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**MAUI PLANNING COMMISSION  
PORTION OF REGULAR MINUTES  
ITEM C-5  
JUNE 27, 2017**

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Mr. Spence: So Commissioners we are on Item C-5, Ms. Kathy Davey requesting a Land Use Commission Special Use Permit and a Bed and Breakfast Home Permit in order to operate the Kaanapali Coffee Cottage, a two-bedroom bed and breakfast home in the State Ag District. Our staff planner this afternoon is Tara Furukawa. And Commissioners we also have a Petition to Intervene on this matter. So the Commissioners the way that we're gonna go is we're gonna give a brief overview. We will go ahead and I don't know if we want to do the full presentation but we're going to give a brief overview by Staff and then we're going to do public hearing and then we go straight into the Petition to Intervene.

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5. **MS. KATHY DAVEY requesting a State Land Use Commission Special Permit and a Bed and Breakfast Home Permit in order to operate the Kaanapali Coffee Cottage, a 2-bedroom bed and breakfast home in the State Agricultural District at 2950 Aina Mahiai Place, TMK: 4-4-020: 052, Kaanapali, Lahaina, Island of Maui. (SUP2 2017/0006) (BBWM T2017/0002) (T. Furukawa)**
- a. **ISAAC HALL, attorney on behalf of JACK and LYNN MUEGGE, MENEHUNE VENTURES, LLC, WORTHY CLAY SCOTT, and MARY JACQUELINE SCHEIBEL submitting a Petition to Intervene dated June 13, 2017 on the above mentioned applications from KATHY DAVEY.**
- 1) **Action of the Petition to Intervene**
- 2) **If the Commission acts to grant the Petition to Intervene, then the Commission may select a Hearing Body/Hearings Officer**
- b. **If the Commission denies the Petition to Intervene, then they may action on the application requests.**

Ms. Tara Furukawa: Good afternoon Commissioners. This item is under your review because the applicant is requesting a Bed and Breakfast Permit for a two-bedroom bed and breakfast in an accessory farm dwelling in Kaanapali. The Department has received protests that amount to 30 percent of lot owners within 500 feet of the proposed lot. Also, the applicant is requesting a Land Use Commission Special Permit to operate the bed and breakfast on a one-acre portion of agricultural land in Kaanapali. The applicant's consultant is Debbie Mitchell and she'll present you with the scope and details of the project.

Mr. Spence: Can we abbreviate?

Mr. Giroux: Just by staff.

Chair Duvauchelle: Oh just by the Staff. Well she just gave her...

Mr. Spence: Okay, just by Staff.

1  
2 Chair Duvauchelle: Staff just gave us the...(inaudible)...

3  
4 Mr. Spence: So we'll hold onto it.

5  
6 Chair Duvauchelle: So we're gonna do public testimony.

7  
8 **a) Public Hearing**

9  
10 Chair Duvauchelle: At this time we would like to open the floor for public testimony. Anybody  
11 wishing to testify on this agenda item please come up? State your name and you'll have three  
12 minutes.

13  
14 Ms. Lynn Muegge: Before I start, can I hand out these?

15  
16 Mr. Spence: Can you give it to Staff and she'll hand it out?

17  
18 Ms. Muegge: Sure. I'm Lynn Muegge. I live at 2951 Aina Mahiai Place. I'm testifying in  
19 opposition to this permit and in support of our Petition of Intervene and to demonstrate the harm  
20 if a permit is granted. I live directly across from the proposed B&B less than 100 feet away. I  
21 have two pictures to show you the proximity to us. My husband and I have been married for 52  
22 years. We worked hard, raised our kids, an experienced our dream of retiring to Maui in 2002.  
23 Seven years ago with reduced prices we bought and our forever home. Our home would have  
24 land and quiet. We could keep Maui green by buying into the responsibility of the coffee farm.  
25 We built the ohana in the true spirit of the word. It is agreed that as we age we will move into the  
26 ohana and our children will live into our home.

27  
28 All owners agree to keep the farm in physical use but also to support the farm. Allowing this  
29 permit would put us at risk financially. Lose the farming aspect of the Kaanapali Coffee Farm  
30 which is a universal coffee farming operation not each individual owner but a universal owner and  
31 we have Launiupoko. Included is a very important letter submitted to Planning in April from Kimo  
32 Falconer, an owner of Maui Grown Coffee and our farmer, opposing this application.

33  
34 The applicant has answered my first letter of opposition but it resolved none of my concerns. One  
35 of the letters in your packet addresses that completely. She comments the association has issued  
36 no restrictions concerning the Coffee Borer Beetle, but the HOA in fact has stopped all farm tours,  
37 closed the gates, posted signs, trimmed the trees outside the gate so the beetle has no place to  
38 live. They have recently written two letters reminding no owners that no one is allowed in the  
39 farming land operation. We know tourists sometimes break the rules. Sometimes they trespass.  
40 Sometimes they swim with red flags waving and why wouldn't they go into the trees if they were  
41 staying at the coffee farm.

42  
43 Additionally there will be noise. We can hear conversation from the proposed B&B on our lanai  
44 and in our house without any amplification. Applicant has been living the ohana while building  
45 her home so we already know how much noise there is. Applicant landscapes to shield her home  
46 but did nothing to shield ours.

47

1 There will be traffic. B&Bs can change occupants every day or every few days. Tourists tend to  
2 travel about coming and going to see the island including other coffee farms which again puts us  
3 at greater risk. There will be check-ins sometimes late at night because planes land late at night.  
4 We have one dim street light. So applicant will have to leave lights on for the people to find the  
5 B&B. Check-ins bring conversations, unloading a bag, et cetera. Already one of their guests  
6 have turned into our driveway instead of theirs.

7  
8 Applicant says the house rules for B&B will protect us. I have addressed several reasons for  
9 being doubtful in my letter but here's just two—

10  
11 Ms. Takayama-Corden: Three minutes.

12  
13 Ms. Muegge: Shall I stop or can I continue?

14  
15 Chair Duvauchelle: Please wrap up.

16  
17 Ms. Muegge: During construction we asked that the mud brought out by her contractors be  
18 cleaned from the street as required. It was not done. And in the last couple of months she has  
19 been installing her landscape, working until dark well past 6:00 p.m. and on Sunday, all prohibited.  
20 Getting ready for tenants is more important than the farm rules. So I have reason to be skeptical  
21 that the B&B rules will be enforced.

22  
23 Chair Duvauchelle: Thank you.

24  
25 Ms. Muegge: Okay.

26  
27 Chair Duvauchelle: Any questions for the testifier?

28  
29 Mr. Robinson: I have one.

30  
31 Chair Duvauchelle: Commissioner Robinson?

32  
33 Mr. Robinson: Good afternoon.

34  
35 Ms. Muegge: Hi.

36  
37 Mr. Robinson: When did you purchase your lot?

38  
39 Ms. Muegge: Seven years ago.

40  
41 Mr. Robinson: And at that time did you know that the rules were that people could apply for a  
42 short-term rental?

43  
44 Ms. Muegge: At that time we were told that nothing mauka of the highway could be used as short-  
45 term rentals and that we were told by the association that never to consider using a short-term  
46 rental on the property.

47

1 Mr. Robinson: Did you folks ever had an association meeting discussing short-term rentals.  
2  
3 Ms. Muegge: There has been a meeting. The developer is in control of our board until 2020 and  
4 it is his opinion that he is going to yield to the Commission. His salesmen uses that pool to sell  
5 property. So he is not going to oppose it and therefore the board will not oppose it.  
6  
7 Mr. Robinson: 'Cause you're aware that they have come in front of our commission to get short-  
8 term rentals and I believe the farmer that you have stated in this letter that now is against it was  
9 previously for that?  
10  
11 Ms. Muegge: Yes.  
12  
13 Mr. Robinson: Okay, thank you.  
14  
15 Ms. Muegge: Thank you.  
16  
17 Chair Duvauchelle: Any other questions? Thank you very much.  
18  
19 Ms. Muegge: If I can say one more thing to your answer? When the first short-term rental came  
20 there was no coffee beetle borer, coffee borer beetle on Maui. And so that's what's changed Mr.  
21 Falconer's mind. It now exists on Maui and then that could be transported to our farm.  
22  
23 Chair Duvauchelle: One moment please ma'am. Commissioner Carnicelli?  
24  
25 Mr. Carnicelli: Do you ever have people come visit you?  
26  
27 Ms. Muegge: Yes.  
28  
29 Mr. Carnicelli: Yeah, from off island?  
30  
31 Ms. Muegge: Yes.  
32  
33 Mr. Carnicelli: Okay. And do those people ever travel to Hana?  
34  
35 Ms. Muegge: Well—  
36  
37 Mr. Carnicelli: Do they ever go Upcountry?  
38  
39 Ms. Muegge: --in the last three years, no because I have told them that if they come and visit us  
40 they can't do that.  
41  
42 Mr. Carnicelli: So no one that visits you is allowed to go to Hana?  
43  
44 Ms. Muegge: No.  
45  
46 Mr. Carnicelli: Are they allowed to go Upcountry?

1  
2 Ms. Muegge: No, not to the farm.

3  
4 Mr. Carnicelli: You restrict them?

5  
6 Ms. Muegge: They're all friends. They're all family or friends and so I ask them not to go any  
7 place where there's coffee. We don't rent out—

8  
9 Mr. Carnicelli: So I see so you can actually ask your guests to not go places?

10  
11 Ms. Muegge: Yes.

12  
13 Mr. Carnicelli: Okay, that's all I had thank you.

14  
15 Chair Duvauchelle: Anybody else wishing to testify at this time? Please come forward, state your  
16 name and you'll have three minutes. Give them to Tara please. Thank you.

17  
18 Ms. Jacqueline Scheibel: My name is Jacqueline Scheibel. I own Lot 6 which is at 1001 Oka  
19 Kope Street just down the road.

20  
21 Vice-Chair Higashi: Please speak into the mic.

22  
23 Ms. Scheibel: I should have gotten a little closer. I'm sorry my name is Jacqueline Scheibel. I  
24 own Lot 6 in Kaanapali Coffee Farms. I have just purchased Lot 6 just recently. I was not informed  
25 at that time that there was a bed and breakfast in anywhere, you know. I expected to be the way  
26 it had been when I first saw it two years ago. So the opportunity to write and to speak in opposition  
27 to the proposed short-term rental bed and breakfast in Agricultural zoned Kaanapali Farms is it's  
28 vital that we opposed this. I closed Lot 6 recently without knowledge. My intent for Lot 6 is to  
29 grow coffee, to grow vegetables, to grow fruit all organic and to build a very lovely retirement  
30 home where I will live for the rest of my life. I've lived in Maui a long time. I do know what happens  
31 with short-term rentals because I own since 1989, I've owned a property, a townhouse in Kahana  
32 at Kahana Sunset so at times I've helped manage that place. So I do know the problems that  
33 occur with guests who come, they want to party, they want to have a good vacation and so I  
34 understand that. But I know the issues. I know the times I've for Kahana Sunset I've had to call  
35 the police to come to handle issues from short-term rentals. So my experience at AH at Kahana  
36 Sunset tells me that the bed and breakfast would seriously disturb our neighborhood. I've  
37 explained owning AH, a 79-unit condominium complex, the Kahana Sunset which is on the water  
38 in Kahana and I also managed it. I know first-hand the problems created by vacation guests,  
39 parties, alcohol, loud music, noise, the need for added security and with guests access to the  
40 entire coffee farm land this can destroy our neighborhood agriculture which we depend on and  
41 the resident's peace and quiet. Plus the probability of guest introduction of the coffee berry beetle,  
42 borer beetle to our agriculture lands, the bushes which have already, this has already happened  
43 in Hana we know that and it happened through a bed and breakfast where people have visited  
44 on the Big Island and then they came. This is a probability and you do have the letter from Kimo  
45 Falconer that explains his concern about that. He's responsible for the growth of the berries, the  
46 coffee berries. So I've been doing short-term rentals for 28 years all in Kahana. I very well know  
47 the problems and there are many. Approval of this bed and breakfast—

1  
2 Ms. Takayama-Corden: Three minutes.  
3  
4 Ms. Scheibel: --will destroy my neighborhood where I will be building and living and I know that  
5 it's not gonna work, you know. I've read what Ms. Davey's protections, solutions as she has  
6 stated in her letters and I know that they will not work.  
7  
8 Chair Duvauchelle: Please conclude, your three minutes—please conclude, your three minutes  
9 is up.  
10  
11 Ms. Scheibel: Okay, okay. So please planning people and board your actions can protect and  
12 preserve agriculture land or destroy it. It's up to you. I don't want to be calling 911 to bring police  
13 to manage loud, aggressive vacation guest behavior which in my experience I know will happen.  
14  
15 Chair Duvauchelle: Thank you. Thank you.  
16  
17 Ms. Scheibel: Okay, thank you.  
18  
19 Chair Duvauchelle: Thank you very much, sorry. Any questions for the testifier? Okay, thank  
20 you very much. Anybody else wishing to testify?  
21  
22 Mr. Isaac Hall: Good afternoon—  
23  
24 Chair Duvauchelle: One moment Mr. Hall.  
25  
26 Mr. Spence: Are you testifying or --we'll close the public—  
27  
28 Mr. Hall: Public testimony, 92-3. Yeah, I'm testifying, but testimony.  
29  
30 Chair Duvauchelle: Okay, all right Mr. Hall.  
31  
32 Mr. Hall: Good afternoon Chair Duvauchelle and Members of the Mau Planning Commission. My  
33 name is Isaac Hall. I represent intervenors Jack and Lyn Muegge, Menehune Ventures, Worthy  
34 Clay Scott. Can you please distribute those? Oh you folks already have it.  
35  
36 Chair Duvauchelle: Yeah, yeah.  
37  
38 Mr. Hall: Oh great. Thank you very much. Worthy Clay Scott and Jacqueline Scheibel. The  
39 Commission has several options on these applications and out of prudence we are presenting  
40 during public testimony pursuant to 92-3. Our refutation of the Planning Department report, I  
41 request that you reject that report and deny both of the permits that are before you. Bed and  
42 breakfasts are not permitted on Agricultural lands and only be allowed if after a rigorous  
43 investigation of the facts and an honest application of law it can be determined if these tests are  
44 met. They are not met here.  
45  
46 First in this memo we show the mandates requiring the protection of agricultural lands under the  
47 Constitution, State Law, County Ordinance. Then we go through Agricultural Tourism Ordinance

1 within Maui County. And we wanted to point out in particular a comment by the State Land Use  
2 Commission. You're acting on a State Land Use Commission Special Use Permit and the  
3 comment was sought from the State Land Use Commission and the comment came back is this  
4 the entire documentation for a special permit for B&B? The discussion of how this permit  
5 application meets the requirements of a special permit are lacking and we agree with that  
6 comment. That doesn't play a major part in the Planning Department recommendations.

7  
8 This is a farm. It's a different kind of agricultural subdivision than you folks are used to reviewing.  
9 Each owner leases the lot to Kimo Falconer and Mr. Falconer operates his coffee operation on all  
10 the leased lots. And so we're dealing with a different sort of situation here. Mr. Falconer's letter  
11 hasn't been quoted in the Planning Department report but what he says, is we are concerned that  
12 visitor turnover that could arrive after recently visiting an infected area will not be monitored and  
13 would be current work to avoid infection in the hands of people who may not have the farm's best  
14 interest in mind. So I don't know what he said before, but this coffee borer problem is a problem  
15 to him on this active farm that you folks have a duty to protect and he sees this B&B as a threat  
16 to his farming.

17  
18 Going beyond that I think the layout of the B&B is a big problem here. I don't necessarily you  
19 folks get B&Bs where there's adjoining property owners on both side and they have to be...it's  
20 right in their faces. And as you could see from the picture that was presented to you, the Davey's  
21 have done nothing to shield their property. It's just a bald, bare house right---

22  
23 Ms. Takayama-Corden: Three minutes.

24  
25 Mr. Hall: --in their faces. There's no...the letters of opposition aren't really dealt with in the  
26 Planning Department report but if you actually read them I think it's pretty clear that there will be  
27 adverse impacts. There's no way you're gonna be able to find that there won't be adverse impacts  
28 to surrounding landowners.

29  
30 Chair Duvauchelle: Please conclude Mr. Hall.

31  
32 Mr. Hall: Okay. There's a lot more in there. They simply don't meet the tests. I think the other...I'll  
33 just end on this last one. One comment that's in there by the State Land Use Commission 'cause  
34 this is our best agricultural land it's Class A, highly productive and the last test for a Special Use  
35 Permit is whether it's unsuited for ag use. You can't find that in this case so it has to be denied.  
36 Thank you.

37  
38 Chair Duvauchelle: Thank you. Any questions for the testifier? Thank you.

39  
40 Mr. Hall: Thank you.

41  
42 Chair Duvauchelle: Anybody else wishing to testify please come forward. State your name and  
43 you'll have three minutes.

44  
45 Mr. Worthy Scott: Hi, my name is Worthy Scott. I own Lot No. 7 with the coffee farms, and I'll  
46 just read a very brief statement and I know this reflects the opinion of most of the people up there.  
47 One night around 10:30 I went to my property to enjoy the peace and quiet of the night sky and

1 the dream of my future home at the coffee farms. However, I was shocked and dismayed at the  
2 level of noise coming from a neighbor over 1,500 feet away. I inquired the next day and was told  
3 that that property was rented out by the daughter of the principal broker selling the lots for  
4 weddings. They were having weddings up there and this was 1,500 feet away. The noise was  
5 amazing how it came down. And it is my understanding that operation has since been shut down  
6 due to noise complaints. Perhaps because of the elevation or wide open it is at the coffee farms  
7 noise travels incredibly well up there and I can't phantom living right next door to basically a motel  
8 like the Muegges would have to do and Nussbaums. Given the nature of vacationing tourists I  
9 can only imagine what would eventually developed if the neighborhood was spotted with partying  
10 tourists because it will be a precedent they'll be more. I dare say if a vote were taken by the  
11 homeowners very few with any of the residents would want to be subjected to loud drunken  
12 strangers on a regular basis. Also, given the gate code to rotating strangers violates the security  
13 of people living in our gated community. I will leave it to others to cite the legal and environmental  
14 reasons for not allowing B&Bs to violate the neighborhood. I have been working very hard my  
15 entire life and feel it is a blessing and a privilege to be able to live at the coffee farms. And though  
16 I understand and respect the applicant's need to make more money should others be made to  
17 suffer as a result of that and I implore you to think if you were living there and you had a B&B and  
18 the noise was unbelievable up there the way it travels how would you feel? Guaranteed you  
19 wouldn't like it. So you know, I just...that's all I have to say.

20

21 Chair Duvauchelle: Thank you. Any questions for the testifier? Thank you.

22

23 Mr. Scott: Okay thank you.

24

25 Chair Duvauchelle: Yes, come up. State your name, you'll have three minutes.

26

27 Mr. Barry Nussbaum: Good afternoon, aloha. I'm Barry Nussbaum. I'm appearing on behalf of  
28 the immediate neighbor which is us to the Davey application site. I'm appearing to support our  
29 Petition to Intervene and to demonstrate the harm to our company which owns our property  
30 Menehune Ventures if the B&B Permit is granted.

31

32 Let me begin by saying that the applicant, Mrs. Davey in a response to us in no way addressed  
33 our concerns that we raised in previous letters. Regarding to the threat to our community  
34 ownership of the farming business by the borer beetle to say that B&B guests will adhere to  
35 farming regulations by not traveling from the Big Island before they come to our island is  
36 completely nonsensical. Everyone in our community is scared to death that if the beetle gets here  
37 it will destroy our coffee crop. The farm workers, the farm equipment don't leave our island. All  
38 the workers know the rules. All the residents know the rules. And because we have such a huge  
39 financial interest in the viability of the farm we all follow the rules. However, there's no way you  
40 can control guests coming to and from what amounts to a motel next door to us. And if the crop  
41 goes down we stand to lose millions of dollars split among the 51 owners who are partners with  
42 Mr. Falconer.

43

44 Regarding the landscaping shielding our property from theirs. We got a letter suggesting when  
45 the landscaping is completed there would be privacy between our homes. Our home fronts their  
46 entire home for the whole length of the mauka side of their property. We adjoin their property and  
47 there are not plants in there to screen their home. We can see everything. They can see us



1 completely. There is no screening. What does that mean? We see everybody that comes and  
2 goes. We see all the cars that come and go and if there's a lot of traffic we see all of that too.

3  
4 Regarding the noise and the house rules. We hear all their outside talking in a normal voice. Last  
5 the speaker said, everything carries out there and we are the immediate neighbor mauka side.  
6 Why subject us to listening to check-in and check-outs. We came here because it was quiet. Do  
7 we expect the rules to be followed? The house rules that you have all looked at and are probably  
8 wanting to think geez if these were followed these would be great? Absolutely not. The Daveys  
9 are already breaking all the farm rules we have regarding construction. They have their workers  
10 working till dark every night. That's in violation of our weekly rules. They have the workers on  
11 Sunday working. We don't have workers on Sunday working. It's against our farm guidelines  
12 and yet the rules are broken on a weekly basis. We complain, nothing happens.

13  
14 Regarding our privacy what's going to happen to us when people we don't know are coming and  
15 going. I'll give you an example. My wife, Denise and I, who are here were having breakfast a  
16 few weeks ago, actually a month ago now, and our front door opened and two people walked into  
17 our house that were in the neighborhood visiting and wanted to see some of the other houses.  
18 They literally walked in next to our breakfast table because they got in through the front gate  
19 because they were let in by a neighbor. We didn't get a chance to ask them who had let them in.  
20 Please don't destroy the culture of our neighborhood. We moved here to retire because it was  
21 private, because it was secure and because there wasn't traffic and having a motel right next to  
22 our property will destroy the peace and quiet we came here to enjoy. Mahalo.

23  
24 Chair Duvauchelle: Any questions for the testifier?

25  
26 Mr. Robinson: I have one.

27  
28 Chair Duvauchelle: Commissioner Robinson?

29  
30 Mr. Robinson: Aloha sir. How long have you lived on this property?

31  
32 Mr. Hussbaum: Physically lived on it or owned it?

33  
34 Mr. Robinson: Either one?

35  
36 Mr. Hussbaum: Three years and October of 2016.

37  
38 Mr. Robinson: So prior to October 2016 when they did that short-term rental permit were you  
39 given a notice since you were that close that there was a short-term rental home on top of your  
40 neighborhood?

41  
42 Mr. Hussbaum: Are you talking about the one by the front gate?

43  
44 Mr. Robinson: Yeah.

45  
46 Mr. Hussbaum: We didn't live here then.

47

1 Mr. Robinson: You owned it? You owned the property though sir, right?

2

3 Mr. Hussbaum: Yes, we did own it. That's correct.

4

5 Mr. Robinson: Did they send you a letter stating that that was going to happen?

6

7 Mr. Hussbaum: Yes.

8

9 Mr. Robinson: Okay. How was your feeling then when you saw that letter?

10

11 Mr. Hussbaum: I actually was coming every month to oversee construction and when I went to  
12 the front gate I realized that that property sits right on the front gate. So in other words, I assume  
13 you were the ones that approved it when you come in the gate—

14

15 Mr. Robinson: Not me.

16

17 Mr. Hussbaum: Your commission. I stand correct. When you come in the gate you're literally  
18 right in their driveway. So it's separate from the whole community in terms of its ability to affect  
19 the neighborhood. And so as I wasn't here yet and I didn't know about sound and I didn't know  
20 about privacy it sort of seemed to me, it didn't sound like a great idea but I didn't want to make  
21 waves and I didn't know the community yet.

22

23 Mr. Robinson: Thank you so much.

24

25 Chair Duvauchelle: Commissioner Gomes?

26

27 Ms. Gomes: I just have a question in regards to the individuals that walk through your home did  
28 you contact the proper authorities such as—

29

30 Mr. Hussbaum: We called the security.

31

32 Ms. Gomes: The security but not the Police Department?

33

34 Mr. Hussbaum: No.

35

36 Ms. Gomes: Okay.

37

38 Mr. Hussbaum: The police doesn't patrol inside our gates. It's Kaanapali Security which is private  
39 which contracts with several neighborhoods. I called and told them and they couldn't locate who  
40 it was. I mean they literally walked right into our dining room 'cause we don't lock our door.

41

42 Ms. Gomes: Oh I see. I mean just so I understand it and maybe Hudson can maybe clarify  
43 because former police officer and I know I was a commissioner but I just want to understand you  
44 have security on this particular subdivision but the police does not get involved if there's a problem  
45 on...

46

47 Mr. Hussbaum: I didn't mean to convey that thought.

1  
2 Ms. Gomes: Oh okay.  
3  
4 Mr. Hussbaum: There's a roving patrol officer, they're not armed, they're sort of eyes and they  
5 drive around periodically.  
6  
7 Ms. Gomes: And do reports.  
8  
9 Mr. Hussbaum: Right. So my issue with them walking into my house is how did they get in and  
10 what I understood from a quick communication was someone let them in and they were staying  
11 or visiting someone in the neighborhood. So my concern which maybe I wasn't very articulate  
12 was if right next to our house, like right next door to our house if there's people coming and going  
13 and they're in the gate and they have the gate code and they wander around we have a farm road  
14 that connects our two properties, people walk by from the neighbors houses all the time and if  
15 there's a different person staying there all the time our privacy is nonexistent.  
16  
17 Ms. Gomes: Oh okay. All right, thank you.  
18  
19 Chair Duvauchelle: Commissioner Carnicelli?  
20  
21 Mr. Carnicelli: Go ahead.  
22  
23 Chair Duvauchelle: Commissioner Hudson?  
24  
25 Mr. Hudson: Gated communities normally police officers don't patrol. However, they all have the  
26 codes to get into gates if they need. If somebody calls the police from a gated community, the  
27 police will still be able to ...(inaudible)...this house.  
28  
29 Ms. Gomes: Okay.  
30  
31 Chair Duvauchelle: Thank you. Commissioner Carnicelli?  
32  
33 Mr. Carnicelli: First off I guess my first question is regarding I'm looking at a map here that shows  
34 a road between the Davey's property and yours that they don't actually abut but there's a road in  
35 between is that correct?  
36  
37 Mr. Hussbaum: No.  
38  
39 Mr. Carnicelli: Your property line goes right up against their property line?  
40  
41 Mr. Hussbaum: Correct. There's a farm road that intersects those two property lines.  
42  
43 Mr. Carnicelli: So there is, so there is a road between the two then?  
44  
45 Mr. Hussbaum: It's a farm road. So our property goes halfway there, theirs comes the other way  
46 and they meet. In other words, there's no interceding property in the middle. Our property and  
47 their property are the two adjoining property. The Muegges are across the street.

1  
2 Mr. Carnicelli: So my next question is when I look at the map here it also looks as though in the  
3 coffee farms there are specific building pads that were given. So you couldn't just go build  
4 anywhere willy nilly on your lot. There's a specific of which you had to build and is that correct?  
5

6 Mr. Hussbaum: Yes. My next question is were you given a copy of the homeowners documents  
7 when you purchased the property?  
8

9 Mr. Carnicelli: Okay, thank you.

10  
11 Chair Duvauchelle: Commissioner Canto?  
12

13 Ms. Canto: Chair, I just want to comment based on the strong opposition from many I will not be  
14 supporting the Department's recommendation.  
15

16 Chair Duvauchelle: I have a question. So there's 51 lots in the coffee farm area and out of those  
17 how many have homes on them do you know approximately?  
18

19 Mr. Hussbaum: There would be in construction or complete I would say combination of both 20.  
20

21 Chair Duvauchelle: But it is correct I'm sorry if I missed that it's not in your CC&Rs nor deed  
22 restriction that you can't have short-term vacation rentals or B&Bs in your development?  
23

24 Mr. Hussbaum: Correct.  
25

26 Chair Duvauchelle: Okay.  
27

28 Mr. Hussbaum: When I asked originally I was told, no they don't do that here. The law that  
29 apparently happened to allow it mauka of the highway happened after we purchased. So when  
30 we bought we thought it was just gonna be a community of 51 homeowners in a quiet  
31 neighborhood.  
32

33 Chair Duvauchelle: Thank you. Anybody else?  
34

35 Ms. Gomes: I have a question Chair?  
36

37 Chair Duvauchelle: Commissioner Gomes?  
38

39 Ms. Gomes: Just for clarification purposes and I'm trying to locate this in the docs that we have.  
40 How many B&Bs or STRs are currently operated in this, so this specific one?  
41

42 Mr. Hussbaum: There's one short-term rental permit at the front gate which is at the very  
43 beginning of the property before you enter the community.  
44

45 Ms. Gomes: And then this other application would be the second?  
46

47 Mr. Hussbaum: Correct.

1  
2 Chair Duvauchelle: Any other questions? Thank you for your patience.

3  
4 Mr. Hussbaum: Thank you.

5  
6 Chair Duvauchelle: Anybody else wishing to testify at this time please come forward? Mr. Croly?

7  
8 Mr. Tom Croly: Hi, Tom Croly. I just wanna give you some of my experience. I have nothing to  
9 do with this application whatsoever, but I'm a bed and breakfast owner for 15 years and I've rented  
10 out my cottage as part of my bed and breakfast. And on average, my quests stay 10 nights when  
11 they come and stay. On average I have between 25 and 30 check-ins per year. Okay, so to  
12 characterize a single cottage use as a motel and a constant in and out on a daily basis would not  
13 be a proper characterization of what the use is being asked for is taking place here at least not  
14 based on my experience of 15 years of running my cottage as a bed and breakfast. Thank you.

15  
16 Chair Duvauchelle: Anybody else wishing to testify at this time? Please state your name, you  
17 have three minutes.

18  
19 Ms. Wendy Makahale: Hi, I'm Wendy Makahale and I'm a personal friend and a business  
20 associate with Kathy Davey. I'm a little nervous, excuse me. I don't live in the area but I'm  
21 listening to the testimony that's going on here and I just would like to say that I've been invited to  
22 their house and I've been their home and I live in Kihei so I didn't realize I was entering this  
23 agricultural bubble and I might schlepped something with me. I'm sorry. I might have strolled in  
24 the moonlight and had a look at the coffee trees maybe not so good. But I would agree with this  
25 gentleman here there's a big difference between a short-term rental and a B&B. And one of the  
26 things about a B&B is that the owners have to reside on the property. They're owner-occupants  
27 and they will be allowing people to come and stay with them at their home. So I think it's highly  
28 unlikely that these people are gonna be partying and drinking and you know causing ruckus in a  
29 private gated neighborhood like that. That's all I have to say. I mean the testimony has been  
30 interesting. Thank you.

31  
32 Chair Duvauchelle: Thank you, Wendy. Any questions for the testifier? Thank you. Anybody  
33 else wishing to testify? Please come forward and state your name you have three minutes.

34  
35 Ms. Kathy Davey: I'm Kathy Davey I'm not sure if I should speak now or if I'm supposed to wait?

36  
37 Mr. James Giroux: You'll have an opportunity because you're carrying the burden in this whole  
38 process.

39  
40 Ms. Davey: That's for sure.

41  
42 Mr. Giroux: So you'll have ample opportunity to address.

43  
44 Ms. Davey: Thank you.

45

1 Chair Duvauchelle: Any other public testimony? All right, seeing none we will close the floor of  
2 public testimony at this time. And I will let Corp. Counsel tell me what we're doing next, and next  
3 up?  
4

5 Mr. Giroux: Right now we have to address the issue of the intervention. There was an intervention  
6 petition that was filed. So we'd need the parties to come up and identify themselves and then  
7 we'll have arguments on the intervention as far as whether or not the intervenor will be allowed to  
8 intervene or not. So Isaac and Ms. Davey if you could come forward?  
9

10 **a. ISAAC HALL, attorney on behalf of JACK and LYNN MUEGGE, MENEHUNE**  
11 **VENTURES, LLC, WORTHY CLAY SCOTT, and MARY JACQUELINE SCHEIBEL**  
12 **submitting a Petition to Intervene dated June 13, 2017 on the above mentioned**  
13 **applications from KATHY DAVEY.**  
14

15 **1) Action of the Petition to Intervene**  
16

17 **2) If the Commission acts to grant the Petition to Intervene, then**  
18 **the Commission may select a Hearing Body/Hearings Officer**  
19

20 Mr. Giroux: Just introduce yourselves for the record.  
21

22 Mr. Isaac Hall: Good afternoon Chair Duvauchelle and Members of the Maui Planning  
23 Commission. My name is Isaac Hall. I'm representing Intervenors Jack and Lynn Muegge,  
24 Menehune Ventures, LLC, Worthy Clay Scott and Mary Jacqueline Scheibel.  
25

26 Ms. Kathy Davey: Aloha, good afternoon. My name is Kathy Davey. I am the applicant. Thank  
27 you.  
28

29 Mr. Giroux: Ms. Davey, are you prepared to address this issues of intervention?  
30

31 Ms. Davey: I think I am. I don't think...(inaudible)...pleading go to what a Petition to Intervention  
32 is about. They really go to the issues of a public hearing. I do have an issue that—  
33

34 Mr. Giroux: So I just want to know that—  
35

36 Ms. Davey: Sure.  
37

38 Mr. Giroux: --because at this point that's what the arguments are gonna be about.  
39

40 Ms. Davey: Okay.  
41

42 Mr. Giroux: We're gonna be focusing on the issues of intervention.  
43

44 Mr. Hall: I'd like to address that first. Any opposition to a Petition to Intervene is due within five  
45 business days after being served with the Petition to Intervene by your rules and Ms. Davey did  
46 not file any opposition to my Petition to Intervene. So I don't think she's permitted having not filed  
47 any opposition to come in here now and oppose the Petition to Intervene. Your procedural rules,

1 I guess I can go back and get them are clear that the opposition, I'm looking at Commission Rules  
2 12-201-44. So I would object to her just standing up here having not filed any opposition and now  
3 opposing our intervention at any rate.  
4

5 Mr. Giroux: We'll take note of your objection.  
6

7 Mr. Hall: All right, thank you very much. Would you like me to argue the Petition to Intervene?  
8 All right, so I filed a timely Petition to Intervene on June 13, 2017. There are two adjoining property  
9 owners who are intervenors who have testified before you today, Petitioners Jack and Lyn  
10 Muegge. They live immediately across from the second farm dwelling that the Daveys want to  
11 use for bed and breakfast purposes. You've heard Lyn Muegge testified. She testified fairly  
12 clearly on what the harms are to her. And the other adjoining property owner is Petitioner,  
13 Menehune Ventures, LLC and Mr. Barry Nussbaum is the project manager of Menehune  
14 Ventures, LLC and you just heard him testify about the harms to him if you approve this...these  
15 two permits. And then there are two other nearby owners within the Kaanapali Coffee Farms  
16 Subdivision, Petitioner Worthy Clay Scott lives nearby and he testified today too about the harms  
17 to him if these two permits were granted and so did the other Petitioner Mary Jacqueline Scheibel  
18 who lives nearby.  
19

20 So the intervenors have standing to intervene in these proceedings as a matter of right. That is  
21 under Section 12-201-44(b) of your Commission's Rules if they can demonstrate they'll be so  
22 directly and immediately affected by the matter before the commission if their interest in the  
23 proceeding is clearly distinguishable from that of the general public.  
24

25 Now I've heard of some of your rulings on these petitions to intervene where you rule that oh, you  
26 don't think the interests that are being advocated before you are any different from other members  
27 of the public. I've said this before you when I've argued petitions to intervene but I think your  
28 rules probably ought to be amended because there's been a 1982 Hawaii Supreme Court, Akau  
29 v. case, Akau v. Olohana Corp. which says clearly and holds, the injury to an intervenor may be  
30 similar to the sort of injury that's suffered by other members of the public generally. So it doesn't  
31 matter if the injury is similar to the type of injury of other members of the public have. What is  
32 important is so long as the intervenor is among the injured. You could be a member of the public,  
33 but if you are among the injured members of the public, the intervenor has standing. So you can't  
34 deny a petition to intervene because the petitioners are...you think they don't have interest that  
35 are different from other members of the public. If they could be...they could have interests that  
36 are the same as members of the public. The point is that they are injured. And I think that the  
37 testimony that you heard today from Mr. Nussbaum, the testimony that you heard today from Ms.  
38 Muegge and the other intervenors shows that they are injured and what we have is an injury in  
39 fact test for injury which means they likely...have they been injured or is it likely that they will be  
40 injured? And I think there's a different ways that they have been injured and I think the layout is  
41 an issue.  
42

43 Now I think Commissioner Carnicelli brought up an interesting point that there's a place that each  
44 homeowner can build their house but one of the things that was available to the Daveys was if  
45 they came in and planned to have their bed and breakfast they had a choice within that building  
46 site of where they were gonna put their proposed bed and breakfast. They could have located  
47 their bed and breakfast back and in another location so that their bed and breakfast was screened

1 by one of their other dwellings, the garage, their house, their own house, something else so that  
2 they would screen it from these two property owners that live right across the street. But no, they  
3 put their proposed bed and breakfast right across the street from two of these people. It's a layout  
4 that they had a choice to do something different with but did not. You'll see in the file that they  
5 had an architect. They had an architect plan their site. So I think that part of the problem we're  
6 dealing with here is a poor layout if you want to do a bed and breakfast. You wouldn't just pick a  
7 place for your bed and breakfast which would put it right in the face of your neighbors and that's  
8 what they did.

9  
10 And not only that, you saw the picture that Ms. Muegge presented, no screening at all. No fence,  
11 no landscaping, no nothing. So the sound from that house goes straight over to these people.  
12 You don't have to do that. That's what they're doing and that's an injury to these people and  
13 that's an adverse impact to the surrounding neighbors and that's the second test for State Land  
14 Use Commission Permit and they can't prove that they satisfied that test for that reason.

15  
16 The first test is that you can't violate the goals of the land use law which is protecting ag lands. I  
17 don't think you can just ignore Kimo Falconer's letter. Like I said, I don't know why he supported  
18 the other one, but this Coffee Borer issue is a new one on Maui and one...and let's not forget that  
19 Kimo Falconer is running this farm with his employees, these are agricultural workers. His whole  
20 farming operation, his employees are threatened by this Coffee Borer. It's not just...It's the whole  
21 operation so we're talking about ag workers too. So we can't just forget about his comment in  
22 this context about the threat that this B&B proposes. So there's that.

23  
24 The fourth test, fifth test, I'm sorry, whether the agricultural lands are suitable for agricultural use.  
25 And I think I mentioned it before but they're classified A and they're...it's some of the best lands  
26 we have and the comment that came in from the State Land Use Commission was that you  
27 can't...these lands as a whole are highly suited for agricultural use. You can't just exclude the  
28 area that's used for houses and say oh that doesn't matter. You know they're already devoted  
29 for houses. No, the point is that that whole lot is Class A agricultural lands so that test can't be  
30 met.

31  
32 There's some discussion about the impact of the community plan. The west side community plan  
33 some of it's cited in the staff report but the west side community plan has a special section on  
34 special use permits that wasn't cited in the staff report. And it says, special use permits can only  
35 be granted under certain circumstances. I've cited in full in that memorandum I submitted to you.  
36 And not of those circumstances fit this. And so it would violate the west side community plan to  
37 issue a special use permit under these conditions.

38  
39 Finally, there's also an issue about whether this applicant has met the financial requirements for  
40 a Bed and Breakfast Permit. I've heard that you've had a discussion about this but there's that  
41 section that they're relying on it says the lot has to have been created before 2008 this one was.  
42 The lot can't be smaller than five acres, no I'm sorry...yeah, and that it has to be a farm plan. And  
43 then...wait a second, yeah can't be. But this doesn't meet that test so what she had to do was  
44 show that she made \$35,000 in two years, in the past two years in order to get a bed and breakfast  
45 permit. So I don't think she passed that test either. So there's whole bunches of tests that they  
46 haven't met and I think mainly because of the adverse impact on the surrounding areas and on  
47 the changing of characteristics of the neighborhood, the fact that bed and breakfasts aren't



1 permitted uses unless these tests are met and the fact that these tests aren't met that these  
2 permits ought to be denied and that my clients are injured by this project and ought to be allowed  
3 to intervene. Thank you.

4  
5 Chair Duvauchelle: Thank you. We're gonna let Ms. Davey speak and then we'll ask for questions  
6 from the Commissioners.

7  
8 Ms. Kathy Davey: Good morning again. My name is Kathy Davey. I am the applicant. First, I  
9 would like to address Mr. Hall's contention that because I didn't file a response within five days  
10 that I am not allowed speak. I'd like to point out that the original petition was filed June 13<sup>th</sup>. I  
11 received it by mailing so I got it much later, but then he had to file a first amendment. Okay that  
12 as much after the 13<sup>th</sup>. So he filed a first amendment because he had the lot numbers wrong.  
13 And then yesterday, the 26<sup>th</sup>, he filed another amendment to his Petition to Intervene. So you  
14 can't file a...say I only have days to respond when he wasn't even finished filing until yesterday  
15 and then this morning at 10:15 he handed me his "testimony". So I think the allegation that I  
16 missed the deadline, well technically I think the deadline went at least until yesterday which would  
17 mean I would have a chance to...I mean he wasn't even finished with his petition within five days.  
18 He didn't finish his petition until yesterday and actually he didn't finish his petition until this  
19 morning. So each of these filings would give me a chance to respond. So I guess I just needed  
20 to say that first that I think it's a little disingenuous to say I didn't get a chance to respond and this  
21 one he gave it to me at 10:15 this morning. And you know well, this is within five days so I would  
22 certainly like to be able to have the opportunity to respond. So first I felt like I needed to address  
23 that that I don't have any rights here and he's the only one with rights.

24  
25 The next one is on the response to Petition to Intervene and so it's kind of... I kind of feel like it's  
26 an interesting position because the public hearing portion where you hear all the negatives is like  
27 partly done ahead a time and now it's a petition to intervene and I haven't really addressed the  
28 frankly misstatements that were made against me and now, you know, it's kind of an interesting  
29 process. But anyway, the standard of intervention and I looked up the rule it's not about the  
30 beetle, it's not about you know how we're nasty people and things like that. The petition to  
31 intervene is directly and immediately affected and that their interest is clearly distinguished from  
32 that of the general public.

33  
34 Now in his original petition, Mr. Hall said that the petitioners were directly and immediately affected  
35 because they were all adjoining or nearby property owners and that they were all within 500 feet.  
36 Well, yesterday is when I got the correction. They're not all adjoining. They're not all directly  
37 affected. They are not all within 500 feet. In fact, and I had some... a packet for your information  
38 that was passed earlier regarding the petition to intervene, it has this picture on the front with the  
39 overview, that's ...this goes to whether they're directly affected, our lot is on the front you can see  
40 Lot 52, on Page No. 3 of that handout, with the pink and yellow. That shows our lots in pink and  
41 this is from the Maui County webpage and there's three adjoining neighbors that supported,  
42 there's two within 500 feet that are opposed, and petitioner on Lot 7 is 900 feet and petitioner on  
43 Lot 6 is 1,500 feet. And going to the petitioners actually lot, the lot that Jacqueline Scheibel, one  
44 of the petitioners owns, that's owned by a group of investors from California. Technically it's  
45 owned by the Kaanapali Coffee Six LLC, a California Corporation. So Mr. Hall may have been  
46 mistaken but you know, and Ms. Scheibel may be one of those investors on that lot but I just  
47 wanted to clarify that that's owned by a group of investors.

1  
2 The next page, let's see, but anyway sorry, let me go back to this petition to intervene. So at first  
3 Mr. Hall said they're gonna be harmed because they're directly adjoining and then he said, and  
4 his correction, he said well maybe they're not all adjoining, maybe some of them are farther away  
5 but then they're still directly adjoining. The way they're located in the neighborhood they are not  
6 any different. Their rights and their, the harm that they are alleging is not any different than  
7 anybody else in the neighborhood especially with the distance of 1,500 feet away from our feet.  
8

9 Now much has been made about the harm from the beetle. Well, my husband and I, that's my  
10 husband over there, we're also owners and we're also part of the cooperative agreement and in  
11 the letter from the association that talks about what owners should try to do to mitigate the risks  
12 from the beetle I'd like to point out in the letter from the association it said that Maui County  
13 became aware of the beetle in November of 2016. And at that time, Ms. Muegge said that they  
14 cut down bushes around the edge, but I'd like to point out that they didn't stop any construction  
15 and the construction trucks come in daily. They bring in fill from other parts of the island. There's  
16 tractors, there's earth moving equipment, there's all the construction workers. There is actually  
17 one of the construction companies is from Hana and the workers drive in from Hana. People in  
18 surrounding neighborhoods come, they come and walk into the coffee farms. There's not a gate  
19 code that you can hand out. You have to actually have a physical card. But the earth moving  
20 equipment is used interisland. I mean this is big, you know, big equipment, big tractors, big earth  
21 moving equipment. Fill, fill that people are putting on their lots comes from other parts of the  
22 island. Workers come in from other parts of the island. People walk over from...that are renting  
23 condos, I'm mean, frankly, you walk around the gate. It's not a secure neighborhood. I mean  
24 people come in around the gate. Construction workers come in. Actually construction workers  
25 have a gate code, but residents do not. We have keys and like garage door openers. But I don't  
26 know Mr. Falconer and I respect that he is concerned about the farm, but if they were really  
27 concerned about the coffee farm they would stop construction. I mean trucks and contractors,  
28 hundreds of people come in every day with dirt on their tires and equipment and dirt from all over  
29 the island, But our four guests at the coffee farm are gonna put the entire farm at risk. I mean  
30 that seems like a pretty heavy burden for me, and I don't think it's accurate. I don't think it's right.  
31

32 And Ms. Muegge sits on the board and if the board was concerned, November 2016 when they  
33 found out about it they should have said hey, construction stops. And you heard them also say  
34 that...it's interesting that Mr. Falconer supported it and Mr. Nussbaum confirmed this that at the  
35 beginning the association wrote a letter of support for a short-term term rental home. Well, they  
36 wrote a letter of support to sell the property. I mean, that was part of the deal. If you wanna buy  
37 the property we're gonna support your application. So there's great concern about the beetle  
38 except when it comes down to the development of the coffee farms and builders being able to  
39 build and them being able to sell lots. So I don't think if the beetle is introduced it's gonna be  
40 because of the few guests we have and also one of the nice things about a bed and breakfast is  
41 we can certainly come and when our guests come I mean we're not running a hotel. We live on  
42 the property. We live next door. When they come in and I have the...I have rules, and we're  
43 gonna ...I mean we'll be able to say hey, don't walk through the trees. I have no idea who those  
44 people were that walked into the Nussbaum's living room. It wasn't us and it wasn't our guests.  
45 Who knows how they came in, who knows let them in, who knows if they came on the construction  
46 road. But I mean, we'll have a map and we'll also mail the rules to our guests before they come  
47 and there's only. I mean we'll do the best we can. There's only so much anybody can do

1 regarding any guests, regarding where the construction workers went that weekend, regarding  
2 where the FedEx truck has made a delivery. I mean we can do the best we can. We can explain  
3 the rules and one thing, it's one thing to say don't walk here, don't walk there, don't do this, but  
4 we're also going to provide the alternative if people want to walk, you know go on hikes and  
5 they're visitors and they come to Maui because it's so beautiful and beautiful terrain, we're going  
6 to provide everybody with a list of these are hikes. This is where you can go, this is where you  
7 can legally go, and so instead of just saying no, no, no. We want to provide an alternative. Yes,  
8 enjoy your vacation.

9  
10 And regarding the noise issue, I mean we lived in the ohana. We have had two parties since we  
11 moved in. We had the blessing. Father Francis came out and did the blessing. We had about  
12 22 people. We were probably up till about 10:30. So that's one, one thing we did have noise. I  
13 had my 60<sup>th</sup> birthday party, so we had a party then. I had seven guests. So there was a total of  
14 nine people at our home. So we have had two parties. We did live in the ohana. No doubt we  
15 had dinner, we had dinners on the lanai and we talked but I mean, this fantasy that we're gonna  
16 have wild parties, I mean, we're living there and we haven't done short-term rentals yet. We're  
17 trying to do the right thing. We're trying to apply for a permit.

18  
19 And one last thing in terms of lot location, on Page 2 I took, I took this picture from Mokulele  
20 Airlines coming back from Oahu one day which is pretty cool, but that one there's been a  
21 discussion that we somehow planned...did bad planning of the locations of the structures on our  
22 lot. Our lot, our home and lot is in the middle there and I've labeled the Muegges live across the  
23 street. This is the paved street. And they have their ohana by the street and then their garage  
24 and then their home. And in our planning we have an ohana by the road, the garage and then  
25 our home so I'm not sure what, what we could have done if we flipped it then we would have had  
26 Mr. Nussbaum saying they put the ohana right in front of us. So I mean, we're kinda caught in  
27 the middle here. I mean the ohana has to go someplace. So anyway it's the same configuration.  
28 There was no evil intent in constructing these homes on our lot. And the other thing I'd like to  
29 point out is there's been allegations that we "planned" to have this bed and breakfast from the  
30 beginning. Well, we didn't. Actually we first were gonna just build a home and then the coffee  
31 farms had a provision in the documents that gave them priority of lien. So nobody would give us  
32 financing because of course the banks want to be in line first. So we couldn't, we couldn't build  
33 'cause we didn't have, we couldn't get any financing. So we emptied our savings and built the  
34 ohana first because we couldn't get financing for the house. So we had to build the ohana first  
35 and then once we had the ohana built then we could get financing because now we had improved  
36 property instead of unimproved property. So this, this thing that you know we had intended to do  
37 this ohana and bed and breakfast from the being isn't true.

38  
39 And I guess another, sorry let me look at my notes here, oh the...I think it's an important issue  
40 the neighbors some of them have testified that they had no idea this neighborhood could have  
41 short-term rental homes. Well, that's interesting right when you come in the gate there is a sign  
42 that says short-term rental home permit number blah, blah, blah County of Maui, call this number  
43 if you have any issues.

44  
45 And the other thing is that this seems to be, and I have all the letters and Mr. Scott says in his  
46 petition and in his testimony that I don't it's testimony, I think it's another pleading but he says in  
47 that that and in the letters they say we never would have bought here had we known there would

1 have been a short-term rental home. And Mr. Nussbaum is an attorney, and if you're gonna buy  
2 in a neighborhood and your number one concern over anything it seems is that there's no short-  
3 term rental homes then there's a sign when you come in the neighborhood and if you're gonna  
4 buy a property and that is your number one concern then you should, I mean as an attorney you  
5 certainly should have read the documents. But the documents do not prohibit it and there was  
6 already one in the neighborhood. So this complaint that there was no notice is, you know, I'm  
7 sorry they didn't read the documents but you know that's...I mean that's not our fault that they  
8 didn't read the documents.

9  
10 I guess the...make sure Mr. Scott had anything else there. Oh, and landscaping and I think it's  
11 interesting that we screened our property but we didn't screen others. I think screening kinda  
12 goes both ways. And then also we've been under construction. Anybody that's ever constructed  
13 knows that you don't, you don't do your landscaping while you're constructing. You wait till the  
14 construction is done and then you do your landscaping. I mean you don't do landscaping and  
15 have contractors come in and, you know deposit materials on all that stuff. As soon as the  
16 construction was done, we started our landscaping. So, I mean we're trying to, I mean we're  
17 trying to do the best we can there.

18  
19 So in summary going back to the petition I don't see that this they could be immediately and  
20 directly affected. I think the beetle is threat, however I don't think our activities are the activities  
21 that are threatening to bring dirt in. I don't think neighbors that are across streets in two different  
22 directions, a farm road and a paved road, and then petitioners that are down, down the street to  
23 1,500 feet and 900 feet I don't think that these petitioners are distinguishable from anybody else  
24 in the neighborhood. I don't think they're distinguished from the general public. I do not think that  
25 they have or suffering any harm that I don't see any injury frankly. So I don't...the standard for  
26 the petition is directly and immediately affected. I don't think they've demonstrated that. And I  
27 don't think they've demonstrated that they're clearing distinguished from the general public.

28  
29 And as to the issue regarding agricultural land and the size of the property and whether we've  
30 made any revenue from farming operations, I think that's a red herring. I think he's just throwing  
31 that out there to see if it sticks. I know that the coffee farm and the County worked for 10 years  
32 on making sure that this neighborhood and the structure of having lot owners and the community  
33 farm plan and a rent between the farming operations and the owners and how we lease land and  
34 which part we can build on. The developer and the County worked on that for 10 years. And the  
35 short-term rental home has already been permitted. So I don't that's even an issue at all. The  
36 issue is not whether the...this whole neighborhood is legal or not. I think it's already been  
37 determined that it's legal. It went through public hearings back when it was created and I'm sure  
38 that was all addressed previously and I don't think it has anything to do with the permit and  
39 anything to do with this hearing at all. I think it's just a distraction from the real issue.

40  
41 There seems to be a blend between the intervention and public hearing. I have other things like  
42 house rules and stuff to go over but I don't...I think that should wait. I think just what I was trying  
43 to cover was the...everything that was brought up against us regarding you know whether or not  
44 there's...they have a right to intervene in the hearing. Thank you for your time.

45  
46 Chair Duvauchelle: Thank you. We're gonna take, can we take a 10-minute break before we  
47 start asking—oh—

1  
2 Mr. Hall: ...(inaudible-speaking from the audience)...

3  
4 Chair Duvauchelle: Yes, you will be allowed to speak on the issue, but we're gonna take a very  
5 quick break here. Yeah, we'll reconvene in 10 minutes. Thank you.

6  
7 A recess was called at 2:38 p.m. and the meeting was reconvened at 2:48 p.m.

8  
9 Chair Duvauchelle: County Planning Commission is back in session. All right, Mr. Hall if we could  
10 have five minutes from you to—

11  
12 Mr. Hall: Five minutes will be fine.

13  
14 Chair Duvauchelle: Yeah, thank you.

15  
16 Mr. Hall: I think that was a demonstration of why you have your rules requiring a written opposition  
17 to filed within five business days. I couldn't keep up with all that. That's the first time I've ever  
18 heard all that. I had no real opportunity to respond to it. It's all new to me. The reason why your  
19 rules require a written opposition is so that the other side sees what the opposition is gonna be  
20 and can respond to it.

21  
22 A lot of that...so I do, I continue to object your taking any of that into consideration or taking any  
23 opposition from her into consideration. She hasn't opposed as the rules require so she cannot  
24 be taken to have opposed our petition to intervene.

25  
26 On direct and immediate effect. I don't know, you can't any more direct and immediate effect for  
27 what's being experienced by Mr. and Mrs. Nussbaum, Menehune Ventures and Muegges.  
28 They're right there. Couple of things that are of interest. Two of the initial house rules are that  
29 you have to contain the audio that comes from them within your own property boundaries. They  
30 both testified they can hear the audio right now coming across the boundaries. So that house  
31 rule isn't going to work for them. And the other house rule is that sound at night doesn't disturb  
32 your neighbors but the sound is already disturbing your neighbors. So there's direct and  
33 immediate effect. Ms. Davey said, implied that there was more landscaping to come but actually  
34 Mr. Nussbaum said that he had talked to the landscaper and they're done. This is the  
35 landscaping. There is no more landscaping than this. There's no protective buffer, there's no  
36 landscaping buffer. There's no nothing. They're just gonna get the sound and the noise and  
37 everything directly coming at them. So there is a direct and immediate impact. Clearly  
38 distinguished from the public. I'm not gonna go over that again. The case law is that's not really  
39 a requirement.

40  
41 On the...I think on the STRH up in the corner, that's not a precedent and Mr. Nussbaum wanted  
42 me to make it absolutely clear what he testified to was when he bought that was not there. It was  
43 a house. What...I think what I put in the memo that I gave to you was my understanding of what  
44 happened with that is and that is the developer had a buyer or no, was having trouble selling that  
45 lot, finally got a buyer and was only able to induce the buyer to or encourage the buyer to actually  
46 make a purchase by saying, hey why don't you do an STRH there? There were no people on  
47 surrounding lots at the time. And so the STRH went through and I don't think it's...because of its

1 location right within the front gate it's as many of these of people testified it's not really part of the  
2 community and doesn't affect the community because everybody else is interior. So we don't  
3 even think that STRH is a precedent for this one.  
4

5 I think just based on testimony that you've heard on the...that we have proved that there is a  
6 direct and immediate effect. That these intervenors are among the injured and that they're entitled  
7 to intervene. Of course we would prefer it if you just simply deny both of the permits 'cause the  
8 tests aren't met. But if you can't do that, we would like you to grant the petition to intervene.  
9 Thank you very much.

10  
11 Chair Duvauchelle: Okay, we're okay with questions? All right, questions from the  
12 Commissioners to either party? Any questions from the Commissioners? Regarding the  
13 intervention? No?  
14

15 Ms. Canto: I have a question.  
16

17 Chair Duvauchelle: Commissioner Canto?  
18

19 Ms. Canto: So based on testimony so the comments are the time line of filing? We should not  
20 be concerned with that?  
21

22 Mr. Giroux: I think at this point where you got a pro se applicant, I think you need to listen to the  
23 arguments of both parties to determine the intervention?  
24

25 Ms. Canto: Okay, all right, thank you.  
26

27 Chair Duvauchelle: Commissioner Higashi?  
28

29 Vice-Chair Higashi: I have a couple question for the applicant. Hi, I think listening to the testimony  
30 more so on I guess on the opposition side against your application. One, I do agree that security  
31 is a problem especially if the gate's supposed to be closed and somebody opens it, whoever it  
32 does, whatever. I'm more concerned you as a bed and breakfast applicant is responsible for any  
33 person that comes as your guest to that gate. And apparently if I was living there next to you I  
34 would be worried too if I was eating breakfast with my wife and somebody just walks in. It's a  
35 stranger who's supposed to be your guest.  
36

37 Chair Duvauchelle: Commissioner Higashi? Can we try to keep the questions on the  
38 intervention? We'll have a opportunity possibly later to discuss.  
39

40 Vice-Chair Higashi: Well, this is part of the intervention.  
41

42 Chair Duvauchelle: Okay.  
43

44 Vice-Chair Higashi: Because it has to do with security about what's happened. You mentioned  
45 about security too Mr. Hall. Well, anyway, ...(inaudible)...is it possible to get someone  
46 responsible to meet your guests at the gate so that they would be escorted to your home which  
47 is apparently is pretty close to your gate.

1  
2 Ms. Davey: Yes, I can address the security the security issues. Each homeowner has cards.  
3 There's like when you drive up to the gate you swipe a card. We're not given codes that you we  
4 can give out. There was...if the homeowners had codes and you could give it your friends and  
5 stuff so they don't give us any codes. They just give us the card. So when the guests initially  
6 come they will not have a card so we will have to go, meet them at the gate. The other way it  
7 works is that they can look up Davey on the rolodex kind of thing at the security gate. You can  
8 look up Davey and then press the button by our name and it rings my cellphone and then I can  
9 you know who is it or you know, or if they're planning...anyway if I've got friends coming up for  
10 dinner or something they're supposed to be at my house at 6:00, the phone rings, you know I can  
11 let them in. You can also say, you know who is it, and they say, you know it's Joe Smith and then  
12 they come in.

13  
14 I can control you know our own guests. I can meet them. I can get them before we rent. I mean  
15 we certainly don't want people, you know, wondering around, but the...it's not a secure  
16 neighborhood. We have hikers in there daily that come from surrounding neighborhoods. We  
17 have, you know, people that live there and tourist park on the road, so—

18  
19 Vice-Chair Higashi: The only reason I ask is because there were two people apparently close to  
20 you your neighbor, one was apparently right next to you that had somebody, a stranger, come  
21 into the house.

22  
23 Ms. Davey: Right.

24  
25 Vice-Chair Higashi: And that's what I'm concerned about as somebody looking at the application  
26 is that it becomes your responsibility to take care of that guest even if you swipe it on a gate or  
27 whatever, somebody gotta physically be there to be able to escort them to your house.

28  
29 Ms. Davey: Right.

30  
31 Vice-Chair Higashi: It's not too far from your gate.

32  
33 Ms. Davey: Right and we can do that, but—but that wasn't our guest.

34  
35 Vice-Chair Higashi: Yeah, no I'm just saying that security.

36  
37 Mr. Giroux: We need to cut this line of questioning because it's not clarifying whether or not we're  
38 looking at the parties as being having the right or the leeway to intervene at this point. We're  
39 looking at for solutions which is great, but that's not where we are in the point of our discussion.

40  
41 Chair Duvauchelle: So if we have any other questions regarding the intervention or discussion or  
42 a motion for the intervention?

43  
44 Ms. Canto: Chair?

45  
46 Chair Duvauchelle: Commissioner Canto?

47

1 Ms. Canto: At this point I've heard from both parties and I would like to make a motion to deny  
2 the Petition to Intervene.

3  
4 Mr. Hudson: Second.

5  
6 Chair Duvauchelle: A motion to deny by Commissioner Canto, seconded by Commissioner  
7 Hudson. Discussion please on the motion?

8  
9 Mr. Robinson: I actually feel that there is a basis for intervention. This is a unique lot. I am not  
10 surprised at all at the problems these neighbors are having with the way the layout is, with the  
11 way the farming is, and now with people wanting to do vacation rentals there. Having said that,  
12 it is a working farm. It is a money producing farm. It is a money subsidizing farm that the people  
13 in this neighborhood use and it's I think that they all need to get together and figure this out, you  
14 know, one way or another. I think this intervention might be the fastest way for the County to get  
15 at this problem because it would get everybody vested in it one time. I'm actually for the  
16 intervention. I know it's strange for me to say that 'cause I never voted for one before but one of  
17 any, this is a very unique one. Thank you.

18  
19 Chair Duvauchelle: Thank you. Commissioner Carnicelli?

20  
21 Mr. Carnicelli: Yeah, I would have to agree with Commissioner Robinson in that this is a  
22 seemingly very unique situation. The farming operation is shared by everybody. We've got lots  
23 that have specific building sites where you have to put this. You've got one person putting their  
24 ohana on the street and then the other person puts their ohana on the street and anyways there's  
25 a lot of extenuating circumstances in regards to this. So when I look at is it clearly distinguishable  
26 and are the petitioners directly affected? I'm gonna have to say no in my opinion and then  
27 therefore, I will be supporting the motion to deny the intervention. Thank you, Chair.

28  
29 Chair Duvauchelle: Thank you. Commissioner Gomes?

30  
31 Ms. Gomes: I'm actually in agreement with Commissioner Robinson. It is a unique situation.  
32 They all should be cohesively, hopefully this may, the intervention may force...I wouldn't say  
33 force, I'd like to somehow wordsmith it a little bit better, maybe get them...you know work, to work  
34 together on this, on this particular matter. You know there's already STR at the front of the gate  
35 and you know, although I'm more in favor of B&Bs than STR you know for myself, because you  
36 do have the landowner on property, you know, I'm in agreement with Commissioner Robinson.  
37 Yeah so that would be my standpoint.

38  
39 Chair Duvauchelle: Thank you. Any further discussion? Commissioner Carnicelli?

40  
41 Mr. Carnicelli: Chair, I do actually...popped out of my mind and popped back in is a I do have a  
42 question for Corp. Counsel though, because is, and maybe we have to go into executive session  
43 on this, but you're the one that's gonna have to write this up. And so my question to you is in and  
44 around Mr. Hall's contention that Ms. Davey does not have standing to respond. She didn't  
45 respond, right? That she didn't respond and so is, you know if...I'm just trying to think about if  
46 this goes before, you know a person with a black rope we've got to be able to address that. So  
47 anyways, I wanna just toss that to you please to clarify for us?



1  
2 Mr. Giroux: I think Commissioner Canto asked me that already as far as...I mean, my position  
3 as far as if you wanted more clarity on it is that you know, the fact that we're dealing with a pro se  
4 petitioner dealing with a experienced attorney, we're here listening to oral argument as far as  
5 whether or not the Petition to Intervene should be granted or not. You should be able to listen to  
6 all parties, all information that you need in order to determine that because the rights of the parties  
7 are that important.

8  
9 Mr. Hall: Oh, can I clarify something? Ms. Davey she is an attorney.

10  
11 Mr. Giroux: No at this moment, no.

12  
13 Chair Duvauchelle: No, we have a motion on the—

14  
15 Mr. Hall: She is an attorney. She's an attorney.

16  
17 Mr. Giroux: At this point no.

18  
19 Mr. Hall: She's an attorney. I want that on the record.

20  
21 Chair Duvauchelle: We have a motion on the floor. If you both would be seated please, thank  
22 you. Any further discussion? Okay, Director would you repeat the motion?

23  
24 Mr. Spence: The motion is to deny intervention.

25  
26 Chair Duvauchelle: All those in favor please raise your hands?

27  
28 Ms. Gomes: I'm sorry, could you please restate the motion?

29  
30 Mr. Spence: The motion is to deny intervention.

31  
32 Chair Duvauchelle: All those in favor of the motion raise your hand?

33  
34 Mr. Spence: One, two, three, that's four.

35  
36 Chair Duvauchelle: Opposed?

37  
38 Mr. Spence: One, three opposed. Motion fails.

39  
40 Mr. Giroux: No.

41  
42 Mr. Spence: No, okay? Did somebody not vote?

43  
44 Chair Duvauchelle: So I need to. I am not real supportive of interventions, but I think, I do feel  
45 possibly in this case it's probably warranted for several different reasons. I also think it will help  
46 in the future if some of these decisions are worked out now and we will not repeatedly see

1 applications where we have this same problem. So at this point I would vote to allow the  
2 intervention. So motion fails. Do we have a new motion?

3  
4 **It was moved by Ms. Canto, seconded by Mr. Hudson, and**

5  
6 **The Motion to Deny the Petition to Intervene FAILED.**

7 **(Assenting – P. Canto, L. Hudson, L. Carnicelli, C. Tackett)**

8 **(Dissenting – K. Robinson, T. Gomes, R. Higashi, S. Duvauchelle)**

9 **(Excused – S. Castro)**

10  
11 Mr. Robinson: I'd like to make a motion to approve the intervention.

12  
13 Ms. Gomes: Second it.

14  
15 Chair Duvauchelle: A motion to approve by Commissioner Robinson, seconded by  
16 Commissioner Gomes. Discussion? Okay.

17  
18 Mr. Robinson: I'll speak to the motion. Again, I do think that this is a different circumstance. I do  
19 think we need people working together. I do think we need decision makers. We have attorneys  
20 on both sides and it's probably gonna end up where one of the attorneys are gonna wanna have  
21 it a different way and I think this might be the best and fastest way, and I think it might be the  
22 safest way for the County, for this beetle, for this crops. This is an experiment with this type of  
23 agriculture where we're doing lots, where we're selling these gentlemen estates and we've having  
24 these preplanned agriculture and whether you agree with it or not it's still ag. And we need ag  
25 and we need to protect ag and we need these fortunate homeowners to work together to protect  
26 that whether it be being good neighbors or being protective of the area. I just think it's a good  
27 time. Thank you.

28  
29 Ms. Gomes: And also just to piggy back on Commissioner Robinson. I mean it's...it definitely  
30 would may be a lesson learned you know for future what is up and coming you know for the  
31 landscape of Maui in the next five to ten years.

32  
33 Chair Duvauchelle: All right, Director? Oh, Commissioner Carnicelli?

34  
35 Mr. Carnicelli: I would just like since, since Mr. Hall spoke out of turn and yelled over the top of  
36 us out of order, I would like for Ms. Davey to actually clarify whether or not she is an attorney in  
37 Hawaii or not?

38  
39 Chair Duvauchelle: I will allow that.

40  
41 Mr. Hall: Can I clarify Mr. Carnicelli?

42  
43 Chair Duvauchelle: No, no, not you.

44  
45 Mr. Hall: Yeah, but I didn't say that.

46

1 Chair Duvauchelle: Isaac, please no. We have a question on the floor for Ms. Davey.

2  
3 Ms. Davey: Hi, I'm an attorney licensed in state of Arizona and Florida. I did construction law. I  
4 represented the Tampa Port Authority in environmental permitting and large scale infrastructure  
5 projects. I did not practice land use before commission. I did not get my license in Hawaii. This  
6 is, this is not my field but I did, I did practice construction law for the Tampa Port, mainly  
7 environmental permitting, non-adversarial contract drafting and basically permitting with DEP and  
8 EPA for shipping channels.

9  
10 Mr. Carnicelli: Thank you.

11  
12 Chair Duvauchelle: Okay, thank you. Any further? Commissioner Carnicelli?

13  
14 Mr. Carnicelli: So it's all just again speak to the motion and I understand where Commissioner  
15 Gomes and Robinson are coming from. And this would set a certain precedence, however, I still  
16 feel as though the intervenors didn't meet the criteria and so I'll be voting against this particular  
17 motion.

18  
19 Chair Duvauchelle: Thank you. Okay, any other? Director, can you repeat the motion?

20  
21 Mr. Spence: The motion is to grant intervention.

22  
23 Chair Duvauchelle: All those in favor, please raise your hands?

24  
25 Mr. Spence: That's three ayes.

26  
27 Chair Duvauchelle: Opposed?

28  
29 Mr. Spence: That's four opposed.

30  
31 Chair Duvauchelle: And the Chair votes to allow the intervention. Motion passes. Oh, motion  
32 fails. I'm sorry, sorry. Commissioner Higashi?

33  
34 Vice-Chair Higashi: Was just going to ask you was it four-four?

35  
36 Chair Duvauchelle: Okay, so I'm sorry, I'm sorry. Motion failed. Okay.

37  
38 **It was then moved by Mr. Robinson, seconded by Ms. Gomes, and**

39  
40 **The Motion to Allow the Petition to Intervene FAILED.**  
41 **(Assenting – K. Robinson, T. Gomes, R. Higashi, S. Duvauchelle)**  
42 **(Dissenting – P. Canto, L. Carnicelli, L. Hudson, C. Tackett)**  
43 **(Excused – S. Castro)**

44  
45 Chair Duvauchelle: Do I have a new motion?  
46

- 1 Mr. Robinson: I move to defer.  
2  
3 Mr. Hudson: Second.  
4  
5 Chair Duvauchelle: Motion to defer, seconded by Commissioner Hudson. Discussion on the  
6 deferral?  
7  
8 Vice-Chair Higashi: Question?  
9  
10 Chair Duvauchelle: Commissioner Higashi?  
11  
12 Vice-Chair Higashi: Can we request for an executive session to have legal counsel?  
13  
14 Chair Duvauchelle: You can. Do I have a second?  
15  
16 Ms. Canto: Second.  
17  
18 Chair Duvauchelle: Motion by Commissioner Higashi, seconded by Commissioner Canto for  
19 executive session. All those in favor please raise your—  
20  
21 Mr. Spence: Do you have to say why?  
22  
23 Mr. Carnicelli: He said to speak with counsel.  
24  
25 Mr. Giroux: I guess to look at the duties, liabilities, responsibility of the Commission. To discuss  
26 those with their attorney.  
27  
28 Mr. Hudson: We have a motion on the floor though. Do we have to withdraw that?  
29  
30 Mr. Giroux: No, no. You just need—  
31  
32 Mr. Hudson: We had a motion to defer which was moved and seconded. So there's a motion on  
33 the floor. Do we have to withdraw that?  
34  
35 Mr. Giroux: In other words, let's dispose of that issue.  
36  
37 Chair Duvauchelle: Okay, so we have a motion on the floor to defer.  
38  
39 Mr. Robinson: Chair, can you please help us and say where are we?  
40  
41 Mr. Spence: There was motion to defer and there was second. And then there was a motion to  
42 go into executive session and I don't know why you would have to dispose of the first.  
43  
44 Mr. Giroux: We can cut line. Just cut in line and—  
45  
46 Chair Duvauchelle: We can table it for now.  
47

1 Mr. Hudson: Okay.

2  
3 Chair Duvauchelle: So all those in favor of going into executive session please raise your hand?

4  
5 Mr. Spence: One, two, three, four, five.

6  
7 Chair Duvauchelle: Yeah, five ayes.

8  
9 Mr. Spence: Six.

10  
11 Chair Duvauchelle: Thank you. We will be going into executive session. If you'll please clear  
12 the room.

13  
14 **It was then moved by Mr. Higashi, seconded by Ms. Canto, then**

15  
16 **VOTED: To Go into Executive Session.**  
17 **(Assenting – R. Higashi, P. Canto, L. Carnicelli, K. Robinson, T. Gomes,**  
18 **C. Tackett)**  
19 **(Dissenting – L. Hudson)**  
20 **(Excused – S. Castro)**

21  
22 The Commission went into executive session at approximately 3:12 p.m. to 3:26 p.m., after which  
23 the regular meeting was reconvened.

24  
25 Chair Duvauchelle: Maui Planning Commission is back in session. We currently have a motion  
26 on the floor to defer. Commissioner Robinson?

27  
28 Mr. Robinson: I'd like to remove by motion to defer.

29  
30 Mr. Hudson: I rescind my second.

31  
32 Chair Duvauchelle: Thank you. Motion to defer has been removed by the makers and the second  
33 person. So discussion or another motion on the intervention?

34  
35 Mr. Robinson: I'd like to make a motion to approve the intervention.

36  
37 Ms. Gomes: Second.

38  
39 Chair Duvauchelle: Commissioner Robinson made the motion to approve the intervention,  
40 seconded by Commissioner Gomes. Discussion on the motion? If there are none, Director would  
41 you repeat the motion?

42  
43 Mr. Spence: The motion is to approve intervention.

44  
45 Chair Duvauchelle: All those in favor please raise your hand?

46  
47 Mr. Spence: Two, three.

1  
2 Chair Duvauchelle: Opposed?  
3  
4 Mr. Spence: One, two opposed, three opposed.  
5  
6 Mr. Tackett: I will abstain.  
7  
8 Mr. Spence: So that's in favor. So that's four.  
9  
10 Mr. Robinson: No, but the Chair didn't vote.  
11  
12 Ms. Canto: Carolyn can't see the hands.  
13  
14 Mr. Spence: Okay, the motion is to approve intervention.  
15  
16 Chair Duvauchelle: Carolyn, the microphone is off. All right so the motion on the floor is to  
17 approve the intervention. All those in favor please raise your hands  
18  
19 Mr. Spence: One, two, three in favor.  
20  
21 Chair Duvauchelle: Opposed?  
22  
23 Mr. Spence: One, two opposed. We have three opposed. We have one abstention.  
24  
25 Mr. Tackett: One abstain.  
26  
27 Mr. Spence: So four-three.  
28  
29 Mr. Robinson: It's up to the Chair.  
30  
31 Chair Duvauchelle: And I vote to approve the intervention.  
32  
33 Mr. Spence: Okay, so five-three. The intervention is granted.  
34  
35 **It was then moved by Mr. Robinson, seconded by Ms. Gomes, then**  
36  
37 **VOTED: To Accept the Petition to Intervene.**  
38 **(Assenting – K. Robinson, T. Gomes, C. Tackett, R. Higashi,**  
39 **S. Duvauchelle)**  
40 **(Dissenting – P. Canto, L. Carnicelli, L. Hudson)**  
41 **(Excused – S. Castro)**  
42  
43 Mr. Giroux: You have to determine the mediator and hearings officer.  
44  
45 Chair Duvauchelle: Okay, I'm going to turn this over to Corp. Counsel.  
46

1 Mr. Giroux: At this point we're going to determine the hearings officers and the mediator. Do we  
2 have a list for the party?

3  
4 Mr. Spence: I'm not aware. We apparently do not have a list. Maybe Clayton had it. He's not  
5 here.

6  
7 Chair Duvauchelle: We're currently going to get our list of hearings officers for approval.

8  
9 Mr. Carnicelli: So do we wanna table agenda item C5 for now and then get back to it or...

10  
11 Chair Duvauchelle: Maybe we ought to do that. We're going to table the selection for now until  
12 the list gets back. So we're going to move onto the next agenda item. Director?

13  
14 Submitted by,  
15  
16  
17 Carolyn Takayama-Corden  
18 Secretary to Boards & Commissions II  
19  
20  
21