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**MAUI PLANNING COMMISSION
REGULAR MINUTES
NOVEMBER 22, 2016**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Vice-Chairperson Sandy Duvauchelle at approximately 9:05 a.m., Monday, November 22, 2016, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

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

Vice-Chair Duvauchelle: Good morning. Maui County Planning Commission of November 22, 2016 is now in session. First of all, I want to wish everyone a Happy Thanksgiving this week. Thank everyone for being here.

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.

Vice-Chair Duvauchelle: At this point we would like to open the floor up for public testimony. You are welcome to testify now on your agenda item. You'll have three minutes. If you choose to wait until your agenda item is called that's fine too. But if you testify now you will not be able to testify later. Would anybody like to testify at this time? Okay, seeing no one, public testimony will now be closed. Director?

Mr. Spence: Okay, good morning Commissioners and Happy Thanksgiving to everybody. Your first public hearing, your first and only public hearing item for this morning is Mr. Michael McNeill requesting a Short-Term Rental Home Permit to operate a five-bedroom short-term rental at 2827 Kolepa Place in Lahaina, and our Staff Planner this morning is Livit Callentine.

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

1. **MR. MICHAEL MCNEILL requesting a Short-Term Rental Home Permit in order to operate the 2827 Kolepa Place Short-Term Rental Home, a five (5) bedroom short-term rental home in the R-3 Residential District at 2827 Kolepa Place, TMK: 4-4-006: 035, Kaanapali, Lahaina, Island of Maui. (STWM T2016/0016) (L. Callentine)**

This application is being brought to the Planning Commission for review because there are at least two permitted Short-Term Rental Home Permit operations located within 500 ft. of the subject property.

Ms. Livit Callentine: Thank you Will, and good morning Commissioners. Nice to see you again. As Will said this is a proposal for a five-bedroom short-term rental home and pursuant to

1 19.65.060 of the Maui County Code you're reviewing this application because there are two
2 more short-term rental homes operating within 500 feet of the proposed short-term rental home
3 lot.

4
5 As of this morning you have received in your packet one additional letter of support. No, sorry,
6 one letter retracting a letter of protest which brings the total number of people in support of the
7 project to seven and lowers the number of people who had a concern about the project to three.

8
9 This property is mauka of Honoapiilani Highway. It is Kolepa Place is a privately owned street.
10 It's ending in a T-shape cul de sac on two of the three ends. There are 16 homes in the Royal
11 Kaanapali Estates Subdivision of which this home is one. And it is surrounded by the Royal
12 Kaanapali Golf Course. The properties in the subdivision range in size from about a 11.5
13 square feet to over a half a mile, sorry, half an acre and to the northwest of the property lies the
14 International Colony Club for which the Commission recently approved 17 new short-term rental
15 homes. There was one already in existence there. To the northeast is the Kaanapali Plantation
16 condominiums. And to the east we find The Masters Kaanapali Hillside condominiums. So
17 there are as I said, there are 19, a total of 19 approved short-term rental homes within 500 feet
18 of the property and one of them is situated three lots south of the subject property on Kolepa
19 Place. The other 18 are in the International Colony Club.

20
21 There's one permitted B&B within 500 feet of the subject property. And as of October 31, 2016
22 there were 58 permitted short-term rental operations in the West Maui Community Plan have
23 been approved. The maximum in the West Maui Community Plan, the cap is 88 just to keep
24 you apprised of how we're beginning to get closer to the cap. There are 58 approved short-
25 term rental operations at this point in the West Maui Community Plan out of 88.

26
27 Now I'd like to speak a little bit about the zoning criteria. All of the other land use designations,
28 the State, community plan, the Maui Island Plan, the General Plan, this project being an urban,
29 in the urban lands and within the growth boundary is compliant with all of the land uses. In
30 zoning, with the approval of a short-term rental home permit this property will be in compliance
31 with County zoning. It is in compliance right now let me add because it is not and has not to
32 anyone's knowledge operated as a short-term rental home. So if you do approve a permit that
33 they will begin to use it and be compliant.

34
35 So in terms of the main criteria, you have that...I've gone through that in detail in the report, but
36 just a few highlights. This is only for one dwelling and there is only one dwelling on the
37 property. The dwelling will only be rented to one group. The applicant has secured TAT and
38 GET licenses. The applicant, Michael McNeill is a trustee of his family trust and he owns
39 100 percent interest in the Kolepa LLC which is the owner of the property, but the permit will
40 issued in Michael McNeill's name. There will be a manager. The manager has already been
41 designated as Ken Harris, who's a licensed real estate broker and we have a copy of his
42 manager designation form on file. The home will only be rented when the manager is available.
43 The applicant does not hold a short-term rental home permit on any other property. There is no
44 homeowner's association at this point. There are covenants and they do not contain any
45 restrictions on short-term rental home...short-term rental use or other private conditions,
46 covenants or restrictions on use, short-term rental use. The applicant is asking for five

1 bedrooms in one dwelling. The maximum number of dwellings to be...would be six. There are
2 only five bedrooms in the home as I verified in my site inspection.

3
4 Let's see, now we go through the criteria to be used for you for reviewing the application.
5 You're going to be looking to see if it has all its existing land use entitlements and uses. I can
6 tell you that it does. It has all its building permits and with this...with an approval of a short-term
7 rental permit this will be compliant with zoning.

8
9 You're gonna be looking at community input and as of this morning you have seven letters of
10 support before you and three letters of concern. The concerns were if you look at Exhibit
11 10...let's see 11, Exhibit 11 shows you a list of...it shows you a map and also a table showing
12 the supporters and the people with concerns and it also summarizes in the right-hand column of
13 the table what concerns. Two of the people that wrote did not state a concern and one of those
14 people has subsequently withdrawn his concern because the applicant's representative got a
15 hold of him and once he understood that this was going to be a well-managed property, there
16 was going to be a way to make complaints if there were any complaints and he withdrew his
17 letter because that satisfied him that any concerns would be addressed if need be. The two
18 other letters of objection were a general worry about potentials for noise, for parking, traffic or in
19 property values. This, and then the second one which made comments were concerned about
20 the number of short-term rentals within 500 feet and signage and possible impacts on crime.
21 Sort of more forward thinking this is what might happen not what has happened. So it could be
22 argued that with the management controls in place and conditions of approval being followed
23 these concerns probably wouldn't come to fruition. And so, the house policies have been
24 written and have been submitted and on file with the Department. And I've just kind of
25 summarized the testimony for you.

26
27 At this point, I'd like to turn the podium over to Mikal Torgerson who is the applicant's
28 representative. The applicant, Mike McNeill is also in the audience is very willing to answer any
29 questions you may have.

30
31 In addition, I'd like to point to the additional questions that were posed by Commissioner
32 Carnicelli. I've placed a summary in front of you this morning that just grouped both the
33 question and the response below it just for your ease of reference. The first question was, I
34 believe it was about requesting information about RFSs if there's any complaints, yeah but we
35 understood what you meant. So there was only one and it was by, it was by an architect, it was
36 in 2015, and it was nothing, but I'm checking to see if you could find the building permit plan
37 sheet for me and that was for a swimming pool and that was marked done and closed in a very
38 short time. The second question was provide a list of anyone who's lived on the property for
39 more than 30 days within the past two years or during current owner's ownership if less than
40 two years. This would be without a formal lease agreement...with or without a formal lease
41 agreement and we should include a tenant, a family member, a property manager, a caretaker,
42 an au pair, et cetera. So the applicant responded right a way to this as soon as I sent it to him
43 and he said, I bought the property in April of 2014. Nobody has lived in the property on a
44 permanent basis or for more than...longer than 30 days since I took ownership. We started
45 remodeling the house within six months of taking possession and once the remodeling started
46 the house was in no condition to live in. So then the third question...so I mean, the answer is

1 there was no one staying there. However, in answer to your third question how many times has
2 the owner physically stayed on the property during the past two years? The applicant
3 responded that his family and he has stayed in the house two times since it was completed
4 consisting of seven days in June of 2016 and 18 days in August of 2016. So without further ado
5 we will turn off the lights, if someone could get the lights, we will let Mikal go ahead and run his
6 power point.

7
8 Mr. Mikal Torgerson: Thank you so much Livit. Did a great job of covering most of the aspects
9 of the project. Madam Chair, Fellow Board Members thank you so much for your time and
10 consideration of the site. I'll try not to duplicate what Livit said out of respect for your time. The
11 2827 Kolepa resides as she said mauka of the Honoapiilani Highway. It's surrounded by golf
12 course and a lot of green space and it's just sort of this enclave of 16 homes. To the north you
13 see the International Colony Club and then the condos and hotels across the way. It's a heavily
14 vegetated area with large, old vegetation. Here you see a good view of the home from the golf
15 course side. And see the golf course path in the foreground there.

16
17 We're providing four off-street short-term rental dedicated parking spaces for the project. So
18 there would be plenty of off-street parking and in addition to that of course, there's the
19 prohibition in our house rules to parking on the street and that would be strictly enforced by the
20 management of the home.

21
22 It's a fairly open floor plan. The thing I wanted to make note of is most of the windows of the
23 house and the opening of the house face the views of Molokai and over the channels and Lanai.
24 So the portion of the house that faces the neighborhood was designed originally with very few
25 openings and the garage buffering the rest of the neighborhood and I think that helps alleviate
26 any concerns about noise and there are other reasons that I think that wouldn't be a concern at
27 all covered here in a moment.

28
29 On the second floor there are two separate masters. On this side there's one and then a larger
30 one over here with its own lanai. This is a view of the great room and dining room and again
31 you see the extensive windows looking out at the channels and Molokai. The dining and lanai
32 area, you see Lanai over to the left.

33
34 And I wanted to go through the criteria that's laid out within Maui County Code relative to these
35 short-term rentals piece by piece and illustrate why it is I believe that this application meets or
36 exceeds all of the criteria outlined in the County Code. The first criteria is related to the number
37 and distance from the subject parcel to other short-term rentals. As Livit described, the
38 application is here. There's a long operating short-term rental here that's operated for quite
39 some time. I think there's a newly approved bed and breakfast her. And the International
40 Colony Club as was mentioned a batch of short-term rentals home permits was approved by
41 this board recently and I think it's historically operated in that fashion as well.

42
43 The second is, the second criteria is related to existing or past compliance about rental
44 operations on the property. The subject home has never been rented on a short-term basis that
45 we're aware of and we're certain that it hasn't been since the current owner took owner ship of
46 it. The Maui Police Department was routed on this application and they didn't reveal any

1 complaints and we were no aware of any open RFSs but as Livit mentioned apparently one was
2 opened by an architect just asking for floor plans and seeing if the County had historical floor
3 plans for his pool design but no RFSs related to concerns or complaints on the property.
4

5 The next criteria is related to existing or past noncompliance with government regulations.
6 We're not aware of any noncompliance on the property. The next criteria doesn't really apply to
7 our case. It's related more to condominium projects.
8

9 And the last one I wanted to talk about is the number and substance of the protests or support
10 for the application and how those relate to the larger neighborhood. As Livit mentioned there
11 are three letters showing concerns that I wanted to get into. And seven letters supporting the
12 application. This is a overview of the letters that we received. As you can see the McNeill
13 home is down here at the extreme end of cul de sac. And it's surrounded by letters of support.
14 There are however, there folks who had concerns and I think it's legitimate to address those.
15 We've spoken to all the ones that we could and discussed them. First gentleman is way down
16 here about 2,500 feet away. He was routed in the mailing that goes out to 500 feet because
17 there's a lot of common properties. These are condo associations up here and they have
18 common properties that come down to within 500 feet. So we got a lot of interest from folks that
19 were well outside the 500-foot radius. He's about 2,500 feet away. These folks up here also
20 expressed support. But the neighborhood itself, I also have a matrix that I could get into if you'd
21 like regarding the concerns that were raised and the support. The neighborhood itself I think is
22 really represented by the 16 lots on Kolepa and this street here as well. And you can see that
23 the McNeill house is surrounded by lot of support.
24

25 These two folks expressed some concern and I'd jump into that right now. Andrew Klein is the
26 first. He lives about 435 feet away about seven lots down Kolepa at the other side and as Livit
27 mentioned he was concerned about on-street parking by the renters and as I said, we'll certainly
28 if approved enforce the prohibition on on-street parking strictly. It's in the house rules and the
29 management company would strictly enforce that. He also expressed a concern about 17
30 permit applications and seemed to confuse this application with the ones in the international
31 colony. He was worried about loud behavior. I really think given the fact that the house is so far
32 away, the was almost outside the 500-foot radius and because the home focuses its openings
33 toward Molokai and Lanai and away from the neighborhood I believe that that along with proper
34 management, there are quiet hours in the house rules that also would be strictly enforced, I
35 think that that could be alleviated. I think you'd find that if we were allowed to operate that that
36 would not be a concern. He also mentioned the concern about crime and dislike signage in his
37 neighborhood. And Mike McNeill has spoken to him and he described his concern about
38 signage being the big B&B sign that was on another application. As you know, B&B signs
39 during the notice period are much larger and he didn't like that.
40

41 The next person that had a concern, this is again down at the opposite end of the block. This
42 was primarily just a concern about short-term rentals in general, just didn't care for those. She
43 was concerned that extra vehicles would bring down her property values which is kinda the
44 opposite argument that we most frequently hear about short-term rentals, the concern about
45 them bringing up property values. I don't think there's any evidence either way as to whether
46 they do either. But that was a concern that she expressed and she was also concerned about

1 the noise. She is again at the opposite end of the street about 478 feet away from the back of
2 the McNeill house.

3
4 And then the last one just said that they're opposed to short-term rentals and that again is the
5 one that was about 2,500 feet away and across the golf course. So I'm not sure what the nature
6 of their concern is. They didn't express that and we weren't able to reach them. It's worth
7 noting that their neighborhood is accessed by an entirely different roadway system than Kolepa
8 and most like they wouldn't notice any interaction whatsoever with folks that would be staying at
9 the home.

10
11 We received seven letters of support. The first one is from the neighbor immediately adjacent to
12 the house. They said that they appreciate that Mike McNeill is organizing the neighbors to get
13 involved in street repairs and neighborhood improvements. Since he bought the property he's
14 been really involved in the neighborhood giving some outreach to his neighbors and they've
15 talked about potentially fixing up the roadway and some other improvements and they also
16 mention that they had no problems with him during the remodel of the home. I should mention
17 that the home was remodeled as I mentioned right after he bought the property. There was
18 extensive termite damage in the house and once that was opened up we revealed that there
19 was actually a lot of structural...connections weren't made properly according to the current
20 Code. So we ended up having to make a lot of structural modifications or additions to the home
21 and then that evolved into an aesthetic remodel of the house as well.

22
23 The next property owner is just down the street. Again, Gary Mason says that he's confident
24 that Mike McNeill would require his guests adhere to the County rules and regulations and he
25 believes that Mike is a man of his word. He's about 213 feet away.

26
27 The next one is from Peter Winn. He says that the McNeills have proven to be trusted and
28 thoughtful neighbors who show concern for the ambience of their street. As a part of his
29 remodel he actually did some improvements to the street. There were broken down storm water
30 infrastructure that he replaced and that sort of thing so I think that was appreciated by the
31 neighborhood. He also mentions that the remodel is a credit to the neighborhood.

32
33 The next one is from Eric and Patricia Plum. They mention that off-street parking is provided
34 and they feel that ample sound and privacy is accommodated and they also mention that the
35 remodel elevated their neighborhood to a higher standard.

36
37 We received a letter from Kevin Chambers who's owned a home at the opposite end of Kolepa
38 Place for a very long time. He simply expressed his support without elaborating.

39
40 And Anton Saca was...this was completely unsolicited he was routed as a part of the
41 neighborhood notice and he wrote a quick note on the back of the cover letter I sent him just
42 saying that he's okay with our application to rent the family home and wishes us good luck. I
43 include my business card in all of the neighborhood mailing when I send those out along with a
44 cover letter. So I get a lot of phones from people just asking for detail about what the
45 application really is and Anton is one of the ones that called me up and just had a few
46 questions. Didn't understand the process. And I get a lot of folks like that. Generally when they

1 find that there's a process for concerns to be dealt with, there's a phone number out front that
2 you can call the manager 24-hours a day, the County staff is available for complaints and that
3 would affect renewal of the permit. When I explained those kinds of things most neighbors tend
4 to believe it's a good process and Anton was one of those.

5
6 The next letter was from Andrew Norris. Andrew was initially actually opposed to the project
7 due to perceived competition with his STRH condo. After I talked to him for some time and
8 gave him some information he withdrew his objection and wishes us good luck with our
9 endeavor.

10
11 I think those are the criteria that are specifically enumerated in the Code, but I think generally
12 they relate to an overall concern about compatibility with the neighborhood and that's really
13 what we're concerned about. The Kolepa neighborhood is a 16-lot subdivision with 14 lots
14 occupied by non-owner occupants. It's historically operated kind of like a short-term rental
15 neighborhood in that way. Not necessarily that they were renting their homes but folks who
16 have that as a second home come use those homes. They don't have jobs that go between 8
17 and 5. Their hours are typically more consistent with short-term renters. They're doing similar
18 activities and that kind of thing. And so I think there's a good compatibility in that respect that's
19 unique to this neighborhood.

20
21 Additionally it's adjacent to similar uses. It's adjacent to the International Colony. It's mauka of
22 the International Colony which is a series of bungalows that's historically operated like short-
23 term rentals and recently got a batch of permits for that. And then across the Honoapiilani there
24 the condominiums, the vacation condos and the hotels of Black Rock in that area. So this
25 provides a nice planning transect. In other words, we're going from the high density hotels to
26 the condominiums that are operating as short-term rentals, the bungalows and then
27 neighborhoods such as this. It's widely accepted good planning practice to sort of create those
28 transitions and I think it's important to give good scrutiny to these short-term rentals and how
29 they affect the neighborhoods. I guess the argument I would respectfully present is that this is
30 consistent with this neighborhood.

31
32 With that, out of respect for your time I'll just cut it short and make myself available for any
33 questions that you might have. I've also got as Livit mentioned, Mike McNeill, the owner of the
34 home here with me and we'd both be very happy to answer any questions or address any
35 concerns you might have.

36
37 Vice-Chair Duvauchelle: Thank you.

38
39 Mr. Torgerson: Thank you.

40
41 **a) Public Hearing**

42
43 Vice-Chair Duvauchelle: At this point we'll open the floor back up for anybody who wish to
44 testify on this agenda item? Seeing none, public testimony is closed. Commissioners,
45 questions? Commissioner Canto?

1
2 Ms. Canto: So this may be a question for the Director. Regarding the maximum amount of 88, I
3 notice on this application on Exhibit 6 there are some I guess future proposed so does the
4 County give these communities a heads up that what the max number of 88 is approaching
5 soon or how does this work?
6
7 Mr. Spence: No, that's a count that we just keep internally, it's excuse me, a number of...the
8 number of permits allowed within a specific community plan area. And so you know, some of
9 those areas are very large. So we just keep track internally. We don't notify everybody of that.
10 That's just a part of the law.
11
12 Ms. Canto: Okay.
13
14 Mr. Spence: Does that answer?
15
16 Ms. Canto: Sort of because we have "x" amount on this exhibit. I would assume that they're
17 forthcoming and so we're reaching...we're at 58 and your max is 88?
18
19 Mr. Spence: Uh huh.
20
21 Ms. Canto: And so as the number elevate do we notify the community that hey, we're reaching
22 our max numbers so, or not?
23
24 Mr. Spence: No.
25
26 Ms. Canto: We don't.
27
28 Mr. Spence: We don't notify people. We will as start approaching 85 and you know...
29
30 Ms. Canto: Closer to the max?
31
32 Mr. Spence: Things like that, yeah and it was really clear on the record it's pretty much first
33 come, first served. So when we run out, we run out and then Council will consider, may
34 consider changing that cap or not.
35
36 Ms. Canto: Thank you, Will. Thank you.
37
38 Ms. Callentine: If I could add to that? Just so if you could take a look at Exhibit No. 6 down at
39 the lower left-hand, I won't say corner but portion of the subdivision there is a short-term rental
40 home proposed and it's indicated by the pink triangle. That has been withdrawn just so you
41 know. The one to the right of it around the circle has not been withdrawn. And in terms of
42 notification to the public we do on a quarterly basis publish on the Planning Department's
43 website, anyone can go and look at a whole section on short-term rental information and there
44 are links to sheets which show all of the permitted short-term rental home permits that have
45 been issued and all of the B&Bs and all of the conditional permits. So there's a separate sheet
46 for each of those categories and that's like I say, updated on a quarterly basis and anyone can

1 go and look at that and it gives the list of address of the property and the number of bedrooms
2 and such.

3
4 Ms. Canto: Thank you.

5
6 Vice-Chair Duvauchelle: Commissioner Robinson?

7
8 Mr. Robinson: Director, does the Council have the ability to reduce the number from 88?

9
10 Mr. Spence: Yes, they can.

11
12 Mr. Robinson: Does the Council also have the ability to temporarily suspend any future short-
13 term vacation rentals because of a reconsideration?

14
15 Mr. Spence: In either one of those cases they would have to pass a law. They just can't...they
16 can't just...once they enact something by legislation, the way to change that would be through
17 additional legislation. They can't just suspend a law. They would have to pass another one to
18 do that.

19
20 Mr. Robinson: So they would have to meet and pass a law either increasing or decreasing the
21 number?

22
23 Mr. Spence: Or suspending.

24
25 Mr. Robinson: Or suspended.

26
27 Vice-Chair Duvauchelle: Commissioner Robinson?

28
29 Mr. Robinson: And isn't it within 10 percent of the cap they have to...they're supposed to...I
30 thought I saw something before when we're within 10 percent of the cap number there has to be
31 some type of notification?

32
33 Mr. Spence: I believe that's the case. That we would notify the Council—

34
35 Mr. Robinson: That's it's, right, within 10 percent, right?

36
37 Mr. Spence: --and they would choose to consider changing the cap or not.

38
39 Mr. Robinson: Okay.

40
41 Vice-Chair Duvauchelle: Any other questions? Commissioner Hedani?

42
43 Mr. Hedani: This is for the applicant. I'm sorry, I didn't get your name?

44
45 Mr. Torgerson: Mikal Torgerson.

46

1 Mr. Hedani: Mikal?

2

3 Mr. Torgerson: Yes?

4

5 Mr. Hedani: I took a drive through the subdivision and the roadway is in very poor condition. In
6 fact there's like a substandard drainage system for the roadway and they've kind of...looked like
7 they've capped it so the water doesn't flow down the center of the street. The applicant has
8 taken it upon himself to try to work on street improvements. How is that coming along?

9

10 Mr. Torgerson: Well initially he actually at his own expense replaced a stormwater inlet and
11 improved the stormwater at the end of Kolepa. It came to the cul de sac there. So that's
12 already been done. He's been working with the neighbors to try to put together some kind of hui
13 to share expenses to do that. It is a private drive and so it has the similar challenge to Halelo
14 and Holomakani the way they were developed. They're private drives and they all face that
15 similar challenge, but at least they're coming together now and—

16

17 Mr. Hedani: So they're looking to resurface the roadway?

18

19 Mr. Torgerson: I don't know that that's been determine yet?

20

21 Mr. Michael McNeill: It's all in the discussion...(inaudible-not speaking into a mic)...

22

23 Vice-Chair Duvauchelle: Step up to the microphone please and identify yourself.

24

25 Mr. McNeill: My name is Mike McNeill. I'm the applicant. Several of the neighbors that have I
26 guess more financial wherewithal are trying to get together. There's some people who just don't
27 want to spend any money, but I think we've got enough people on board that even if we can't
28 get everybody to commit we'll start making some progress. We've also tried to contact the
29 original developers to see if there's any help that we can get from them. But we're really not
30 getting anywhere with that. So it's a long process 'cause there's a lot of people involved but I
31 think we're a lot closer now than we were you know two years ago. I mean they hadn't talked
32 about it before I got to the street, and at least now we're talking about it so it's moving ahead.

33

34 Vice-Chair Duvauchelle: Any other questions Commissioners? Okay, if the Department want to
35 read the recommendation please?

36

37 **b) Action**

38

39 Ms. Callentine: Thank you, Madam Chair. The subject application for a short-term rental home
40 complies with the applicable standards for a short-term rental home permit in accordance with
41 19.65.030 restrictions and standards, Maui County Code and that was referenced for you in the
42 applicable regulations section of the Maui County Planning Department report to the Maui
43 Planning Commission for this meeting.

44

45 The Maui County Planning Department does recommend approval of this short-term rental
46 home permit subject to 22 conditions which are listed in the recommendation. In consideration

1 of the foregoing the Planning Department recommends that the Maui Planning Commission
2 adopt the Planning Department's report and recommendation prepared for the
3 November 22, 2016 meeting as the findings of fact, conclusions of law, and decision and order
4 and authorize the Planning Director to transmit said written decision and order on behalf of the
5 Maui Planning Commission.

6
7 Vice-Chair Duvauchelle: Thank you. Do I have a motion?

8
9 Ms. Canto: So move.

10
11 Vice-Chair Duvauchelle: Moved by Commissioner Canto for approval.

12
13 Mr. Hedani: Second.

14
15 Vice-Chair Duvauchelle: Second by Commissioner Hedani. All those in favor?

16
17 Mr. Carnicelli: Could I just—

18
19 Vice-Chair Duvauchelle: Oh, please. Commissioner Carnicelli?

20
21 Mr. Carnicelli: Just would like to just for the record put a couple of thoughts on the record for
22 this. I appreciate Livit you answering my questions and the applicant answering my questions
23 of which I was kinda told that couple of them are personal so I appreciate you answering those
24 anyways. I do feel that this is consistent with the neighborhood. The fact that 14 out of 16
25 owners live out of state or non-owner occupants matters. I know that we just approved 17 long-
26 term rentals, I'm sorry, short-term rentals at ICC and this is who faces, this faces ICC basically.
27 No objections from any of them. And the fact that there's not an ohana, that just the way that
28 property is and is used I don't feel as though we're losing any affordable housing by granting
29 this one as well. So with that, that's just sort of my belief and I'll go ahead and
30 support...(inaudible)...

31
32 Vice-Chair Duvauchelle: Okay, any further discussion? Commissioner Robinson?

33
34 Mr. Robinson: I do not support no short-term vacation rental. I'm concerned that the number of
35 rentals that we just gave to Colony Club in front, I believe that it is starting to cluster across the
36 street. This is another residential area that's become turn into a TVR area. Instead of getting
37 zoning changes, we're getting these special permits and slowly one person supports the other
38 and I don't have sympathy for millionaires from the mainland who don't live here who say they
39 can't afford to upkeep their million-dollar home so that they have to rent it out to other people so
40 that they can come here once or twice or three times a year. I appreciate people that buy
41 homes here that wanna have second residence but not have a second hotel. I do not think that
42 this is conforming the area. I think this area wasn't zoned TVR. If it was zoned TVR there
43 wouldn't be a special, a special permit. This is a special permit and I'm against this project and
44 almost, most projects in this area. Thank you.

45

1 Vice-Chair Duvauchelle: Thank you, Commissioner Robinson. Any further discussion?
2 Commissioner Hedani?

3
4 Mr. Hedani: I supported this particular application because I think it has improved the
5 neighborhood, it has improved the home actually from the condition that preexisted. I agree
6 with Commissioner Carnicelli that 14 out of the 16 owners within in the subdivision you know
7 being offsite reduces the concern to some degree. I think in the future we need to give greater
8 consideration for the objections that are coming from the items that are labeled number one and
9 number two on this because they would be in direct proximity to the short-term rentals for those
10 that are being considered and that would make their impact much more direct than what we're
11 seeing right now. As it's displayed on Exhibit 11 it shows 5 out of 16 homes being prospectively
12 short-term rentals and that would comprise about 31.25 percent of the neighborhood. I don't
13 think it was the original intent of this subdivision to be transient oriented on a short-term basis.
14 But I think in measuring the impacts that can be identified for that type of use having it in this
15 area as opposed to areas where long-term residents of Maui are occupying homes would be
16 less impactful than in other neighborhoods. It is a resort neighborhood. It is surrounded by golf
17 course and I think the impacts from that perspective can be minimized. But I would just advise
18 caution in the future to not necessarily just saturate the entire neighborhood but giving adequate
19 consideration to the people that do live there on a full-time basis.

20
21 Vice-Chair Duvauchelle: Thank you. Any other discussion? Commissioner Higashi?

22
23 Mr. Higashi: I have mixed feeling about this particular application. Not from the standpoint that
24 the applicant hasn't done everything possible to get the permit going. It's more in line with what
25 Commissioner Robinson is talking about and that's basically you buy a home here the intent is
26 to live here not to rent it out. And what has been happening in the past is that we've had a slew
27 of 17 of them in a close proximity of this area that's gonna be short-term rental. I'm concerned
28 about the direction that it's heading toward and I agree with Commissioner Robinson that
29 although the applicant has done everything possible to get it approved this particular area
30 basically is I believe to be one in which bought the home to live there more permanently than
31 using it as a vacation rental. I don't have anything against the applicant because the applicant
32 is new. I don't know what his track record is gonna be. I'm just going by what has happened in
33 the past and so, I would abstain from this particular application.

34
35 Vice-Chair Duvauchelle: Thank you. Any other discussion? Director, you want to repeat the
36 motion?

37
38 Mr. Spence: The motion is to approve as recommended by Staff.

39
40 Vice-Chair Duvauchelle: All those in favor?

41
42 Mr. Spence: That's one, two, three in favor. Opposed?

43
44 Vice-Chair Duvauchelle: Opposed?

45
46 Mr. Spence: One and nonvoting is—okay, that's—

1
2 Mr. Giroux: I think we gotta address the abstention because within a known reason to you
3 know, based on a conflict of interest the abstention would be seen as a yes vote. So I don't
4 know if that's your intention, but I wanna raise it at this time so that you know that what the
5 result would be.

6
7 Vice-Chair Duvauchelle: Thank you, Counsel. Commissioner Higashi?

8
9 Mr. Higashi: Based on Corporation Counsel's decision on my decision I would go along with
10 Commissioner Robinson and oppose the particular vote.

11
12 Mr. Spence: So that was three ayes and two noes.

13
14 Vice-Chair Duvauchelle: Two noes.

15
16 Mr. Spence: So motion fails.

17
18 **It was moved by Ms. Canto, seconded by Mr. Hedani, and**

19
20 **The Motion to Approve the Short-Term Rental Home Permit, FAILED.**
21 **(Assenting – P. Canto, W. Hedani, L. Carnicelli)**
22 **(Dissenting – K. Robinson, R. Higashi)**
23 **(Excused – L. Hudson, S. Castro, M. Tsai)**

24
25 Vice-Chair Duvauchelle: Motion fails. Thank you. Do we need more discussion? I'm sorry,
26 motion fails at this time. Thank you all and we'll take a 10-minute break. Oh—

27
28 Mr. Robinson: I have another motion.

29
30 Vice-Chair Duvauchelle: Okay.

31
32 Mr. Robinson: Motion to deny application.

33
34 Mr. Higashi: Second the motion.

35
36 Vice-Chair Duvauchelle: Okay, any discussion?

37
38 Mr. Robinson: I believe the area is saturated. I believe that this block is gonna turn into every
39 other residence who supported this they're gonna come in for short-term vacation rentals and
40 the two owners who are opposed to it they're gonna be surrounded by rentals even though
41 when they bought their house they had no idea that this could possibly happen in their
42 neighborhood. Thank you.

43
44 Vice-Chair Duvauchelle: Any other discussion? Director, you want to repeat the motion?

45
46 Mr. Spence: The motion is to deny.

1
2 Vice-Chair Duvauchelle: Okay all those in favor of the motion to deny?

3
4 Mr. Spence: That's two ayes.

5
6 Vice-Chair Duvauchelle: Opposed?

7
8 Mr. Spence: That's three opposed. The motion fails.

9
10 Vice-Chair Duvauchelle: Motion fails.

11
12 **It was then moved by Mr. Robinson, seconded by Mr. Higashi, and**

13
14 **The Motion to Deny the Short-Term Rental Home Permit, FAILED.**
15 **(Assenting – K. Robinson, R. Higashi)**
16 **(Dissenting – P. Canto, W. Hedani, L. Carnicelli)**
17 **(Excused – L. Hudson, S. Castro, M. Tsai)**

18
19 Mr. Spence: Do we need, we need a motion to defer?

20
21 Vice-Chair Duvauchelle: Commissioner Hedani?

22
23 Mr. Hedani: Move to defer to a future meeting so we can get more commissioners aboard to
24 weigh in on this particular item?

25
26 Mr. Carnicelli: Second.

27
28 Vice-Chair Duvauchelle: There is a motion to defer by Commissioner Hedani, seconded by
29 Commissioner Carnicelli. Can I see a vote? Discussion?

30
31 Mr. Giroux: Part of discussion can we include a date and time certain as part of the motion.

32
33 Vice-Chair Duvauchelle: Move to defer to the next available meeting date that the Department
34 can schedule.

35
36 Mr. Spence: The next available meeting date would be December 13th and that's going to be a
37 very full agenda with two quite interesting projects.

38
39 Mr. Hedani: What's the next meeting after that?

40
41 Mr. Yoshida: Yeah, I believe that...the next meeting you're gonna deal with the Paia Inn County
42 Special Use Permit and the Lahaina Bypass Road Southern Terminus SMA and Shoreline
43 Setback. The first meeting in January you're gonna deal with the five-volume Final
44 Environmental Assessment for the Makena Resort. So I would say the January 24th meeting
45 would be the earliest.

1
2 Mr. Hedani: So I would move to include the January 24th meeting as the next meeting for
3 consideration...for deferral.

4
5 Vice-Chair Duvauchelle: Thank you Commissioner Hedani.

6
7 Mr. Carnicelli: Second.

8
9 Vice-Chair Duvauchelle: Second by Commissioner Carnicelli. Discussion? Commissioner
10 Robinson?

11
12 Mr. Robinson: I apologize Commissioners for delay but I want a clarification of how this works?
13 I assume that it's an automatic deferral. I mean is...if there's three against two is two
14 commissioners or three commissioners able to not agree on a deferral? I mean if we don't have
15 a motion either way does it become a automatic deferral.

16
17 Mr. Giroux: I think you've seen up our skirt. No, no. Basically what we're trying to do is make
18 sure that there is agreement about deferral and a date because what comes into the play is the
19 fact that you have a public hearing and so when you have it brought up again you want to make
20 sure that you either have followed the public hearing procedure or if not, then you run into the
21 issue of do we need to have another public hearing? So at this juncture if there is agreement
22 that it would be heard on a certain date you would just bring up, enter discussion again and then
23 make a decision. If you didn't agree then it would be then on the next agenda. Whether or not
24 we could take it up or not it would be on the agenda as a unfinished action of the committee. So
25 to answer your question the motion to defer could fail and then it would automatically just be put
26 on the next agenda and I think that would mirror Member Hedani's motion that it would be on
27 the next available agenda.

28
29 Vice-Chair Duvauchelle: Commissioner Robinson?

30
31 Mr. Robinson: I guess what I'm saying is is when you have quorum you have enough people to
32 make a decision and so when the quorum can't decide then it goes ahead and it gets deferred.
33 And then to say okay, we'll...and this has happened for a couple years that's why I'm bringing
34 this up now so we can...so we always want to bring in a couple more people to try and hope
35 that the vote's gonna change. I mean, at some point there's gonna have to be with the busy
36 docket we have to where to say you know what I'm gonna defer to try to get more votes and see
37 if I make it and in my eyes sometimes it might be just a waste time. It might work but I mean is
38 there a mechanism in the Robert's Rules where because automatic deferral if we don't agree
39 within a hundred and so many days whatever it is if we just defer now or if we can't make up our
40 minds now or we don't have enough to disapprove of the recommendation then it automatically
41 becomes approval or does it have to be because there's so many days and has to follow or is
42 this County Charter to expedite this process of deferral because there's been so many deferrals
43 that keeps on prolonging our things and each meeting there's two or three people come back
44 and forth. So you know, I guess my question is do we do it out of courtesy, do we have our
45 rules that it goes 120 days or is it because it's a charter?

1
2 Vice-Chair Duvauchelle: Director or Counsel?

3
4 Mr. Giroux: That's a very good question. I was just wondering that same thing is that is there
5 anything in the rules that puts a deadline on the action of a B&B and I think one of the issues is
6 that we've been confronted with so many iterations of use of residential property being
7 converted into something other than residential property. So we have the B&B Ordinance, we
8 have the STR Ordinance, so when all of these ordinance come up then either the direction has
9 to come from the Council that they want the Commission to fish or cut bait, right, 120 days, 90
10 days, you know, give us a number. If it's not there then we have to look into the rules and to
11 see okay, do we have rules that govern our review of B&B and STR and to see if there's a rule
12 that was made by this Commission to say, yeah we're gonna do that. We're gonna move
13 forward in so many days and if not, then. If you look at the Board of Variances Rules there's
14 specific language about that. But even then you run into legal problems when you have issues
15 of real estate which have certain, I don't know how to put it but you know you've got thousands
16 and thousands of years of real estate law going back to the king, going back to the ancient
17 times of you know how we treat property and property does have certain rights that we don't
18 want to be making decisions that should be made by committee by default is kind of the thinking
19 behind entitlements.

20
21 And the other issue is do you change land use by default? If you look at variances they've gone
22 through a lot of lawsuits to clarify that you do not want to give somebody a variance just
23 because the board that reviews it cannot take action. And that's really dicey. And I think what
24 you were talking about is that you know what's the zoning, what's...you know, what are we
25 changing? So the short answer is right now I don't believe we have any trigger that says if we
26 don't take action it's automatically denied, automatically granted. I don't believe we're at that
27 point. So basically the hope is is that once you have full, the full body here there's a realization
28 that there is a action. It's not that oh we're hoping that if everybody comes we get the action we
29 want. It's that if everybody's here we get a action and it's an affirmative action and that's the
30 hope is that the body takes an action that it's not a default action.

31
32 Mr. Robinson: Thank you.

33
34 Vice-Chair Duvauchelle: Thank you.

35
36 Ms. Callentine: Excuse me, may I interrupt for just one moment? The applicant has just asked
37 if he would be allowed to ask for a continuance in this matter.

38
39 Vice-Chair Duvauchelle: We have a motion on the floor. Let's finish our...let's finish our
40 motion on the floor.

41
42 Ms. Callentine: Yeah.

43
44 Vice-Chair Duvauchelle: We have a motion on the floor to defer to the January 24th Maui
45 Planning Commission. Commissioner Hedani?

46

1 Mr. Hedani: In this particular case I think a motion to defer would be appropriate because we
2 had three in favor. We had one abstention until it was clarified and the abstention was turned
3 into an opposition. If Commissioner Higashi had retained his abstention and the Chair voted in
4 favor they would have had five votes out of six commissioners that are present today. It's
5 unfortunate that we had three commissioners absent but I think in light of that it's appropriate to
6 have it taken up again at a future meeting with the full record made available to the
7 commissioners that are not here today so that they can make an appropriate decision based on
8 the record. So they get to listen to an audio tape like I did for this meeting. And also I'd like to
9 say that I recognize the voice that wasn't identified on this audio tape as our esteemed counsel
10 Jim Giroux and I truly am happy to have Jim back as our counsel for the commission. I've
11 known him for 10 years. He's a bona fide hero in my eyes and I'm just tickled to death that he's
12 back with us.

13
14 Vice-Chair Duvauchelle: I mirror your feelings on that. Welcome back. Okay, so we have a
15 motion to defer to January 24th. Any further discussion? Commissioner Higashi?

16
17 Mr. Higashi: Well, I just thought about something in looking at what we're doing now and we
18 have...actually the commission has a safety valve. The safety valve is if we give the applicant a
19 one-year trial period a permit, the Director has the right to either approve, deny or prolong the
20 application as one way to say that we could get this approved. So with that I have mixed feeling
21 about how I'm going to vote on this one.

22
23 Mr. Robinson: Vote for defer.

24
25 Vice-Chair Duvauchelle: Commissioner Hedani?

26
27 Mr. Hedani: In light of Commissioner Higashi's comments I'd like to withdraw my motion to
28 defer and offer a motion for reconsideration.

29
30 Vice-Chair Duvauchelle: Thank you. Do I hear a second?

31
32 Mr. Carnicelli: I'll second.

33
34 Vice-Chair Duvauchelle: Commissioner Carnicelli seconded. Okay, so we have a clean slate.
35 Do I have a motion on the floor?

36
37 Mr. Giroux: Did we vote on the motion to reconsider? We have a motion.

38
39 Vice-Chair Duvauchelle: So Director?

40
41 Mr. Spence: So we have a motion to reconsider the deferral.

42
43 Mr. Giroux: No, no, no. It's the motion to reconsider on the floor. We have a first and a
44 second. We need a vote on that.

45
46 Mr. Hedani: Before we decide we need a vote to reconsider it again.

1
2 Mr. Spence: To reconsider it would be approval or denial.
3
4 Vice-Chair Duvauchelle: All those in—
5
6 Mr. Spence: I know it's not to...it's continue the discussion and possibly make another motion
7 for one or the other.
8
9 Vice-Chair Duvauchelle: Can I see a show of hands in support of—
10
11 Mr. Spence: The motion to reconsider.
12
13 Vice-Chair Duvauchelle: Motion to reconsider.
14
15 Mr. Spence: One, two, three, four. Opposed?
16
17 Vice-Chair Duvauchelle: Those opposed?
18
19 Mr. Spence: One opposed.
20
21 Vice-Chair Duvauchelle: The motion passes.
22
23 Mr. Spence: Because the Chair—
24
25 Mr. Hedani: Chair votes aye.
26
27 Mr. Spence: --is the Chair's vote included.
28
29 Vice-Chair Duvauchelle: Yes.
30
31 Mr. Spence: Okay.
32
33 **It was moved by Mr. Hedani, seconded by Mr. Carnicelli, then**
34
35 **VOTED: To Reconsider the Matter.**
36 **(Assenting – W. Hedani, L. Carnicelli, P. Canto, R. Higashi,**
37 **S. Duvauchelle)**
38 **(Dissenting – K. Robinson)**
39 **(Excused – L. Hudson, S. Castro, M. Tsai)**
40
41 Mr. Carnicelli: Okay, so I will make a motion to approve the recommendation with a change
42 saying that instead of it being valid to November 30, 2019, it's for only one year.
43
44 Mr. Hedani: Second.
45

1 Vice-Chair Duvauchelle: Moved by Commissioner Carnicelli, seconded by Commissioner
2 Hedani? Director, do you want to reread the or –

3
4 Mr. Carnicelli: Well, I have a question.

5
6 Vice-Chair Duvauchelle: Any discussion?

7
8 Mr. Carnicelli: And this is for Corp. Counsel? 'Cause do we need to put an actual date because
9 I'm amending it to say one year, but I mean that's what I said on the record, but do we need to
10 actually pick a date?

11
12 Mr. Giroux: So we just minus one year from the date that's on the permit?

13
14 Mr. Spence: Right.

15
16 Mr. Carnicelli: So November 30, 2018. No, that's two years.

17
18 Mr. Spence: That would be two years.

19
20 Mr. Carnicelli: 2017. November 30, 2017.

21
22 Vice-Chair Duvauchelle: Director, would you like to repeat the motion?

23
24 Mr. Spence: Okay, the motion is to approve as recommended by Staff except that it would be
25 for a duration of one year.

26
27 Vice-Chair Duvauchelle: Discussion? Okay, can we take a vote? All those in favor?

28
29 Mr. Spence: That's five, excuse me, that's four ayes. Opposed?

30
31 Vice-Chair Duvauchelle: Opposed?

32
33 Mr. Spence: Okay, that's one nay.

34
35 Vice-Chair Duvauchelle: And the Chair votes to approve.

36
37 Mr. Spence: Okay, congratulations.

38
39 **It was then moved by Mr. Carnicelli, seconded by Mr. Hedani, then**

40
41 **VOTED: To Approve the Short-Term Rental Home Permit as Recommended**
42 **by the Department with the Amendment that the Permit Term be for**
43 **One-Year to November 30, 3017.**
44 **(Assenting – L. Carnicelli, W. Hedani, P. Canto, R. Higashi,**
45 **S. Duvauchelle)**
46 **(Dissenting – K. Robinson)**

1 (Excused – L. Hudson, S. Castro, M. Tsai)

2
3 Vice-Chair Duvauchelle: Okay, we will take a 10-minute recess. We'll be back here at 10:15.

4
5 A recess was called at 10:05 a.m., and the meeting was reconvened a 10:21 a.m.

6
7 Vice-Chair Duvauchelle: Maui County Planning Commission is back in session. Director, our
8 next agenda item?

9
10 Mr. Spence: Commissioners we're going to number D, Unfinished Business. The first item is
11 Mr. John Dunbar requesting a Land Use Commission Special Use Permit and a Bed and
12 Breakfast Home Permit to operate the Maui Adventure Villa. This was deferred from last
13 meeting and the Staff Planner is none other than Clayton Yoshida.

14
15 **D. UNFINISHED BUSINESS**

- 16
17 1. **MR. JOHN DUNBAR requesting a Land Use Commission Special Permit**
18 **and a Bed and Breakfast Home Permit in order to operate the Maui**
19 **Adventure Villa, a five (5)-bedroom bed and breakfast in two (2) dwellings**
20 **in the State Agricultural District at 192 Kaokoa Way at TMK: 2-8-002: 034,**
21 **Haiku, Island of Maui. (SUP2 2016/0008) (BBPH T2016/0004) (C. Yoshida/K.**
22 **Wollenhaupt) (Public hearing was conducted at the November 7, 2016**
23 **meeting. The matter was deferred as the Commission was unable to take**
24 **an action.)**

25
26 **Maui Planning Commission review is triggered by the fact that there is a**
27 **permitted bed and breakfast home operation located within 500 ft. of the**
28 **subject property.**

29
30 Mr. Clayton Yoshida: Good morning Madam Vice-Chair and Members of the Commission. The
31 applicant is requesting two permits, one a State Special Permit in the State Ag District and a
32 Bed and Breakfast Home Permit in the County Ag District. A public hearing was conducted on
33 this matter at your November 7th meeting and the public hearing was closed and upon
34 deliberation the matter was deferred until this meeting as there were only five members present
35 at the November 7th meeting and the Commission was unable to take an action on the
36 applications.

37
38 In accordance with the request from Commissioner Carnicelli, we have submitted a list of
39 Requests for Services requested in the past two years. There are eight of them. Actually one
40 of them is by the applicant to look at the Planning Department file on this application. And the
41 applicant also has submitted a list of tenants for the past two years. The applicant I guess
42 would like to make a supplemental power point presentation.

43
44 Vice-Chair Duvauchelle: Thank you.

1
2 Mr. John Dunbar: Aloha and good morning, Vice-Chair and Members of the Commission, and
3 Director. Again, I'd like to thank Mr. Yoshida and Evelyn who assisted considerably in
4 preparation of my application for the B&B and it's been a long process, I believe about nine
5 months for which I'd planned for getting approval on this. And during the process a number of
6 obstacles I think we've gone over—

7
8 Vice-Chair Duvauchelle: One moment, sir.

9
10 Mr. Hedani: Needs to identify himself for the record.

11
12 Vice-Chair Duvauchelle: Oh, I'm sorry.

13
14 Mr. Dunbar: John Dunbar. I'm the applicant for the Maui Adventure Villa B&B. And I'm here for
15 the second round on discussion and hopefully approval on this B&B application. I will actually
16 go through the presentation that I provided this honorable commission at the last sitting on
17 November 7th, but I will attempt to go through it a little bit quickly in respect for your time and
18 allowing for questions and also there'll be some testimony following this. So I'll begin the
19 presentation and if you have any questions during it feel free to ask also. Okay, --

20
21 Vice-Chair Duvauchelle: Sir, can you give us one moment? All the Commissioners received
22 the DVD to update them on the last presentation? All the Commissioners received the DVD that
23 gave us the information on the last presentation that we weren't here at.

24
25 Mr. Dunbar: Okay.

26
27 Vice-Chair Duvauchelle: Do we want to see the presentation again? Is anybody uncomfortable
28 or did you add more information?

29
30 Mr. Dunbar: There is some more information. So I'll keep in mind that—

31
32 Vice-Chair Duvauchelle: Please do, yeah.

33
34 Mr. Dunbar: --the commissioners did read and then I'll actually go through this. At the last
35 hearing I would like to point out and make some emphasis on the input from the Honorable Mr.
36 Higashi who as you can see on the screen made some very relevant points and to articulate it I
37 think it was all very succinct and expressed it all the way I would like to but I couldn't have done
38 it so articulately. Basically that there is a catchall, as he called a safety valve where if this is
39 approved there's one year. Actually, it's actually nine months I believe the applicant has to start
40 for the renewal of the permit. So approximately nine months I would be required to begin the
41 process again. If there were any issues either from the neighborhood or any other reason. And
42 so the recommendation of the Staff of course was for approval of it and Mr. Higashi pointed out

1 that this is an opportunity that perhaps should be given. And of course, with due respect to Mr.
2 Higashi's caveat there that I have to be careful, my future actions with the neighbors in there. I
3 think I've made a fairly good attempt at insuring that the neighbors are satisfied that there'll be a
4 safe and clean and sound operation with my B&B.

5
6 So I also like to point out a letter that, actually memo from the Planning Department which
7 simply emphasizes that the B&B property owners and of course, I've come forward and over the
8 last almost a year with no operation and attempting to get my permit on this and of course
9 acknowledge that I was operating as so illegally and that actually provided an opportunity to test
10 the grounds for a B&B so it does some benefit here. And I of course, acknowledged to Mr.
11 Robinson I believe questioned it, it wasn't of course correct to do that and I want to make
12 amends by having an operation that's legal. And it's of course a benefit to the community
13 financially and to allow people an option, an alternative for hotels and we'll go into that real
14 briefly also.

15
16 So this is a letter that as you can see the date on it, it's very recent from my neighbor, Vance
17 Akanaka for nearly 30 years. He has a family. I've watched all his kids grow up, eight of them
18 and their children grow up, now they're growing up and they've walked the streets right next to
19 my property on a daily basis coming from school. And so we've all learned and we've had
20 speed bumps installed and I believe the Akanaka Family lead that and of course, I, the
21 neighbors agreed with that. So the speed bumps were installed and we've always respected
22 that there are children in the neighborhood. Another neighbor next door, his children are both
23 grown, Mr. Nelson, Dr. Nelson's.

24
25 So again, this is a letter in support from a neighbor of many, many years and I respect that he
26 believes that as long as there's no nuisance and perhaps the test period of nine months to a
27 year would demonstrate to this commission and the community that this is a viable operation.

28
29 I have something up here that demonstrates that I was honorably discharged from the United
30 States Navy and retired honorably with faithful service. And the reason why this is before you
31 now is there was a comment made at the last presentation that I was dishonorably discharged
32 and I felt compelled to ensure that this commission knows that I served my country for over 20
33 years and beyond that as an anti-encounter terrorism instructor worldwide, traveled and gave
34 instruction in that and in law enforcement. So here's my retirement certificate. I have the
35 originals here that someone has already asked to see this morning along with a letter from the
36 Chief of Police for apprehending a kidnap, burglary suspect who was armed in San Diego and
37 another incident which is the same when I was with the Naval Investigative Service. Am I going
38 backwards on this, okay...sorry.

39
40 Okay, again there was another remark made about my not providing DNA to the Police
41 Department. I'm sorry to take your time with his but this is a 22-page decision by the Appellate
42 Court here in Hawaii regarding an incident which occurred in which I was told I need to give

1 DNA and this was resolved through the Appellate Court and I'll let that go from there. If
2 anybody has any questions.

3
4 Here is what I feel real quickly is my commitment to comply with the B&B process again, to have
5 that legal permit and I am in fact very sensitive to the neighbor's concerns and interest. I've
6 spoken with many of the neighbors during this process and even the last meeting to ensure that
7 neighbors feel comfortable with what's happening in their community and it is a rural community.
8 I'll add that most of the properties are around or below a million dollars and they're not really the
9 high end properties but really people come here and they love that. They want to be a farm and
10 enjoy being able to pick bananas and be a part of a community outside of the normal hotel
11 arena.

12
13 Okay, again there's a growing demand and I very much seen this because I, I actually was
14 involved in some events on the island have brought hundreds of people to the islands and
15 brought millions of dollars to the County and to the State of Hawaii through events that for five
16 years I actually had a television production that exposed...gave exposure to the Island of Maui.
17 So the idea that people can come here and I'll make this point again and train here for example
18 for the Iron Man, I was one of the founders and creators of that to go to the Big Island. They like
19 to train on Maui. It's actually safer. They can ride with hills, the altitude and other people come
20 with families as many as eight people would like to have a place outside of hotel where they can
21 feel comfortable at home and feel it's their home not a foreign place and that's what B&Bs are
22 doing. And I think they're very, very important to Hawaii particularly with hotels now that are
23 reaching their maximum capacity during the holiday seasons this is an outlet for that, an option,
24 an alternative.

25
26 Again, I fully acknowledge that this is a privilege and very much appreciate that there is a
27 commission and department that's handling it in this manner. And I think some of the people
28 that do, many of the people that have permits now are very grateful that there is some more
29 control over it so that it's not going wild and even taking from what their having to do with paying
30 the Transient Accommodations and General Excise Tax which is important to the County. And
31 again, with the operation that I had, I have paid on the General Excise and Transient
32 Accommodation Tax.

33
34 Again, there is a lot of work in running a B&B. The management and being involved with people
35 and I can show you that I really meet that requirement with B&B guests I've had. And the
36 benefits to the other persons meaning the County and the community and the image and the
37 vibe, the vibration on the island is great to have...knowing that people can come and I've seen
38 letters to the editor that shown that we want to come back and stay in a B&B. We don't want to
39 go to hotels. So this is really, this has been ongoing, going on for years. And to experience the
40 culture as our...people that have come to the property like to get out and actually do some
41 gardening and experience getting fresh vegetables and fruits from the property and if we have
42 more...and that's another...it's great that the County has actually emphasized the ag use of the

1 property as part of the B&B because it's an integral part of it. I didn't see before but it's
2 important to guests to have that.

3
4 We do have a continuous production of ag use and we did bring some and I don't know if you
5 have them now but if you don't some of the samplings of our dehydrated organic apple bananas
6 which are really a big hit with the neighbors and people who have tried them. This is ongoing.
7 We dehydrate and have fresh bananas. We have taken them to the market. We've had a fruit
8 stand on the property and would like to further this with an opportunity for people to be involved
9 in the process all the way from harvesting, cleaning the bananas, cutting them, putting them into
10 the dehydrator and then the end product and this would be an outstanding operation to have for
11 a field day trip for school kids for example and this is something we could do on the side once
12 the activity with the B&B is going.

13
14 Here's the banana patch. There are over bananas and my neighbor, Dr. Nelson and his family
15 have another banana patch right next to it. It gets a lot of water in there so we have healthy
16 bananas growing. The bananas we found have to be kept away from areas near the ground
17 and where birds can access them. So this is a storage area. This is the processing here.
18 Here's some bamboo that is growing on the property too. I've had a lot of experience using
19 bamboo. I do want to address something that was brought up at the last hearing.
20 Commissioner Canto had asked about the use of bamboo and I had mentioned that periodically
21 we have an opportunity for people to experience the use of bamboo in building shelters such as
22 this. And to know how this sustainable material can be used and even homes have been built
23 with it and this is completely out of sight. This is actually not on my property but the work we've
24 done is completely out of sight from the neighbors or anyone else and it gives people an
25 opportunity to see and experience. Kids have come and they've really loved the idea that they
26 can experience things like this and even working in the banana patch. Plenty of avocados on
27 the property. And then here's...this is the field which we've kept open and Mr. Akanaka's
28 property is just beyond at the very end but it borders my property. We use the coconuts
29 regularly and here we have the...taking...it's fantastic if you haven't adapted to that yet. It's
30 more like fad but the coconut water and milk is very healthy for you. Here's the garden that's
31 grown to more dimension and we're actually expanding that now. And it's used on a daily basis
32 to basically farm to table. Two of my long-term tenants have been here over a year and these
33 are all greens from the garden that the guests will have an opportunity to experience. We have
34 this, it was in the last one also what essentially the neighborhood is comprised of. This is the
35 border.

36
37 The units are fairly well off the road and some distance from all the neighbors. So this is a view
38 from one of the units. I'll go through this pretty quickly. This is one of the structures that's used
39 to B&B. My cat insisted that she be part of this so I had to put her picture in there. And parking,
40 this parking is not visible from any of the roads. The only way he'd be able to see cars parked
41 there is by helicopter and this is another area that's completely not visible to the guests and this
42 is the main proposed B&B rental. This is the interior and the views are pretty spectacular there.

1 So people...you know they're not on the beach but it's another location where they can
2 experience the...

3
4 Again some of the adventures the guests would have an opportunity to enjoy. I have kayaks
5 there. They're actually given kayaks and...excuse me, boogie boards, and beach chairs and
6 towels. We don't...we wouldn't charge for that. So these are some of the reviews I felt
7 necessary since it was brought up that these are what some people feel about the place and to
8 show that I really fit the bill for someone wanting to run a B&B operation and again, my
9 apologies it was done without a permit. But I think in some ways it's an opportunity for this
10 commission to take a look and see in advance how it might be done and then of course, we
11 have that probation period which would be desirable for any B&B operation where there are
12 some...there is some opposition.

13
14 Okay, so I think that's pretty much the end of what I have here. I think there is some testimony.

15
16 Vice-Chair Duvauchelle: All right, thank you.

17
18 Mr. Dunbar: You're welcome.

19
20 Vice-Chair Duvauchelle: All right at this point we'd like to open the floor up for public hearing.
21 You'll have three minutes to testify on this agenda item. Anybody here wishing to testify?
22 Come forward, please state your name, you'll have three minutes.

23
24 Mr. Dave Nelson: good morning. My name is Dave Nelson. I'm a neighbor bordering Mr.
25 Dunbar and I've lived there 24 years. He's been a good neighbor for 24 years. I guess there
26 was some personal attacks in the last meeting and I found him to be an unusually competent
27 and pleasant neighbor. So we could just set that aside and move onto the housing concerns.
28 We've been sharing bananas and avos and food for 20 years and he gives us sliced bananas.
29 The best ones are rolled in almond dust which is really good and then he sells those at farmers
30 market and that sort of thing. As far as neighborhood safety, 15 years ago he would babysit our
31 kids when we would go do something and I feel like the neighborhood's safer if anything from
32 him being around. We walk our dog on Aliioka and Kaokoa every day and haven't noticed any
33 problem with traffic or safety issues. So I think that he would be capable and pleasant host for a
34 bed and breakfast and I encourage you to approve his application. Thanks.

35
36 Vice-Chair Duvauchelle: Thank you. Any questions for the testifier? Thank you very much.
37 Anybody else wishing to testify at this time? Please state your name. You'll have three
38 minutes.

39
40 Ms. Thahn Kim Nguyen: Aloha. I have problems so—

41
42 Vice-Chair Duvauchelle: You can leave your glasses on.

1
2 Mr. Nelson: So Thahn is...got eye trouble so she wants to keep her glasses on. Her mom
3 speaks only Vietnamese and shares bananas with us so we'll translate for her mom.
4
5 Vice-Chair Duvauchelle: Please state her name.
6
7 Ms. Xuyen T. Vu: Good morning my name is Xuyen. I am from Vietnam and I live with—
8
9 Vice-Chair Duvauchelle: Can you pull the microphone down a little closer.
10
11 Ms. Nguyen: She's going to speak in Vietnamese and I can try to translate.
12
13 Vice-Chair Duvauchelle: Okay.
14
15 Ms. Vu: ...(spoke in Vietnamese)...
16
17 Ms. Nguyen: We came to live at John's place.
18
19 Vice-Chair Duvauchelle: Can you speak into the microphone please?
20
21 Ms. Nguyen: We came to live at John's place last year October so it's been about over a year.
22
23 Ms. Vu: ...(spoke in Vietnamese)...
24
25 Ms. Nguyen: It's a long one. We met John last year, about a year ago at the farmer's market
26 and he...I have been dealing with a diagnosis of a condition so I was buying a lot of coconut,
27 using a lot of coconut water so he was offering me coconut waters. It was very nice of him and
28 also we were looking for a place to stay and so he offer us. So he has been very helpful is what
29 she's been saying. He's been very helpful in terms of you know making a place, a shelter,
30 offering shelter for us and driving us around as well with my eye condition and all and basically
31 he's just being very helpful and we appreciate his help very much. His place you know, it's just
32 been very nice and peaceful. Yeah, no, no complaints. Very happy. Very happy, yeah. Very
33 happy with him, his manners and his place.
34
35 Ms. Vu: ...(spoke in Vietnamese)...
36
37 Ms. Nguyen: She just wanted to stay from what she see John's a very good person, very
38 helpful to everyone, very caring and yeah, thank you.
39
40 Ms. Vu: Thank you.
41
42 Vice-Chair Duvauchelle: One moment. Commissioner Carnicelli has a question.

1
2 Mr. Carnicelli: You can probably answer. So my question to you is if we approve this
3 application—

4
5 Ms. Nguyen: Yeah.

6
7 Mr. Carnicelli: Are you gonna lose your home and if so, where are you gonna move?

8
9 Ms. Nguyen: Am I gonna...I don't think that I will lose my home. I don't think 'cause I think he
10 does have certain arrangements where there's...'cause I'm also part of helping with the
11 operations like the bananas and so I don't know I don't think that—

12
13 Mr. Dunbar: May I answer? She, they will actually stay—

14
15 Vice-Chair Duvauchelle: Excuse me, if you come to the microphone and state your name?

16
17 Mr. Dunbar: Yeah, sorry, Mr. Carnicelli, actually they will live there as long as they want to and I
18 put that in condition also. They will never have to leave the property.

19
20 Mr. Carnicelli: Thank you.

21
22 Vice-Chair Duvauchelle: Thank you. Thank you. Anybody else wishing to testify at this time?
23 Please come forward. State your name you'll have three minutes.

24
25 Mr. Barbara Kranichfeld: My name is Barbara Kranichfeld and I live in Haiku. I testified last
26 time there was a meeting about John's proposed Airbnb and I have to say that after seeing what
27 John's gone through the last nine months it's something that I have to consider whether or not I
28 want to go through this whole long process because I have a property that I could possibly turn
29 into a Airbnb and I've very discouraged because it's been quite difficult for him. I hope that I
30 think it's right at this point that you please give John the opportunity to try this for nine...for a
31 year, nine months to a year because I think you'd be very pleased to see that he would be a
32 wonderful host and he would run a very shipshape operation. Being in the Navy for all those
33 years everything he does is quite immaculate inside the house. When people come
34 everything's just perfect. And he's also a very helpful, accommodating host and landlord. I've
35 known John for 30 years and I can testify that he's just a very honorable straight up guy. So I'm
36 hoping that this moves forward and he can start his business.

37
38 Vice-Chair Duvauchelle: Any questions for the testifier? Thank you very much.

39
40 Ms. Kranichfeld: Thank you.

41
42 Vice-Chair Duvauchelle: Anyone else hoping or wishing to testify at this point?

1
2 Ms. Monserrate Del Dago: Good morning Counsel, Planning Commission. My name is
3 Monserrate Del Dago and I live directly in front of John Dunbar across the street. I have a video
4 here that I took this morning and I would like the panel to see it. The pictures that he show now
5 are not what it looks like. I have never seen that property look so good. Maybe three times he's
6 mowed it. And I've never seen any evidence of farm work. However, that being said I would
7 like to say that the County has 33,000 vacation rentals. There's a cap of 55,000. I, myself have
8 a property in Makawao and I struggled as a single lady to hold onto that property because I had
9 a family there. I could have sold it when I bought Haiku, but I chose to get into debt and work
10 and work overtime as a single lady to have what I have. And I do long term rentals. I have had
11 people call me all the time. There are no long-term rentals for citizens here on Maui that live
12 here. There's a shortage because everybody has gone vacation rental especially Haiku. This is
13 ag land. It's not a residential area. To have this constant traffic as one of the neighbors said
14 that there's a couple of lots where people have a lot of long-term illegal rentals. So there's a lot
15 more traffic in the last 30 years. I've lived there for 29 years. I built the house 29 years ago. As
16 I said, I've worked hard. As a little girl I came here to visit my family and every summer and I
17 said I will grow up and I will buy a property here. My mother said you're crazy. They all wanna
18 come here for jobs. It was very difficult for me in the last 30 years. I haven't even gotten to
19 spend much time at home because I'm always working. Now I'm close to retirement and I want
20 a quiet peaceful retirement. I'm starting a goat farm. I have five goats at the moment. All the
21 traffic and the noise and the nuisance it's scary to my livestock, it threatens them. He showed a
22 parking lot. He doesn't use that parking lot. He uses the street right across from me and there's
23 a number of cars parked there. I have pictures of this. I've sent it to the County when I first
24 started to complain about him illegally renting two years ago. I have the video and I wish you
25 would extend me the kindness of allowing me to show it to you.

26
27 Vice-Chair Duvauchelle: I'm sorry, ma'am we discussed the video and we are not going to be
28 able to accept digital. Yes, I mean if it was written or someway we could get it into the record.
29 I'm sorry, though.

30
31 Ms. Del Dago: Okay, the character witness, Dave Nelson is his neighbor who has a B&B. I live
32 directly across from both of them. So they both gonna have like a mini hotel. The only
33 difference is it's not a high rise it's six bedrooms he's having. Dave Nelson I don't know how
34 many. I didn't contest him. It's time to eliminate any further subterfuge and state the facts as it
35 is. He's had character witnesses. If he was a Buddhist monk I would still contest it. It's about
36 the peace in the neighborhood. I've been there 29 years and now there's so many kids playing,
37 all this traffic and also the kind of people he rents to are not...they're like backpackers. I've had
38 two people on my property from his rentals.

39
40 Vice-Chair Duvauchelle: Please conclude.

41
42 Ms. Del Dago: And that's it. I hope the Planning Commission will protect my rights. I pay

1 property taxes on two different properties. At least protect me, protect me. I don't feel safe. He
2 said that neighbors feel safe. He threatened me. He said to withdraw my letter.

3
4 Vice-Chair Duvauchelle: Ma'am thank you. Thank you. Is there any questions for the testifier?
5

6 Mr. Robinson: I have a question for the—
7

8 Vice-Chair Duvauchelle: Thank you very much. Commissioner Robinson?
9

10 Mr. Robinson: So what's the difference between a photograph and a digital video? 'Cause we
11 don't keep the photographs after, the testifiers take it back. I mean are we allowed to view it?
12

13 Mr. Spence: If there's a photograph written as a part of written testimony we distribute that to
14 the members and we keep it as a part of the record. And I'll just say during the recess we did
15 discuss...Ms. Del Dago did ask if she could show the video and we discussed it at some length.
16 That's what we were talking about up here and we looked into the rules and it said you may
17 present written testimony. We...and I should probably just leave it at that, but if there was...if
18 there were photographs that was submitted as a part we would distribute that to the members
19 and we would keep that as a part of our record.
20

21 Vice-Chair Duvauchelle: Commissioner Robinson?
22

23 Mr. Robinson: Wouldn't they be able to submit the video as testimony? I mean it says to
24 submit. It doesn't say we do not accept. 'Cause I've been here and see pictures of people
25 bringing when we had the flood and they showed the pictures of their homes being flooded and
26 things like that on billboards that's always been taken back with them and those were...those
27 were important to my votes because I had visual evidence of their testimony.
28

29 Mr. Spence: Right. We will keep copies of those. Not if they're mounted on boards, but
30 whatever photographs they submit we keep as a part of the record.
31

32 Mr. Robinson: Okay.
33

34 Vice-Chair Duvauchelle: Commissioner Canto?
35

36 Ms. Canto: So I have a question for you. You shared a quote on the County's vacation rentals.
37 Can you give me those numbers again?
38

39 Ms. Del Dago: There's 33,000 and the cap is 55,000.
40

41 Ms. Canto: 55,000?
42

1 Ms. Del Dago: Yes.

2

3 Ms. Canto: Can I get a confirmation on that Will, Director?

4

5 Vice-Chair Duvauchelle: Director?

6

7 Mr. Spence: What we're talking...and I don't know what the total is if you count permitted
8 condominiums and timeshares and all those things. The studies that were done and granted
9 they're a couple years old and also our Enforcement Division who tries to follow up on these
10 kinds of things and search the web, there's probably 2,000...2,500 illegal vacation rentals,
11 illegal ones. Okay, there's...we know there's a bunch of condos that number in the thousands
12 that are entirely entitled to short-term rent. I'm not sure where the 33,000 comes from.

13

14 Ms. Del Dago: I read it on the County rules and regulations. I read everything.

15

16 Mr. Spence: Okay, I don't know—

17

18 Ms. Del Dago: So the night on November 7th, but I've been very distraught over this and I would
19 like to have a chance to have an attorney represent me because I don't think the facts are being
20 presented here the way they should be presented. He seems to have the upper hand showing
21 videos.

22

23 Vice-Chair Duvauchelle: Excuse me ma'am your testimony is over. ...(inaudible)...you need to
24 answer any direct questions. Does anybody have any additional questions? Thank you very
25 much. Mr. Yoshida would you like to read the Department's...oh, I'm sorry, is there any other
26 public testimony?

27

28 Mr. Michael Loncaric: Yes, I'm unclear on—

29

30 Vice-Chair Duvauchelle: Could you state your name?

31

32 Mr. Michael Loncaric: Michael Loncaric. Live at 211 Kaokoa Way, directly across the street
33 from Mr. Dunbar's property. And he stated in his presentation that he has agricultural
34 production and that he has sold things at the farmers market. I'm kind of unclear reading the
35 rules online. It says that you must show your tax records and do \$35,000 gross in sales two
36 years prior to applying for the application. So I'm kinda confused on that. If the Board maybe
37 could clarify that? As well as I forgot my other page, but you know Mr. Dunbar has an extensive
38 criminal history. He's threatened us that if we didn't show up to the hearing that there would be
39 peace in the neighborhood. There's been over 30 percent people contesting the B&B in the
40 neighborhood as well as there's already a B&B next to him and across from our property. It
41 would be a lose-lose situation as the last hearing was demonstrated that he threatened me
42 personally with assault and battery and the police had to be summoned here to restore order to

1 the hearing. It would be a lose-lose situation for the County of Maui and the residents of the
2 neighborhood and people of Hawaii to ever allow this individual to be a representative of aloha
3 to the tourist industry. People work hard all their lives to acquire and earn a piece of paradise
4 and I think that the rural communities being infiltrated by the B&Bs is not a good thing. People
5 want the peace and quiet of the country and be away from the disturbances of the tourism of the
6 hotels and the condominiums. He also legally threatened another neighbor with legal
7 retaliation, went on his property as is submitted to the County by Richard Friedman. This
8 individual has a violent history and I would wish that the Commission would really consider all
9 the testimonies given here today and the previous hearing as it is on record. Thank you very
10 much.

11
12 Vice-Chair Duvauchelle: Thank you. Any questions for the testifier? Sir? Mr. Higashi?

13
14 Commissioner Higashi: Your name is Mike?

15
16 Mr. Loncaric: Yes sir.

17
18 Commissioner Higashi: You mentioned about the requirement for production of agriculture, and
19 I heard, I thought you said \$35,000 a year?

20
21 Mr. Loncaric: I believe it's 32 or 35,000 gross.

22
23 Commissioner Higashi: Where'd you get this figures from?

24
25 Mr. Loncaric: It's on the website, the County website for the conditions for a permit...to apply
26 for permit and it says, two consecutive years prior to submitting for application for the permit and
27 I think that's Section a, b, and c, and it also says about water. If you're claiming agricultural use
28 for water and there's another one under c that I'm kind of unclear about. 3a, b, and c. I read it
29 on the internet and somehow I misplaced my first sheet. I had it all written down.

30
31 Commissioner Higashi: How long have you lived in this property that you own?

32
33 Mr. Loncaric: I've been living with her now for a over year.

34
35 Commissioner Higashi: Oh you're a partner of the lady?

36
37 Mr. Loncaric: Yes.

38
39 Commissioner Higashi: So you don't own any property there?

40
41 Mr. Loncaric: Not at that address no.

42

1 Commissioner Higashi: Not at that...(inaudible)...

2

3 Mr. Loncaric: No.

4

5 Commissioner Higashi: Okay, thank you.

6

7 Vice-Chair Duvauchelle: Thank you. I'm sorry, would anybody else like to testify at this time?
8 Please come forward. State your name. You'll have three minutes sir.

9

10 Mr. Nicholas Wallen: Good morning, I'm Nicholas Wallen and I'm a resident of Haiku. I was
11 present at the –

12

13 Vice-Chair Duvauchelle: Can you get a little closer to the microphone, sir? I know you're tall.

14

15 Mr. Wallen: Hi, I'm Nicholas Wallen and I'm a resident of Haiku and I was present at the
16 previous meeting. And I saw how the previous testifier questioned Mr. John Dunbar's military
17 record and I believe that damages his credibility today as well as the episode where he said that
18 John Dunbar threatened him. I was right behind him and I was that that was not true. So I
19 would just like to you know clarify that. Okay, that's all. Thank you very much.

20

21 Vice-Chair Duvauchelle: Any questions for the testifier? Thank you very much. Anybody else
22 wishing to give testimony at this time? Seeing none, public testimony is now closed. Mr.
23 Yoshida would you like to read the Department's recommendation?

24

25 Mr. Yoshida: Thank you Madam Vice-Chair, I guess there are two permits. For the Bed and
26 Breakfast Permit the Department is recommending approval subject to some 18 conditions. We
27 want to emphasize Condition No. 1 essentially that the permit be valid for a period of one year
28 subject to further extension by the Director pursuant to the provisions Section 19.64.060, Maui
29 County Code, and Condition No. 18, that no permanent bed and breakfast approval number
30 shall be issued, no advertising shall be permitted and no B&B rentals shall commence until such
31 time as the Department of Planning receives from the owner/proprietor a completed bed and
32 breakfast home inspection form signed by an ASHI Certified Home Inspector. In consideration
33 of the foregoing the Department recommends that the Commission adopt the Department's
34 report and recommendation prepared for the November 7th meeting as its findings of fact,
35 conclusions of law and decision and order and authorize the Director of Planning to transmit
36 said written decision and order on behalf of the Planning Commission.

37

38 With respect to the State Special Permit, find that the proposed use meets the test for an
39 unusual and reasonable use and we recommend approval subject to six conditions...seven
40 conditions emphasizing Condition No. 1 that again the State Special Permit be valid for a period
41 of one year subject to extension by the Planning Director upon a timely request for extension
42 filed within 90 days prior to its expiration. The Director may forward the time extension to the

1 commission for review and approval and may require a public hearing on the time extension by
2 the commission. So the Department recommends that the Commission adopt the report and
3 recommendation prepared by the Department for the November 7th meeting as its findings of
4 fact, conclusions of law and decision and order.

5
6 Vice-Chair Duvauchelle: Thank you. Okay, Commissioners questions?

7
8 Unidentified Speaker: You need a motion?

9
10 Vice-Chair Duvauchelle: One moment, Director?

11
12 Mr. Spence: Let me just ask, just for clarity and for the record. Clayton for the condition
13 regarding the certified home inspection I know we do that for short-term rental homes. We're
14 not requesting that for B&Bs at this time?

15
16 Mr. Yoshida: I guess we are requesting that for B&Bs also.

17
18 Mr. Spence: So that's supposed to be...is there a reason it wasn't submitted as a part of the
19 application?

20
21 Mr. Yoshida: Yeah, I guess we're now requiring a home inspection form for B&B permit
22 operations to...for the safety of the people's guests staying at the B&B.

23
24 Mr. Spence: And then second question. Commissioner Carnicelli requested summary of the
25 RFSs for the last couple of years. So we printed out what was, and I don't think it was in the
26 context of just this application. It was just for short-term rental homes. Is this what you're
27 wanting or were you wanting just a summary in the staff report or...

28
29 Mr. Carnicelli: This actually is great. 'Cause I can...you know rather than...I think this is
30 actually probably easier for Staff to just print this out than have to write up a summary. So this
31 is fine for me.

32
33 Mr. Spence: Okay. Is there a reason for two years?

34
35 Mr. Carnicelli: I think that we can play nice for a year. I just want to see what the history of you
36 know this particular applicant is and...not necessarily for this one but just say in general my
37 thought was that I want to try to get the tenor of who it is that we're dealing with and if this is
38 someone that you know says I'd rather you know ask for forgiveness than you know, as for
39 permission then I just...that's you know the thought process is that if this is someone that
40 completely bucks the system over and over and over and over again, and then they come and
41 say okay, I now I'm gonna play nice or is it someone that you know got caught with their hand in
42 the cookie jar ...(inaudible)...

1
2 Mr. Spence: Okay, thank you.
3
4 Vice-Chair Duvauchelle: Commissioner Robinson?
5
6 Mr. Robinson: I also think that two years is a better view of it. When they put the application in
7 by the time it comes to us it's usually six months when we're looking back at it it's probably only
8 six. I like the two years as well.
9
10 Mr. Spence: Okay.
11
12 Vice-Chair Duvauchelle: Questions Commissioners? Anybody have any other questions for the
13 applicant or Clayton?
14
15 Mr. Carnicelli: So this actually is a question for the Director. Can we get clarification on this
16 \$35,000 for income on ag land please?
17
18 Mr. Spence: That actually there's no requirement in the Special Use or the Short-Term Rental
19 Home application. What we require is that there be for short-term rental homes or B&Bs we
20 require that there be an implemented farm plan. Okay, I believe what the gentleman is referring
21 to is out of the 19.30A, the Agricultural Zoning under Accessory Uses where it says one farm
22 labor dwelling per five acres of lot area. That's in addition to the house and the second farm
23 dwelling, this is for a third or more like Ulupalakua Ranch or something. And there's three
24 criteria to get a permit. One is proof of at least 35,000 of gross sales. One's certification by the
25 Department of Water Supply that ag water rates are being paid. Or the third one, so these are
26 a, b, and c, provide a farm plan that demonstrates feasibility of commercial agricultural
27 production. But there's nothing in 19.65 related to short-term rental homes for that. This is the
28 only place in the Code that's found.
29
30 Vice-Chair Duvauchelle: Commissioner Canto?
31
32 Ms. Canto: So based on what you've just said, so is that in perpetuity? I mean, it has to keep
33 producing as you go forward?
34
35 Mr. Spence: No, if somebody wanted to build a third...for the first...I mean and this is a whole
36 discussion of Agricultural zoning and I apologize, in 30 seconds or less. The first house you
37 need to file a farm plan. You need to have that approved before you get a building permit. This
38 is for any house on ag land. The second house, that farm plan has to be implemented. The
39 trees have to be in the ground and the cattle on the property or whatever your farm plan says.
40 To get the third one, that's what this is about 35,000 income. You have to have a regular
41 genuine commercial farm up and running and producing to get a third farm dwelling.
42

1 Ms. Canto: Thank you.

2

3 Vice-Chair Duvauchelle: Any other questions? Commissioner Carnicelli?

4

5 Mr. Carnicelli: Okay so Clayton I want to go to the RFSs here. I guess is if I'm...I just want to
6 make sure that I'm reading these correctly. So back in Summer of 2014 is when we first got
7 notice that there was a vacation rental operating without a permit and that it was resolved...I
8 mean is it resolved in Summer of 2015 then, was it a year later? 'Cause I'm just not following
9 the when it's scheduled and then when it's complete when I'm looking at this. And then you
10 know there were subsequent RFSs but it looks as though they, you know, like they couldn't find
11 evidence of that in the following ones. Am I following that correctly?

12

13 Mr. Yoshida: Yes, if I can refer you to Page 12 of the staff report under Item C, it does state that
14 on December 10, 2014 the applicant received a Notice of Warning to correct apparent violations
15 to 14-0001175 for short-term rental activities and advertising outside activities without a permit.
16 NOW has been closed and this application for B&B is in a process to allow B&B activities on the
17 property. So in responding to RFS 14-0001175 Notice of Warning was issued.

18

19 Mr. Carnicelli: Just a Notice of Warning is all that was issued then?

20

21 Mr. Yoshida: Yeah, that's the first—

22

23 Mr. Carnicelli: Right.

24

25 Mr. Yoshida: --enforcement step.

26

27 Mr. Carnicelli: And there wasn't --

28

29 Mr. Yoshida: Yes, since then I guess they stopped.

30

31 Mr. Carnicelli: Got it. Thank you.

32

33 Vice-Chair Duvauchelle: Commissioner Higashi?

34

35 Commissioner Higashi: Clayton, in your County recommendation you have anywhere in there
36 that states that all parking should be done on the premise versus on the street as one of the
37 testifiers had mentioned?

38

39 Mr. Yoshida: Well, that's kind of a requirement you know for the off-street parking and loading
40 ordinance that the parking be provided onsite or...I mean, they have offsite parking approvals
41 you know within 400 feet of the subject property. But the required parking needs to be provided
42 on site.

1
2 Vice-Chair Duvauchelle: Director?
3
4 Mr. Spence: That was a big emphasis at the County Council in passing this law that all parking
5 be onsite. That there be no street parking because people were very concerned. You know
6 some B&Bs or short-term rental homes end up in much denser neighborhoods and
7 they...sometimes the streets are already crowded so they must provide parking on the property.
8
9 Commissioner Higashi: Thank you.
10
11 Mr. Spence: And not just provide, the guests must park on the property.
12
13 Vice-Chair Duvauchelle: Commissioner Robinson?
14
15 Mr. Robinson: Clayton, have you done an inspection of this property?
16
17 Mr. Yoshida: Yes, I believe on October 17th, myself, Kurt Wollenhaupt and one of our zoning
18 inspectors.
19
20 Mr. Robinson: So on top of the paper that I have in front of me it shows that there's four current
21 residences at this property so is there enough residences as well as the proposed bed and
22 breakfast?
23
24 Mr. Yoshida: I think he wants the...the applicant wants the ability to use all of the rooms
25 realizing that he will use one room, one of the rooms for his occupancy.
26
27 Mr. Robinson: Yeah, but there's four people living there. He testified that two of those people
28 today never have to leave if they don't want to and then there's another resident. So I guess my
29 question to you since you inspected this. So you have four permanent residents. Where is the
30 people with the bed and breakfast gonna go? Well, I mean you're an inspector right, and you
31 have his testimony here saying that there's four current residents so if he has to be...if he's the
32 bed and breakfast then he has to be there when the bed and breakfasts is gonna be rented out.
33
34 Mr. Yoshida: Yes. I think he just wants...he'll use one of the rooms for his purposes.
35
36 Mr. Robinson: So the County's position that there is available space with four current residents
37 to also operate. 'Cause you...I mean, we haven't...you inspected it, we didn't so we don't, you
38 know we didn't have...we have the floor plan but we don't exactly how everything was set up in
39 the living conditions. So with your inspection you feel that there can be four residents and then
40 a bed and breakfast as well?
41
42 Mr. Yoshida: Yes.

1 Mr. Robinson: And this permit and this application specifies the exact area where this bed and
2 breakfast rooms are gonna be?

3
4 Mr. Yoshida: Well, I think he wants the flexibility to use four of the five bedrooms for a bed and
5 breakfast purposes. The room that he uses may change depending on I guess demand.

6
7 Mr. Robinson: So he has the...this permit will give him the flexibility to move the current
8 residents into different rooms at different times?

9
10 Mr. Yoshida: Yes, but he would be onsite as the owner/ proprietor?

11
12 Mr. Robinson: And he would move the persons that sick into different rooms? He wants that
13 flexibility?

14
15 Mr. Yoshida: Yes, I believe that's why he signed the affidavit that he would only use four of the
16 five rooms for bed and breakfast purposes.

17
18 Mr. Robinson: But three of the rooms are occupied.

19
20 Mr. Yoshida: Yeah, this is Exhibit 4. He's applying for five rooms but he would use no more
21 four of the guest bedrooms at any one time for the bed and breakfast purposes.

22
23 Mr. Robinson: Okay, thank you Clayton.

24
25 Vice-Chair Duvauchelle: All right, any other commissioners have any questions? If not,
26 Commissioner Hedani?

27
28 Mr. Hedani: I'm not sure who this question is for. There's a tremendous number of Request for
29 Service to the County regarding to this property and there's a tremendous number of police
30 reports relative to this property. And I'm not sure how we reconcile that with an approval for a
31 B&B permit at this point. Is it that, is...maybe it's for you Clayton? Is it your understanding that
32 despite the Requests for Service and despite the police reports relative to this property that all
33 of that is not pertinent to the application? I mean, either Clayton or the Director?

34
35 Vice-Chair Duvauchelle: Director?

36
37 Mr. Spence: So, Commissioner part of the, part of the reason the Council put...one of the big
38 concerns of Council when they produced this law was that bed and breakfast fit into the
39 neighborhood. That's why they wanted copies of you know CC&Rs not that you should
40 consider those but just as an indicator, does it fit in? There was a number of other things they
41 put into the bed and breakfast and the short-term rental home ordinance. That's when...we
42 regularly send applications to the Police Department for review if there have been issues, if

1 there have been incidences, noise, whatever. We use that as an indicator to see if you know, if
2 it is fitting into the neighborhood or not. Most of them are very quiet. Sometimes, you know, the
3 police reports say yeah, this is...there have been issues, not very often though. We, of course,
4 as staff we would look at RFSs kinda to get a history, a snapshot of history, is this application
5 have there been complaints before about operating illegally, et cetera. So that's really what we
6 look at to see is it...is it being responsibly run, whatever and if we recommend approval then we
7 tailor the conditions accordingly. In this particular case, you know we're recommending a year.
8 But we also bring that information to the Commission because this is a public hearing item and
9 the decision making body is this Planning Commission. So this information is for you to
10 consider and to interpret is this a proper use of this property or not. That pretty much answer?

11
12 Mr. Hedani: Yeah.

13
14 Mr. Spence: Okay.

15
16 Vice-Chair Duvauchelle: Commissioner Carnicelli? Let's try to do two questions at a time.

17
18 Mr. Carnicelli: No, I've only got one, and I apologize but I'm gonna put you on the spot. And the
19 question is essentially does the Department not have the latitude to recommend denial that we
20 have to actually vote in denial? Like do you have to...does the Department have to have a
21 direct lawful reason to, you know, to deny, to recommend denial rather than just saying well you
22 know we've got all these RFSs and we've got police reports and so we're gonna recommend
23 denial, you know because of that or is it you know, do you have...well, it doesn't fit in the
24 ordinance because of "x" otherwise you kinda just go well, we'll recommend a year. So...

25
26 Mr. Spence: We have the latitude to recommend that you vote to deny. It's rare I'll admit. A lot
27 of time if we're going...if we're recommending a year, we're saying let's give it a try. There has
28 been a least one recent instance where we did not renew a permit. It was administratively
29 granted... I mean where since granting the permit there have been a number of noise
30 complaints, there's a change of manager, there was all kinds of stuff going on, but that was not
31 allowed by the permit, violating a number of conditions of the permit and we just chose not to
32 renew the permit. So we do have that latitude and we do take that kind of action when it's
33 warranted.

34
35 Vice-Chair Duvauchelle: Commissioner Robinson?

36
37 Mr. Robinson: I'd like to go back to Commissioner Hedani's question to you because I wanted
38 to bring this up last week but it kind of got mixed up in there. It's there was a recommendation
39 by the Police Department where they felt that a certain action should be taken and then it was
40 then said that the Police Department shouldn't have made that comment. And the Assistant
41 Director says, well they shouldn't have that, those words or they shouldn't be denial, they should
42 be we're not somehow, in so many ways they shouldn't be giving a nonrecommendation and I

1 remember talking with other commissioners well if we send them a letter asking them for a
2 recommendation and they say we feel that you shouldn't do this because of certain amount it's
3 in the packet. So we asked for the recommendation but we still say, well yeah, we hear your
4 recommendation but we're still gonna go for approval anyway, we're still gonna recommend
5 approval.
6

7 Mr. Spence: And that's why I'm saying...no, the commissioners should consider all the
8 information that's in front of you in order to make a decision. You're gonna get, I mean on
9 different applications, you're gonna get a whole lot of correspondence with a whole lot
10 information and a whole lot of professional opinions, personal opinions, layperson opinions on a
11 variety of different matters and it's up to the Commission to make a decision based on all that.
12 I'm not saying that the Police Department's comments are invalid. What I'm saying is that's
13 something you should consider along with everything else that you've heard, what you've seen
14 in the staff report with the RFSs, what you've heard from the applicant, what you've heard as
15 part of public testimony all this information goes into making a decision for the commission.
16

17 Vice-Chair Duvauchelle: Commissioner Robinson?
18

19 Mr. Robinson: Are we able to use that recommendation as criteria for a denial?
20

21 Mr. Spence: If the Commission chooses...I mean, yeah you can. You can use any of the
22 information you've heard as a part of your decision making.
23

24 Mr. Robinson: Thank you.
25

26 Vice-Chair Duvauchelle: Okay Commissioners any other questions? Discussion?
27 Commissioner Hedani?
28

29 Mr. Hedani: Can I ask a question of the applicant?
30

31 Vice-Chair Duvauchelle: Yes.
32

33 Mr. Hedani: Mr. Dunbar?
34

35 Mr. Dunbar: Yes.
36

37 Mr. Hedani: Were you a former Navy Seal?
38

39 Mr. Dunbar: Yes sir.
40

41 Mr. Hedani: And you are honorably discharged?
42

1 Mr. Dunbar: Yes sir.

2

3 Mr. Hedani: And you served in Vietnam?

4

5 Mr. Dunbar: I went to Vietnam. I did. I was a Vietnam veteran.

6

7 Mr. Hedani: I heard comments that people felt that they were threatened. Can you explain
8 that?

9

10 Mr. Dunbar: I think somebody clarified, there was...(inaudible)...about a threat in this room.
11 There was no threat. There's some testimony from Monserrate that there were threats. I'm not
12 aware of threats made from me to anybody in the neighborhood. I frankly, I'm basically
13 confused as to what she what she may be talking about. If she wants to elaborate on it, that's
14 fine. But you know and her boyfriend who is not a property owner there had made some
15 remarks also which were disproved today so I think you can look at the creditability of it from
16 that standpoint and there's nothing in my record that I know of to show any indication of violence
17 so if there's something specific someone wants to bring up then we can address that. I've made
18 efforts with the particular neighbor across the street, Monserrate over the years and more
19 recently to satisfy here with the parking, the parking plan is included in the information given to
20 her, but there seems to be no willingness in that regard to accept that.

21

22 The remarks made concerning coming to meeting, I said you wouldn't need to come to the
23 meeting because I'm making a promise to you that there won't be any cars parked in front of
24 your property. So there's no need to be disturbed about that. And that wasn't accepted. They
25 wanted to go and frankly disrupt the hearing. So that's...

26

27 Vice-Chair Duvauchelle: Commissioner Hedani?

28

29 Mr. Hedani: You know on the police reports that I was there were a lot of cases involving
30 contract workers that were working on the property that obviously ended up being intoxicated or
31 loud or those kinds of situations. Can you address that? I'm looking at the question of whether
32 or not guests of the property are gonna be safe in that environment.

33

34 Mr. Dunbar: Yes, I have to say in some way it was poor judgment, but I found some people that
35 were interested in working on the property doing some construction work. They had very
36 skilled. One actually was diagnosed with PTSD as a veteran and he was quite loud on the
37 property and I thought that was disturbing so he was asked to leave. And there was another
38 situation which individual was actually discharged from prison after five years. I gave him a
39 place to live and he was a fantastic carpenter. He worked on Robert De Niro's house for three
40 years and he basically couldn't control his drinking so he was asked to leave.

41

42 The police, a couple of the police reports are included in that package for incidents where these

1 people actually had warrants. They were arrested and they were prosecuted and they had
2 stolen from other neighbors. So basically I kept them in shelter a place where they weren't
3 working in that regard and eventually they were prosecuted for it and again that was I admit
4 poor judgment and I'm not doing that anymore. I'm screening people better. But the police
5 report in fact most recently within the last week or 10 days there was a letter from the assistant
6 chief of police regarding police reports and he said I can't find anything over a year from you to
7 that property. So in the last year there's no indication of police reports. The others prior to that
8 within the last few years. And if any of them were in appropriate for instance 911 calls then I
9 think the police has a position to say that these were not proper calls. In fact, I've had incidents
10 where the same officers had come and we shook hands and smiled and they said, yeah, you've
11 done something for these people and they actually scolded them and said Mr. Dunbar gave you
12 a place to live and some work and now you have to leave. So they understood some of these
13 people were taken off the street, they didn't have a place to live and they were given some
14 work, unfortunately there's not a situation in the island where that can be alleviated with for
15 instance a center, the veterans have one for looking at work and if they need help and
16 something of that nature occurs. But anyway hope that answer your question.

17
18 Vice-Chair Duvauchelle: Commissioner Hedani?

19
20 Mr. Hedani: As a follow up to Commissioner Carnicelli's question, do you have long-term
21 residents on the property and are they gonna be allowed to continue to stay on the property as
22 you operate you B&B?

23
24 Mr. Dunbar: Yes, it's a very good question. I was anxious to answer that. Two of the long-term
25 tenants that testified they're here. I, it was my belief that if I were able to get the five rooms
26 approved as B&Bs they're there because I understand there's a long process to increase the
27 number. So those rooms are occupied by long-term tenants but at least they've been inspected
28 and they could qualify for example of shifting. In fact, the tenants have been told if I ask, would
29 you mind shift to another room that could accommodate more people like a couple of adults and
30 two children? And they're okay with that. They understand that. So that's the reason why I've
31 asked for five rooms. Initially it was less, but I thought if I can get these rooms approved and
32 they're there in the future for occupancy by B&B guests.

33
34 Vice-Chair Duvauchelle: Commissioner Canto?

35
36 Ms. Canto: I want to take you back to the last time you were here. You mentioned training for
37 minor children and you mentioned they were coming out of another country, do you remember
38 that?

39
40 Mr. Dunbar: Yes, of course.

41
42 Ms. Canto: So where will you be housing them, how long will they be here, and when you say

1 minor, what age are they and what will they be doing?
2

3 Mr. Dunbar: Okay, this was actually proposed not too long ago by a gentleman whom I've
4 worked for. I was asked to go to Shanghai and Wuhan in China which I did in January for a
5 brief period to instruct in safety and security for persons, executives and college students
6 traveling abroad because some have...there have been some kidnappings and people are not
7 familiar coming from these countries with our laws and the safety concerns here. So that was
8 the purpose of that travel. Since then Mr. Zai from Honolulu who operates a business there, he
9 has children that come to his facility. He teaches aquaponics and things about the environment.
10 He would like to have a course for these people ranging maybe in age 11 to 18 in which they
11 learn about survival and safety. Nothing has been established yet. The parents perhaps would
12 come as B&B guests with the children and we would travel around the island and they would
13 learn water safety and perhaps some as you saw the bamboo structure on the property, but it's
14 very limited and is still in the planning stages and it would certainly be no disruption and of
15 course with minors there would be insurance policy under his company.
16

17 Ms. Canto: And the only reason I ask is because there is known dissent amongst some of
18 you there the welfare of these children. But if they're gonna be accompanied by adults then...
19

20 Mr. Dunbar: Okay, I didn't understand some dissent among?
21

22 Ms. Canto: Well, if there is friction within your –
23

24 Mr. Dunbar: The neighborhood—
25

26 Ms. Canto: there—
27

28 Mr. Dunbar: Yeah.
29

30 Ms. Canto: I'm concerned about the welfare of these minors.
31

32 Mr. Dunbar: Right, and I've actually had scouts from the Big Island that couldn't find,
33 remarkably couldn't find a place to stay overnight on this island. It was disturbing that they had
34 asked from the Big Island if they could camp on the land overnight and I did provide that to
35 them. They had a wonderful time and they earned their merit badges.
36

37 Ms. Canto: Thank you. Thank you Chair.
38

39 Vice-Chair Duvauchelle: Commissioner Carnicelli?
40

41 Mr. Carnicelli: So Mr. Dunbar I have his list of who's been a tenant in the last two years and
42 then I'm looking at it as Commissioner Robinson said you currently have four people living on

1 the property including yourself?

2

3 Mr. Dunbar: Yes.

4

5 Mr. Carnicelli: We've heard from Ms. Nguyen and Ms. Vu that you've stated on the record that
6 they don't have to leave?

7

8 Mr. Dunbar: Absolutely.

9

10 Mr. Carnicelli: And then is it Pettee?

11

12 Mr. Dunbar: Yes.

13

14 Mr. Carnicelli: Is she going to be staying there as well?

15

16 Mr. Dunbar: She came arrived about three, four months ago and she's welcome to stay there.
17 However, she doesn't know herself where she's going, she's basically a roommate of Thanh
18 and her mother. So it's possible that in the future that she would get notice, yes, a 45-days'
19 notice.

20

21 Mr. Carnicelli: Okay, thank you.

22

23 Vice-Chair Duvauchelle: Commissioner Higashi?

24

25 Commissioner Higashi: I guess from a Commission standpoint it's always health and safety that
26 comes primary in considering permits and apparently your past has not been too good in
27 judgment from the police report of whether it was your hired personnel or somebody within the
28 area or your own temperament or whatever. And so it becomes a concern that your behavior
29 becomes a question as to whether you are able to handle this bed and breakfast that's gonna
30 be coming into your property. And I wanted basically to ask you because you're a veteran from
31 the military that you feel confident enough that you will be able to handle yourself in such a way
32 that your neighbors will feel safe in whatever concern they have in coming to you and talking to
33 you about it et cetera is my concern.

34

35 Mr. Dunbar: Yes Commissioner. I know most of the neighbors around me and I think it was
36 approximately 25 notices that had to be sent out and I've spoken with the neighbors over the
37 years and more recently with closer neighbors. And I heard them say I don't have any issue, I
38 don't have any problem with that. There hasn't never been any confrontations except the
39 occasional ones with Monserrate. That's it. And those I think she indicated at the last
40 presentation it's been over ten years since she had to call the police ever so evidently...and
41 frankly sometimes neighbors they just...they don't come together but I've tried to assure her that
42 there'll be no contact.

1
2 Vice-Chair Duvauchelle: Commissioner Higashi?

3
4 Commissioner Higashi: Yes, I just wanted to also commend you that the couple that came from
5 Vietnam you're willing to allow them to work apparently these kinds of people if they go out on
6 the street and try to find a job it will be very difficult especially with their communication skills, et
7 cetera and it's commendable I think that you took it upon yourself to allow them to work on your
8 farm and gain some kind of an income coming in.

9
10 Mr. Dunbar: Thank you Commissioner. I would like to say that her mom is Vietnam and they're
11 both legal residents by the way and Thanh has been in the country for 20 years and is very
12 successful in California working with a Silicon Valley company. She's on her road to recovery.

13
14 Vice-Chair Duvauchelle: Any other questions? Commissioner Hedani?

15
16 Mr. Hedani: How many structures do you have on your property?

17
18 Mr. Dunbar: I have two structures do you have on your property?

19
20 Mr. Dunbar: I have two structures. The primary which is the four-bedroom which is indicated in
21 the plan and then the farm dwelling which is a 1,000 square foot and I have several permit
22 exempt structures which were inspected on a number of occasions. One's a tool shed and the
23 other one's a storage facility. The other one is being configured for banana processing and
24 those have all been inspected. And with regard to the farm plan I think the Director had clarified
25 that had been approved. I believe 56 percent of the land is being used for agricultural purposes.

26
27 Vice-Chair Duvauchelle: Director?

28
29 Mr. Spence: And I want to comment I should correct myself. In my previous comments on you
30 know to get the third farm dwelling that I read those criteria further on in that same section of
31 19.30A it talks about except on Molokai bed and breakfast homes permitted under 19.64 which
32 this would fall under are operated in conjunction with a bona fide agricultural operation that
33 produces 35,000 of gross sales for each of the preceding two years as shown on State general
34 excise tax forms and Federal Form 1040 Schedule F or in compliance with all of the following
35 criteria and is not part of a condo, condominium regime, that the lot was created before 2008,
36 that the lot is comprised of five acres or less and an approved farm plan has been fully
37 implemented. So what Mr. Dunbar is saying is correct. And what the gentleman before, testifier
38 was saying before is correct and I apologize I misspoke to that. So...but it's either or. It's
39 you're either producing 35,000 and you show it on Schedule F or you're in compliance with all
40 these other things on less of five acres that you have your farm plan and it's fully implemented
41 so I assume this application has gotten this far because that is the case as Clayton would
42 confirm.

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Vice-Chair Duvauchelle: Commissioner Hedani?

Mr. Hedani: Okay, I notice that you had hired a bunch of very talented carpenters to work on your structures. The question that I have is that have all of the structures been properly permitted and approved?

Mr. Dunbar: Yes, Commissioner and that was part of the process that I went through to show that they had met those requirements. In fact there were several site visits and I provide the permits for the structures with the application process. There will be some additional work for which I will need to get a permit for a new deck on the property.

Mr. Hedani: Okay, the only reason I ask is because we're approved structures in the past that have gone down the river and into the ocean.

Mr. Dunbar: Well, I think I'm far enough away from that or a collapse of that nature. So I'm ensuring that they're all to Code structurally built sound.

Vice-Chair Duvauchelle: Any other questions for the applicant? Thank you. Okay, do I have a motion?

Commissioner Higashi: I move to accept the recommendation of staff.

Vice-Chair Duvauchelle: Okay.

Ms. Canto: I'll second.

Vice-Chair Duvauchelle: Seconded by Commissioner Canto. Director you want to...

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

Vice-Chair Duvauchelle: Discussion? Commissioner Higashi?

Commissioner Higashi: I moved to recommend approval by recommendation by Staff based upon the fact the applicant hopefully will be a little bit more compassion to his neighbors so that they will feel safe in working with him in that particular area. I definitely feel that there is a part in him that shows compassion that allows other people to have an opportunity to have employment. And with that I'd like to him get a try at it with a one-year recommendation.

Vice-Chair Duvauchelle: Thank you. Commissioner Canto?

Ms. Canto: I'd like to echo Commissioner Higashi. I see the humanitarian side of Mr. Dunbar.

1 It's a little bit different from the last time we saw each other, but I hope and it is my hope that
2 everyone can work together, you know right the wrong if there is any. But I would echo
3 Commissioner Higashi. Thank you.

4
5 Vice-Chair Duvauchelle: Thank you. Any other discussion? Commissioner Robinson?

6
7 Mr. Robinson: I have a concern with bed and breakfasts being allowed to operate without the
8 operator there when they're on vacations or so forth. I think that should always be a condition
9 that the applicant must always be on property when he is renting out the place. If he's gonna go
10 on vacation I believe any applicant should then not rent out the bed and breakfast because that
11 is the spirit of what a bed and breakfast is and I disagree with how the County views it as they're
12 allowed to go on vacation. They're allowed to go on vacation but then they're not allowed to
13 rent it out. So they could be on vacation for nine months as like...as certain as this tenant has
14 expressed in his last time he travels, he's very worldly, you know he does a lot of things, he's
15 very interesting but you still have the safety element of a neighborhood. The persons that are
16 gonna be in the place are not the applicants that would view this in ...(inaudible)...and this is in
17 all applications. I always think that we should have that as a condition that the applicant has to
18 always be on premise for a bed and breakfast...oh, I mean, sorry, always have to be sleeping
19 there or residing there and not on vacation and not there.

20
21 Mr. Spence: Comment?

22
23 Vice-Chair Duvauchelle: Director?

24
25 Mr. Spence: Okay, I can't say if the Commission would view this particular application
26 differently or not. But the way that the Department figures it if a small business owner whatever
27 business you're operating whether it's in the commercial industrial districts, whatever, if you
28 want to go on vacation, if the owner wants to go on vacation normally you leave somebody in
29 charge. You're entitled to let your business run while you get to go enjoy the fruit of your labors.
30 You know, why would this be any different? So but what we do ask applicants to do is provide
31 us with the name and contact information before going on vacation of whoever the manager is
32 going to be while they're away.

33
34 Now we kinda have a...I don't know how long this particular applicant goes away, travels, it
35 does sound very interesting but I would tend to agree, I might have a little bit difficult time if
36 somebody was gonna be gone for several months. But you know this is the discussion for the
37 commission. If you would like to make a motion after as to that.

38
39 Mr. Robinson: Well, I think it has to go with rules and always and I think we have to put that on
40 the agenda for certain agendas, but short-term rental homes they have to have manager but
41 bed and breakfasts doesn't. It doesn't seem very consistent with me as far as public safety
42 goes. I'd said I'm appointing you know Joe Blow as my representative and oh by the way,

1 I...(inaudible)...missed my flight and now that guy is longer there 'cause he had to leave. You
2 know I mean we ask professional people to watch out for our tourism industry which is what a
3 bed and breakfast is and I don't think it's so out of the ordinary if they're gonna go on vacation
4 that they have a professional, you know, service that's always gonna be at a certain area to be
5 called and also to be vetted. That's, again I'm from the hospitality side and I always want to
6 make sure that our people visiting here and people that have permits from County they're
7 assuming that we vet people that they're gonna stay with. They're not renegade rentals. These
8 are County vetted, commission approved and I guess they ...(inaudible)... to not show up and
9 the owner not be there and have three people and the rooms rented for all three of them.

10
11 Mr. Spence: Yeah, I can understand that. I know for short-term rental homes it's easier
12 because they're required to have a realtor's license. Well, they're required to be professional,
13 normally that involves a realtor's license. So and I'll just say the one, at least the permit I
14 referenced that said we're not renewing it they did change managers without notifying us. That
15 was one of the reasons we chose not to renew them. So I mean we do pay attention to that
16 stuff.

17
18 Vice-Chair Duvauchelle: Commissioner Higashi?

19
20 Commissioner Higashi: I agree with Commissioner Robinson that it shouldn't be one in which
21 it's just left alone. We should put that incorporate it as one of the conditions that if a manager or
22 a bed and breakfast operation goes on vacation that they immediately have a fallback, an acting
23 manager, whatever it is for the period of time they're absent. I think that's part of our duty for
24 safety for our neighbors if these people are gonna be responsible as an applicant they then they
25 should also be responsible as a homeowner being able to make sure that whoever they rent it to
26 are gonna be supervised some way or another.

27
28 Vice-Chair Duvauchelle: Would you like to make a motion to add that as a condition on this
29 particular application?

30
31 Commissioner Higashi: I would definitely add that in as a recommendation for consideration.

32
33 Vice-Chair Duvauchelle: Do I have a second?

34
35 Unidentified Speaker: Is that an official amendment? What is the amendment?

36
37 Commissioner Higashi: This is about bed and breakfast.

38
39 Vice-Chair Duvauchelle: To add the condition that when the owner is not on the property that it
40 wouldn't be rented or...

41
42 Mr. Robinson: Second.

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Vice-Chair Duvauchelle: Discussion?

Mr. Carnicelli: If I could just for clarity then. Is the amendment is that if the applicant is not on property that he has to inform the Planning Department that's he's being replaced by a professional property manager that adheres to the same conditions as an STRH?

Commissioner Higashi: Can I put a clarification on that? That if the applicant who has the permit goes...for bed and breakfast, goes on vacation for a period of time that the Planning Department has a list of people who will be able to be contacted by the neighbors or whoever it is if in case there is a problem is basically what I'm trying to get at.

Mr. Spence: Yeah, I think an applicant...if we're gonna go this direction the applicant should inform us I'm going on vacation. I'm gonna be gone for two week. I'm gonna be gone for a month or whatever, this is the person that is going to be...the contact is going to be the manager and at least the way that I heard the motion I didn't hear any qualification that it be a professional or licensed realtor, property manager, I would ask for that clarification.

Mr. Robinson: Professional right? That's what I second is a professional. You have to...it's your motion you have to—

Vice-Chair Duvauchelle: Commissioner Carnicelli?

Mr. Carnicelli: Well, let him—

Vice-Chair Duvauchelle: Oh

Mr. Robinson: Go, go, go.

Vice-Chair Duvauchelle: You're all raising your hands.

Mr. Carnicelli: Go ahead and clarify.

Commissioner Higashi: Just put addition as a professional.

Mr. Spence: Okay, so it would be the responsibility of the applicant/operator to notify the Planning Department who is going to be the manager while they are away and that person will be a professional property manager and that means licensed.

Mr. Carnicelli: Right. And one other just piece of clarification 'cause you did say for a period of time and just for clarification just due to the nature of this particular discussion that's one day. One night you're not there that's the period of time that I'm comfortable with is not, okay well if

1 I'm in Hana for two days, I'm not gonna...no, it's one day.
2
3 Mr. Spence: Yeah, I would feel more comfortable with that.
4
5 Mr. Carnicelli: Okay.
6
7 Vice-Chair Duvauchelle: Discussion?
8
9 Mr. Robinson: Oh wait we have to vote on the amendment first?
10
11 Mr. Spence: I would think.
12
13 Mr. Carnicelli: Are you gonna discuss ...(inaudible)...
14
15 Vice-Chair Duvauchelle: Commissioner Hedani?
16
17 Mr. Hedani: I just had a question on what we're gonna be voting on at this point.
18
19 Mr. Robinson: The amendment.
20
21 Mr. Hedani: And whether or not it's something that the applicant can live with?
22
23 Mr. Carnicelli: It doesn't matter.
24
25 Mr. Spence: There's the main motion on the floor right now to approve as recommended by
26 staff. There's an additional motion to amend the original motion to add this condition about
27 having a licensed professional manage the operation while the owner/operator is away and
28 even if only that's a day.
29
30 Vice-Chair Duvauchelle: Commissioner Canto
31
32 Ms. Canto: Okay so is it okay to ask a question on the main motion at this point or not?
33
34 Mr. Spence: We should deal with this amendment first.
35
36 Ms. Canto: Okay.
37
38 Vice-Chair Duvauchelle: Commissioner Hedani?
39
40 Mr. Hedani: The way Commissioner Carnicelli, you know, worded it it's structured like an
41 STRH. They have to live within "x" number of miles from the residence, they have to be able to
42 respond to a problem on the property within 30 minutes or whatever it is. We're creating our

1 own regulations by going this route at this point. So the question is does a realtor living in
2 Lahaina able to respond by telephone to somebody who's asking his question. If the neighbor
3 across the street has a complaint you know it's not structured in a way that he's governed by
4 pre-existing regulations. How do we manage that?

5
6 Vice-Chair Duvauchelle: Discussion? How would we would like to see...Commissioner
7 Robinson?

8
9 Mr. Robinson: We have a bed and breakfast in Kaanapali and there is a registered
10 management company. There's no regulation that says they have to be responsive in 30
11 seconds. There has to be a company that has to be...yeah, but not...but they don't have to be
12 on property in 30 minutes, they have to respond within 30 minutes. And to think that somebody
13 in Haiku would pick somebody in Lahaina you would hope that they would pick somebody at
14 least in Central. But it's not only for the neighbors but it's also for the safety our tourists who we
15 are giving the ability for these people to become our hospitality endorsers and ambassadors to
16 accept them. And my concern is when these bed and breakfast people leave and people are
17 checking in and checking out, and you know it's very fluid that what happens when there's a
18 overlap? Do we have to...does the police now have to get involved because the owner decides
19 to take some holoholo time and have his business run, you know, on its own? And to me, that's
20 where I'm more saying, you know, neighbors will always call 911...(inaudible)...but what
21 happens when you show up to a bed and breakfast and they tell you well the key's under the
22 mat but there's still a family there who's flight at 10 o'clock and they don't want to leave.
23 There's no manager on property. There's nobody there. And that's what's gonna...that's what I
24 don't wanna fall back onto our police department. They shouldn't have to be the hotel keepers.
25 It should be the people. And if not, the people don't have to rent the room out when they're
26 gone. They don't have to get a commercial person, they could say you know what I'm not
27 gonna be here for a week, I don't need to rent it out for a week and it's better that way.
28 Because this is a special permit. This isn't a normal business. This isn't a normal business.
29 This isn't a normal you know zoning area, this is something that they wanna do in a special area
30 at a special place and if they're on vacation then you know they don't have to run, they can rest.

31
32 Vice-Chair Duvauchelle: Commissioner Carnicelli?

33
34 Mr. Carnicelli: So yeah my intent kinda what Commissioner Robinson is saying is that the
35 applicant has admitted on the record showing a lapse of judgment in people that he hires. And
36 so to put the condition in there that says, okay we have a vetted structured way of picking a
37 person to replace you is the only reason why I used that particular language is just because it's
38 not to try to create a new ordinance. It's just to say like okay, listen we have a process that's
39 kind of in place. Let's just mirror that process so we don't have to rely on the applicant to
40 choose someone.

41
42 Vice-Chair Duvauchelle: Commissioner Hedani?

1
2 Mr. Hedani: Yeah, what I thought I heard Richard say basically was that when he's not there he
3 doesn't operate as a bed and breakfast which to me makes sense. If you want to be gone for
4 two months or three months on a trip, don't book anybody for the three-month period. Just don't
5 operate for the three-month period and that works for me. From the standpoint of bed and
6 breakfasts I feel comfortable because the person is there. In this case, it's actually better
7 because the person is there and he also has long-term residents that are there, people that he's
8 willing to continue residence for accommodating people that were in need which is kinda good
9 from my perspective it's like an outreach. He has made mistakes by picking and that's outreach
10 too, he's reaching out to guys that have PTSD and other kinds of problems that other people
11 probably wouldn't hire and he's hired them and taken a chance on them and got burned in the
12 process, but in my book that's to his credit that he took the chance with them at least. From the
13 perspective of operating a B&B, I like B&Bs over STRHs because the guy is there. He's present
14 on the property. He monitors any problems that comes from his neighbors 24/7 when he's
15 there. And that's the beauty of a B&B. I guess in accepting a property manager that makes
16 sense from the standpoint of an amendment but I'd actually prefer what Richard originally said
17 which was don't operate if you're not there and I don't know if that flies with the applicant.

18
19 Vice-Chair Duvauchelle: Discussion? Commissioner Carnicelli?

20
21 Mr. Carnicelli: I would be fine actually either way. You know if we wanted to say okay, you
22 know we're gonna scrap this amendment and we're gonna just say hey listen if he's not there
23 then you don't operate, I'm actually...that kinda accomplishes the same thing, but as far as you
24 know, welfare of the people renting it and the neighborhood you know it accomplishes the same
25 thing, but you know to the Director's you know point of saying, hey listen you know we're gonna
26 give someone the opportunity to still continue your business when they're away, you know
27 having someone to be able to take over and putting the caveat of who that person can be I'm
28 okay with. But even if we wanted to say hey, listen too bad so sad, you don't get to run it at all,
29 if we're gonna go that direction I'm okay with it on this particular application. The other part too
30 is I don't wanna say that we're creating a whole new way of doing this. I'm specifically talking
31 about this particular application.

32
33 Mr. Hedani: Can we ask the applicant if he has any problem with this because we're heading
34 down that direction?

35
36 Mr. Dunbar: Thank you Commissioner.

37
38 Mr. Carnicelli: Wait, let him ask you a specific question.

39
40 Mr. Hedani: Mr. Dunbar, do you have a problem with not operating the B&B if you're not on the
41 property?

42

1 Mr. Dunbar: No, I don't have a problem with that, but I would like to elaborate a bit. I think there
2 are gonna be a number of different scenarios with not just myself but others. For example, if
3 somebody suddenly has to go for a medical and they've already booked someone in the unit,
4 my idea or thought might be to work with the County Planning Department and establish a list of
5 professional licensed or certified property managers maybe perhaps through realtors that could
6 identify people available to do that so that we know and the County knows specifically who the
7 property manager is and is certified that someone could call in an emergency even and say, hey
8 I gotta go for week but I already have people booked in there. You don't wanna have to move
9 the people out.

10
11 Mr. Spence: We're not gonna do that.

12
13 Mr. Dunbar: I mean, what I'm suggesting is there a number of different scenarios with that
14 situation but I don't have an objection to the notion of not operating if I'm not on the property. In
15 fact one thing I will add is I'm certain that most people that a property they're doing rentals
16 particularly short-term do not want to leave their property without somebody that's well qualified
17 to take care of it because of the fact that the B&B basically lives upon recommendations and
18 reviews. And if you have somebody that's gone, everything could fall apart. So it's important,
19 very important for the owner, the operator to ensure that someone is qualified there.

20
21 I did have one other point and as my neighbor who had to leave, Dr. Nelson, his unit is right
22 next door and I would think I could possibly call myself after a year perhaps a qualified manager
23 if he and his wife were to go on vacation would it be conceivable he's right next door that I could
24 ensure that his property was managed. So it was just an idea that you know, it's...and he would
25 entrust the property or vice versa with someone that's right next door could respond within five
26 minutes.

27
28 Vice-Chair Duvauchelle: Thank you. Okay. So are we...Clayton do you wanna try to read the
29 condition or are we...is there a motion on the condition that's on the table?

30
31 Mr. Spence: There is a motion on the floor.

32
33 Vice-Chair Duvauchelle: Right.

34
35 Mr. Robinson: But I think we need clarification on exactly what the amendment is that I second
36 for you so we can get a vote.

37
38 Vice-Chair Duvauchelle: Yeah.

39
40 Mr. Robinson: Because there was professional, there was no can if you're not there, it's just
41 whatever, whatever you feel.

42

1 Commissioner Higashi: Well, my recommendation for the amendment is basically one in which
2 if the owner of the bed and breakfast is not present at his property that a license or someone
3 recognized be notified that they would be responsible in place of the manager.
4
5 Vice-Chair Duvauchelle: Commissioner Robinson?
6
7 Mr. Robinson: Second.
8
9 Mr. Spence: Okay—
10
11 Mr. Robinson: Yeah, he gets it, he's just gonna move the words.
12
13 Mr. Spence: No, I'm not. No I don't get it.
14
15 Mr. Robinson: You don't okay.
16
17 Mr. Spence: Because that's different than what we've been discussing for 30 minutes. If the
18 owner's not present I assume that's for a day or more?
19
20 Mr. Robinson: Right.
21
22 Mr. Spence: Okay, then and I'm asking for clarification, either the bed and breakfast does not
23 operate or there is a professional licensed manager available to—
24
25 Mr. Robinson: Temporarily.
26
27 Mr. Spence: --temporarily, 30-minute response time like we do with short-term rental homes
28 and that is a licensed professional.
29
30 Commissioner Higashi: So basically it will be continuous. There's no interruption.
31
32 Mr. Spence: Okay, and then that license...and then the owner would notify the Planning
33 Department who this is.
34
35 Commissioner Higashi: Right.
36
37 Mr. Spence: Okay. That's what I thought, but I wanted to make sure.
38
39 Mr. Robinson: Okay, I have one...I'm sorry.
40
41 Vice-Chair Duvauchelle: Commissioner Robinson?
42

- 1 Mr. Robinson: Is there a maximum of time somebody's allowed to take vacation on a bed and
2 breakfast?
3
- 4 Mr. Spence: I don't know. At what point does it become a short-term rental because the owner
5 is not there?
6
- 7 Mr. Robinson: Yes.
8
- 9 Mr. Spence: I don't know. We've never pondered these deep things before.
10
- 11 Mr. Robinson: Is that also on us too?
12
- 13 Mr. Spence: I'm sorry?
14
- 15 Mr. Robinson: Is that also on us too?
16
- 17 Vice-Chair Duvauchelle: Does the Commission want to break for lunch and take this up after?
18
- 19 Mr. Carnicelli: I think we're close.
20
- 21 Vice-Chair Duvauchelle: Okay, Commissioner Carnicelli?
22
- 23 Mr. Carnicelli: Okay, so I just also want to be clear that we're not trying to change the B&B law,
24 we're not trying change the STR law, we're trying to put a condition on this application. That's
25 all that this is, you know, we're not suddenly saying okay we're doing all that. So as far as you
26 know what we have so far on the amendment to the original motion you know from
27 Commissioner Higashi seconded by Commissioner Robinson I'm okay with it. Now as far as
28 you know if...anyways, I'm okay with it.
29
- 30 Vice-Chair Duvauchelle: Okay, all right so, you want to...Director, do you want to reread that
31 amendment so we can take a vote?
32
- 33 Mr. Spence: I don't know if I have my exact condition terminology down but if the owner is
34 on...goes on vacation for one day or more the owner is responsible to notify the Planning
35 Department of who will be the manager, the licensed professional manager and with contact
36 information or they will cease operations for that time period.
37
- 38 Vice-Chair Duvauchelle: Can we get a vote. All those in favor?
39
- 40 Mr. Spence: That's five ayes?
41
- 42 Vice-Chair Duvauchelle: All opposed? Okay, condition carries.

1
2 **It was then moved by Mr. Higashi, seconded by Mr. Robinson, then**

3
4 **VOTED: To Add the Amendment, If owner goes on vacation for one day or**
5 **more the owner is responsible to notify the Planning Department of**
6 **who will be the licensed professional manager with contact**
7 **information or the owner will cease operations for that time period.**
8 **(Assenting – R. Higashi, K. Robinson, L. Carnicelli, P. Canto,**
9 **W. Hedani)**
10 **(Excused – L. Hudson, S. Castro, M. Tsai)**

11
12 Mr. Spence: Now we're back to the main motion.

13
14 Vice-Chair Duvauchelle: Now we're back to the original motion.

15
16 Mr. Robinson: I think we should go to lunch unless you guys want to stay.

17
18 Vice-Chair Duvauchelle: Let's power through it.

19
20 Mr. Robinson: Okay, all right.

21
22 Vice-Chair Duvauchelle: Okay, so we're back to the original motion on the table to approve as
23 recommended by Staff with the addition condition. Commissioner Carnicelli?

24
25 Mr. Carnicelli: You're gonna hate me. I wanna put another amendment to the motion. Just
26 basically the amendment is that the property shall have two long-term tenants...yeah, there
27 should be long-term tenants with leases on the property while the B&B license is in effect 'cause
28 he's already admitted on the record so I mean, that's my motion, that my amendment. He's
29 already admitted on the record that he would keep these two people. So I'm just gonna say
30 well, let's make a condition then. Let's make it a condition that he's gonna have two tenants
31 because technically as much as he said that he could say oh well life changes tomorrow and
32 give everybody 45-day notice and put them out. He's already kind of indicated that the third
33 person probably will. Whether that happens or not I'm not going to ...(inaudible)...but he said
34 that he would still keep two tenants so let's keep two tenants.

35
36 Mr. Hedani: Second.

37
38 Ms. Canto: Did you second?

39
40 Mr. Hedani: I second.

41
42 Ms. Canto: Discussion?

43

1 Vice-Chair Duvauchelle: Discussion?
2

3 Ms. Canto: Are we within that right to say he must have two full-time?
4

5 Mr. Spence: I don't know.
6

7 Mr. Giroux: I think only time will tell 'cause I mean we're getting into some on the edge, you
8 know, we're making stuff up, you know. The County's never required somebody to have a
9 tenant, required not to have a tenant. I mean, it's we're getting to the point where we're
10 micromanaging to the point that if we did get sued the judge would probably be like you guys
11 what? I mean, you know, I'm just putting a black dress on and going really? We're here ladies
12 and gentlemen for this? So I'm not saying it's legal, it's illegal, you're going to sued or what, but
13 the bottom line is that we're looking at permit, somebody's gonna have to enforce this permit,
14 somebody's gonna have to manage this permit, somebody's gonna have to do something. But
15 if we keep on putting on conditions they better be reasonable, they better be relevant to the
16 condition of a B&B and we have to go from there. If it's not, you know, as the attorney I can't
17 say, oh yeah, sure it's legal or no, it's not legal, I can say well you know what you're adding stuff
18 on. It's not in the ordinance, it's not in the rules, it's not...so the only thing we can go by is is it
19 reasonable and does it have anything to do with the functioning of this B&B?
20

21 Vice-Chair Duvauchelle: Commissioner Carnicelli?
22

23 Mr. Carnicelli: Thank you Corp. Counsel, and for the record, for the black robe that we might be
24 in front of one day, I didn't make this up. This is what the applicant actually stated on the record
25 that he wanted to do and is willing to do and so I'm just putting it as part of. So that's for the
26 record for the black robe.
27

28 Vice-Chair Duvauchelle: Commissioner Hedani?
29

30 Mr. Hedani: That's why I like Jim Giroux. He puts on the black robe and he tells it like it is. He
31 says you guys are in deep water over here, but it hasn't been tested in court. So if you want to
32 take the chance, take the chance.
33

34 Vice-Chair Duvauchelle: Okay, we have a motion on the floor to add the condition regarding the
35 two tenants with leases. Any other discussion? Clayton or Director would you like to repeat the
36 motion?
37

38 Mr. Spence: The motion is to require that the applicant have two tenants, long-term tenants on
39 the property for the duration of the bed and breakfast permit.
40

41 Vice-Chair Duvauchelle: We'll take a vote. All those in favor or is there more discussion?
42

1 Commissioner Higashi: Excuse me who second the motion, the amendment?

2

3 Mr. Spence: Wayne.

4

5 Vice-Chair Duvauchelle: Commissioner Hedani.

6

7 Commissioner Higashi: Mr. Hedani seconded the motion. Okay, I just didn't know who it was.

8

9 Vice-Chair Duvauchelle: So all those in favor please raise your hands.

10

11 Mr. Spence: That's two ayes.

12

13 Vice-Chair Duvauchelle: Opposed?

14

15 Mr. Spence: That's one, two opposed. One no vote which counts as affirmative.

16

17 Mr. Robinson: I don't want to get into...(inaudible)...

18

19 Mr. Spence: So that's three ayes, two nays, the motion fails.

20

21 **It was moved by Mr. Carnicelli, seconded by Mr. Hedani, and**

22

23 **The Motion to Add the Condition, to require that the applicant have two long-**
24 **term tenants on the property for the duration of the bed and breakfast**
25 **permit, FAILED.**

26 **(Assenting – L. Carnicelli, W. Hedani, K. Robinson- abstained)**

27 **(Dissenting – P. Canto, R. Higashi)**

28 **(Excused – L. Hudson, S. Castro, M. Tsai)**

29

30 Vice-Chair Duvauchelle: All right. Commissioner Hedani?

31

32 Mr. Hedani: Question for Clayton. Clayton, you know when I look at the property the roof has
33 shingles missing on the roof of the property. Are the structures structurally sound and safe?

34

35 Mr. Yoshida: I think that's why we're requiring the home inspection. Before operation we're
36 requiring the home inspection.

37

38 Mr. Robinson: I'm sorry, I didn't hear what he said.

39

40 Mr. Spence: Normally as a part of our application process we require a home inspection by
41 inspector. I'm not sure why it didn't take place in this case but normally we require that as a part
42 of the application. So Mr. Dunbar, should this...a permit be granted, he is not allowed to
43 operate until such time as that inspection is submitted to the Planning Department and is

1 approved.

2 Vice-Chair Duvauchelle: Commissioner Carnicelli?

3

4 Mr. Carnicelli: So the Department approves the inspection/

5

6 Mr. Spence: We're gonna look at it and if it's—

7

8 Mr. Robinson: It's part of the conditions.

9

10 Mr. Spence: Yeah, for the purposes of the condition.

11

12 Mr. Carnicelli: Well, but my experience of—I'm sorry, Chair?

13

14 Vice-Chair Duvauchelle: Commissioner Carnicelli?

15

16 Mr. Carnicelli: My experience of home inspections are they don't...they just tell you what is,
17 they don't say you know...they'll say okay, roof is substandard. They're not gonna tell you okay,
18 don't rent this because the roof is substandard. They're just gonna say okay, you
19 know...they're gonna say the garbage disposal has rust but still is operational. They're gonna
20 say that the sliding glass, you know the sliding glass door squeaks but still is operational.
21 They're gonna do stuff like that but they're not gonna give recommendations.

22

23 Mr. Spence: The purpose for the home inspection is to make sure that the home is safe.

24

25 Mr. Carnicelli: Okay.

26

27 Mr. Spence: If the home...if in reading this thing there are problems that come up that we feel
28 the home is not safe we'll require that that be changed prior to operation. We will make that
29 determination.

30

31 Vice-Chair Duvauchelle: And we are going to go ahead and break for lunch because I don't
32 think we're going to get this complete prior. So Planning Commission is now adjourned to
33 lunch, oh wait a minute. We have a motion on the floor is that why?

34

35 Mr. Hedani: I hate to leave the discussion without actually making a decision one way or
36 another.

37

38 Ms. Canto: I have a question regarding the main motion.

39

40 Vice-Chair Duvauchelle: Okay.

41

42 Ms. Canto: So are we voting on two issues on the main motion?

1
2 Mr. Spence: Yes, we're voting to approve both.
3
4 Ms. Canto: So does the amendment affect the other?
5
6 Mr. Spence: Yes it would.
7
8 Mr. Robinson: It affects operation.
9
10 Ms. Canto: I'm sorry?
11
12 Mr. Spence: We would add that to the bed and breakfast home permit.
13
14 Ms. Canto: Okay, so it affects both, the Land Use Commission Special Permit and the B&B, the
15 amendment?
16
17 Mr. Spence: We would probably just add it to the Bed and Breakfast Home Permit that
18 amended condition.
19
20 Ms. Canto: All right, thank you Chair.
21
22 Vice-Chair Duvauchelle: Commissioner Robinson?
23
24 Mr. Robinson: I'm not comfortable in approving this permit. My reasons are one, the applicant
25 did operate a illegal operation. A fellow commissioner says that that we shouldn't turn away
26 people that are coming forward which I agree, but I think there should be a time of them being
27 compliant with the law not okay, you caught me now I'm gonna apply and until you say yes or
28 no I'm gonna stay clean. I think it should be a little grace period that's just me. I think there
29 should be a little grace period because if you've been illegal for so many years well prove to us
30 that you can be compliant without us giving you a permit.
31
32 Second of all, I'm very concerned with the amount of times that the Police Department was
33 called there and this is even the applicant called the Police Department to help him out on a
34 couple of occasions. This wasn't neighbors only calling on top of him. At the last meeting, I
35 saw maybe the worse of the applicant when he got very upset. I've also seen the best of the
36 applicant, you know dealing with his tenant. I think this applicant, I think he has very good
37 intentions. I think he might be a good ambassador to our people, but I'm not confident of that
38 yet. I think he exaggerates the truth a little bit. I think he implies certain things that may not
39 actually be fact, but that's fine. That's nothing wrong with that, but my comfort level with the
40 County not inspecting it, with having three rooms occupied out of five. There's a lot of things
41 going on with this bed and breakfast and that's not even grabbing in you know, the neighbors
42 and the area. So at this point, I'm just not comfortable with approving this application. Thank

1 you.

2

3 Vice-Chair Duvauchelle: Additional discussion? So we're back to the original motion. Director?

4

5 Mr. Spence: Okay, the motion again is to approve as recommended by Staff and as amended.

6

7 Vice-Chair Duvauchelle: All those in favor please raise your hand?

8

9 Mr. Spence: That's four ayes.

10

11 Vice-Chair Duvauchelle: Opposed?

12

13 Mr. Spence: One opposed.

14

15 Vice-Chair Duvauchelle: I did look at the...I'm sorry I wasn't here at the last meeting and I did
16 look at the DVD, read through the information. I really have to mirror Commissioner Robinson
17 in his concerns. The lack of time that has passed for things to be done correctly, the safety
18 issues, so at this point I would be a no vote.

19

20 Mr. Spence: Okay, so that motion fails.

21

22 **It was moved by Mr. Higashi, seconded by Ms. Canto, and**

23

24 **The Motion to Approve the Land Use Commission Special Permit and Bed and**
25 **Breakfast Home Permit as Recommended by the Department with the Amendment**
26 **that When the Owner/Applicant is Not Present for a Day or More that a Licensed**
27 **Professional Manager be in Charge and the Department be Notified of Who the**
28 **Licensed Manager is or the Bed and Breakfast Cease to Operate During the**
29 **Owner/Applicant's Absence, FAILED.**

30 **(Assenting – R. Higashi, P. Canto, L. Carnicelli, W. Hedani)**

31 **(Dissenting – K. Robinson, S. Duvauchelle)**

32 **(Excused – L. Hudson, S. Castro, M. Tsai)**

33

34 Mr. Spence: Okay, maybe lunch.

35

36 Vice-Chair Duvauchelle: Why don't we...okay, so now we will break for lunch. It's 12:40, we'll
37 return at 1:40.

38

39 Mr. Spence: At 1:40 do you want to make a motion, are we gonna entertain a motion for a
40 deferral to January.

41

42 Mr. Robinson: No, we're at lunch. You said lunch.

43

44 Vice-Chair Duvauchelle: Okay, all right thank you.

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A recess was called at 12:20 p.m., and the meeting was reconvened at 1:26 p.m.

Vice-Chair Duvauchelle: The Commission is now back in session. We will continue Agenda D-1, under Unfinished Business.

Mr. Spence: And so we did not...Motion to approve didn't make it. Motion to deny did not make it.

Mr. Robinson: That's not true. We didn't do a motion to deny.

Mr. Spence: Then I guess we wanted to—

Vice-Chair Duvauchelle: Any further discussion or entertain a motion?

Mr. Robinson: Yes.

Mr. Spence: Yeah to defer to another or okay or if you wanna make a motion to deny go ahead.

Vice-Chair Duvauchelle: One moment please, Mr. Yoshida?

Mr. Yoshida: I guess the applicant would like to address the Commission at the appropriate time.

Vice-Chair Duvauchelle: I think right now we're in the middle of discussion—

Unidentified Speaker: We just about to take a vote.

Vice-Chair Duvauchelle: Yeah, I'm sorry, we're gonna continue at this time.

Ms. Canto: There is no motion on the floor.

Mr. Robinson: We're done with testimony.

Mr. Spence: Yeah, there's no motion on the floor.

Vice-Chair Duvauchelle: Just a moment. So shall we? Okay, all right Mr. Dunbar.

Mr. Dunbar: Thank you.

Vice-Chair Duvauchelle: Please identify yourself.

Mr. Dunbar: John Dunbar, I'm the applicant for the Maui Adventure Villa B&B. Prior to departing for lunch there was some discussion, I'm not sure exactly the details on it but with regard to denying or not approving. I did hear that there was a concern for safety of the dwelling and I think perhaps Mr. Spence, Director could elaborate on this but that certified safety

1 inspection is provided by a licensed inspector, I've made an appointment with and he has
2 indicated to me he will come to the house. I think some people know this, if in realty that he'll
3 come to the house, he'll do the inspection, if anything is flawed, smoke detector or any
4 structural, electric, he will not sign that form. He said he will come back again. I had to call
5 around because some of them come once and that's it. He will come back again, two, three
6 times to make sure that everything's certified. He will not sign it. In fact, the gentleman is also a
7 County inspector. So he will come out and do the inspection. And it's now a bit of a concern for
8 my long-term tenants where they're living in a safe house and I believe it's a safe house. I've
9 had multiple inspections. It passed the permit process for the newest dwelling and the older
10 dwelling and there's no termites, there's nothing in there. Yes, some shingles are gone there's
11 basically the roof, I'm planning for a new roof. It's an expensive undertaking. And I just simply
12 want to allay any concerns. I know Mr. Robinson had concerns about the operation of the B&B
13 prior to the permitting. I have to say it goes back a long time ago that I did operate and there
14 were...and Mr. Spence can clarify there were operations going on there. There were really no
15 guidelines for that and I was...excuse me, I was told at one point many years ago and that with
16 the different mayors that they weren't enforcing it is what I'm speaking of...not, not, I mean it
17 was prior to Mr. Spence's position there that there were incidents with people operating and it
18 seemed...I'm not justifying any, I'm saying I came in here and admitted to it. I'm paying my
19 taxes and we've heard that there are 25 operating illegally unfortunately a decision in this one I
20 think could have a chilling effect on people and I wouldn't like to see that because I really
21 support the B&B operation and that's all I have to say.

22
23 Vice-Chair Duvauchelle: Thank you.

24
25 Mr. Dunbar: So if there's anything I can say or do to ensure I'm going along with the conditions
26 I think that's fine.

27
28 Vice-Chair Duvauchelle: We'll let you know if we have any further questions. Thank you.
29 Okay, all right, discussion, motion? Director?

30
31 Mr. Spence: Just to clarify for the Commissioners. I don't know when the...there was a whole
32 discussion when Mayor Apana was Mayor on whether there was gonna be enforcement or not
33 that was I forget when his term ended and the lawsuit was settled. But at no time has the
34 previous directors either Jeff Hunt nor myself nor Kathleen Aoki when she was director has ever
35 said anybody can just operate without a permit.

36
37 Vice-Chair Duvauchelle: Thank you. Okay. Commissioner Robinson?

38
39 Mr. Robinson: I'd like to make a motion to deny.

40
41 Mr. Carnicelli: Second.

42
43 Vice-Chair Duvauchelle: Discussion on the motion?

44
45 Mr. Robinson: We have to get through it. There's three options. First like to comment I've
46 never had our discussions go into voting proceedings and then an applicant is able to talk to us

1 and question our voting and our judgment and reclarify it and try to put words into our mouths. I
2 hope that's not gonna be the norm. That a Planning Department employee stands up and says
3 the applicant would like to talk again. I mean I've never had that before so I just wanted to state
4 that.

5
6 Vice-Chair Duvauchelle: Any other discussion on the motion? Commissioner Carnicelli?

7
8 Mr. Carnicelli: So I seconded the motion due to some you know some reconsideration at lunch.
9 The thought of you know there's just this application has been very contentious to say the least.
10 It's another one of these things before us that we get the fun of seeing a split neighborhood.
11 And if we deny this application there's nothing saying that he can't play nice for six months or a
12 year or whatever it is and come back and reapply and we can say okay, you know what he
13 actually...everything that he says is genuine, everything that he says, you know we don't have
14 to question that or not or say that he's lying or not. I'm not saying he is or isn't, but it's one of
15 those things that it just seems as though okay, instead of saying yes, we're gonna approve it for
16 a year and then see, we'll just say like okay, we're gonna not approve it for a year but we're
17 gonna leave the door open, I'm saying it on the record I'm very open to the applicant coming
18 back six months or a year from now and saying okay, you know, I did all those things that I
19 wanted to do, I got the inspection ahead of time, I you know did everything that the neighbors
20 wanted me to do nobody's parking on the lawn or in the street and I hired the right contractors
21 and all those other things and come back and I'm open to it. But rather than saying approving
22 and go, okay, we'll see what happens in a year. It's not approving and we'll see what happens
23 over the next year.

24
25 Vice-Chair Duvauchelle: Thank you. Any other discussion? Director, can you repeat the
26 motion?

27
28 Mr. Spence: The motion is to deny.

29
30 Vice-Chair Duvauchelle: All those in favor please raise your hands?

31
32 Mr. Spence: That's two ayes.

33
34 Vice-Chair Duvauchelle: Opposed?

35
36 Mr. Spence: Opposed?

37
38 Mr. Spence: Three opposed.

39
40 **It was moved by Mr. Robinson, seconded by Mr. Carnicelli, and**

41
42 **The Motion to Deny the Land Use Commission Special Permit and Bed and**
43 **Breakfast Home, FAILED.**

44 **(Assenting – K. Robinson, L. Carnicelli)**
45 **(Dissenting – (P. Canto, W. Hedani, R. Higashi)**
46 **(Excused – L. Hudson, S. Castro, M. Tsai)**

1
2 Mr. Spence: So the motion fails.

3
4 Vice-Chair Duvauchelle: Commissioner Carnicelli?

5
6 Mr. Carnicelli: I'd like to make a motion to defer this to January 24, 2017.

7
8 Mr. Hedani: Second.

9
10 Vice-Chair Duvauchelle: Discussion on the motion?

11
12 Mr. Robinson: Why don't we defer it to later and maybe he can show us some longer time that
13 he's been following the rules. I know the 24th we just...didn't we just defer something else to the
14 24th or was this...

15
16 Mr. Carnicelli: ...(inaudible-not speaking into mic)...

17
18 Mr. Robinson: Yeah, so we already have that other one. And as we know there's always a lot
19 to be spoken for this. Maybe a longer length of time.

20
21 Vice-Chair Duvauchelle: Any other discussion? Commissioner Higashi?

22
23 Commissioner Higashi: I feel as part of the role of the Commission is to evaluate the pros and
24 cons of the application and making sure number one that safety is an issue that should be
25 looked at, monitoring is done properly and that our community is taken care of as far as the
26 people who are trying to find employment, et cetera. And yes, I understand that there was
27 violations and just like the justice system there's always an opportunity for that person to have
28 what we call probation. Our gap in probation I think is the Planning Director who will be
29 overseeing this particular operation. I understand the commissioner's position about well, we're
30 gonna let 'em go and then wait and then have them...you know, I think some of our process
31 needs to be expedited. We're already running into a problem of illegal permits and now we're
32 trying to have people come back and make it legal which costs a lot of money. I mean, when
33 you look at an applicant who was applying for a permit that the cost to get the thing going is
34 insurmountable to the point where I can see why we have so many illegal ones because the
35 time element that it takes for the permit to take place from the time application to the time of
36 approval through the County Council. It takes two to three years and I don't think a lot of people
37 have that kind of time to be able to do that. And I think the applicant here, yes, we all make
38 mistakes that I have to admit and that's why I stated that people like this they make a mistake,
39 well at least, we should at least support them the a second chance for an opportunity and our
40 stop gap is the Planning Director. So with that that's why I took the position to say that I think
41 our role as commissioners we should very carefully look at public safety et cetera, but at the
42 same time make sure that we're encouraging people to go the right route of going through the
43 permit process and so we don't wanna discourage people to try to do it and then turn them
44 down.

45

- 1 Vice-Chair Duvauchelle: Thank you. Okay, we a motion on the table to defer to January 24th
2 and we have a second by Mr. Hedani.
3
- 4 Commissioner Higashi: Second.
5
- 6 Vice-Chair Duvauchelle: Mr. Hedani had already seconded it. Do I need you to repeat that or
7 shall we just...
8
- 9 Mr. Spence: No, you just repeated it.
10
- 11 Vice-Chair Duvauchelle: So I can see...all those in favor of deferral to January 24th please raise
12 your hands?
13
- 14 Mr. Spence: That's three ayes.
15
- 16 Vice-Chair Duvauchelle: Opposed?
17
- 18 Mr. Spence: Two opposed. Motion fails.
19
- 20 **It was moved by Mr. Carnicelli, seconded by Mr. Hedani, and**
21
- 22 **The Motion to Defer the Matter to the January 24, 2017 Meeting, FAILED.**
23 **(Assenting – L. Carnicelli, W. Hedani, R. Higashi)**
24 **(Dissenting – (P. Canto, K. Robinson)**
25 **(Excused – L. Hudson, S. Castro, M. Tsai)**
26
- 27 Vice-Chair Duvauchelle: Commissioner Robinson?
28
- 29 Mr. Robinson: I'd like to make a motion to defer to the second meeting in February.
30
- 31 Vice-Chair Duvauchelle: Do I hear—
32
- 33 Commissioner Higashi: I second the motion.
34
- 35 Vice-Chair Duvauchelle: Okay, so we have a...the 28th. We have a motion on the floor to defer
36 to the February 28th Maui Planning Commission meeting. All those in favor please raise your
37 hand.
38
- 39 Mr. Spence: No...I'm trying...when is a 120 days? Wouldn't be by February?
40
- 41 Mr. Carnicelli: That's why it's close.
42
- 43 Mr. Spence: Okay.
44
- 45 Mr. Carnicelli: It's close to that. That's why...(inaudible)...When is it trigger as of
46 November 7th?

1
2 Mr. Robinson: November 7th.
3
4 Mr. Carnicelli: November 7th.
5
6 Mr. Robinson: We're still good.
7
8 Mr. Spence: Which date was that?
9
10 Vice-Chair Duvauchelle: 28th.
11
12 Mr. Spence: 28th. So that's 110 days.
13
14 Mr. Robinson: it's actually February 21st is the meeting.
15
16 Mr. Spence: 21st okay. Still where it's getting awfully close and just if we go past 120 days...I'm
17 assuming James is looking up the rule, 120 days for automatic approval?
18
19 Mr. Giroux: No. When I reviewed the rule it didn't give any...it says that the time period...let's
20 see, it says that the decision has to be made within 120 days from the later of and then it has
21 two options the date of the application is deemed complete or the closing of the public on the
22 application.
23
24 Mr. Robinson: The closing of the hearing. It wasn't closed.
25
26 Mr. Giroux: So 120 days from the closing of the public hearing. So the issue is which day are
27 you gonna consider?
28
29 Vice-Chair Duvauchelle: February 21st.
30
31 Mr. Robinson: I don't know how that's not 120 days, Will? It's 90.
32
33 Mr. Spence: The last deferral was on the 7th.
34
35 Mr. Robinson: It's a 106 days.
36
37 Mr. Spence: To February—
38
39 Mr. Robinson: 21st.
40
41 Mr. Giroux: I mean technically the fact that we continued to deliberate today would probably be
42 the date that it would start, the 120 days would actually start, 'cause we did continue to take
43 public testimony and we continued to deliberate.
44
45 Mr. Spence: Okay.
46

1 Vice-Chair Duvauchelle: So the motion on the floor is to defer to February 21st.

2
3 Ms. Takayama-Corden: Our meeting is on the 28th not the 21st. It's the second and fourth
4 Tuesday.

5
6 Mr. Robinson: I'm sorry on the list that you gave me, I apologize the list that I have is the 21st.

7
8 Ms. Takayama-Corden: And the list that I have says 28th.

9
10 Mr. Robinson: Okay, then this list is...

11
12 Vice-Chair Duvauchelle: We're going to take a brief recess. We'll reconvene at 1:50.

13
14 A recess was called at approximately 1:42 p.m., and the meeting was reconvened at 1:52 p.m.

15
16 Vice-Chair Duvauchelle: County of Maui Planning Commission is back in session. Thank you
17 for patience. We have a motion on the floor to defer this matter to the February 28th agenda.
18 Director do you want to comment on that?

19
20 Mr. Spence: Sure. So Commissioners we in accordance with your rules there's from the time
21 the...the way that we're reading it, from the time and...the public hearing closed on an item,
22 there's a 120 days for an action. I know that we're receiving testimony and those kinds of things
23 but the official public hearing was held on the 7th. So 120 days from that would be March 7,
24 2017. So the February 28 day would be okay. There better be a decision there or Mr. Dunbar's
25 permit is automatically approved. You know, I think Mr. Giroux said earlier that's you know,
26 that's not desirable, but that's the way that the law reads. So if you want to wait to the 28th or
27 we could do earlier.

28
29 Mr. Robinson: That's the motion.

30
31 Mr. Spence: Okay, that's the motion.

32
33 Vice-Chair Duvauchelle: Okay, so the motion is to defer this matter to February 28th. All those
34 in favor please raise your hands.

35
36 Mr. Spence: Five ayes.

37
38 Vice-Chair Duvauchelle: Motion carries deferred to February 28th. Thank you.

39
40 **It was then moved by Mr. Robinson, seconded by Mr. Higashi, then**

41
42 **VOTED: To Defer the Matter to the February 28, 2017 Meeting.**
43 **(Assenting – K. Robinson, R. Higashi, L. Carnicelli, P. Canto,**
44 **W. Hedani)**
45 **(Excused – L. Hudson, S. Castro, M. Tsai)**

46

1 Vice-Chair Duvauchelle: Director, next agenda item?
2

3 Mr. Spence: Okay, Commissioners we are on Number D-2. Craig D. Wagnild and Dennis C.
4 Carroll of Bays Lung Rose & Holma, attorneys for Dennis Schober. They submitted a Petition
5 for Reconsideration for Condition 8 of their September 26th, their permit, for their Special Use
6 Permit and Tara Furukawa is our Staff Planner.
7

8 **2. CRAIG P. WAGNILD and MICHAEL C. CARROLL of BAYS LUNG ROSE &**
9 **HOLMA, attorneys for DENNIS SCHOBER submitting a Petition for**
10 **Reconsideration or Modification of Condition No. 8 dated September 26,**
11 **2016 of State Land Use Commission Special Use Permit No. SUP2**
12 **2016/0004 on the Maui Planning Commission's August 23, 2016 action on**
13 **the DENNIS SCHOBER's request for a State Land Use Commission Special**
14 **Use Permit for a short-term rental home operation in the State Agricultural**
15 **District at 78 North Lauhoe Place, TMK: 4-7-012: 013, Lahaina, Island of**
16 **Maui. (SUP2 2016/0004) (STWM 2016/0003) (T. Furukawa) (Matter was**
17 **discussed and deferred at the November 7, 2016 meeting as the**
18 **Commission was unable to take an action.)**
19

20 **a. CRAIG P. WAGNILD and MICHAEL C. CARROLL of BAYS LUNG**
21 **ROSE & HOLMA Attorneys for DENNIS SCHOBER submitting a**
22 **Notice of Submission of the Original Declaration of DENNIS**
23 **SCHOBER dated September 30, 2016.**
24

25 **Under Roberts Rules of Order if action is to be taken there must be notice**
26 **by a board member that they would support such a motion under Roberts**
27 **Rules of Order Section 35 and Section 10 Previous Notice of Motions. The**
28 **board members may indicate whether or not at least one of them would**
29 **support such a motion at a future meeting.**
30

31 Vice-Chair Duvauchelle: Commissioner Robinson?
32

33 Mr. Robinson: Director, I thought they had to have a motion to rehear it in order for us to rehear
34 it but we're gonna rehear it anyway.
35

36 Mr. Spence: Well, I think that's what they're trying to persuade you to go ahead and reconsider
37 that. You can vote yes or no to reconsider.
38

39 Mr. Robinson: So I apologize. So we don't need a motion, we just need one commissioner to
40 say that they want, they want to hear it again?
41

42 Mr. Spence: The motion has to come from the affirming side. So whoever voted in favor of the
43 permit with that condition, any one of the members who did so would have to vote in favor of a
44 motion for reconsideration and then the members would...the members would vote on that first.
45 Then if that passed then you would reconsider and discuss and then vote to amend it or not.

1
2 Mr. Robinson: But that member is not here.

3
4 Mr. Spence: True. I don't think it...(inaudible)...and maybe Corp. Counsel should comment on
5 that.

6
7 Mr. Giroux: I don't have my Roberts Rules of Order with me so kinda what we're looking at I
8 think we discussed it at the last hearing was we're looking at a situation where something was
9 passed by the commission. So there was a motion by the applicant and what they're asking for
10 is you to reconsider the permit and a condition within the permit. So for Robert's Rules of Order
11 what's happening is is that you're basically reconsidering an action that was already accepted
12 by the Commission. So it triggers a kind of a dance of their presenting their case to you. If
13 they're persuasive and somebody on the board does want to make a motion to reconsider then
14 that board member has to give notice at this meeting that that is their intent to make a motion to
15 amend and they can say what that motion is so it's very clear what their motion is. But at a next
16 meeting so now that there's a public notice now or notice to the board that that is the intent of
17 the board then they can go ahead and you can do that motion and then have a vote on that
18 issue. It's kind of like what we just went through with our motion to reconsider, you know when
19 we said, okay we're gonna reconsider it. Well, that motion wasn't to change the decision, it was
20 just to decide as a board are we going to reconsider it? Once that motion passed then you were
21 able to go forward and say now that that passed I move to change that. So Robert's Rules of
22 Order bifurcates...if it happens on the same day there's a procedure. If it happens on a different
23 day then we get bumped into this kind of trunk...you know this, I know it seems a lot but it again
24 as explained before it's just a matter of making sure that if something is changed that there's
25 adequate notice to the body that that is what's going to happen.

26
27 Vice-Chair Duvauchelle: Commissioner Carnicelli?

28
29 Mr. Carnicelli: So for clarity, if someone was going to go ahead and say yes, I'm gonna make a
30 motion to reconsider is it just on that item or can you reconsider the entire thing and say we
31 could actually just not approve it? You know, we're considering the entire application again or is
32 it just thing that they're talking about?

33
34 Mr. Giroux: Well, I think for simplicity I would hope that it would...we would address the motion
35 as brought forth by the applicant. I mean I would hate to think that the applicant's motion would
36 then open up the whole can of worms because...I mean, they've put on the agenda that they're,
37 you know, specifically looking at one specific action and so that's what we're kind of taking up.

38
39 Mr. Carnicelli: The reason why I ask that is because what if that one condition swayed me to
40 say yes to the entire motion, you know to the entire application. Like without that condition I
41 wouldn't have voted for it. So if you remove that condition then I'm now not in favor of the entire
42 application. That's why I guess why I'm trying to ask you that question.

43
44 Mr. Giroux: Right, and that's why the purpose of this crazy procedure is that because then you
45 would put on notice to show up to the meeting and argue against the motion.

46

1 Mr. Carnicelli: Okay.

2

3 Mr. Giroux: That's the whole purpose.

4

5 Vice-Chair Duvauchelle: Commissioner Robinson?

6

7 Mr. Robinson: So essentially every time we make a decision we could have all seven agenda,
8 every single day everybody asking for reconsideration and we have to hear all those seven
9 again and then all it takes one commissioner to say I want to hear it again and then we gotta
10 hear all those seven again because we're gonna hear them again. I understand voting again
11 and talking about it, but to see presentation upon presentation upon presentation, it's time
12 consuming. And so, when does our vote become a vote instead of a it's a vote for now unless
13 you want us to reconsider it?

14

15 Mr. Giroux: And that's why I brought it up when I did is because what happens is that this
16 procedure pretty much puts a damper on what you're talking about because what happens is is
17 that we hear from the applicant and the board looks around and says okay we heard you.
18 See—

19

20 Mr. Robinson: Well we're saying one commissioner can make us hear a whole thing all over
21 again?

22

23 Mr. Giroux: No, no, no. Let's slow down and go back. If one commissioner says, that makes a
24 lot of sense, you know what at the next meeting I'm gonna make a motion. If at the next
25 meeting he doesn't get a second, we look around, okay, we heard you. There's no, there's
26 no...you know I mean the body is in control of your time and your...so by hearing this today
27 because they've asked to be heard, so we are hearing their argument, but board's action is not
28 dictated by the applicant. It's dictated by the board. So even if one person today is persuaded
29 and says you know what on the next agenda I'm gonna make a motion. The motion dies if it
30 doesn't get a second. If it gets a second, there's deliberation.

31

32 Mr. Robinson: Okay.

33

34 Vice-Chair Duvauchelle: Director?

35

36 Mr. Spence: So first thing is they're gonna try and they...and I'm not trying to put words in their
37 mouth, they're gonna try to persuade one of the commissioners to make a motion for
38 reconsideration and they get a second and get that passed. Once that's passed then you can
39 start discussing whether you want to reconsider that amendment or not. If you don't get a
40 second or the motion fails then you're pau. There is no reconsidering of that condition. There
41 is also, we also have a standard condition amendment process that they could have utilized.
42 I'm not exactly sure why they went this way 'cause that's not unusual for permits to come before
43 this body like SMA permits when they're changing owners or they're pau with one condition and
44 they want it removed or something like that. It's not unusual to come before this body and
45 request amendments for conditions on permits. It doesn't touch the permit, but it does touch
46 that one condition.

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Vice-Chair Duvauchelle: Commissioner Canto?

Ms. Canto: I'm going to defer to him for now.

Vice-Chair Duvauchelle: Oh okay, Commissioner Robinson?

Mr. Robinson: I understand but there wasn't a second at the last meeting when they tried to convince us to hear it. So that's my question is I understand that a commissioner has to make a motion but nobody second that motion. It was only one commissioner. So we're gonna hear 'em again for a second time that's where I'm not clear about. Was there a second?

Ms. Canto: There's the minutes. We haven't approved those minutes.

Vice-Chair Duvauchelle: The minutes from the last meeting say, well actually it went through several votes. I'll let you do this.

Mr. Spence: Okay, I'll just read the bottom line of it. There is...there were several motions to modify the condition and that failed. It was moved by Commissioner Robinson, and seconded by Mr. Higashi motion to deny request for reconsideration to reconsider the condition. That failed. So the matter was just deferred to this meeting. That's why we're here listening to it again.

Mr. Robinson: Doesn't somebody have...I'm sorry.

Vice-Chair Duvauchelle: Commissioner Robinson?

Mr. Robinson: But so, if there's no motion to hear it again, then—

Vice-Chair Duvauchelle: It was deferred.

Mr. Spence: It was deferred so it's still on the agenda for today.

Mr. Robinson: Was there a motion to defer and second?

Vice-Chair Duvauchelle: It's in the minutes, so...

Mr. Robinson: Did somebody second the defer...

Mr. Spence: That's not what it says.

Mr. Robinson: There was no—

Vice-Chair Duvauchelle: Commissioner Hedani?

Mr. Hedani: Can we just hear from the applicant?

1
2 Vice-Chair Duvauchelle: I am perfectly willing to hear from the applicant. Let's hear it.

3
4 Ms. Canto: I'm sorry, I have a question.

5
6 Vice-Chair Duvauchelle: Oh wait, Commissioner Canto?

7
8 Ms. Canto: Sorry, so do we hear from applicant after we make a motion to request for
9 reconsideration or...

10
11 Mr. Spence: I would let them try to convince you first and then you can decide whether you
12 want to reconsider or not.

13
14 Mr. Robinson: Again?

15
16 Vice-Chair Duvauchelle: I'm sorry, go ahead.

17
18 Ms. Furukawa: Good afternoon Commissioners. The matter was heard by you on August 23,
19 2016, the applicant wished to operate a short-term rental home on five acres of Ag land in
20 Launiupoko. The application was for two dwellings, the main dwelling consists of four bedrooms
21 and the accessory dwelling consists of two bedrooms. The Department recommended approval
22 of the Special Permit application subject to seven conditions and the Planning Commission
23 approved the Special Permit subject to an eighth condition which was to remove the accessory
24 dwelling from the scope of the application and put it into long-term rental. The applicant hired
25 the law firm of Bays Lung Rose Holma which submitted the petition before you today. Mike
26 Carroll is the applicant's attorney and he's gonna discuss the reconsideration request.

27
28 Mr. Michael Carroll: Good afternoon Members of the Commission. Thank you for allowing me
29 to speak today and I will try to be brief as I know your time is valuable. I did have a couple of
30 slides I wanted to show to help my presentation, hopefully it will help expedite things. I do have
31 a handout as well if the Commissioners would like to receive that in written format. If you don't
32 mind I'll go ahead and begin.

33
34 These are the applicants, the Schobers and they live on the mainland and they come to Maui
35 part-time and they live at the property with their children and their extended family. So I just
36 wanted to show some photographs of the family. These photographs were also submitted in the
37 original application packet that was handed out. The property it's a large piece of property that
38 has a single driveway that is intended for basically single family use. It's a very narrow driveway
39 and it wasn't intended for there to be multiple families or different uses on the property. So I
40 wanted to show some photos to depict this condition. These are some more photographs of the
41 property. Again, the driveway is a very narrow, long driveway. Not intended for multi-family
42 uses. The Maui County Code, I apologize this is very difficult to read but these are the sections
43 of the Maui County Code that are applicable to a short-term rental and basically the reason I
44 wanted to point this out is that the applicant has met all the necessary conditions or a short-term
45 rental. It does permit a primary dwelling as well as a ohana unit. I also want to note that there
46 are on west side of Maui there are six other short-term rental applications that have ohana units

1 that don't have this separate condition. And again, we are very thankful for the commission for
2 approving this. We are just respectfully asking for reconsideration of the single condition. We
3 certainly don't want to reopen the entire process. We would just like the commission's ear to
4 consider revisiting the issue of this one condition that we are respectfully asking to be looked at
5 again and we're hoping the commission will look at it again.
6

7 The standard for imposing a condition is that the condition needs to be reasonably designed to
8 mitigate adverse impacts to the neighborhood. And I appreciate that we've had a lot of
9 discussions on what is a reasonable condition and I do want to reference Corporation Counsel's
10 earlier comments in the last proceeding where his comment was that the condition needs to be
11 to address the actual use. It's not to address some greater purpose for the neighborhood and
12 it's specifically is intended address...excuse me to mitigate adverse impacts to the
13 neighborhood by the approval. So if you look at all the conditions that are imposed traditionally
14 on a short-term rental there's things such as you need to have adequate insurance. You need
15 to have adequate signage. You need to have information related to where is the property
16 manager and how are they are gonna be contacted and it's those conditions are reasonably
17 designed to mitigate adverse impacts to the neighborhood by the approval. And with respect to
18 this condition imposing a further obligation on the landowner to also operate a long-term rental
19 or to exclude that ohana dwelling we respectfully submit that it goes a little bit beyond what the
20 intention of imposing these conditions are. And that's one of the points that I wanted to kinda
21 emphasize with the commission when they do consider this reconsideration.
22

23 And lastly I just wanted to emphasize three points. First off, there's no question that the
24 property complies with the requirements for a short-term rental. It was approved. We're not
25 contesting that and I again I recognize there was the question as to whether the Commission
26 had the opportunity to reopen that. Again, we're hopeful that that's not gonna be an issue. We
27 don't want that to be the case. We are just respectfully asking for a reconsideration to look at
28 one small condition that was imposed and hopefully that will not sway one commissioner to go
29 one way or the other but we're hopeful that they can understand what our concerns are.
30

31 The property was designed as a single cohesive unit and just...we've submitted a written
32 application but just in brief there's no privacy between the ohana unit and the main house.
33 There's a single pool, there's a single Jacuzzi, there's single barbeque area. It was never
34 intended to be used as multiple dwellings.
35

36 And lastly, excluding the cottage will not...excuse me, excluding the cottage from the permit will
37 not improve traffic. I know that was one of the reasons for imposing this condition and we
38 respectfully submit that that condition does not address the traffic issues.
39

40 Lastly, the Staff did submit three questions yesterday that I did want to respond to briefly. The
41 first question on was whether there has been any RFSs submitted on this property? There have
42 been none. There's also have been no complaints or oppositions to the pending...the original
43 application as well as this motion for reconsideration. The next question was a list of anyone
44 who has lived in the home for more than 30 days in the past two years. There has not been
45 anyone that fits within that definition. The next question is is how many times has the applicant
46 physically been on the property or physically stayed at the property the past two years. During

1 the past two years it's not a very demonstrative example of the family's use of the property. As
2 you may know, Mr. Schober underwent brain surgery, had daily radiation therapy,
3 chemotherapy, doctor's appointments so unfortunately they were not able to go to the property
4 as much as they wanted to. So they only visited the property two times in the past two years.
5 However, historically they have, they and their family or extended family have used the property
6 on regular basis. Their ultimate goal is to return to Maui. They lived in Maui from 2011 to 2012.
7 Their kids attended school at Lahaina Town. Their large extended family currently visit with
8 them on a semi-annual basis. For example, Maryann's parents stay in the ohana when they
9 come and visit. Parents usually stay two other times during the year without the Schobers.
10 They also come with the Schobers and that's one of the reasons why they built this large
11 property so the parents could stay in the ohana and they could stay at the main house.
12 Maryann's brother and his wife also usually join them when they visit. They also usually come
13 two times independently. Maryann's sister and husband usually travel with them as well. They
14 also come roughly one time a year as well. Dennis's sister and six nieces and nephews and
15 three grandnieces and nephews also come on a regular basis as well. So as you can see this
16 property is not something that's being left barren. They want to use it, they want to comply with
17 all the requirements. They want to make sure are forthright with the commission and that's one
18 of the reasons why we came to commission to respectfully ask that one of the commissions will
19 hopefully make a motion and hopefully that motion will be supported by a majority of the
20 remaining commissioners. I'm available to answer any questions, but that concludes my
21 presentation.

22
23 Vice-Chair Duvauchelle: Thank you.

24
25 Ms. Canto: Chair?

26
27 Vice-Chair Duvauchelle: Questions Commissioners?

28
29 Ms. Canto: So the last time you were here sir you indicated that the applicant has since
30 passed?

31
32 Mr. Carroll: That's correct. Mr. Schober has passed away.

33
34 Ms. Canto: All right, thank you.

35
36 Vice-Chair Duvauchelle: Any other questions? Comments? Thank you for your presentation.

37
38 Mr. Carroll: Thank you.

39
40 Vice-Chair Duvauchelle: Is there any motion to reconsider? Any discussion on it?
41 Commissioner Canto?

42
43 Ms. Canto: So move.

44
45 Vice-Chair Duvauchelle: Commissioner Canto moved to reconsider. We have a second?
46 Okay, motion to reconsider failed. Thank you.

1
2 **It was moved by Ms. Canto to Reconsider. There being no second to the Motion to**
3 **Reconsider the motion FAILED.**

4
5 Vice-Chair Duvauchelle: All right, Director next agenda item?

6
7 Mr. Spence: Okay, Commissioners we're on Communications. Number one, Mr. Marcus
8 Holheiser he's requesting an amendment to a Project District Phase II Approval in order to
9 clarify residential sub districts in Maui Lani. Our Staff Planner is Mr. Danny Dias.

10
11 **E. COMMUNICATIONS**

12
13 **1. MR. MARCUS HOLHEISER, Authorized Agent for HBT OF MAUI LANI, LLC**
14 **requesting an amendment to a Project District Phase II Approval in order to**
15 **clarify residential sub districts in the existing Maui Lani Project District at**
16 **Kahului, Island of Maui. (PH2 2004/0004) (D. Dias)**

17
18 Mr. Danny Dias: Thank you, Director Spence. Good afternoon Vice-Chair Duvauchelle and
19 Members of the Maui Planning Commission. I'm gonna be referring to these two maps that I
20 handed out right after lunch. Basically we came before this Commission in I believe June of this
21 year for a Project District Phase II Approval regarding the map that sort of has this like reddish
22 color to it. So this Commission approved this map and during the following weeks and months
23 our Zoning Division started looking at it closely and they realized that there is a couple things
24 that they wanted changed. And these are just changes to the map itself not to the Maui Lani
25 project at all.

26
27 So let me just kinda explain the two changes that they wanted made. If you look at the map that
28 this Commission approved on the lower right-hand side of Maui Lani there's this reddish area.
29 And according to the map legend that red area is zoned Single-Family SF-3 (completed) and
30 the yellow portion is the undeveloped SF-3 portion and our Zoning Division said, well technically
31 I mean there's no distinction between you know what's developed and what's not developed.
32 So for example, if you're zoned Ag, you're zoned Ag. There's no distinction between whether or
33 not you built a house or if it's an empty Ag lot. Your zoning is your zoning. So they wanted the
34 applicant to take out that distinction and just have everything be SF-3 regardless of whether or
35 not there was a house on it. So that's the first change.

36
37 The second change if you look at the map that this Commission approved. If you look at the
38 SF-5 areas and that's the areas that are sort of crosshatched in blue, if you look at the
39 roadways, the roadways are yellow and I think the applicant did that to sort of put some colored
40 distinction between the roadways and the lots itself, but technically according to the map
41 legend, that yellow portion which are the roadways are actually zoned SF-3 which kinda doesn't
42 make a whole lot of sense. So our Zoning Division wanted them to change the lots and the
43 roadways to match so the zoning match each other. So those are the two changes. Like I said
44 earlier it does not change anything within the Project District itself, it doesn't change anything
45 that's happening on the ground. It's just changes specifically to these maps. Thank you.

1
2 Vice-Chair Duvauchelle: Any questions Commissioners for Danny? Commissioner Hedani?

3
4 Mr. Hedani: Sorry Danny I wasn't paying attention.

5
6 Mr. Dias: No, no I don't blame you.

7
8 Mr. Hedani: What was the first change?

9
10 Mr. Dias: The first change is the red area on the map that you folks approved. This map makes
11 a distinction between the completed parts...the completed SF-3 District and non-completed
12 SF-3 District. And you know basically when it comes to zoning there's no distinction on whether
13 or not you built anything on the property. You're zoned what you're zoned, you know whether
14 it's Residential, Ag, et cetera. So our Zoning Division wanted them to take out that distinction.

15
16 Vice-Chair Duvauchelle: Commissioner Carnicelli?

17
18 Mr. Carnicelli: So Danny I'm...just looking at the difference between the two maps here. If you
19 look at Nahoku in the Legends, you know, is Nahoku predominantly SF-5 with a couple
20 smatterings of SF-3, and then the Legends and is kind of the other way around.

21
22 Mr. Dias: Correct.

23
24 Mr. Carnicelli: So it looks as though we're trying to you know make this...we're trying to create
25 something that's already existing so we're like kinda spotting it here and there rather than
26 what...I guess my question...here let me retract here. Why is it not just consistent? Why do we
27 have these spotty, okay, lots here and there that have to have different zoning?

28
29 Mr. Dias: That's a good question. I don't really know why they went and chose to do some lots
30 you know SF3, some lots SF-5. My understanding is that the Nahoku Legends area that's
31 already built.

32
33 Mr. Carnicelli: Right.

34
35 Mr. Dias: And so my assumption that some of the lots were smaller and some were larger.
36 Why they did that I'm not sure. But this portion is reflective of what exists.

37
38 Vice-Chair Duvauchelle: Commissioner Carnicelli?

39
40 Mr. Carnicelli: So I mean there's not really anything we can do that now. This is basically,
41 you're just asking for you know, Department's just asking to just tighten the ship and saying,
42 okay, we're getting rid of the red, we're going to blue and yellow and that's it and it's just gonna
43 kinda match up.

44
45 Mr. Dias: Correct.

1
2 Mr. Carnicelli: So I mean, we're don't need to revisit and remake the wheel at this point.
3
4 Mr. Dias: No.
5
6 Mr. Carnicelli: It's just about—
7
8 Mr. Dias: Yeah.
9
10 Mr. Carnicelli: Okay, thank you.
11
12 Vice-Chair Duvauchelle: Any other questions Commissioners? Danny you want to read the
13 recommendation?
14
15 Mr. Dias: The Department recommends that this Commission approve or provide Phase II
16 Approval for the map called Wailuku-Kahului Project District I, Single-Family Sub District dated
17 August 24, 2016.
18
19 Mr. Carnicelli: So moved.
20
21 Mr. Robinson: Second.
22
23 Vice-Chair Duvauchelle: Any discussion? Commissioner Hedani?
24
25 Mr. Hedani: Did I hear incorrectly is the roadway color the wrong color and we're trying to get it
26 into the right?
27
28 Mr. Dias: Yeah, the way it was explained to me is I think it was an error that they made. I think
29 whoever made the original map was just kinda you know having...made it yellow just to
30 distinguish between the road and the lot. But by doing that you know basically they're that the
31 roadway is zoned SF-3, and normally what you do is you know, you can have roads in
32 Residential Districts and so usually the entire property is given a certain designation that
33 matches you know the lots next to it and thereby allowing some flexibility too. Like if you look at
34 the map that exists now, you know if they decided you know let me change the configuration of
35 the road a little, then they would have to change the map all over again because technically the
36 roads are zoned something.
37
38 Mr. Hedani: You're asking us to approve this map today?
39
40 Mr. Dias: Yeah, the more simple one. That one that's just blue and yellow.
41
42 Mr. Hedani: Okay. This road, doesn't have a road that leads to the golf course clubhouse. It's
43 Residential according to the map. Is that what they wanted?
44
45 Mr. Dias: Correct. So yeah, that entire property and the road is given that SF-3 designation.

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Mr. Hedani: And the roadway would be considered SF-3?

Mr. Dias: Correct. Yeah, there's no like you know specific zoning designation for a roadway.

Vice-Chair Duvauchelle: Okay, any other questions. We have a motion on the floor to accept the Department's recommendation. All those in favor raise your hands.

Mr. Spence: Four ayes.

Vice-Chair Duvauchelle: Opposed?

Mr. Spence: No opposed. So Robinson's—

Mr. Robinson: I don't understand so I'm going to abstain.

Mr. Spence: It's counted as an affirmative.

Vice-Chair Duvauchelle: Motion carries.

Mr. Dias: Thank you.

It was moved by Mr. Carnicelli, seconded by Mr. Robinson, then

**VOTED: To Approve the Amendment to a Project District Phase II Approval
as Recommended by the Department.
(Assenting – L. Carnicelli, K. Robinson, P. Canto, W. Hedani,
R. Higashi,)
(Excused – L. Hudson, S. Castro, M. Tsai)**

Vice-Chair Duvauchelle: Danny is there a separate. Is this the next, the Kehalani?

Mr. Dias: You know that we pulled from the agenda because they're also making some changes too, but we want them to do even more changes than they...so we're gonna come back to you in a couple months or so.

Vice-Chair Duvauchelle: All right Director next agenda item?

Mr. Spence: The second Communication item Commissioners is E-2, Mr. Ward Mardfin, Chairman of the Hana Advisory Committee to the Maui Planning Commission on the following application Mr. Kaulani Woessner and Sandra Woessner requesting a B&B Home in the County R-3 Residential District in Hana, and our Staff Planner is Ms. Gina Flammer.

**2. MR. WARD MARDFIN, Chairman transmitting the recommendation of the
Hana Advisory Committee to the Maui Planning Commission on the
following application:**

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MR. KAUALANI WOESSNER and MS. SANDRA WOESSNER requesting a Bed and Breakfast Home Permit in order to operate a three-bedroom bed and breakfast home on a property located in the County R-3 Residential District at 4820 Uakea Road, TMK: 1-4-014: 017, Hana, Island of Maui. (BBHA T2015/0002) (G. Flammer)

Ms. Gina Flammer: Good afternoon Commissioners. So we have before you a three-bedroom bed and breakfast home. It's being reviewed because there is another one within 500 feet. The Hana Advisory Committee discussed this on August 30th. They voted unanimously to approve. I also want to note there was no letters of opposition and there were three different letters sent out to the neighbors. The applicant provided one before the application, they did the official one once the application was submitted and then here's the hearing notice that goes out. So everybody knew that he was proposing this.

The applicant was born in Hana. He's an active member of the community. You'll notice the minutes are kind of short because everybody knew him. They know where the house is. The area Uakea Road is what they call Urban Hana, it's the Urban District right down there by the bay. The community plan actually calls for limiting vacation rentals specifically to this area. Discourages them outside of the area. It does have a Maui Island Growth Small Town Boundary area. The cap for Hana is 48 and currently there's only 10 so plenty of room in the cap. The Department is recommending approval with our 16 conditions that we typically put on bed and breakfast. I can just go ahead and do the recommendation real quickly and then let the applicant speak if you'd like.

Vice-Chair Duvauchelle: That's fine Gina.

Ms. Flammer: Okay, great. So in consideration of the foregoing, the Planning Department recommends that the Maui Planning Commission adopt the Planning Department's report and recommendation as its findings of fact, conclusions of law, decision and order and authorize the Director of Planning to transmit said recommendation. Thank you. Would you like the applicant to come up and say a few words or?

Vice-Chair Duvauchelle: Any questions for the applicant, Commissioners? Commissioner Robinson?

Mr. Robinson: I have a question regarding Commissioner Carnicelli's request for every time we have a RFS, do you have those?

Ms. Flammer: Yeah, I sure do. There are no RFSs. The only people living on the property are his parents. He's not operating now. So you'll notice from the pictures too, I always tell them give me really good pictures but it's not set up yet. So he wanted to get the permit approval first before he turned it in. I think that was all three. No RFSs, no one living there. Okay. Good question though, thank you for that.

Mr. Kaulani Woessner: Hi Commissioners, my name's Kaulani Woessner. As Gina said, I was born and raised in Hana. Family has lived there my whole life. We have a home. We just built a little ohana for my mom in the backyard to retire and so we're hoping to do this for the family to be stewards of the aina in Hana. We love it. You have any questions?

Vice-Chair Duvauchelle: Any questions? No, questions.

Mr. Woessner: Thank you much. Aloha.

1 Ms. Canto: So move.

2
3 Vice-Chair Duvauchelle: So we have a motion on the floor to approve as recommended.

4
5 Commissioner Higashi: Second.

6
7 Vice-Chair Duvauchelle: Seconded by Commissioner Higashi. Director?

8
9 Mr. Spence: The motion is to approve as recommended by the Hana Advisory Committee and
10 Staff.

11
12 Vice-Chair Duvauchelle: Any discussion? All those in favor raise your hand.

13
14 Mr. Spence: That's four ayes.

15
16 Vice-Chair Duvauchelle: Opposed?

17
18 Mr. Spence: That's counted as five. Motion carries.

19
20 Vice-Chair Duvauchelle: Motion passes. Thank you.

21
22 **It was moved by Ms. Canto, seconded by Mr. Higashi, then**

23
24 **VOTED: To Approve the Bed and Breakfast Permit as Recommended by the**
25 **Hana Advisory Committee and the Department.**
26 **(Assenting – R. Higashi, L. Carnicelli, K. Robinson-abstain, P. Canto,**
27 **W. Hedani)**
28 **(Excused – L. Hudson, S. Castro, M. Tsai)**

29
30 Vice-Chair Duvauchelle: Okay, moving on. Director?

31
32 Mr. Spence: Boy we're coming down the homestretch. Next Item is number F, actually letter F,
33 Acceptance of the Action Minutes for November 11, 2016 meeting—

34
35 Ms. Takayama-Corden: November 7. It's a typo.

36
37 Mr. Spence: Oh a typo, November 7, I'm sorry I'm just reading, not thinking. November 7, 2016
38 meeting and Portion of August 23, 2016 Meeting, Item D-1.

39
40 **F. ACCEPTANCE OF THE ACTION MINUTES OF THE NOVEMBER 7, 2016 MEETING**
41 **and PORTION OF AUGUST 23, 2016 MEETING ITEM D-1**

42
43 Mr. Carnicelli: Move.

44
45 Vice-Chair Duvauchelle: Moved by Commissioner Carnicelli.

46
47 Ms. Canto: Second.

48

1 Vice-Chair Duvauchelle: Seconded by Commissioner Canto. All those in favor raise your
2 hand? Five ayes. Motion carried.

3
4 **It was moved by Mr. Carnicelli, seconded by Ms. Canto, then**

5
6 **VOTED: To Accept the Action Minutes of the November 7, 2016 Meeting and**
7 **Portion of the August 23, 2016 Meeting, Item D-1.**
8 **(Assenting – L. Carnicelli, P. Canto, K. Robinson, W. Hedani,**
9 **R. Higashi,)**
10 **(Excused – L. Hudson, S. Castro, M. Tsai)**

11
12 Vice-Chair Duvauchelle: Director?

13
14 **G. DIRECTOR'S REPORT**

15
16 **1. SMA Minor Permit Report**

17
18 **2. SMA Exemptions Report**

19
20 Mr. Spence: Okay, Commissioners you have also in front of you Director's Report, the SMA
21 Minor Permit Report, SMA Exemptions Report. You notice it's much smaller.

22
23 Vice-Chair Duvauchelle: Okay, any comments? Acceptance of the SMA Reports? Motion to
24 approve by Commissioner Higashi.

25
26 Mr. Hedani: Second.

27
28 Vice-Chair Duvauchelle: Second Commissioner Hedani. All in favor raise your hands. That's
29 five ayes. Motion carries.

30
31 **It was moved by Mr. Higashi, seconded by Mr. Hedani, then**

32
33 **VOTED: To Accept the SMA Minor and SMA Exemption Reports**
34 **(Assenting – R. Higashi, W. Hedani, L. Carnicelli, K. Robinson,**
35 **P. Canto)**
36 **(Excused – L. Hudson, S. Castro, M. Tsai)**

37
38 Vice-Chair Duvauchelle: Okay, Director?

39
40 **3. Discussion of Future Maui Planning Commission Agendas**

41
42 **a. December 13, 2016 agenda items**

43
44 Mr. Spence: Okay, the next meeting will be December 13th. Commissioners there will three
45 public hearing items. The first is transmitting Council Reso. 16-100 referring to the Maui
46 Planning Commission a bill to amend West Maui Community Plan designation from Park to

1 Business for...it's for a very small property in Kaanapali. It's very small, a portion of a property
2 in Kaanapali. The second public hearing item will be Mr. Thomas Parker of Central Federal
3 Lands Highways Division. This is gonna be an SMA Permit for the Lahaina Bypass 1B2 that's
4 that between Hookiokio and Kaiheleku and then down to the Olowalu Landfill. So that's a whole
5 other section on the...basically from Puamana down to Olowalu Landfill. So that will be very
6 interesting. It's got a lot of interesting comments and the public review and everything. And
7 then there will be Mr. Michael Baskin of Seashore Properties LLC requesting a County Special
8 Use Permit for nine-bedroom transient vacation rental for Paia Inn in Paia.

9
10 Vice-Chair Duvauchelle: Okay, all right.

11
12 Mr. Spence: So that one also promises to garner some interesting—

13
14 Mr. Carnicelli: Will we have dinner along with lunch?

15
16 Mr. Spence: We might.

17
18 Vice-Chair Duvauchelle: Okay, I guess that's it. All right, Commissioners thank you for
19 patience with everything and me today and thank you for being here. Planning Commission is
20 adjourned.

21
22 **H. NEXT REGULAR MEETING DATE: December 13, 2016**

23
24 **I. ADJOURNMENT**

25
26 The meeting was adjourned at 2:34 p.m.

27
28 Submitted by,

29
30 Carolyn Takayama-Corden
31 Secretary to Boards & Commissions II
32

33 **RECORD OF ATTENDANCE**

34 **Present**

35 Pua Canto
36 Lawrence Carnicelli
37 Sandy Duvauchelle, Vice-Chairperson
38 Wayne Hedani
39 Richard Higashi
40 Keaka Robinson

41
42 **Excused**

43 Stephen Castro
44 Larry Hudson
45 Max Tsai, Chairperson
46

- 1 **Others**
- 2 Will Spence, Director, Planning Department
- 3 James Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel
- 4 Rowena Dagdag-Andaya, Deputy Director, Department of Public Works (on-call)