

Mr. Floyd Rollefstad: Good morning. My name is Floyd Rollefstad. I live in the neighborhood not real close to them but I know the owners of the properties there and I've helped them with their, with their maintenance and management and stuff like that about the property.

I've lived in Launiupoko now for 10 years, and I have short-term rental. I have a short-term rental and it's great. But I do know, I do know permanent residents and I know, and I know the situation that happens with vacation rentals and as far as the noise goes, I can truly say that I think, I think the community is better off with the short-term rentals because there are...there is recourse, there are regulations about the noise, where permanent residents, well, lots of people have barking dogs, and it's really annoying, and there's aggressive animals that they can have. There's really... a permanent homeowner, you know, can pretty much do, you know, create noise that a short-term renter can't.

Recently I was at a get together and there was a band there from a permanent resident and it was really loud till 1 o'clock in the morning and there are no regulations against that where there would be with a short-term. So I think, I think the community is better off from a noise point of view which is kinda what I just wasn't gonna testify, but I just thought I would mention that because I truly know that that is pretty, you know, I mean pretty accurate description of the situation down there and that's really all I have.

Chair Ball: Thank you. Any questions for the testifier? Seeing none, thank you. Anyone else would like to testify at this time? Seeing none, we will close public testimony and we will take a five-minute recess. Thank you.

A recess was called at approximately 10:16 a.m., and the meeting was reconvened at approximately 10:28 a.m.

Chair Ball: Call this meeting back to order. I just wanted to make sure that the Commissioners received the...did everyone receive that testimony that was handed out by Mark and Kathy Rand? It was handed out by the testifier. I want to make sure everybody has that and that we will...Gina, you have a copy of that also, right? We'll make a copy available for the public as well. Okay, let's continue. Can we have the recommendation from Staff?

**b) Action**

Ms. Flammer: Okay, so the Department is recommending approval on both permits. The Short-Term Rental Home Permit as you know has 23 conditions on it. If there's any questions I'm happy to answer them. I don't feel like we need to go through each one of them. I'm seeing that you're comfortable with that? Okay.

The State Land Use Permit we're also recommending approval and that is subject to seven conditions. Thank you.

Chair Ball: Okay, thank you. Commissioners, discussion, questions? Commissioner Robinson?

Mr. Robinson: Director, are you able to know at this time, go over that testifier's proclamation about a lawsuit?

Chair Ball: Director?

Mr. Spence: Thank you, Mr. Chairman. The lawsuit, there was a petition for a declaratory order and the lawsuit, and Keeaumoku is gonna correct me, I'm sure at some point, but they were basically challenging the County's granting of ag subdivisions being they're really not gonna be ag subdivisions. The primary purpose is not gonna be agriculture, but these are gonna turn into gentleman's estates and there be very little agriculture on...being conducted. So that being said, that has very little bearing on the permit that's before this Commission today. The subdivision has been completed. And you know, obviously by the number of owners that are here today and so we're continuing on with that.

Mr. Robinson: Okay.

Chair Ball: Any other questions? Commissioner Robinson?

Mr. Robinson: I do. I have a question for you. And thank you for being patient, I'm new so I have...I always have questions.

Ms. Flammer: Oh, of course. Yeah, please.

Mr. Robinson: Is...in the properties I was where there was two dwellings, and on agriculture I thought there was a main dwelling as well as a barn, secondary dwelling. And I see in my pictures two beautiful homes, and one doesn't look like...I mean, is there no criteria for what constitutes a barn?

Ms. Flammer: So on agriculturally zoned land you're allowed to have two dwellings. You can have a third if there's a certain criteria met, a certain number of income, amount of income. But with the two, the first dwelling is, you have to have a farm plan on paper. The second dwelling, the farm plan has to be implemented. There are restrictions on the size of the second dwelling. Under different sections of the Code such as residential, they actually call it an accessory dwelling. However, under the Ag zoning it's a second farm dwelling is what it's called, but there are still limitations on the size of it. A 1,000 square feet, it needs to be under that if it...given a two-acre lot. They have an accessory ag building for agriculture not that's habitable but that doesn't come into play with this property.

Chair Ball: Commissioner Robinson?

Mr. Robinson: There's two different owners and I remember you breached upon it in the beginning to where even though it is separate ownership it's just not shown that on a TMK is that correct?

Ms. Flammer: How it works is under Hawaii State Law you are allowed to condominiumize a property. It's not County law, it's State. So what it does is it essentially breaks up the ownership of the property and you can then sell it separately. How the County looks at it, however, is they continue to see it as one lot until it is, and if it is ever officially subdivided. So in terms of Public



Works, in terms of the Planning Department, it retains the use, I think it's the 10-number, TMK number, the main lot number. We see it as one. Real Property Tax may have two separate owners and see it as two, but for building purposes it's one. And I don't know, our Director or Corp. Counsel wants to clarify, but...

Chair Ball: Director?

Mr. Spence: Mr. Chairman, I think the thing to remember here is that our Agricultural zoning allows a lot down to two acres so, and on those two acres you can two dwellings provided certain conditions are met. But they can't...you know, somebody mentioned that this be subdivided some time in the future, it can't be subdivided. Because it's Agriculture it already has the minimum lot size. So...but you can have two different owners by what Gina was talking about 'cause you can have a condo on it.

Mr. Robinson: So could they each put a cottage?

Mr. Spence: The zoning allows a main dwelling, and a cottage. And both of those are supposed to be farm dwellings related to agriculture. But they've reached...because it's one lot, they've reached their maximum. They have a main dwelling and they have the cottage.

Mr. Robinson: Cottage.

Mr. Spence: Yes.

Mr. Robinson: Okay.

Chair Ball: Thank you. Commissioner Tsai?

Vice-Chair Tsai: I guess this question is for the applicant or applicants. I think this is the first time I'm seeing, actually have two separate owners.

Chair Ball: Hold on, can we have the applicants come forward in case they have to answer questions? Thank you.

Vice-Chair Tsai: Thank you. What is you guys intention in regards to renting this out since you have two separate dwellings and under two separate ownerships, and are you guys renting both dwellings same time as a all and all or are you saying you're gonna have separate people live in there, separate, you know, contracts, tenants, renters?

Chair Ball: Please identify yourself too, since we have two people talking up there, thank you.

Ms. Wilson: Thank you, again. My name's Amanda Wilson. So I'm one of the...I'm the owner of the main, the main home, and Mike Whitehurst is the owner of the smaller dwelling. So both properties are allowed together to have a total of only six bedrooms. So at any one time we could be renting out up to six bedrooms, but that's the maximum we're allowed. So yes, basically because both Mr. Whitehurst and myself and our family come pretty frequently, neither of us really rent it all that often and when we do, typically it's to families because it's just, you know, two

bedrooms on his side, and six...I'm sorry, four bedrooms on ours. So again, a total of six bedrooms for the whole property. I don't know if that answers your question.

Chair Ball: Commissioner Tsai?

Vice-Chair Tsai: So you're attempting to rent out both units as a whole, as a six-bedroom? I guess my question is are you gonna have two separate parties possibly come in?

Ms. Wilson: Potentially it could be two separate parties exactly, but it would be limited to no more than that many people at any one time.

Mr. Whitehurst: The Whitehurst would only rent out their two bedrooms to somebody that they choose, and Amanda would rent out her four bedrooms to somebody that they would choose. It's two separate events, decision ...(inaudible)...

Chair Ball: Commissioner Higashi?

Mr. Higashi: I have a question. You're both not living there permanently now, correct?

Mr. Whitehurst: Correct.

Ms. Wilson: Yes.

Mr. Higashi: And your reason for renting these two dwellings is, is it because of financial or is it because you just wanna rent the facility 'cause it's not used?

Ms. Wilson: Thank you for asking. So there's several reasons actually. The first is when we're not there, we're there about three weeks every quarter at this point. And in about 18 months, I anticipate that we'll be living here half-time. So we may not rent it all at that point, but up until then, we'd like to rent it for a few reasons. One, I personally very much enjoyed when we were able to come to Launiupoko and rent an ohana, and that's what held us and helped us fall in love with this area, and so we'd like very much to rent to small families, you know, because again we only have four bedrooms, so we typically rent to small families who come and enjoy it the way that we did. Secondly, it does help cost offset our expenses with our agricultural plan and continuing to develop that, but we're not renting it all of the time. We're renting it a very small portion of the time, and then the balance we actually have friends and family that come and stay or folks who work for our business will stay there sometimes. So we just, we use it for a variety of different purposes like that.

Chair Ball: Commissioner Higashi?

Mr. Higashi: So the question to that is, what is your long-term plan as far as getting there to live permanently from the standpoint that I understand the neighbors are concerned about, you know, especially now, you have two dwellings that you're gonna have people come back and forth and that means traffic coming in and out?

Ms. Wilson: Right. So in terms of our long-term plan my hope is to be in about two years our

youngest daughter will be out of high school and so at that point when she goes to college, we intend to live here half-time. And at that point, we probably won't be renting it any further. In the interim we would have people staying there, but it would be a family like ours. So they would provide no more traffic to that area or no excessive use of the sewage or the waste or the other systems than our family would, you know, because we frequently have our, you know, our family a couple of our friends stay with us. So at any one time, there's never more than eight people in our home for example. And because of that I don't think that they provide any more use of the land or the property or the roadways or any of that. And we also will have a book in our home that states those requirements very clearly, No noise after 8:00 p.m., no parties, no...so we're actually very restrictive about that and we've got a property manager who comes by the property every day to check and make sure that those people that are staying are in compliance. And again, we very are selective about who we allow to stay. So generally it's families and you know, people who are, you know, parents and their children and then their grandparents. You know, and that's who's typically staying in our homes.

Mr. Whitehurst: Now in our case, we're a little farther away from retirement because of Lindsey. But understand that if we were to rent our home while Amanda's home was being occupied by them, we have a maximum. We can only allow four people to be at the rental. We're the ohana. The gathering place we call it. And so we're, we are only allowed to rent out our two rooms that are in our 1,000 square foot ohana and a maximum of four people. So I guess it's possible for a longer period of time while they take it off of the rental pool, I would be requesting this permit to continue, but I'd only be allowed to rent out two bedrooms and it would be a maximum of four people when they were living there. But we're very cognizant of what we're asking for is a one-year opportunity. And there's, there's a lot of restrictions on this one-year. And there's...everybody here, they all know us now, and our three neighbors know us very well. And so we'd just like that opportunity.

Mr. Higashi: Thank you.

Chair Ball: Commissioner Tsai?

Vice-Chair Tsai: Mike, where do you currently reside?

Mr. Whitehurst: In the San Francisco Bay area region. I'm as close to Hawaii as I can get.

Chair Ball: Commissioner Robinson?

Mr. Robinson: Have you guys ever thought of any alternative ways instead of going for a vacation rental for both of you? Have you thought about bed and breakfast? Have you thought about events like the Dragon Fruit Farm now does up there? Have you thought about maybe renting one of them long-term and one of them when he comes to visit then renting your place over or working some type of deal that way so that it would be financially viable?

Mr. Whitehurst: The homes are, the homes are owned and occupied by two separate families if you will.

Mr. Robinson: Yes.

Mr. Whitehurst: I guess in our case with Lindsey's school schedule, she's in six...going into sixth grade, there may be an opportunity to rent it for six months at a time. You know, but we would then be engaging in what that gentleman said, the potential of raising rents in the area. So we're really not interested in doing that. I think we would just simply leave it vacant and you know, all the maintenance that is required of an established farm area that we have would have to continue to be done.

Ms. Wilson: I share Mike's feeling about wanting to have as much control over the timing as possible. I think that's the bigger issue for us. With my work schedule being what it is, which is quite extensive at this point, the number of hours and as we're growing for us to have flexibility to decide, you know, these are weeks that we're blocking off, it's just for us and our family, these are weeks that we're blocking off for you know, professionals that work for us that we want to give a gift to stay, and these are you know, times for our, you know, other family members to come, and our extended family to come. So it gives us a lot of flexibility to accommodate those people and then you know, have periodic interval rentals otherwise. So in terms of trying to maximize those, that amount of flexibility, we felt this was the simplest way to accommodate that.

Chair Ball: Commissioner Robinson?

Mr. Whitehurst: May I? I apologize. It occurs to me, we've had...we spent Christmas here a couple years ago, and we had like 10 or 12 people and we had air mattresses out on the lanai and you know, it's a home. It's land. It's not a condominium where the walls stay right there. So as a homeowner, we...there are times that we try to jam as many people into that 1,000 square foot home as possible you know. So that's kind of fascinating. So as an owner, we would have a lot more people than as a rental, it just occurs....

Mr. Robinson: I disagree with that 'cause I've rented before and I brought my whole family. But to the point, is-

Mr. Whitehurst: Sir, you understand by law I can only have four people at my home as a rental?

Mr. Robinson: Yes, yes.

Mr. Whitehurst: Okay, thank you.

Mr. Robinson: I understand. And I...I do. You mentioned that the line of work that you do, and I think that's a great line of work, and I congratulate you on that.

Ms. Wilson: Thank you.

Mr. Robinson: I didn't see in any of these restrictions since you're so involved with those families and people if you ever thought about some of those people actually being some of your renters or using that as part of your therapy or part of your, you know, your outreach to these people, and you know, how that might affect your neighbors around there if those people actually were to come and maybe not, you know?

Ms. Wilson: Yeah, great question. So absolutely it is not our intent to have this become a

rehabilitation center of any kind just to clarify. Our business is entirely outpatient, office-based. So we employ nurse practitioners and physicians who provide care in an office setting. Actually it's my personal philosophy of care, the patients do better when they get longitudinal care over time as an outpatient. And so I'm not a big believer in in short incidences of care. So you're more than welcome to look up the organization, it's called, Clean Slate, but what we do is entirely outpatient. And so for sure, no worries about us having any type of rehab center or having guests come to stay who are our patients. There would also be boundary issues with that as a physician. So that wouldn't happen. But thank you for asking.

Mr. Robinson: One more question? Yes, I notice that you guys did have a site before that was taken down once a complaint was filed is that correct of the VRBO? So how long ago was it taken down?

Ms. Wilson: So we received, actually starting in June of last year, we had initiated the process actually already to start the application for a short-term rental. We received the notice in September, when they had, you know, been coming around at point and evaluating properties for use. And we immediately...we had been in contact actually already with the Planning, you know, the Planning group and working with them to try to implement this process. And spoke with Kai and spoke with Gina about what to do, and we honored, you know, the few, we actually cancelled a great number, and we honored a few that we felt like what we would with these folks had nowhere to go otherwise. So we honored those last few, and since that we have been completely compliant with everything they've asked.

Mr. Robinson: Up until now?

Ms. Wilson: Exactly, right.

Mr. Robinson: Thank you so much.

Ms. Wilson: My pleasure.

Mr. Robinson: Thank you, Chairman.

Chair Ball: Any further questions? Seeing none, is there a motion?

Mr. Robinson: Did we have a discussion or just...

Chair Ball: We'll have a motion and then another discussion?

Mr. Hopper: I just wanna note for the record that Commissioner Medeiros will not be voting on this item. We discussed that. So we've got six Commissioners. We need a vote of five in order to take action.

Chair Ball: Okay, we'll look for a motion from the floor and then we will discuss further.

Mr. Hudson: So move.

Chair Ball: Is there a second to that?

Mr. Higashi: I second the motion for discussion's sake.

Chair Ball: The motion was to approve the Short-Term Rental Permit.

Mr. Hudson: Right.

Chair Ball: And there was a second. Discussion? Commissioner Robinson?

Mr. Robinson: I heard a lot of opinions on both sides, you know, I don't know if I've heard any facts per se with noise up or down or what's better to have a short-term rental as a neighbor or a landowner. I can just go from you know, personal experience and I can't see how having somebody come every...a different person every week next door and different cars, and different ways of thinking, you know, to my home with my kids playing in my front yard. You know, there's always that you know, who are these guys coming in? You know, and I don't think it has any bearing on how great a, how great a owner is or how tight they think their plan might be.

There's people like me and my family that when we go to a short-term rental in Honolulu there's 20 plus. There's futons everywhere, there's guitar and ukulele playing till we, till we puka the cooler as they say. And it's hard for me to support something as well as what another Commissioner said as far as the rental. I can't see how, how putting a short-term rental actually helps rental prices. I think, I think we're all aware of the lack of rental housing and both these owners stated that they would not put this in the rental market. You know, and that's kind of unfortunate but I understand you know, being there every two months.

I read in here where one used to work...used to come over to Kaanapali Alii, the parents owned a condominium there and they would come over periodically over the year, and to me, that's more of what these people are kind of at right now. They're at the stage in their lives where they're not ready to come and move to Hawaii. They're coming to you know, stay extended amounts of time, and a condominium in one of the nice resorts that you know, that we have employment and people work at and we get great taxes from. I think that's their stage in life and their retirement is a couple years away, and another one a little bit further and maybe they're preemptive in trying to get to that dream quicker and trying to ask for different permits is not something that I think is conducive to the Launiupoko area. Thank you.

Chair Ball: Commissioner Higashi?

Mr. Higashi: I seconded the motion because I was little concerned about the applicant's direction as far as how they're gonna use this facility from the standpoint that if they said they were gonna have short-term rental for like three, five years to help their farm get established because financially they can't afford it and so forth. But it now sounds like it's a place for them to come back. It's not really I think the total intent of having a farm, five-acres, and they're gonna live there like most of the people are already living there. And so that's my reservation right now, is that there's no closure to coming back and staying there permanently like most of the residents are.

Chair Ball: Commissioner Hudson?

Mr. Hudson: Thank you. Keeaumoku made a very important point about gentlemen's estates and when that was done 11 years ago I remember reading about it and following that. That was a very prominent thing at that time. So that's one side of that I'm wrestling with. The other side that I'm wrestling with is as a body we're supposed to make sure that people follow the rules and regulations and if they stay within the rules and regulations, we have to put some of our personal feelings on the side. And so while even up to the midnight hour, I still haven't decided. This is a tough decision. I made the motion so we can discuss this. So there is one part of me that is rule driven, well considering my career, I'm very rule driven, and there's another part of me that understands exactly what Keeaumoku brought up. Thank you.

Chair Ball: Commissioner Hedani?

Mr. Hedani: This is a tough one for me to consider approving. We have multiple ownerships on an Agricultural piece of property that's been condominiumized. We're supposed to have a farm dwelling and an accessory farm dwelling. The farm dwelling is for the farmer to occupy the land so he can work the land. The accessory farm dwelling is for the workers that he has to work the agricultural land. We've come about as far as we can come from the intent of the State Agricultural Law. It's basically been perverted to the point where Keeaumoku is right. We're dealing with gentlemen's estates. The reason the land is not suitable for agriculture is because you cannot grow anything underneath the swimming pool and there's two swimming pools on this property.

The whole thing is cockeyed. It shouldn't be like this. And this Commission shouldn't be put into a position of having to decide whether something is right or wrong on something like this when it's so obviously wrong. I would like to know what the status of changing the entire subdivision from Agriculture to Rural or some other uses so that all of this stuff, all of this shibai, you know, the most unattractive part of this application is the plumeria trees, and that's the only thing that makes it legal is that you have plumeria trees which is supposed to be an agricultural use. I don't know if the agricultural use is even generating any money or if the flowers are being given away or if they're actually...the flowers cannot support the two homes that I see in these pictures. It's doctors basically that have built the home for their retirement and the whole thing is cockeyed, you know. It's very difficult to support something like that especially in light of what we've done in terms of sending the Council a resolution and telling them, eh guys how 'bout taking a timeout and thinking about this?

Chair Ball: Director, would you like to comment on the state of Rural zoning?

Mr. Hopper: Just at this point, I wanna interject. I mean, the land is still Agriculture. There are agricultural criteria for the Special Use Permit and for the Short-Term Rental Home Permit and that's what's being reviewed right now, and I would advise the Commission to make its decision on those criteria which do involve agricultural use criteria for the State Special Use Permit. But as far as issues of a rezoning that's not particularly, that's not something that's before the Commission right now notwithstanding, you know, whether or not there's...that's something that the Commission would support not, right now the review is of a requested permit in the Agricultural District and you've been given a review of what entails and what the criteria of granting the permit are. So I recommend the Commission just stick with the record in front of them.

Chair Ball: Thank you for that. And so if we could put that on a maybe a future agenda or something the status of Ag to Urban or Ag to Rural, Director?

Mr. Spence: And I was gonna preface any of my remarks exactly as Mr. Hopper already commented that what's before this Commission is not a rezoning, it is a...what we're doing this morning is we're following the laws that are in place at this particular time. So at some point, this particular subdivision may be rezoned but that's up the County Council and we'll discuss it later.

Chair Ball: Thank you. Any further discussion? Okay, the motion on the floor is to approve the Short-Term Rental Home Permit. Director, would you like to restate the motion?

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

Chair Ball: All in favor? Opposed?

Mr. Hedani: What's the sign?

Chair Ball: Raise your hand. Opposed? Opposed, please raise your hand if you're opposed. One, two, three, four, five. Permit is denied.

Mr. Hopper: ...(inaudible)...just have a motion to deny.

Mr. Spence: It's not approved.

Chair Ball: Oh, okay. Sorry. Thank you. The motion is denied.

**It was moved by Mr. Hudson, seconded by Mr. Higashi to approve the permit as recommended by staff. The motion to approve the permit FAILED.**

***Assenting: None***

***Dissenting: W. Hedani, R. Higashi, L. Hudson, K. Robinson, M. Tsai***

***Excused: S. Duvauchelle, I. Lay, J. Medeiros***

Chair Ball: Any other motions? Should be an easy one.

Mr. Spence: The motion to approved failed. So you would need a motion to deny if that's what the Commission ...(inaudible)...

Mr. Robinson: I have a motion to deny.

Chair Ball: Is there a second?

Mr. Higashi: Second.

Chair Ball: Second by Higashi. Any discussion on that? Under denials, we need to provide reasoning behind that denial because the Staff Planner has to write that up as part of our, as part of our denial.



Mr. Hopper: Should there be a denial, a decision and order will be prepared for you. You already have a record in front of you, but in order to give the Staff some assistance in preparing the decision and order, it would be helpful if the Commissioners could provide a bit of the reasoning. There would be a formal adoption of that decision and order at a future date to confirm the reasons and to provide those reasons, but if you could provide a bit of information for Staff at this point. It does not have to be exhaustive because we already have a record, but a bit of guidance so that Staff may have assistance in helping to prepare that decision so it's something that you would be in accord with.

Chair Ball: Commissioner Hedani?

Mr. Hedani: Okay, I'll support the motion to deny and here's some of the reasons that I have for supporting it. We've had discussion about the number of short-term rental homes operating in the area. Although our report states that there are two other or three other short-term rentals and B&Bs, we've heard testimony today that there are up to six different short-term rentals operating in the area. The second reason that I have for opposing this would be because the applicant has operated contrary to the law. Basically operating without a permit. It's a violation of the Short-Term Rental Ordinance. We've had also an record of existing past complaints that were filed both with the Police Department as well as ten, now ten letters in opposition to this particular applicant or applicants. This is the first time I've seen an application come in for two different owners instead of one person. I have a concern about the noise equipment being disabled as opposed to removed. To me, disabled means it's turned off or it's disconnected. It can be reconnected. It can be turned on and that's something that could generate noise problems in the future. And those basically are my reasons for opposing it. I think giving away flowers is nice for lei making. I don't think it...I don't think the plumerias support what I saw being built much less covering the maintenance cost of the pool. So it's not in furtherance of, you know, a bonafide agricultural operation from my perspective.

Chair Ball: Any further comments? Discuss more? All right, Commissioner Higashi?

Mr. Higashi: Based upon the fact that there is a letter of disapproval or concern about this particular application, although the criteria itself might fit the need of a short-term rental, the primary intent of ownership of this property is for agricultural development and use and these particular owners are really not there to really oversee this particular operation as far as agriculture is concerned. And I do have a concern about how this application pertain to the primary source of what the intent of the owners were.

Chair Ball: Commissioner Hedani?

Mr. Hedani: Yeah, I also have a concern regarding traffic. We've heard the applicants say that you have...well in this case you have two different owners, one that owns two units that can rent out to four people. The other one owns four units that can rent out to eight people. So you could have a total of 12 people occupying the residence, I'm sorry, occupying the farm dwellings, and that to me is a substantial case of increasing the amount of traffic impact to the area.

Chair Ball: Any further comments? Okay. Director, would you like to restate the motion?

Mr. Spence: The motion is to deny the State Land Use Commission Special Use Permit and deny

the Short-Term Rental Home Permit for the reasons stated on the record.

Chair Ball: All in favor of denial, please raise your hand? One, two, three, four.

Mr. Spence: That's four.

Chair Ball: All opposed to denial?

Mr. Hopper: Silence is an affirmative vote. Again, we need to clarify that.

Mr. Spence: So that's—

Chair Ball: So that's five.

Mr. Spence: —that's five in favor of denial.

Chair Ball: The motion is carried for the denial of the short-term permit.

Unidentified Speaker: The vote was five to zero?

Chair Ball: The vote was five to zero, yes.

Mr. Hopper: Staff will prepare a decision and order that will need to be adopted a future meeting date.

**It was moved by Mr. Robinson, seconded by Mr. Higashi, then**

**VOTED: To deny the State Land Use Commission Special Use Permit and the Short-Term Rental Home Permit per reasons stated during discussion.**

***Assenting: W. Hedani, R. Higashi, L. Hudson,  
K. Robinson, M. Tsai***

***Excused: S. Duvauchelle, I. Lay, J. Medeiros***

Chair Ball: Okay, let's take a five-minute recess.

A recess was called at approximately 11:04 a.m., and the meeting was reconvened at approximately 11:15 a.m.

Chair Ball: We are under Item D, Pending Litigation, Item 1. Director?

Mr. Spence: It's still morning. Morning again, Commissioners. This is in regards to judicial appeal from the Commission's denial of the request by Mr. Terry Epstein for a State Land Use Commission Special Use Permit and a Short-Term Rental Home Permit for the Shambala Short-Term Rental Home in Wailea, Island of Maui.

**D. PENDING LITIGATION**

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

**AN EXECUTIVE SESSION MAY BE CALLED IN ORDER FOR THE COMMISSION TO CONSULT WITH ITS ATTORNEY ON QUESTIONS AND ISSUES PERTAINING TO THE COMMISSION'S POWERS, DUTIES, PRIVILEGES, IMMUNITIES AND LIABILITIES, PURSUANT TO SEC. 92-5(a)(4), HRS.**

Mr. Spence: My understanding is—

Chair Ball: Corporation Counsel?

Mr. Hopper: I'd advise that the Commission go into executive session at this time. The purpose would be to the extent it is applicable, HRS 92-5, Subsection...Subsection 4 to consult with the board's attorney on questions and issues pertaining to board's powers, duties, privileges, immunities, and liabilities. That would require a vote of two-thirds of the members present.

Chair Ball: Is there a motion to go into executive session?

Mr. Hedani: So move.

Mr. Medeiros: Second.

Chair Ball: All in favor, please raise your hand?

Mr. Spence: That's six ayes.

Chair Ball: Any opposed? Motion carries unanimously. We will go into executive session at this time. If you could clear the room, and we will reconvene shortly with public testimony.

**It was moved by Mr. Hedani, seconded by Mr. Medeiros, then unanimously**

**VOTED: To Enter into Executive Session.**  
**Assenting: W. Hedani, R. Higashi, L. Hudson, J. Medeiros,**  
**K. Robinson, M. Tsai**  
**Excused: S. Duvauchelle, I. Lay**

The Commission went into executive session at 11:18 a.m., and the regular meeting was reconvened at 11:52 a.m.

Chair Ball: ...back in order. Under Item D-1, we will open this up for public testimony at this time. Please identify yourself and you have three minutes.

Mr. Greg Kugle: Good morning, Mr. Chairman—

Chair Ball: Good morning.

Mr. Kugle: —and Commission Members. My name is Greg Kugle, I'm with the Damon, Key Law Firm in Honolulu and I represent Terry and Kay Epstein who are also present here this morning. And I thank you all for the opportunity to come before you again. I understand that you've had an explanation of what's transpired. And so I just wanted to let you know that we submitted a letter to Corp. Counsel, Colby, I'm sorry. I heard you two talking about last names. Explaining what we thought should transpire which is a new hearing on the permit applications. And the reasoning we set forth in that, and I'm not going to trouble you all with that today 'cause that's part of the record, but we would like to have the opportunity to come before...whether we come before the Planning Commission or a hearings officer. I suppose those are procedural options for you, but we look forward to the opportunity to present our case, and to make, to make sure the factual record is very clear about, about the situation that exists on our property as well as our neighbors. So, that's all I have this morning. Thank you.

Chair Ball: Thank you. Any questions for the testifier? Seeing none, thank you. Anyone else who would like to testify at this time may do so? Seeing none, public testimony is now closed. We will recess for lunch and be back by 1:00. Sorry for all of you who were waiting outside while we were in deliberation here. We will reconvene at 1 o'clock.

A recess was called at 11:55 a.m., and the meeting was reconvened at 1:08 p.m.

Chair Ball: ...come to order. I'd like to remind the Commissioners that we do start at 1:00 and we cannot start until all members are seated, not just presented but seated also. We are going to Item D-2, Director?

Mr. Spence: Commissioners, this is the judicial appeal of the Commission's denial of the Special Use Permit by Mr. Fredrick Honig of the Spirit of Aloha Temple for State Land Use Commission down on 800 Haumana Road, and I believe we're gonna go into executive session.

2. **Judicial appeal of the Commission's denial of the request by MR. FREDRICK R. HONIG of the SPIRIT OF ALOHA TEMPLE for a State Land Use Commission Special Use Permit to operate an agricultural educational classroom and hold Spirit of Aloha Temple Church Services with Church Service Related Events such as Weddings in the State and County Agricultural Districts on approximately 11 acres of land located at 800 Haumana Road, TMK: 2-8-004: 032, Haiku, Island of Maui. (SUP2 2012/0032) (K. Wollenhaupt)**

**AN EXECUTIVE SESSION MAY BE CALLED IN ORDER FOR THE COMMISSION TO CONSULT WITH ITS ATTORNEY ON QUESTIONS AND ISSUES PERTAINING TO THE COMMISSION'S POWERS, DUTIES, PRIVILEGES, IMMUNITIES AND LIABILITIES, PURSUANT TO SEC. 92-5(a)(4), HRS.**

Chair Ball: Corporation Counsel?

Mr. Hopper: We would request a motion to go into executive session the purpose being under HRS 92 to consult with the board's attorneys on issues of their rights, duties, liabilities and also to update the current case that is under appeal.

Chair Ball: At this time do I have a motion to move into executive session.

Mr. Medeiros: So move.

Chair Ball: Is there a second for that?

Mr. Robinson: Second.

Chair Ball: All in favor say, aye or raise your hand?

Commission Members: Aye.

Chair Ball: Any opposed? Motion carried. We will have public testimony after this brief executive session. We are--

Mr. Hopper: Note that no action is gonna be taken today on this item. This is not an approval. So this just a discussion of the case with the board's attorney today.

**It was moved by Mr. Medeiros, seconded by Mr. Robinson, then unanimously**

**VOTED: To enter into Executive Session.**

**Assenting: W. Hedani, R. Higashi, L. Hudson, J. Medeiros, K. Robinson,  
M. Tsai**

**Excused: S. Duvauchelle, I. Lay**

Unidentified Speaker: ...(inaudible-speaking from the audience)...wondered if we can give public testimony first before going into executive session?

Mr. Hopper: Chair, we had a motion to go into executive session and the Chairperson--

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

Mr. Hopper: I mean, I'd probably recommend doing that afterwards.

Unidentified Speaker: Okay.

Chair Ball: We don't think it will be that long hopefully. Thank you. We are going to move into executive session.

The Commission went into executive session from 1:12 p.m. to approximately 1:49 p.m., and reconvened the regular meeting at 1:51 p.m.

Chair Ball: Call this meeting back to order. We are on Item D-2, we are going to open this up for

public testimony at this time. If you would like to testify, you have three minutes on this subject matter, and come forward and identify yourself please.

Mr. Dan Mizner: Good afternoon, my name's Dan Mizner. I'm a resident of Haumana Road, 455. And there's probably little need to testify 'cause there's nothing changed from last time we testified. It's still a matter of law that he wants a church, but he really wants weddings on Agricultural land. And we do disagree with the Fire Department and Police about that road. They get use sirens and lights, but food trucks and people late for the wedding don't. And as you can see by the pictures passed around that's a narrow road. All the residents use it to get to house to house, the kids ride their bikes on it, we all walk on it. It's just not safe to have weddings come up there. And you just denied, I think for eight extra bedrooms, how about a wedding with 100, 200 people? What's that impact on the traffic and the neighborhood? So it's just a matter...a commercial enterprise is not allowed on Ag land. Yes, he's got a beautiful piece of property. He's already permitted for ag tours, but he wants more. So we just ask you to please deny this. We feel it's a frivolous lawsuit. Please deny it and vigorously oppose it. Thank you.

Chair Ball: Thank you. Any questions for the testifier? Seeing none, thanks, Dan.

Ms. Nancy Gilgoff: Aloha.

Chair Ball: Aloha.

Ms. Gilgoff: I'm Nancy Gilgoff and I live at 411 Haumana Road since 1994 when I built my house with my sister and my daughter. I also have testified twice and don't feel that I need to add anything to the testimony except to thank you all for all the effort and time you've put into this, and to say that nothing really has changed. When I bought the land I was told don't run a business in Ag land this isn't what it's for. And I was quite happy and confident that the road would not be used for private businesses. So I still object to having Frederick run something like that. Thank you.

Chair Ball: Thank you. Any questions for the testifier? Seeing none, thank you, Nancy. Anyone else that would like to testify at this time?

Unidentified Speaker: Can I just ask a question?

Mr. Hopper: No.

Chair Ball: No. Thanks, Brian. Thanks for not asking your question. Okay, anyone else who would like to testify at this time, do so. If not, we will close public testimony and close this item. Oh, let me enter into the record these photos that were handed to us. They'll be passed around for all the Commissioners to see and this goes with the letter that everyone has received from one of the residents down in the...on that road.

Okay, moving onto the next item. Item E, Acceptance of Action Minutes of May 12<sup>th</sup> meeting, and Regular Minutes of the April 28, 2015 meeting.

**E. ACCEPTANCE OF THE ACTION MINUTES OF THE MAY 12, 2015 MEETING AND  
REGULAR MINUTES OF THE APRIL 28, 2015 MEETING**

Chair Ball: Do I have a motion to approve.

Mr. Hedani: So move.

Chair Ball: Moved by Hedani.

Mr. Higashi: Second.

Chair Ball: Seconded by Higashi. All in favor, please raise hand indicating aye. Any opposed? Please raise your hand indicating aye. Seeing none, the motion passes unanimously.

**It was moved by Mr. Hedani, seconded by Mr. Higashi, then unanimously**

**VOTED: To Accept the Action Minutes of May 12, 2015 and the Regular  
Minutes of April 28, 2015 Meetings.**

***Assenting: W. Hedani, R. Higashi, L. Hudson, J. Medeiros,  
K. Robinson, M. Tsai***

***Excused: S. Duvauchelle, I. Lay***

Chair Ball: Director's Report. Director?

Mr. Spence: Okay, we are on Item F-1. First is Sam and John Garcia requesting a two-year time extension on a SMA Permit to initiate construction. Staff Planner this afternoon is Ms. Candace Thackerson.

**F. DIRECTOR'S REPORT**

1. **MR. WILLIAM SPENCE, Planning Director, notifying the Maui Planning Commission pursuant to Section 12-202-17(e) of the Maui Planning Commission's SMA Rules of his intent to process the following time extension request administratively:**
  - a. **SAM and JOHN GARCIA requesting a two(2)-year time extension on the Special Management Area Use Permit condition to initiate construction of the Garcia Family Subdivision at TMK: 2-1-007: 067, Makena, Island of Maui. (SM1 2002/0016)(C. Thackerson)**

Ms. Candace Thackerson: Aloha, Commissioners. So this is a waive of review for a time extension, a two-year time extension for an SM1 that was previously approved by this body. This is going to be the third request for the applicant. The original approval was granted in 2008.

Chair Ball: Candace, can you go into it a little bit for the new guys, a little bit about what this means

in general?

Ms. Thackerson: Sure. Let me grab the agenda really quick too.

Chair Ball: With time extensions in general.

Ms. Thackerson: Sure. So SMA Major Permits are SM1s. Those projects come before this body and they're voted on, you know, just like you see the SMA approvals that you do right now. We give them a time to initiate construction. It's usually five years from the date of the approval, and then after they initiate construction which could be offsite improvements or getting a grading permit or a building permit, they usually have five more years to complete the project. So sometimes, you know, due to economic things or other things happening in the area, they get a permit but they can't act on initiating the construction for some time and so the applicants will come back in and they will request a time extension request. So we have now streamlined the process for that for just a two-year time extension request where this body can then decide to waive review of it. It just means that you allow the Director to grant two years out the gate without really bringing back the permit for a new public hearing, opening up the permit for possible new conditions.

So usually what's included is the two-year request, the reason for the request. I try to include the drainage report because that's very important in the SMA as well as a site map, a slight description of the project, and sometimes pictures just to give you a brief because it's supposed to be a waive of review. If the body feels there's some outstanding things or this has been going on for too long or they have other issue, you're welcome to not waive review and ask to see the project again brought before the body and that will require me to do, well not me, the Department to provide a staff report and reopen up the project essentially or you can grant two more years, you know, with comments. Sometimes I've had the board say, the Commissioners say, you know they don't want to see it come before, you know, another...or they can grant more than two years if you feel this has come before me three or four times for a two-year time extension, how many years do you guys really need and you're welcome to make that a longer extension.

So this is the Garcia Family subdivision. This is gonna be their third time extension request. And the applicant's actually made a lot of improvement towards getting this permit done. They actually submitted for final subdivision approval just this past March and that was due to the Show Me the Water Bill was kind of their big hold up for getting the subdivision done. And with the amendments made to that they now qualify for an exemption because they're under 10 lots. So that was really the major mover that's gonna get this permit going. So the applicant is confident that with a two-year time extension request they can get this project moving forward and they are here as well.

Chair Ball: Corporation Counsel?

Mr. Hopper: Just to give the detail. This is a determination by the Director that they're going to grant a two-year time extension. The Commission is being asked whether it would like to review that determination or waive review of that determination. It states in the rules, prior to granting or denying an permit time extension request, the Director shall notify the Commission of the request at the Commission's next regularly scheduled meeting, that's today. Receipt of which shall be acknowledged by the Commission. Such notification shall include but not be limited to the information provided by the Department by the permit holder. That's the justification for the time



extension. The Commission may review the permit time extension request at its next available meeting after receiving notice or waive review of the request. If the Commission waives review of the request, the Director may grant or deny the time extension and forward a copy of the determination to the Commission.

So today, you're not approving or denying a extension. You're looking at the Director said, I'm going to grant this extension if you waive review unless you take action to say you actually wanna review and determine whether to approve or deny the time extension. So the requested action today is for the Commission to waive review of the two-year time extension that can be granted by the Director as long as you waive review. If you don't waive your review, at the next meeting it's gonna come up as an agenda item, and you'll have to take action to grant or deny the time extension.

Ms. Thackerson: What he said.

Chair Ball: Commissioner Robinson?

Mr. Robinson: So the question I have is so this came in front of the board in 2002 is this how I read this 'cause it has a 2002 at the bottom?

Ms. Thackerson: That was the date the permit was assigned. That's not when it came before the board. It actually had a change in zoning. It was an SM1, a CIZ. I believe it had an EA on it as well that took several years to process to get through County Council. Your original approval for this project was on—

Chair Ball: 08.

Ms. Thackerson: 08. It was March 25, 2008.

Mr. Robinson: And how would I see that? I wouldn't see that unless I ask for it?

Ms. Thackerson: That's in the letter. I believe there should be a copy.

Chair Ball: Coversheet on that.

Ms. Thackerson: The top, it says Rory Frampton Consulting and it says--

Mr. Robinson: Oh, I see.

Ms. Thackerson: The permit was granted by the Maui...yeah, it kinda gives a brief history of the project.

Mr. Robinson: And it's not this, I'm just trying to follow so when it comes up in the future and how to read it.

Chair Ball: Good question.

Mr. Robinson: But these are all preapproved from the board before?

Ms. Thackerson: Yeah.

Mr. Robinson: This is just extensions 'cause they're still in construction.

Ms. Thackerson: Yeah.

Mr. Robinson: Thank you.

Ms. Thackerson: And this one was really held up by the Show Me the Water Bill.

Chair Ball: Commissioner Hedani?

Mr. Hedani: Move to acknowledge receipt of the request and to waive review.

Mr. Hudson: Second.

Chair Ball: Discussion? Commissioner Hedani?

Mr. Hedani: I think as I recall this was a small subdivision of 10 lots in Makena, a family subdivision. Show Me the Water is a substantial barrier to proceeding if you're in the middle of a dry area. And it seems like they're right at the point where they're just about ready to start moving with the exemption that they've received. So I would encourage approval of an extension at this time. Well, I would encourage waiving review to not prolong the misery.

Chair Ball: Further discussion? Commissioner Medeiros?

Mr. Medeiros: I would support waiving the review too. The Planning Director knows what he's doing. Garcia Family has been in Makena forever, you know, so I'll support waiving.

Chair Ball: Director?

Mr. Spence: I just want to thank Mr. Medeiros for the compliment.

Chair Ball: The only concern I would have, would be...you said they're basically ready to go now is that...

Ms. Thackerson: Well, they submitted final subdivision approval in March, just this past March and because they got an exemption from the Water Department because they just amended the Show Me the Water Bill, being how they lightened it up a little bit. So they're moving forward with it.

Chair Ball: Okay, so they're--

Ms. Thackerson: To initiate construction, then from there they have--

Chair Ball: So funding is in place to start this then?

Ms. Thackerson: I can ask the applicant. He's nodding affirmatively. Yeah.

Chair Ball: Let the record show Mr. Garcia is nodding affirmatively. Okay, any further discussion? Seeing none, all in favor, please raise your hand?

Mr. Spence: That's six ayes.

Chair Ball: Motion carries with six ayes unanimously. Thank you.

**It was moved by Mr. Hedani, seconded by Mr. Hudson, then unanimously**

**VOTED: To Acknowledge Receipt and to Waive Review of the Time Extension Request.**  
**Assenting: W. Hedani, R. Higashi, L. Hudson, J. Medeiros, K. Robinson, M. Tsai**  
**Excused: S. Duvauchelle, I. Lay**

Chair Ball: Onto the next item?

Mr. Spence: Okay, Commissioners, Item F-1, 1b, is Mr. Charlie Jencks, Owners Representative for Honuaula Partners, LLC requesting a two-year time extension to initiate construction of roadway improvements. This is the same thing, you can acknowledge receipt and waive or decide if you wanna review, and again, our Staff Planner is Ms. Candace Thackerson.

- b. MR. CHARLES JENCKS, Owners Representative for HONUULA PARTNERS, LLC requesting a two(2)-year time extension on the Special Management Area Use Permit condition to initiate construction of the proposed Wailea Alanui Drive and Wailea Ike Drive Intersection Improvements at TMK: 2-1-008: 118, 131, and 134, Wailea, Island of Maui. (SM1 2009/0012)(C. Thackerson)**

Ms. Thackerson: So this is a waive of review for a two-year time extension request for the proposed Wailea Alanui Drive and Wailea Ike Drive intersection improvements. The reason for this permit time extension request was that the project development has got a legal challenge filed against it for the County of Maui's acceptance of their Final EA. So that's kind of blocking them moving forward or pulling any permits right now to move forward on this project. So they are requesting a two-year time extension request as of now. And the applicant is here if you have questions on about how long that process might take or what they're expecting to be the outcome.

Chair Ball: I think that would be good for the new commissioners, and just maybe an update for the old commissioners if Charlie can come forward?

Mr. Charles Jencks: Good afternoon, Commissioners. It's been a long day. I'll keep this short, to the point. In 2008-

Chair Ball: Can you identify yourself for the record? Thank you.

Mr. Jencks: Oh, sorry. Charlie Jencks, Owners Representative for Honuaua Partners, LLC. I have been the owner's rep. since 2000 on this project. We received zoning approval in 2008 from the Maui County Council. And one of the conditions we received from the Council was to improve this intersection, Wailea Alanui and Wailea Ike Drive, not to so much address impacts from my project, but anticipated impacts from the development of the Makena Resort project. The improvements include left-turn lanes heading south on Makena Alanui or Wailea Alanui so it's not really tied, but nevertheless, I have the requirement to do this improvement.

After the zoning approval was received, we initiated the development of the Environmental Impact Statement because of two triggers. One was the use of State highway to extend the Piilani Highway into the project, and also the development of a wastewater treatment facility. The EIS was completed. We did a draft. The Commission reviewed that. We then submitted a final in 2012, in July of 2012 for the Commission's acceptance. The Commission accepted it and then the Sierra Club filed suit at the 60<sup>th</sup> day, they could do so.

So in October 2012, we were...well, the County of Maui was served with a lawsuit that we now have standing, supporting, and addressing the challenge for the County of Maui. We are now I think very close to getting settlement with Sierra Club. One of the key issues just for your information was they claimed that the archaeological inventory survey was inadequate. In September of 2013, I initiated a new AIS. I have just the other day finally received a letter from SHPD accepting with a few minor comments that document. So we're close to completing and addressing all of the issues that Sierra Club claimed they wanted addressed.

And this project, by the way, is designed. We did a subdivision, received the land from the owners from the Blue Course in Wailea for the widening of Wailea Ike Drive which by the way in the meantime has been accepted by the County as a County roadway. So we've done everything we can do. We did an EA project. We received a FONSI on that. Did the design, did the subdivision, got the land, and I'm just kind of marching in place until I can get settlement with Sierra Club and then I can convince my banker friends to spend some money. So that's where we are, and I'd like your support on this.

Chair Ball: Okay, Commissioner Robinson?

Mr. Robinson: Hi, thanks for cluing us in on...(inaudible)...project.

Mr. Jencks: No problem.

Mr. Robinson: So we're talking about the main stop light coming down from Wailea and that's the project site?

Mr. Jencks: No, the project if you drive down Piilani—

Mr. Robinson: So you have the housing and then I see another circle at Shops of Wailea and it's showing the...

Mr. Jencks: Yeah, it's the T-intersection of Wailea Alanui and Wailea Ike Drive, right there that intersection. That's where the signal improvement would go.

Mr. Robinson: And you're tasked because of your other, your other...your other developments is to improve that intersection?

Mr. Jencks: Well, my project was reviewed in the context of Makena Resort's application at the same time. So a lot of...you know, in a long-term sense a lot of traffic is gonna be generated. Most of the traffic being handled by this intersection would come from Makena Resort. But I was the first guy up so I got the opportunity to make the improvement.

Mr. Robinson: Isn't...aren't they also building a clubhouse by where Manoli's is right now?

Mr. Jencks: That was the old Blue Course Clubhouse years ago, then it was a restaurant, then it was the Chart House. That has all been revised. It's now a commercial center and it's, it's pretty much complete.

Mr. Robinson: But I heard that there is a, there is a redevelopment of that clubhouse?

Mr. Jencks: Yeah, they redid the whole thing.

Mr. Robinson: And are any of those roads gonna impact this intersection?

Mr. Jencks: No.

Mr. Robinson: No?

Mr. Jencks: No. The capacity that will generate is primarily...there's now one left-turn lane going south from Wailea Ike Drive, there'll be two. And then coming north on Wailea Alanui, to Wailea Ike Drive heading north there'll be two right-turn lanes signalized going up the hill. So that's the type of improvement that we have, that we're responsible for.

Mr. Robinson: Thank you.

Mr. Jencks: You're welcome.

Chair Ball: Commissioner Tsai?

Vice-Chair Tsai: Well, actually I had hoped that Public Works would be here to answer this question, maybe you can Charlie, is that we are...while they're doing the repaving of Wailea Ike and Wailea Alanui as we speak, they got approval...how's that going to affect this going forward?

Mr. Jencks: It shouldn't. We're gonna have to...we're gonna have to add and if necessary repave that sections that the County wants us to do. So we'll do whatever we need to do.

Chair Ball: Okay, any further questions? Do we have a motion?

Mr. Hedani: Move to acknowledge receipt of the request and to waive review.

Mr. Medeiros: Second.

Vice-Chair Tsai: Second.

Chair Ball: Seconded by Medeiros. Any further discussion? All in favor, aye, please raise your hand?

Mr. Spence: It's six ayes.

Chair Ball: Motion carried unanimously.

**It was moved by Mr. Hedani, seconded by Mr. Medeiros, then unanimously**

**VOTED: To Acknowledge Receipt and Waive Review of the Time Extension Request.**  
**Assenting: W. Hedani, R. Higashi, L. Hudson, J. Medeiros, K. Robinson, M. Tsai**  
**Excused: S. Duvauchelle, I. Lay**

Chair Ball: Moving on. F...F-1c.

Mr. Spence: Mr. Grant Chun, Vice-President of A&B Properties also requesting a two-year time extension for an SMA Permit to initiate construction of Kane Commercial Street Mixed-Use project and it is Candace Thackerson.

- c. MR. GRANT Y.M. CHUN, Vice-President of A&B PROPERTIES, INC. requesting a two(2)-year time extension on the Special Management Area Use Permit condition to initiate construction of the Kane Street Commercial Mixed-Use Project and related improvements at TMK: 3-7-005: 003, 011, and 023 (por.), Kahului, Island of Maui. (SM1 2005/0004)(C. Thackerson)**

Ms. Candace Thackerson: Yeah, so this is again a waive to review the time extension request for the Special Management Area Use Permit for Kane Street Commercial Mixed-Use project. This is the fifth time extension request for this project. This is the fifth time you guys would be granting a two-year time extension. The applicant is here, Grant, you wanna maybe give 'em a brief update on what's been going with the project?

Mr. Grant Chun: Good afternoon everyone, Mr. Chairman. My name is Grant Chun here on behalf of A&B Properties. Just to update you all on this project...for the new members this project is situated right near the Kahului Foodland between...on Kane Street between Foodland and the Kahului Library.

This project was...had the, I guess you would call it the unfortunate timing of coming, coming up for review for SMA right when the economy and the real estate market took a real serious downturn in 2007. So we've been the subject of a couple of different extensions up until this point. We have done all of the architectural and civil design work for the property. We've put in the water meters.

We've been, of course, working with the State in terms of the traffic improvement...traffic impact assessment report which is actually approved by the DOT and the Department of Public Works back in 2011.

The most recent development that I think is pertinent for your consideration is in December of 2014, the County made...the County Council made what we think are some very positive changes to the Residential Workforce Housing Ordinance. And that has sort of breathed new life into this project in terms of its feasibility. As you, as you may already be aware, the ordinance allow for, well encourages, it's basically the changes have been to encourage the development of affordable housing. And in so doing they have accommodated in the ordinance for workforce housing product to be provided say in Kahului and satisfy a requirement anywhere on the island so not just in Kahului which was the case previously. So that allows us to take a different look at the project with the different lands. And as indicated in our letter we've been in earnest discussions with a nonprofit housing provider who's very interested in pursuing the design and the plan as permitted. So on that basis we respectfully request a waiver of the Commission's review to allow the Planning Department to go ahead and proceed with an extension.

Chair Ball: Okay, questions? Commissioner Tsai?

Vice-Chair Tsai: So Grant if I'm understanding correctly financing is not an issue here or is it?

Mr. Chun: Really the issue has been the market. In order to, of course, this is a high rise condominium project, so of course there's construction costs associated with that kind of construction that drive, you know, expense in terms of constructing the project. That overlaid with the fact that we are in a section of Kahului where you know prices, there is a market but prices have to be responsive to that market, yeah. And so the original concept of basically a market project with an affordable component wasn't working financially mainly because you can only charge so much you know, in that part of our community and make it desirable to the market place so it wasn't working financially. So now with this new scenario wherein we might consider this as a where in 103 units would be made available to you know, workforce, our workforce housing needs, to address our workforce housing needs. We think that there is a good, very good possibility that this might, you know, come to fruition as designed actually.

Chair Ball: Commissioner Robinson?

Mr. Robinson: Aloha, Grant. I always have questions for you but I didn't want to bother you at a party, so....

Mr. Chun: Yeah, no worries.

Mr. Ball: Don't do it.

Mr. Robinson: Just here. So the Life Center Church where is that located on this?

Mr. Chun: The Life Center Church is right across the street from Foodland is that the one?

Mr. Robinson: Yeah.

Mr. Chun: So we're right—

Mr. Robinson: Across the street from that?

Mr. Chun: —we're on the same side of the street, but right next door. So the DOE property, the large DOE property that at one time was—

Mr. Robinson: DAGs, all that over there?

Mr. Chun: Yes, at one time it was the elementary school and then it became DAGs, is on the other side of us.

Mr. Robinson: So where the—

Mr. Chun: The dorms, the MCC dorms.

Mr. Robinson: Yeah, so the go-cart area?

Mr. Chun: That's the one.

Mr. Robinson: The fish tank, lily pond, that's all your property as well as the tree where all the vagrants hang out right now.

Mr. Chun: That's the...yeah.

Mr. Robinson: That's that whole property there?

Mr. Chun: That's our tree, yeah.

Mr. Robinson: And the bumpy, bumpy road that everybody is always wondering when it's gonna get fixed?

Mr. Chun: Yes.

Mr. Robinson: So now it's...I was talking to somebody who's involved with across the street and they said that their whole idea of the student housing and all that has kinda fell off and it's not low income housing there, and it's actually...they're actually...there's opening there. So are you saying that until the market picks up you guys might, you know, do some site work and slowly build and kind of make this project go till it's viable to actually try and sell. Just try to kind of clear up the area and kind of...

Mr. Chun: Well, we're looking at a couple of different scenarios. If we work with a provider it could very well be rental housing, senior rental housing or affordable rental housing.

Mr. Robinson: And does the determination of the housing across from your street determine any type of restrictions you guys might have as a type of housing 'cause it's switched from student



housing to low income?

Mr. Chun: It wouldn't...it would probably impact the market that we try and appeal to in terms of you know, once the units are available, but it wouldn't impact what we build necessarily.

Mr. Robinson: I hope you guys do it quickly. That's a eyesore.

Mr. Chun: Yeah.

Mr. Robinson: Thank you.

Mr. Chun: Yeah, thanks.

Chair Ball: Commissioner Higashi?

Mr. Higashi: Grant, what kind of price range are you talking about in this particular complex?

Mr. Chun: Well, when we first came out in the mid-2000's we were looking at units that ran from the mid-twos to the mid-fours, you know, yeah. We have to reassess now, you know, in 2015 what the market rate would be as well as whether it is in fact developed as a purely affordable, you know, project then in which case it would be...pricing would be basically dictated, yeah, but ordinance.

Chair Ball: Questions, anyone? Seeing none, can I get a motion?

Mr. Medeiros: Move to waive review.

Mr. Robinson: Second.

Chair Ball: Second by Robinson. All in favor, signify by raising your hand? Director?

Mr. Spence: It was six ayes.

Chair Ball: Motion carries.

Mr. Chun: Thank you very much.

Chair Ball: Thank you.

**It was moved by Mr. Medeiros, seconded by Mr. Robinson, then unanimously**

**VOTED: To Waive Review of the Time Extension Request.**

**Assenting: W. Hedani, R. Higashi, L. Hudson, J. Medeiros,  
K. Robinson, M. Tsai**

**Excused: S. Duvauchelle, I. Lay**

Chair Ball: Thank you. With that, then we will move onto Item 2 and 3?

Mr. Spence: Your SMA Minor Permit and SMA Exemption Reports.

**2. SMA Minor Permit Report (Appendix A)**

**3. SMA Exemption Report (Appendix B)**

Mr. Spence: If there's any questions on that?

Chair Ball: Seeing none, shall we move onto Item 4?

Mr. Spence: Clayton you wanna do this?

Mr. Yoshida: You can.

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

**a. June 9, 2015 meeting agenda items**

Mr. Spence: Okay, so Commissioners on your June 9<sup>th</sup> Commission meeting we have two public hearing items. One by Mr. Lawrence Alder of Walgreens....all is Draft Environmental Assessments for a new Walgreens down on South Kihei Road. The second one is Victory Development. I believe that...actually both of them has been handed out to you today, also a Draft Environmental Assessment in support of a community plan amendment, multi-family use hotel for Nani Loa Condominium project also in Kihei.

Chair Ball: Thank you very much. Members, read those and bring those back with your questions for the next meeting then.

Mr. Spence: And then there's, the last one is the adoption of decision and order for the Maui Demolition and Construction Landfill.

Chair Ball: Very good. Okay, next meeting will be on June 9<sup>th</sup>. If there is nothing else, meeting's adjourned.

**G. NEXT REGULAR MEETING DATE: June 9, 2015**

**H. ADJOURNMENT**

The meeting was adjourned at approximately 2:21 p.m.

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN  
Secretary to Boards and Commissions

**RECORD OF ATTENDANCE**

**Present**

Keone Ball, Chair  
Wayne Hedani  
Richard Higashi  
Larry Hudson  
Jason Medeiros  
Keaka Richardson  
Max Tsai, Vice-Chair

**Excused**

Sandy Duvauchelle  
Ivan Lay

**Others**

Will Spence, Director, Planning Department  
Michael Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel  
Clayton Yoshida, Planning Program Administrator  
Joseph Alueta, Administrative Planning Officer  
Annalise Kehler, Cultural Resources Planner  
Gina Flammer, Staff Planner  
Rowena Dagdag-Andaya, Deputy Director, Department of Public Works (on-call)