

**MAUI PLANNING COMMISSION
REGULAR MEETING
SEPTEMBER 25, 2018**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Keaka Robinson at approximately 9:02 a.m., Tuesday, September 25, 2018, 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.)

Mr. Keaka Robinson: Good morning everyone. Welcome to...September 25th Planning Commission. Commissioners in attendance we have Vice-Chair Commissioner Hudson.

Mr. Larry Hudson: Good morning Chair.

Mr. Robinson: Morning. We have Commissioner Pali.

Ms. Kellie Pali: Morning.

Mr. Robinson: Commissioner Kahu Hill.

Kahu Hill: Aloha Chair.

Mr. Robinson: Aloha. Commissioner Carnicelli.

Mr. Lawrence Carnicelli: Good morning Chair.

Mr. Robinson: Commissioner La Costa.

Ms. P. Denise La Costa: Aloha Chair.

Mr. Robinson: Aloha. Commissioner Castro.

Mr. Stephen Castro: Morning Chair.

Mr. Robinson: Commissioner Tackett.

Mr. Christian Tackett: Morning Chair.

Mr. Robinson: We have Deputy Director Joe.

Mr. Joseph Alueta: Morning.

Mr. Robinson: And Corp Counsel David. At this time on...on Item B.1., we have a request from the applicant to postpone. They were unable to, to make it today.

B. UNFINISHED BUSINESS

1. **MR. DAVID PYLE of THE KRAUSE COMPANIES INC. requesting a Special Management Area (SMA) Use Permit six (6)-year time extension to initiate construction of the Downtown Kihei project and related improvements at TMK: (2) 3-9-002: 020, Kihei, Island of Maui. (SM1 2012/0006) (C. Thackerson) (Deferred at the August 28, 2018 meeting.) [REPORT](#)**

The Commission previously voted not to waive its review of a two (2)-year SMA time extension request to initiate project construction at its meeting in May 2018.

The Commission may take action on the current six (6)-year time extension request.

Ms. Candace Thackerson: Yes.

Mr. Robinson: And do we have a, a preferred time or are we going to try to get that later?

Ms. Thackerson: Staff planner Candace Thackerson. As of right now, there is no set date. They're hoping for the December 11th agenda, but that also depends on how our agenda plays towards the end of the year. I know they fill up quite quickly so my supervisor, Clayton, will be booking them as soon as possible.

Mr. Robinson: And, and, and how long is their permit valid, or is their permit already expired?

Ms. Thackerson: It's valid right now because --. The date has passed but because it's in our hands we're honoring it.

Mr. Robinson: Okay, thank you. All right, thank you. Commissioners, moving on, on the next one, we're going to go to Communications. At this time is there any motion to go into executive session?

C. COMMUNICATIONS

Mr. Carnicelli: So move.

Mr. Robinson: Do I have a second?

Mr. Hudson: Second.

Mr. Robinson: I have a second. All those in favor to go into executive session please raise your right hand? All right, at this time we'll go into executive session. Audience, this means, please ask you folks to leave your stuff and we'll go into executive session and we'll call you back when we're finish – to, to discuss our legal. Thank you.

It was moved by Mr. Lawrence Carnicelli, seconded by Mr. Larry Hudson, then unanimously

VOTED: to go into Executive Session.

(Assenting: L. Carnicelli, S. Castro, Kahu A. Hill, L. Hudson, P. D. La Costa, K. Pali,
C. Tackett)
(Excused: T. Gomes)

(The Planning Commission recessed the regular meeting at approximately 9:05 a.m. to enter into Executive Session. The Planning Commission reconvened the regular meeting at approximately 10:13 a.m.)

1. **Hearing Officer's Report dated July 13, 2018 from E. JOHN MCCONNELL, Retired Judge, Hearing Officer, containing his [proposed Findings of Fact, Conclusions of Law, and recommendation](#) regarding the following remanded application:**

County Special Use Permit application from SEASHORE PROPERTIES, LLC for the proposed nine (9) room transient vacation rental on the property referenced as the Paia Inn located at 93 Hana Highway, TMK: (2) 2-6-002: 027, Paia, Island of Maui. (CUP 2015/0006) (CTB 2015/0009) (SMX 2015/0522) (K. Wollenhaupt)

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

The Commission may take action on the permit application.

Mr. Robinson: Welcome back. Planning Commission is now back in session. Next item on the agenda.

Mr. Alueta: Okay, thank you Mr. Chair. Your next item on the agenda is Communications . . . *(Deputy Director Joseph Alueta read the above project description into the record.)* . . . There's also a Country Town Business Permit as well as an SMX that would be done, as we've indicated, would be administratively processed afterwards the CUP. And that's your item. Thank you.

Mr. Robinson: Thank you Deputy. Thank you everyone in the audience. Today there is not public testimony. I want you, I want you all to understand that there will be not public testimony. There has been sufficient time and evidence put into this case. There has been a lot of data that this Commission has received. In that same sense, this Commission will not be hearing the applicant as well. We think that there is, there is enough data, and we're going to, we're going to go with what's in front of us and...we'll proceed that way.

Commissioners, I'm not going to allow any more testimony from the applicant or from the public. Do I have anybody that is opposed to that?

Mr. Carnicelli: No objections.

Mr. Robinson: Seeing none, I would like to propose --. At this time, Commissioners, we do have Mr. Colby and Mr. McConnell here. Let's -- in that same sense, let's, let's, let's try to see if we can refrain from them and using them, and of course, if we do need to and we need to ask them a question that we can't cross, of course, they're here for us to, to ask question for and I thank them for their presence.

Stating that, would we like to --. Does anybody have any questions, comments, or start a motion to get this --? Corporation Counsel?

Mr. David Galazin: Thank you Chair. And if anybody, if any of the Commissioners have not reviewed the entire record that was provided to you, along with the hearing officer's report, please indicate so. Otherwise, I will presume that you have reviewed all of the relevant information and are able to vote on the matter today. Okay, thank you.

Mr. Robinson: I apologize Commissioners, I was supposed to address that. But, yes, you guys are all comfortable. Would any of the Commissioners would like to start? Commissioner Carnicelli?

Mr. Carnicelli: Chair, I think that it would be fair if Mr. Galazin, for the sake of the public, could walk us through kind of where we are with this, and what it is that, you know -- what our options are as far as proceeding forward before we actually proceed forward.

Mr. Robinson: We can but it's, I think, it's about us, it's not about the public right now because there's no testimony. And, and I get that. But if you, if you have, if you have a question as a Commissioner that Mr. Galazin can, you know, you can form it that way instead of just --. Because that to me he's just doing more, you know, testimony. If you want, if you want to turn it to a specific question, I'd be more than happy to turn it over to David. You can frame it.

Mr. Carnicelli: I'm trying to think how this would go. You know, actually, Kurt's always good at this. Why are we here today?

Mr. Robinson: Corp Counsel?

Mr. Galazin: Thank you Commissioner Carnicelli. We're here today to consider the report of the hearing officer. Now under your rules, Chapter 12 or Section 12-201-81, Commission action, in any contest case, if the entire Commission did not serve as a hearing officer, then the hearing officer will provide a recommendation with a -- along with a proposed finding of facts, and conclusions of law. You may -- you have a couple of different options. You may accept the findings of fact, conclusions of law, and the proposed decision and order as is. You may reject it. You may accept it with modifications. There are a number of different points of findings of fact, there are a number of different points of law.

The...reason that we are here, if you look on page 5 of the hearing officer's report, the application is for a Special Use Permit to operate a transient vacation rental less than 12 units which is allowable in the zoning district of business country town, with a special use permit,

provided that the eight criteria listed on page 5 of the report are met. I would note as stated in the report, the eight criteria is inapplicable as it pertains to if the use is located in State Ag or Rural District. So, there are seven criteria and the report goes through and addresses each one of the seven. Provides the facts after reviewing. There's the extensive record. And then the conclusion of law based on those facts. So you're here today to determine whether to agree with this report, adopt it as such, make modifications to it, or, or deny. Does that answer your question?

Mr. Carnicelli: Yes, thank you.

Mr. Robinson: Thank you. Commissioners, at this time, does anybody have a motion to start this ball rolling so we can get the discussion going? Commissioner Carnicelli?

Mr. Carnicelli: Thank you Chair. I would like to make a motion to reject the -- what do we call this again? -- the hearing officer's --

Mr. Robinson: Recommendation.

Mr. Carnicelli: -- recommendation.

Mr. Robinson: We have a motion to reject the recommendation.

Mr. Hudson: I'll second.

Mr. Robinson: We have a second. Commissioner Carnicelli, would you like to speak to your motion?

Mr. Carnicelli: Thank you Chair. In considering all the facts and going through the entire record, I am in disagreement with Item F, which is the public shall be protected from the deleterious effects of the proposed use. In this, the judge has cited a couple references with which I disagree, and there are also options -- or things that he puts in here that are in, that conflict with each other. One being that all adjacent owners behind and directly across the street are in support when in his report he shows in No. 65 of the report that at the time, a 50% owner in an adjacent building testified against it.

Mr. Robinson: Commissioner Carnicelli, are you talking about F on page 18?

Mr. Carnicelli: Yes, F, on 18 of the recommendation.

Mr. Robinson: And is there a, is there a number that F references?

Mr. Carnicelli: Well, 75.

Mr. Robinson: 75.

Mr. Alueta: Line 75.

Mr. Robinson: Okay. And is, is -- do you have that referenced in any of the criteria of the, of the criteria of the Maui County Code?

Mr. Carnicelli: Yes, F is in reference to No. 6 of the Maui County Code 19.510.070, Special Use Permit require that the proposed action meets eight criteria for the granting of permits of which the eight criterion is not applicable. So no. 6 is that the public shall be protect from the deleterious effects of the proposed use. Deleterious basically being harmless, subtle and unexpected effects.

Mr. Robinson: Thank you Commissioner Carnicelli. Second, do you have anything to add on that motion?

Mr. Hudson: I think Mr. Carnicelli did a good job of that. Thank you.

Mr. Robinson: Okay, thank you. Commissioners, at this time, I'd like to open it up for discussion. While we're in discussion, it's, it's -- I'd like to also give the Deputy Director time before we start the discussion of we want to clarify a couple things that were in this D&O. And Joe, at this time, if you have a list of things you'd like for us to look at please.

Mr. Alueta: Thank you Mr. Chair. The Department has, based on the settlement agreement does not have a position on the thing. With regards to clarifications on it, that was, if you had adopted -- again, we have no objections to the adoption of the recommendations from the hearing officer's report -- however, I believe the motion currently is to not adopt the hearing officer's report, so I think that my statements would be moot at this point.

Mr. Robinson: Okay, thank you. Commission, any discussion at all? Seeing none, is a --? Deputy Director, can you, can you call for a vote please?

Mr. (____): Excuse me, Mr. Chair. Sorry, but . . . (inaudible) . . . would like to offer public testimony.

Mr. Robinson: I'm sorry, I, I, I, I did make it clear that, that both sides, both sides have had ample time to, to put forth testimony. We've had a hearings officer. We've had data. I've -- we've reconfirmed with all the Commissioners that we have carefully read everything involved inside of this. This is proceeding. There's a motion on the floor. I will not allow any objection while there's a motion on the floor. I understand I'm being an inconvenient to you, but this is, this is the way this Commission works. Okay, sir, everyone, everyone, you know, there's a motion on the floor. Thank you. Deputy?

Mr. Alueta: Thank you Mr. Chair. Currently my understanding of the motion is to reject the hearing officer's report and that based on...however based on -- so the facts, specifically 65 as well as on the criteria F. I'm sorry, Section F, line 75, the Commission is finding that the proposed project has not met the criteria of, criteria 6, for a County Special Use Permit, which is that the public shall be protected from deleterious effects of the proposed use. So you, so you found that he did not, based on what's in the report, based on the evidence that was presented, you did not meet that criteria. Is that, is that my understanding from the motion?

Mr. Carnicelli: Yes.

Mr. Alueta: So that was the motion on the floor.

Mr. Robinson: So Commissioners, all those in favor of denial, please raise your right hand? One, two, three, four, five. All those, all those opposed to a denial, please raise your right hand? One opposed. We have one abstention, so that's six. So the motion carries; the item has been denied. Corporation Counsel.

It was moved by Mr. Lawrence Carnicelli, seconded by Mr. Larry Hudson, then

VOTED: to reject the hearing officer's recommendation.

(Assenting: L. Carnicelli, S. Castro, Kahu A. Hill, L. Hudson, P. D. La Costa)
(Abstained: C. Thackett)
(Dissenting: K. Pali)
(Excused: T. Gomes)

Mr. Galazin: Thank you Chair. And I would direct counsel for the Planning Department to go ahead and prepare a draft D&O for the Commission.

Mr. Robinson: Thank you. Before we move on to the, to the next item, D, which is workshop on the County's Planned MAPPS, we'll give a five minute break to, to let the room clear and let the MAPPS get ready for their presentation. Thank you.

(The Planning Commission recessed at 10:26 a.m. and reconvened at 10:32 a.m.)

D. Workshop on the County's Planned MAPPS Permit Tracking System Conducted by the County Information and Technology Services (ITS) Division, Department of Management. (Postponed from the September 11, 2018 meeting.)

The workshop is for information purposes only. No action will be taken.

Mr. Robinson: Aloha. Commission back in session. Deputy Director?

Mr. Alueta: Thank you Mr. Chair. The item with regards to D, workshop on the County's permitting MAPPS system, the ITS Department was not available until this afternoon. We had anticipated that your meeting would have gone longer, so we have no objections if you want to defer the action and move the item to the next meeting.

Mr. Carnicelli: No objections.

Mr. Hudson: No objections.

Mr. Robinson: No objections, we'll defer. Thank you.

E. DIRECTOR'S REPORT

1. SMA Minor Permit Report

This is for notification and review purposes. No action is anticipated.

2. SMA Exemptions Report

This is for notification and review purposes. No action is anticipated.

Mr. Alueta: And then you have Director's Report, your SMA Minors, Exemptions and future Maui Planning Commission agenda. Those are under Item E.

Mr. Robinson: As Commissioners, do we have any questions regarding the SMA Minors or SMA Exempted projects? Seeing none. Deputy?

Mr. Alueta: So a motion to -- are you going to accept those?

Mr. Robinson: Yes.

3. Discussion of Future Maui Planning Commission Agendas

a. October 9, 2018 agenda items

Mr. Alueta: And I don't have any list on new agenda items.

Mr. Robinson: Okay, then next week?

Mr. Alueta: Sorry. Okay so you have proposed agenda is going to be the PV system for the University, State of Hawaii, UH Maui Campus. There's an expansion on the PV system. It's going to be located at the overflow parking area, if you're familiar with the campus, across from the recycling center. And then you also have bed and breakfast permit. And, then another County Special Use Permit, communication item. Do you have any problems with those? And then we'll add, we'll add the MIS to the bottom of this one, the MAPPS presentation.

Mr. Robinson: Please.

Mr. Alueta: Is that okay?

Mr. Robinson: Please. Commissioner La Costa, yes?

Ms. La Costa: I will not be here on October 9th.

Mr. Robinson: On the 9th? Okay. Thank you. Duly noted.

F. NEXT REGULAR MEETING DATE: OCTOBER 9, 2018

G. ADJOURNMENT

Mr. Robinson: All right, Commissioners, thank you for your long day today. Thanks for lunch. I'll see you in a couple of weeks.

The meeting was adjourned at 10:34 a.m.

Respectfully Submitted by,

LEILANI A. RAMORAN-QUEMADO
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Present

Lawrence Carnicelli
Stephen Castro
Kahu Alalani Hill
Larry Hudson, Vice-Chair
P. Denise La Costa
Kellie Pali
Keaka Robinson, Chair
Christian Tackett

Excused

Tina Gomes

Others

Joseph Alueta, Deputy Director, Department of Planning
Candace Thackerson, Staff Planner
Kurt Wollenhaupt, Staff Planner
David Galazin, Deputy Corporation Counsel, Department of the Corporation Counsel