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**MAUI PLANNING COMMISSION  
REGULAR MINUTES  
MAY 9, 2017**

**A. CALL TO ORDER**

The regular meeting of the Maui Planning Commission was called to order by Chairperson Sandra Duvauchelle at approximately 9:07 a.m., Tuesday, May 9, 2017, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

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

Chair Duvauchelle: Good morning, Maui County Planning Commission is now in session. We are May 9, 2017. Thank you for your patience. We're a little late getting started but as you know parking is an issue. So we appreciate you being here this morning and everybody else that's here Commissioners and Planning Staff.

**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. **Testimony will be limited to a maximum of three (3) minutes.**

Chair Duvauchelle: We want to open the floor with public testimony this morning. If you testify at this point you will not be allowed to testify when the item, agenda item comes up. Your testimony will be limited to three minutes and we have a few people that are registered. When I call your name you can either testify now or decline and testify when your agenda item reaches...when we get to your agenda item. When you come up please identify yourself and which agenda item you are testifying on. The first name I have listed is Sherry Harrison.

Ms. Harrison: We'll wait.

Chair Duvauchelle: Darcell Gilbert?

Ms. Gilbert: I'll wait.

Chair Duvauchelle: Okay, Michael Leon?

Mr. Leon: I'll wait.

Chair Duvauchelle: And Gerry...the last name, you'll wait? Okay. All right, thank you. Would anybody else wish to testify at this time? Well, open it up for public testimony for each agenda item. All right, Director would you like to read our first item?

Mr. Spence: Okay, Commissioners we have three public hearings this morning and two are for short-term rental homes. One is for a bed and breakfast. I would just want to call to attention...to the Commission's attention, the first and second items they are within the same subdivision within Lahaina if you did not notice from your packet and I just, I mean, that's just by

1 way of disclosure and for the Commission's awareness and for your consideration when the  
2 public hearings go forward. So anyway, the first one is Mr. Chris Smith requesting a Short-Term  
3 Rental Home Permit to operate at 106 Halelo Street in Kaanapali, and the Staff Planner is Livit  
4 Callentine.

5  
6 **C. PUBLIC HEARINGS** (action to be taken after each public hearing.)

- 7  
8 1. **MR. CHRIS W. SMITH requesting a Short-Term Rental Home Permit to**  
9 **operate the 106 Halelo Street Short-Term Rental Home, a 6-bedroom**  
10 **short-term rental home located in the R-3 Residential District at 106 Halelo**  
11 **Street, TMK: 4-4-009: 007, Lahaina, Island of Maui. (STWM T2016/0025)**  
12 **(L. Callentine)**

13  
14 **The subject application is being brought to the Maui Planning Commission**  
15 **for review because there are at least two (2) permitted short-term rental**  
16 **home operations located within 500 ft. of the subject property.**

17  
18 Ms. Livit Callentine: Thank you Director. Good morning Commissioners and welcome to the  
19 new commissioners that I haven't met yet. So this item is under your review because the  
20 applicant is requesting a Short-Term Rental Home Permit for property located at 106 Halelo  
21 Street in Kaanapali. The applicant, Chris Smith wishes to operate a six-bedroom short-term  
22 rental home on one dwelling that sits on approximately 11,000 square feet of land in Kaanapali.

23  
24 The applicant, Chris Smith wishes to operate a six-bedroom short-term rental home on one  
25 dwelling that sits on approximately 11,000 square feet of land in Kaanapali. The application is  
26 before you today because there are three permitted short-term rentals within 500 feet of the  
27 proposed short-term rental home and the trigger for a public hearing in this case would be if  
28 there's any beyond two within 500 feet it triggers a public hearing. There are also two proposed  
29 short-term rentals this one and the next item on your agenda and there's one permitted short-  
30 term rental which has apparently expired. You'll see that on a map in just a moment. Can  
31 someone turn off the lights?

32  
33 Mr. Spence: Yes.

34  
35 Ms. Callentine: That's a good idea. Thank you. So this is the neighborhood of the Kaanapali  
36 subdivision and what you'll notice is that this splits into two. It takes off from the highway here  
37 and it splits into two cul de sacs. This is Halelo and this is Holomakani and the primary leg is  
38 Halelo. Okay, slide three. There are 35 parcels in the Kaanapali Vista Subdivision. And I'd like  
39 to just note for the record here that on Page 2 of your report we incorrectly reported the number  
40 of lots as 32 and it's actually 35. So this slide points out permitted an proposed short-term  
41 rentals as well as tax classifications. So I'm sure that this is way not visible. I'm sorry the colors  
42 aren't transferring here. We found this to be true, there are...but I'll tell you what this shows  
43 you, the dots on each parcel have numbers in them and that was how we counted the number  
44 of lots in the subdivision, but the green dots are...represent the homeowners. The blue dots  
45 represent those who are taxed...and this is for tax classification purposes. The blue dots are  
46 classified residential and the red ones are classified as commercial. So as you'll note there are  
47 60 percent of the lots or 21 lots claim a homeowner's exemption. Approximately 11 percent

1 which is four lots obtained short-term rental permits and hold them currently and are taxed at a  
2 commercial rate. The remaining 28 percent which is 10 lots are taxed at the residential rate and  
3 are ...(inaudible)...part-time residents. Slide 4, neighborhood notice was provided to neighbors  
4 three times. Once when the application was filed, once when the project sign was posted and  
5 more recently for this public hearing. There were three letters of protest filed by homeowners  
6 within 500 feet of the property and those are right...the subject property is right here and the  
7 three letters came from these three lots.

8  
9 So our report also includes, I'm sorry I've lost my place here...the main issues that were raised  
10 by the people who wrote letters was the growing number of short-term rentals already in the  
11 neighborhood, the disruptive behavior of some guests, disturbances to the neighborhood,  
12 guests parking on the street, guests picking flowers out of private yards, and destruction of the  
13 character of the residential neighborhood. These issues all point, I might point out that they  
14 point to negligent management. Properly managed and enforced short-term rentals needn't  
15 have a negative impact on a neighborhood. The majority of permitted short-term rentals in our  
16 experience have zero complaints. Of a 192...of a 195 permits we've issued or you've issued  
17 combined across the island of Maui we have only revoked a handful, a small handful. So that  
18 tells us that most of the properties are being well-managed.

19  
20 Letters of support were also filed and they are shown in your report as Exhibits E-F, two of those  
21 letters were from owners within 500 feet. One of these was from an applicant for an STRH  
22 you'll be reviewing as the next item on the agenda today. Our report also includes two letters  
23 from owners outside the 500-foot boundary and a third letter was provided to you after the report  
24 was finalized. And the letters of support are shown in the green, the location of the letter writers  
25 of support is shown in the green dots. One of the letters was from another STRH permit holder  
26 in the same subdivision, one of the letters outside the boundary.

27  
28 If both of the short-term rentals proposed today are approved six of 35 lots will be classified as  
29 commercial property and operating as short-term rentals. This is equivalent to approximately 17  
30 percent of the total lots. No I did some research on this question of when is enough, enough?  
31 And I consulted with our Staff Planner, Ms. Gina Flammer who is really instrumental in writing  
32 and bringing forth these short-term rental permit legislation. And I asked her about how the  
33 caps really came about and whether the Council ever discussed caps for individual  
34 neighborhoods? And what she told me was that the Department had recommended to Council  
35 that it can't be placed on the maximum number of short-term rentals within a 500-foot radius.  
36 During the discussion, Council indicated that they trust the planning commissions to determine  
37 on a case by case basis whether an application would alter the character of the neighborhood.

38  
39 So in our report we pose those several questions for your consideration. Are there ever too  
40 many short-term rentals within a single neighbor and is there an optimal saturation point in a  
41 neighborhood? So I'm gonna leave, leave you there. I'm going to at this time introduce you to  
42 the applicant's representative Mikal Torgerson who will present you with the scope and details  
43 of the proposed short-term rental home. The applicant is here also and would like to introduce  
44 himself after Mikal concludes his remarks. And after the presentation I'll make my...I'll provide  
45 you with the Department's recommendation and of course, answer any questions you have.

1 Mr. Mikal Torgerson: Good morning Madam Chair, Fellow Board Members, thank you for the  
2 opportunity present our short-term rental application this morning. I'd like to start by going  
3 through the house, show you a bunch of photos and then I'd like to specifically address –  
4

5 Chair Duvauchelle: Excuse me, could you restate your name please, I think we missed it.  
6

7 Mr. Torgerson: I apologize. My name is Mikal Torgerson, I'm an architect. So I'll start by  
8 showing you some photos of the property and then I'd like to address point by point the criteria  
9 by which the Code recommends these short term rentals be...so as Livit mentioned the  
10 Kaanapali Vistas Subdivision is mauka of the resort area of Kaanapali. It's a logical extension of  
11 that roadway system directly across the Honoapiilani Highway. And 106 Halelo is roughly mid-  
12 block along the makai side there. The property is...has a large green space in front of it. In  
13 fact, there's nothing between the makai side of the house until you get down to the resort area  
14 opposite the Honoapiilani Highway and this is a view of the golf course side of the house. This  
15 is looking down the street on the right-hand side would be the subject property and this is a  
16 street view of the property. It's worth noting that the architecture of the house is such that the  
17 front side of the house has what would be considered to be more private type uses. We have  
18 the garage and series of bedrooms with closets facing the street and a bathroom and that has  
19 the effect of buffering noises from uses in the house as well. This is a view from the kitchen and  
20 dining area looking makai and those doors open out to the lanai. The stairway to the entrance  
21 of the house. The stairway you see here is the front door. You come down some steps to the  
22 great room of the home. Again, this is the entry off to the right you see the bathroom and then  
23 there's a couple bedrooms along streetside of the house. This is the great room with the doors  
24 opening out to the lanai. So one of the things you'll see about the house that architecturally  
25 most of the openings in the house, the windows and doors and the lanai and all those things  
26 open to the golf course or the downhill side of the house. This is the lanai looking south. This is  
27 the master bedroom with doors that open out to the lanai, master shower. And this is bedroom  
28 two, I'll go through them quickly out of respect for your time.  
29

30 The pool area sits a full two stories below the roadway of Halelo Street. The grade is such that  
31 it's sort of a bowl or the hill goes down and you go down a series of stairs to get to the great  
32 room and then you go down another set of stairs to get down to the pool area and the lower part  
33 of the house. The pool like I said opens up down to the golf course. And this is a view looking  
34 south and north from that area.  
35

36 This is the floor plan of the home. Again, a couple things I just wanted to mention again is the  
37 garage is here. This is the bathroom and then these are two bedrooms with closets along that  
38 side. But you do see a number of opening along the makai side of the house. There's also  
39 ample parking. We're actually providing...there's places to park cars in excess of the Code  
40 requirement and the rubbish is a stone enclosure that keeps the rubbish not visible from the  
41 street from Halelo Street. There's an upper floor plan for the bedroom up there and then the  
42 lower with the bedrooms down there and those are available obviously if you have any  
43 questions.  
44

45 So next I'd like to go through point by point the criteria by which the Code dictates that these  
46 things should be judged by. The first item relates to homeowner's association, homeowner's  
47 boards and there's no constituted board for the homeowner's...or for Kaanapali Vista. So this

1 one doesn't apply. The second one relates to land use entitlements and uses. Kaanapali Vista  
2 was originally developed as a residential extension of the tourist lodging and shopping areas of  
3 Kaanapali. Historically many of these homes have been used as second homes. I think Livit  
4 just mentioned that 40 percent of them had tax addresses that were outside of the residence.  
5 There's unfortunately been a number of them that have been used as rooming houses and that  
6 was true of this house in the past as well, and it's my understanding that that was rather  
7 problematic. And there have been a number of illegal vacation rentals in the neighborhood just  
8 by virtue of its location as a sort of logical extension of that resort area. As she mentioned there  
9 are several short-term rentals in the neighborhood.

10  
11 Some residents have actually shared their view with me that short-term rental homes are more  
12 compatible with the neighborhood than the boarding houses that have sprouted out where  
13 people are renting these by the room. The applicable community plan is something they  
14 mentioned that should be considered and the proposed subject property is consistent with the  
15 single-family community plan designation and the Smith Family has been living in this home as  
16 much as possible, a few months a year with the goal of moving here in the near future and I  
17 know Chris would like to go over that in a little bit of detail with you and renting the home on a  
18 short-term basis is gonna help the achieve that dream.

19  
20 The next criteria that they mentioned should be considered is the potential adverse impacts  
21 including excessive noise, traffic and garage. As I mentioned there's a substantial stone  
22 enclosure around the rubbish bins so it's not anticipated that that would be an issue any  
23 different than any other residence. All the rubbish is shielded from that enclosure. The grading  
24 of the home and the architecture of the home as I mentioned are such that any noise generated  
25 would logically sort of emanate makai or towards the golf course towards the resorts. It's just  
26 the views are obviously makai and so the home is just built that way. In addition the pool as I  
27 mentioned is well below the street grade and it creates sort of an amphitheater and that has the  
28 effect of transferring that noise forward as well just as the performer in an amphitheater would.  
29 And the neighboring home nearest the pool is owned and occupied by the Sharp Family and  
30 they're actually here in support of this application. So really the home that would be most  
31 affected by any noise generated in this short-term rental we've spoken with the Sharp Family  
32 and they're in support of the application so I think that's significant.

33  
34 It's also mentioned that we should bring up the number of short-term rental properties  
35 surrounding and as she mentioned there are several short-term rentals in the neighborhood.  
36 The APA and good planning practice advocates for a logical transect of uses. And we have the  
37 resorts down along the water and then the condos and it is a logical extension I would argue to  
38 have a clustering of short-term rentals transitioning up to standard residential. And this area is  
39 particularly well suited for that. It has functioned that way historically and I know there are  
40 permanent residents of the neighborhood and we certainly absolutely need to respect their  
41 viewpoints and take them into account. But it is good planning to have transitioning of that or a  
42 transect of both densities and uses.

43  
44 And it mentions that the number and substance of protests to the short-term rental application  
45 should be considered and as Livit mentioned, there were three letters of concern relative to this  
46 application...(inaudible)...and she mentioned some of their concerns. A lot of them appeared to  
47 be specific to a particular operation but more generally there was concerns expressed about

1 excessive noise and parking on the street and increased crime. There were also four letters of  
2 support written by neighboring owners in the subdivision along with the other ones Livit  
3 mentioned and those were from the Sharp Family immediately next door, Patrick Adsuar,  
4 Russell Evans and Steve Gatchel.

5  
6 So relative to noise, I've kind of beat this dead horse but again there are wing walls that actually  
7 protrude along both sides of the lanai and the opening kind of face out that way. It is my belief  
8 with the pool being way so much lower that sound would be mitigated but in addition to that  
9 there are house rules that are strictly enforced by the management and I would encourage  
10 anybody who has a problem with noise to call the management company as I've actually spoken  
11 to them and they haven't heard many complaints but they're open to trying to work with  
12 neighbors on anything that might happen in that regard.

13  
14 There's also ample parking on the site. There is a strict prohibition for our people parking on the  
15 streets in the short-term rental use. That's one of the house rules and it's also something that  
16 the guests who would stay there if it were approved would sign as a part of the vetting that they  
17 do before anybody would stay at the house they would sign something saying that they would  
18 abide by the quiet hours that are outlined and that they would park on site not park on the street.  
19 So there's three spaces available on the street and then two more inside the garage which  
20 exceeds the requirement.

21  
22 And the last is regarding existing or past complaints about rental operations on the property.  
23 The current owner has not rented it on a short-term basis, but and there are no known open  
24 RFSs or anything like that on the property. The home has historically operated as a boarding  
25 house and it's my understanding that that was actually quite a problem for the neighborhood. It  
26 was a bit of a party house. They even had a bus they called the party bus out in front of the  
27 house. So it wasn't really compatible with the neighborhood and I would submit that some of  
28 the legal uses that are occurring in the subdivision are far less compatible with residents who  
29 live there than what we're proposing especially given the controls that are given to you to any  
30 homeowners.

31  
32 And then existing and non...past noncompliance with governmental regulations and there's no  
33 known noncompliance with governmental regulations or RFSs. It's I would guess that the  
34 previous owner frustrated the neighbors quite a bit and had issues. And with that, out of respect  
35 for your time, I'll cut it there and I know Chris would like to introduce himself and say a few  
36 words. I'm available for any questions that you might have and I respectfully request approval  
37 of our short-term rental. Mahalo.

38  
39 Mr. Chris Smith: Good morning. My name is Chris Smith and I own the house at 106 Halelo.  
40 Thank you for your time and thank you for the neighbors who have come today to listen to what  
41 our story is and I'll be brief. So basically I'm here today to tell you about a story about our family  
42 and what we plan on doing with this home, with Maui.

43  
44 We're gonna move back to Maui full-time. Our children are currently in a dual immersion  
45 Spanish program for five years in Redondo Beach, California where they're becoming bi-literate.  
46 We can't really take them out of there but we did buy this home 'cause we saw the opportunity,  
47 thought it was a great neighborhood and we know it well.

1  
2 I moved here in 1994, where I met and married my wife, Kerri Lope. We built a great family and  
3 existence here for seven years. My uncle, Uncle Alan Williams, Kerri's uncle is here. We really  
4 love Maui and we are dedicated to coming back.

5  
6 Briefly I worked as a camera man. I had the pleasure of working with Eddie Kama'i, a  
7 documentary film, filming the last days of sugar cane in Lahaina which was really special to me.  
8 I can't tell you how many people we met and what I learned about the community. I helped  
9 produce public service announcements for Maui Police Department, the Maui Visitor's Bureau  
10 and worked to support the industry through the mid-1990's. We lived in Kihei, Paia, Lahaina,  
11 Kahana and we know the Halelo Street pretty well since some of our friends lived there  
12 previously. We also know as Mikal mentioned that there was a previous owner and he did  
13 cause some trouble to the neighborhood and we are very respectful of that and knowing that  
14 that is not going to happen again at my house or in my community or in my neighborhood ever  
15 again. So I take that very seriously. I think it's an important aspect to supporting the  
16 community. We are applying for this permit just essentially 'cause we would like to spend two to  
17 three months a year with the kids at summer time and so forth and then those other months we  
18 would like to you know short-term rental to friends and family and guests and anyone that  
19 comes to my house I will personally speak to and vet myself. We'd like to do that over the next  
20 four years and then return to Maui full-time once our children have completed the education.

21  
22 My immediate neighbor as mentioned Amy Sharp is here today in support. We've really  
23 become friends and family with Mike Lyon and his family and some others in the community.  
24 They know we're here and not just as California interlopers or people to make a buck. We have  
25 a plan and I hope that you guys help us support that. I would say in closing I respect the  
26 neighbors who are here to oppose me. I think I have empathy for them. I understand some of  
27 the challenges they've had. I think Mikal mentioned that I think their challenges are specific to a  
28 specific rental permit and those are the issues that are bothering them at times and I have  
29 compassion for that and understand it. I'm not going to allow that to happen with my house and  
30 our community. So I plan on being here for a long time and I request that you give me  
31 permission to make our dreams come true, move from California back to Maui reunite with my  
32 uncle, family and friends and go from there. Thank you very much. Appreciate your time.

33  
34 Chair Duvauchelle: Thank you.

35  
36 **a) Public Hearing**

37  
38 Chair Duvauchelle: At this time, we'll open the floor back up for public testimony. We have  
39 listed Cherry Harrison.

40  
41 Ms. Cherry Harrison: Hello, I'm Cherry Harrison. I live in 87 Halelo Street and I have lived there  
42 since 1973. My husband was a physician at Maui Medical Group in Lahaina and my four  
43 daughters moved with us there and we lived there as a family and we consider it a family  
44 atmosphere on our street. We're concerned when the traffic gets heavy and when there are  
45 more cars than we can associate and knowing who our neighbors are. Thank you.

46

1 Chair Duvauchelle: Thank you. Excuse me, one moment. Questions from the Commissioners?  
2 Commissioner Canto?

3  
4 Ms. Canto: Ms. Harrison, so I'm to assume then that you're in opposition of the short-term  
5 rental?

6  
7 Ms. Harrison: Yes.

8  
9 Ms. Canto: Okay, thank you.

10  
11 Chair Duvauchelle: Any other questions? Thank you Mrs. Harrison. Next testifier Darcel  
12 Gilbert.

13  
14 Ms. Darcel Gilbert: Aloha, thank you for being willing to listen to me. I am here to testify—

15  
16 Chair Duvauchelle: Please identify yourself.

17  
18 Ms. Darcel Gilbert: My name is Darcel Gilbert. I have been a physician and lived and worked  
19 on Maui since 1980. I am here to testify against further short-term rental approvals on Halelo  
20 and Holomakani Street in Lahaina. I have lived on Halelo Street subdivision for about 17 years  
21 now. There are presently four TVRs in the subdivision which only consists of two streets and 35  
22 homes. So one TVR is next door to me, another is two door further, there's another at the north  
23 end of the street, and another around the corner. So you currently have two applications, one  
24 on Halelo and the next one will be on Holomakani and this would bring a total of six TVRs in a  
25 subdivision of 35 homes or 17 percent. And I wanted to thank you for that work you did, I was  
26 wondering about what numbers were like and exactly what they were. And when I called to ask  
27 what criteria were used for approval I was told that changing the nature of the neighborhood  
28 would be a critical issue and I do feel that the proliferation of TVRs does harm the nature of our  
29 neighborhood. There are increased number of strangers walking frequently up and down the  
30 street. I usually know the names of my neighbors, I know the cars they drive. Last year we had  
31 a horrific assault. I don't think it was related with the TVRs but just the increase in the number  
32 of strangers on your street is worrisome and bothersome. The tourists are on vacation. They  
33 want to have a good time. I do. So yeah, they party late at night by the pools I can't blame  
34 them for that. And although everyone has rules and restrictions, you know, they're there for a  
35 day or two, they party. I call the next day if there's a complaint and they take the note and that's  
36 it. My yard is the one where I looked out the window one day and a woman was in my backyard  
37 picking flowers, nice but you know it's not exactly what I normally have had in the past.

38  
39 You've seen the map of the neighborhood. You've seen that where these homes are and as I  
40 said, this is a small neighborhood of only 35 homes. Now you're allowing 80 TVRs I believe in  
41 all of West Maui. So I'm not sure why six should be on our block. So I hope you will consider  
42 denying these applications and consider some type of cap in the area.

43  
44 You know these owners that apply have an advantage. They have planners, they have  
45 agencies they can send to make the applications. They get the application. They hand the key  
46 over and then it's the management's and that's it. They can then go to Kaanapali Vista...excuse  
47 me, Kaanapali Hillside or Launiupoko and you know—



1  
2 Ms. Takayama-Corden: Three minutes.

3  
4 Ms. Gilbert: --I and my other neighbors are living there 12 months a year.

5  
6 Chair Duvauchelle: Please conclude.

7  
8 Ms. Gilbert: I'm sorry?

9  
10 Chair Duvauchelle: Your three minutes is up, please conclude.

11  
12 Ms. Gilbert: Okay, I'd like to say that as a physician one of the things at the start of my career is  
13 that I should treat and care for my patients like I my own family and I hope you care for our  
14 neighborhoods like family. Okay, what would you think if your neighbor was...well, not really a  
15 neighbor but a transient vacation rental on one side, another two doors behind, another at the  
16 other end of the street, another on the corner and now one's applying on the other side of the  
17 street.

18  
19 Chair Duvauchelle: Excuse me, thank you. Please conclude.

20  
21 Ms. Gilbert: So thank you. I want to live in a neighborhood not a business district.

22  
23 Chair Duvauchelle: Any questions for Ms. Gilbert? Seeing none, thank you very much.

24  
25 Ms. Gilbert: Okay, thanks.

26  
27 Chair Duvauchelle: Next testifier Michael Lyon. Please state your name, you'll have three  
28 minutes.

29  
30 Mr. Michael Lyon: Aloha and good morning. My name is Michael Lyon and I live at 144 Halelo  
31 Street. It's about four houses down from the Smith residence. My wife and I and my two boys  
32 we live like I said four houses down. We've lived at our house since 2011. The past two years  
33 we've gotten a chance to know Chris and his wife Kerry and their two beautiful daughters. They  
34 are welcome addition to our neighborhood and have already invested so much to renovate a  
35 very neglected home. One that was once as a you saw an eyesore on the street and now very  
36 well maintained. You can see the pride of ownership just by driving by. I believe the Smiths will  
37 be respectful and responsible in renting their house. They have a plan that Chris shared to  
38 move back to Maui and we support that plan and this wonderful family. I support their approval  
39 for a short-term rental permit and I did support sending the support letter, I guess it didn't get  
40 there in time, but I believe that would be number eight in terms of supports. That's my  
41 testimony. Any questions for me?

42  
43 Chair Duvauchelle: Any questions? Thank you very much. Gerry, I'm sorry I can't catch the  
44 last name. Would you wish to testify now or wait? Okay, would anybody else like to testify at  
45 this time, please come forward, state your name, you'll have three minutes.

46  
47 Mr. Tom Croly: Hi, I'm Tom Croly and I don't have anything to do with either of these

1 applications, but I did have input when the short-term rental ordinance was promulgated by the  
2 County Council and I just wanted to give you some of the benefit of that—

3  
4 Mr. Robinson: ...(Inaudible)...

5  
6 Vice-Chair Higashi: He's testifying—

7  
8 Mr. Robinson: No he's not. He's testifying what he testified when he did the permit. He just  
9 said that. It has nothing to do with this. He wants to testify about trying to give us knowledge  
10 about when the permit happened.

11  
12 Mr. Croly: It's the Chair's decision. I want to talk about the reason why these applications are  
13 before you today.

14  
15 Chair Duvauchelle: I'll allow, but yeah...

16  
17 Mr. Croly: These applications are before you today because there's more than a certain number  
18 within 500 feet and I wanted to just give you some feeling for why did the Council do that? Why  
19 did they put this in your lap? And it's because there's going to be places where it's appropriate  
20 to have more than in 500 feet and there's going to be places where it might be inappropriate to  
21 have more than one in 500 feet. I believe you have a tough task today to determine where that  
22 balance is. But what the Council did when they created the ordinance was they considered a  
23 cap for the overall area so that we wouldn't have too much housing being put into this use and  
24 for West Maui it was 88. And then they said, if there's going to be more than two in...after they  
25 made the change, within 500 feet then we really want to pause and take a look at should we  
26 have more than that in a particular area. Now at your last meeting I was the applicant's  
27 representative for one on Halama Street where you did approve it and I appreciate your  
28 approving it because it was an area that just seemed appropriate. It was surrounded by homes  
29 that were all owned by off-island owners and there you go. In this one, you have a much more,  
30 you know, split between people that are living there and some off-island owners so you've got a  
31 difficult task there. But I just wanted to make clear to everyone who may not have been there  
32 when the law was promulgated that the Council never said, no there shouldn't be more than two  
33 in a particular area. They were given that, they discussed it, and they said, we think that each  
34 one should be considered on merit and that's why it's before you today. So thank you.

35  
36 Chair Duvauchelle: Thank you. Any questions for Mr. Croly? Commissioner Robinson?

37  
38 Mr. Robinson: Mr. Croly what is your profession?

39  
40 Mr. Croly: I'm a bed and breakfast operator. I run my own bed and breakfast.

41  
42 Mr. Robinson: Do you also consult for other people to get these permit?

43  
44 Mr. Croly: I do consult with people for a fee to get permits. I also correspond with a lot of  
45 people on a voluntary basis just to kinda let them know these rules. I act as a volunteer on  
46 behalf of the Maui Vacation Rental Association when we created the laws and I became kind of  
47 an expert in the laws.

1  
2 Mr. Robinson: Are you also a registered lobbyist for this?

3  
4 Mr. Croly: I am a lobbyist for the Maui...as a volunteer for the Maui Vacation Rental Association  
5 which is a non-profit organization that nobody gets paid for.

6  
7 Mr. Robinson: So were you on a volunteer basis two weeks ago when you were in front of us?

8  
9 Mr. Croly: No, I was saying there are people who will employ me to help them put together an  
10 application and that's why I wanted to make clear in my testimony here I have nothing to do with  
11 these applicants whatsoever.

12  
13 Mr. Robinson: That's all. I just have a concern when somebody comes, they're not on the staff,  
14 they're not from the Council and they're trying to tell us what Council's ideas and what their  
15 reasons were for voting. I think if you want to give testimony about doing it maybe give us the  
16 actual paperwork instead of giving us your opinion. I think it's very dangerous when people  
17 show up and they speak for other people especially our council members when it goes to  
18 something like this when we have something to vote on. Thank you very much.

19  
20 Mr. Croly: I appreciate that and again I don't want to misrepresent myself in any way. I'm a  
21 citizen that's all.

22  
23 Chair Duvauchelle: Thank you. Thank you. Anybody else wishing to testify at this time please  
24 come forward.

25  
26 Ms. Amy Sharp: Aloha and good morning. My name is Amy Sharp and I am here in support of  
27 Chris and Kerry Smith. I have been a resident here on Maui for 18 years and I have owned my  
28 home at 116 Halelo Street, that's number four since 2011 so nearly six years.

29  
30 When we first purchased our home in 2011 our children were one and two years old and soon  
31 after we moved in we recognized we had a serious problem with our neighbor at 106. You saw  
32 the photos. This young man who owned the home liked to throw a lot of parties that would last  
33 long into the morning hours. We had to call the police several times for disturbances. And the  
34 biggest problem with this particular neighbor with the pool and the parties that would go on and  
35 on is that our bedroom windows for all of our bedrooms are about 30 feet from the pool and the  
36 deck area. So this went on for several years until Chris and Kerry bought the home.

37  
38 We were ecstatic to hear the news of Chris and Kerry purchasing the home. We did not know  
39 them personally. However, we do have several mutual friends and to learn that we had a young  
40 family, a young family who previously lived on Maui that were going to be our neighbors was a  
41 big relief to us. We have had the wonderful opportunity to get to know Chris and Kerry and their  
42 two beautiful daughters, Scout and Sailor who are very close to the same ages our two boys.  
43 We love when they come and visit and that we have a good friends as our neighbors and we  
44 look forward to our children growing up together here on Maui.

45  
46 Chris and Kerry are the most respectful people. They love this island, they love their home and  
47 they love our street. They shared with us how they had a dream of owning a home on Halelo

1 Street for many years and we look forward to the day that they come and become permanent  
2 residents here and we can raise our families together on Halelo Street. And until then we  
3 support the request for them to obtain their short-term rental and I want to say we do so knowing  
4 that we are the most effected neighbor by you approving their short-term rental application and  
5 the reason that we are in support of this is that we know if there are any difficulties,  
6 disturbances, noise issues, I can contact Chris personally as well as the management but I don't  
7 believe that we will have any of these issues so I respectfully ask you to grant their permit.  
8 Thank you.

9  
10 Chair Duvauchelle: Any questions for Ms. Sharp? Seeing none, thank you very much.  
11 Anybody else wishing to testify at this time? Please come forward.

12  
13 Mr. Patrick Skillings: My name is Patrick Skillings. I live in Victoria, British Columbia, I'm a real  
14 estate agent. And we have a system in Victoria that is quite simple. If you cannot get 75  
15 percent approval of the direct neighbors it's refused. Thank you.

16  
17 Chair Duvauchelle: Thank you. Any questions? Thank you very much. Please state your  
18 name.

19  
20 Mr. Alan Williams: My name is Alan Williams. I am related to Chris through his marriage to my  
21 niece Kerry. Kerry came originally to Maui because of me. I'm a 38-year resident here. They  
22 lived here for a number of years. It was great having them around and I look forward to them  
23 coming back. You've heard a lot of testimony about positives and negatives and about how the  
24 vacation rental situation and you obviously know a lot about that, can be negative at times and  
25 so also can be boarding houses, long-term rentals. I know Chris and Kerry will take very good  
26 care of the situation here. I hope you'll approve this. I'm looking forward to them coming back  
27 as well and I know that this is a vehicle in which it's gonna be able to happen sooner rather than  
28 later. Thanks for your time. Appreciate it and I hope you weigh this out and see that they're  
29 gonna be really good for that community. They always have been in the past when they lived  
30 here. Thank you.

31  
32 Chair Duvauchelle: Thank you. Any questions for Mr. Williams? Thank you very much.  
33 Anybody else wishing to testify at this time? Okay, seeing none, public testimony is closed.  
34 Commissioners, questions? Commissioner Higashi?

35  
36 Vice-Chair Higashi: This is for Chris.

37  
38 Mr. Smith: Chris Smith, 106 Halelo.

39  
40 Vice-Chair Higashi: Yes Chris I notice that in one of the slides there were a bus and couple  
41 vehicles parked in front of the residence. Now is that blocking...is that a sidewalk that goes  
42 along the way in front of your property?

43  
44 Mr. Smith: No there is no sidewalk and sorry for the confusion, but that photo was taken of the  
45 previous owners who had a party bus and lots of cars there and since then that bus has been  
46 removed when I purchased the home.

47

1 Vice-Chair Higashi: So when you have residents there, rental do they park inside of that area  
2 rather than them sticking out?

3

4 Mr. Smith: Correct. We have ample parking and they would be well off the street and that's a  
5 house rule.

6

7 Vice-Chair Higashi: Okay, thank you.

8

9 Chair Duvauchelle: Any other questions? Commissioner Robinson?

10

11 Mr. Robinson: Aloha Chris.

12

13 Mr. Smith: Aloha.

14

15 Mr. Robinson: Can you explain to me more of how this....(inaudible-sound system  
16 feedback)...work?

17

18 Mr. Smith: Say it again.

19

20 Mr. Robinson: I've heard it from a couple of people that your dream, we're trying to accomplish  
21 your dream. Can you explain what needs to be accomplished so you can have this dream?

22

23 Mr. Smith: Yeah absolutely. So we've been planning this for quite some time. My wife and I  
24 we've wanted to return to Maui for a while. The opportunity came up to purchase this home.  
25 We knew the neighborhood well. We purchased it. We left Maui not necessarily 'cause we  
26 wanted to, but we wanted to pursue some education goals for my wife and career goals for me.  
27 We've had our children and born 2009 and 2011. They're six and eight. They got into a dual  
28 immersion program so they have to complete it. It's important for them to complete it otherwise  
29 their education could be altered cause they learned Spanish first then English and writing. So  
30 our goal and our dream is simply to get them through that period of time which is about another  
31 four and a half years and then move back to Maui, you know, if not sooner. This is a bridge plan  
32 for us. We love our home. We plan on living there. So that's our dream and that's what we're  
33 gonna do.

34

35 Chair Duvauchelle: Commissioner Robinson?

36

37 Mr. Robinson: I apologize but why do you need this to become a short-term vacation rental for  
38 you to accomplish your dream?

39

40 Mr. Smith: Because we would like to...we spend the summer, I'm going to spend the whole  
41 month of July here, this July and probably parts of August, then we come in November and  
42 sometimes in the spring. So a short-term rental allows us to still enjoy the home throughout the  
43 year but not have a long-term rental in there so we can never come back to Maui and stay there  
44 over the next four years. So that's...the bridge plan is that we would stay on Maui for a  
45 significant amount of time. The other time that we're not we would short-term rental and then  
46 eventually move back once the girls complete their education.

47

1 Mr. Robinson: You could do that without having it being a short-term rental couldn't you?  
2

3 Mr. Smith: Well, I can't stay in the house.  
4

5 Mr. Robinson: Why not? You own the house don't you?  
6

7 Mr. Smith: Yeah I know. I can't stay in the house if someone's renting it.  
8

9 Mr. Robinson: Well, you don't have to rent it that is what I'm saying.  
10

11 Mr. Smith: Yeah well—  
12

13 Mr. Robinson: Why I'm saying that is you have two neighbors that came and said there's a lot  
14 short-term rentals and I understand you're going to be a resident of that area. You know, you  
15 are a homeowner. And so the question is it doesn't have to be rented out.  
16

17 Mr. Smith: For us, it pretty much does, yes over the next four years. At one point, not very  
18 often but enough to make things work for us as a family.  
19

20 Mr. Robinson: To work financially is what you're saying?  
21

22 Mr. Smith: Well, financially yeah. And I'm not using that as an excuse, but I'm just saying that's  
23 a part of our overall plan and I'm very empathetic of my neighbors. I've spoken to them  
24 personally not all three but one of them. Attempted to speak to all of them. I just get it, I  
25 understand. I think that their concerns were more specific to a bad...other houses and how  
26 they're operated in the proximity to their home. And I know that that's frustrating to them so I'm  
27 compassionate to that, but in my situation the way my home faces towards the golf course and  
28 the way that we're gonna run it and operate it I believe it will not be an issue that they brought  
29 up. All the cars will be parked in the driveway, everything we've thought it through and just want  
30 to kind of make it work for about four years.  
31

32 Mr. Robinson: Thank you.  
33

34 Chair Duvauchelle: Any other questions Commissioners? Commissioner Carnicelli?  
35

36 Mr. Carnicelli: So I guess this question is for either the Director or Staff. I'm trying to recall that  
37 Kaanapali Vista is in the resort district area or there's something to do with land use or  
38 something that's like the boundaries of the resort actually include this particular street I do  
39 believe. I can't remember exactly how, but I'm recalling from a former life when I was a realtor  
40 that that boundary was drawn around this particular area for a reason and I'm just trying to see if  
41 my recollection is correct or not. I see somebody in the audience, but I don't know if Staff has  
42 that.  
43

44 Chair Duvauchelle: Director?  
45

46 Mr. Spence: Thank you Commissioner Carnicelli. I've seen a map every now and then but I  
47 don't think there's no regulatory significance to it. It's...yeah, it's like okay this is Kaanapali

1 we're gonna have homes here, we're gonna have hotels, you know, high rise condos, those  
2 kinds of things but you know, as you've heard today you have long-term tenants, you have  
3 shorter term tenants, I'm not aware of any significance of that. It may even stretch back when  
4 Amfac JMB that could have been just the original boundaries of this area that they set up. I'm  
5 not entirely sure.

6  
7 Ms. Callentine: I can speak...I can't speak to the actual boundaries of the resort area because  
8 I've never actually seen a map that...I'm not sure you know because we deal with zoning I am  
9 not exactly sure were a resort area map would be located but I have researched the community  
10 plan of 1996. Okay, so that's an old plan yes, but it is still in effect until it's replaced with a new  
11 version. And just by the community plan all the hotel designated properties and remember this  
12 is just one layer of all the different land use overlays. All of the hotel properties are all along the  
13 shoreline. Mauka of the highway you find this neighborhood which is designated in the  
14 community as Single-Family. You find Park, you have golf courses, you have Multi-Family and  
15 Open Space roughly kind of in the area above the Kaanapali Resort area.

16  
17 Now the fact that in the community plan this neighborhood was designated as Single-Family  
18 doesn't preclude it from...people from applying for and getting short-term rental permits because  
19 of the zoning Chapter 19.65 which authorizes short-term rentals in single-family neighborhoods.  
20 So just keep that in mind.

21  
22 Mr. Spence: And I would just add that you know, the golf course is associated with the resort.  
23 So that goes around this subdivision.

24  
25 Chair Duvauchelle: Commissioner Carnicelli?

26  
27 Mr. Carnicelli: Yeah, and I do recall that. This is something that predates you know the SRTH  
28 Bill, you know and the B&B Bill. It's something that I just remember even though this was single  
29 family that it might even be in their deeds that says that they are you know, again pre this  
30 particular ordinance they were allowed to do short-term rental like it was some...anyways if we  
31 don't have it then it's nothing more than conjecture on my part. So I just wanted to see if maybe  
32 there was something else there.

33  
34 Mr. Spence: I do know that...there have been...we've come across some subdivisions where  
35 that is allowed by their CC&Rs. I'm not familiar with it.

36  
37 Ms. Callentine: And I do have...excuse me, I do have a copy of the covenants for the  
38 subdivision and these covenants were written primarily as architectural guidelines. There's a lot  
39 of language about what you can build, what you can't build, the kind of materials you can use,  
40 the cost of the home, the minimum cost of a home such as that. And there's only one particular  
41 clause in the entire document that I could find which addresses uses and it says nuisances, no  
42 noxious or offensive activities shall be carried on upon any lot nor shall anything be done there  
43 on which may be or may become an annoyance or a nuisance to the neighborhood. No  
44 commercial activity shall be carried on upon any lot nor shall anything be done thereon which  
45 may be or may become an annoyance or a nuisance to the neighborhood. No commercial  
46 activity shall be carried on or conducted on any lot. Now, from the Planning Department's  
47 perspective a short-term rental is not a commercial use. From the taxation perspective is

1 considered a commercial use. So you've kind of got that difference in viewpoint as to whether  
2 this is commercial or not but we do not consider it to be commercial. So that's...and this  
3 document is in effect until I think 2021, but there is no homeowner's association. There is no  
4 governing body that would enforce these rules so...

5  
6 Chair Duvauchelle: Thank you. Commissioner Canto?

7  
8 Ms. Canto: So when complaints are made who are they made to?

9  
10 Ms. Callentine: Well, if you're meaning specifically short-term rental homes?

11  
12 Ms. Canto: Yes.

13  
14 Ms. Callentine: There would be two possibilities. One is each short-term rental home that's  
15 permitted has to put a sign up that provides the manager's name and phone number 24-hour  
16 phone number. So that would one way to make a complaint if you didn't know the owner, if you  
17 didn't know how to reach someone, if you didn't know if you should call the police or if there was  
18 a managing agent somewhere. So if you're looking at the property you would just see the sign.  
19 That's a requirement that a project sign be posted on approved properties.

20  
21 The second thing is after an approval the permit holder is required to mail out a copy of the  
22 approval and in that most people generally provide their own phone number for neighbors to call  
23 in case they encounter any problems and that would probably be the most immediate solution. I  
24 don't know, the managers are required to be available 24-hours a day. I've never called one to  
25 see in the middle of the night if they answer the phone or not, but...and then of course the other  
26 thing would be they could call the police if there's a disturbance of some kind they can call the  
27 police if they can't get through to a manager.

28  
29 Chair Duvauchelle: Commissioner Canto?

30  
31 Ms. Canto: So I have another question and it's for one of the testifiers, is it possible to call one  
32 of the testifiers back up?

33  
34 Ms. Callentine: Sorry, I didn't catch your question.

35  
36 Chair Duvauchelle: ...(Inaudible)...

37  
38 Ms. Canto: No. Okay, okay.

39  
40 Chair Duvauchelle: Sorry.

41  
42 Ms. Canto: Then I'm just going to comment then. So one of the testifiers I believe mentioned  
43 that an attempt to be made to report something or other...anyway and nothing was done. So  
44 I'm a little concerned about, you know, who to report and how it's handled.

45  
46 Ms. Callentine: I'm sorry I didn't pick up that commentary and so we could, if you want to ask  
47 the applicant or his representative you could or ask anyone else about that.



1  
2 Chair Duvauchelle: Excuse me, Mikal would you like to answer that question from  
3 Commissioner Canto?  
4

5 Mr. Torgerson: I just like to offer a little bit of insight and maybe some help going forward as  
6 well. I was...I agree with some of the neighbor's concerns those are legitimate concerns.  
7 Nobody should have somebody picking flowers in their backyard and some of those things.  
8 When I got their letter of concern I called the management company of the home adjacent to  
9 them and spoke to them about what was going on there. What they told me was that they, and  
10 again, this is just secondhand ...(inaudible)...I'm getting it from him, but that they had gotten  
11 one call about pool noise and he looked into it and it was the owner's children having a little  
12 party. But I'm gonna talk to both Darcel and Cherry following this meeting and make sure they  
13 follow up with him because he wasn't aware of a lot of these concerns or at least that's what he  
14 told me. And I would absolutely encourage them to remain involved in talking to him because  
15 he expressed a willingness to clean that up because it does put their permit in jeopardy. They  
16 have to renew every year or two and they selfishly want to make sure that things are run well,  
17 but I also know that the manager just wasn't aware of some of those issues so for what it's  
18 worth. In this case, I know the owner is dedicated to making sure it's run well.  
19

20 Chair Duvauchelle: Thank you. Any other questions? Commissioner Higashi?  
21

22 Vice-Chair Higashi: This for Chris again.  
23

24 Mr. Smith: Chris Smith.  
25

26 Vice-Chair Higashi: You know more and more we're getting requests for short-term rental  
27 permits for homeowners. I understand your position that financially it might also be a problem  
28 where you're paying a mortgage and you're gone three-fourths of the time and so the house is  
29 unoccupied. However, there's a regulation about if there's more than two residents that are  
30 short-term rental within a 500 feet area that we have to address the issue of whether we should  
31 provide a permit or not. You fall under that category. Now your previous owner did not...I don't  
32 know whether they rented the place or not but apparently from the other testifier said that they  
33 filed a complaint with the Police Department and apparently nothing was done which is a  
34 concern from our standpoint that you as a homeowner who's going to be in California or  
35 wherever, the homeowner is placing a complaint because of a violation of the house rules. My  
36 question to you is what is your projection of how you're gonna rent this home of yours? Is it  
37 going to be like three times a month, five times, ten times, 'cause that makes a major difference  
38 in the amount of traffic that's gonna be going up and down your neighborhood especially with  
39 the amount of short-term rentals you have in that 35 residential area? Can you kind of give us  
40 an explanation as to what is your projection of how you're gonna rent your home?  
41

42 Mr. Smith: Sure. I think I'm gonna spend a...Chris Smith, 106 Halelo Street...Thank you for the  
43 question. We plan on spending a significant amount of time in the home ourselves, between  
44 two and three months a year. So the other months of the year we're looking to do two maybe  
45 three max per month, something like that just to make ends meet. But again, our goal is not to  
46 run it like a high functioning business or anything like that. We have a plan that we're gonna be  
47 in place and we're gonna go through with that plan you know in way or another and just want to

1 kind of make it work in this manner. And to your question about where I'm gonna be located, I  
2 have a cell phone on me, my kids joke that it's attached to my head. So I will be accessible to  
3 all the neighbors at all times. Professional management company for sure, but also I think  
4 having giving them my number and they can call me at any time.

5  
6 Vice-Chair Higashi: Thank you.

7  
8 Chair Duvauchelle: Any other questions Commissioners? Commissioner Gomes?

9  
10 Ms. Gomes: I'm sorry Chris, I'm sorry. Good morning. I just have a question. You hired a  
11 consultant. The reason for the consultant, not all applicants have a consultant so I'm just  
12 curious as to...

13  
14 Mr. Smith: It was a recommendation of a friend. So I just didn't know anything about the  
15 process and I figured I could learn a little bit more about it. Since then I've pretty much learned,  
16 I've been a part of the process the whole way. I have not...I've written all the response letters  
17 myself. I wrote every single person in my neighborhood outside of the official notices. I sent  
18 them my own letters, I dropped off letters at their homes and notes. So I've been actively  
19 involved in the whole process. That's just the way I started it 'cause I didn't know anything  
20 about it at the time.

21  
22 Ms. Gomes: Thank you.

23  
24 Chair Duvauchelle: Any other questions Commissioners? Seeing none, do you want to read  
25 the Department's recommendation please?

26  
27 Ms. Callentine: As previously mentioned the item before you today is here because there are  
28 two or more...there are more than two permitted short-term rentals within 500 feet. There are  
29 63 short-term rentals permitted within the West Maui Community Plan area with a cap of 88.  
30 That means there is still 25 permits left and once we reach that cap, well we'll see what happens  
31 then. There are nine permitted bed and breakfasts permitted in the West Maui Community Plan  
32 area, the cap is also 88 for the B&Bs.

33  
34 The applicant has not operated as a short-term rental and there have been no RFSs filed on the  
35 property ever even with the previous owner. There have been no existing...there are no  
36 existing or past complaints about rental operation. This applicant has been fully compliant and  
37 very cooperative in providing us with access and information and is in full compliance with  
38 government regulations.

39  
40 The application complies with the applicable standards for a short-term rental home permit and  
41 the Department is recommending approval of the permit. The short-term rental permit has 22  
42 standard conditions. The Department is recommending that the Maui Planning Commission  
43 adopt the Planning Department's report and recommendation prepared for the May 9, 2017  
44 meeting as its findings of fact, conclusion of law, and decision and order and to authorize the  
45 Director of Planning to transmit said written decision and order on behalf of the Planning  
46 Commission. Thank you.

1  
2 Chair Duvauchelle: Thank you. Commissioners, discussion, motion?

3  
4 Ms. Canto: I move. Move to approve and I'll speak to the motion.

5  
6 Chair Duvauchelle: Moved by Commissioner Canto to approve.

7  
8 Ms. Gomes: Second.

9  
10 Chair Duvauchelle: Seconded by Commissioner Gomes. Discussion?

11  
12 Ms. Canto: Chair, you know, based on the merit of the application and just hearing of his, of  
13 Mr. Smith's business plan to Commissioner Higashi I will support my motion. And I'd like for  
14 those that are in opposition if Mr. Smith...if the motion passes that they work with those three  
15 women that or two women offered testimony in opposition. I think that the applicant will be good  
16 for the community. I see goodness in their heart to make it work and therefore, that's my reason  
17 for supporting it.

18  
19 Chair Duvauchelle: Thank you. Commissioner Carnicelli?

20  
21 Mr. Carnicelli: Thank you Chair. I find these to be interesting just because you know we have  
22 nine commissioners and we have nine different ways of looking at this in orientations towards it  
23 and you know, we all have our sort of thing. I don't remember who it was that said that we have  
24 a tough decision. You know I mean the law says that it bounces to us when it comes with  
25 certain things and we have to make a decision. So I'm sitting here looking at that map going  
26 okay, we got red dots and we got green dots and we got purple squares and we're going okay,  
27 is this something that we want to do or not. And also, I'm considering this application knowing  
28 that we've got you know, C.2 coming. Not that I can make my decision on this based on that  
29 because we haven't even heard it yet, but knowing that we're gonna do this all over again, you  
30 know, as soon as we make this decision. And I know that certain commissioners differ for me in  
31 this but I feel as though, I think that this particular area lends itself to that. I think that this is...it's  
32 kinda like you know we had the International Colony Club before us a few weeks ago and I  
33 spoke to it at that point in time is I just think that I remember this neighborhood 25 years ago  
34 and what it was then and you think the STRHs are bad now, you know, it was crazy back then. I  
35 just think this particular neighborhood lends itself to this type of a situation. I appreciate the  
36 applicant's sincerity and I'll be supporting the motion.

37  
38 Chair Duvauchelle: Thank you. Any other discussion? Commissioner Robinson?

39  
40 Mr. Robinson: We have...we're gonna have two applicants today and I don't, you know, the  
41 way I look at it, I ...(inaudible)...choose one application from the other as it looks as towards of  
42 space, towards of area, towards of law I haven't had a applicant expect maybe one that I  
43 thought wasn't a good person. I mean, I think everybody's good people. I think everybody has  
44 a different reason for renting, 99 percent it's economics. It has nothing to do with dreams or  
45 what I want to do because I have 2,000 family members that dream about owning a house in  
46 Maui and in Kaanapali so I think that's everybody's dream. I think when I look at this and I may  
47 be jaded but we had misinformation from the County planner making innuendos about what a

1 third person said that a council member said. We have a tax on a commercial property which  
2 means it's a commercial property otherwise it wouldn't be taxed a commercial property saying  
3 that we don't look at it as a commercial property. It's taxed as commercial, it's commercial. I  
4 think this misinformation, this innuendo is a disservice to the commission and to people  
5 listening. We had a lobbyist come up here and throw some more innuendos. There was one  
6 person that was opposed. You everybody for and there were two people opposed and that one  
7 person had barely three minutes to share her pilikia with us and her mana`o and try to tell about  
8 what's happened with her and she's a doctor that we want coming to our islands that we're short  
9 on. And people say well this area really isn't considered a residential area. Of course, it's a  
10 residential area we have residents living there. There's a project just down the road that was  
11 just blessed last month that was sold out in I believe one day of local people. Local people that  
12 went to this and were so fortunate enough to find a home in their area where they work and  
13 families that just broke down crying that people don't see 'cause it's not a commission meeting.  
14 People don't understand the...they don't understand the hardships that people on the west side  
15 have. They don't understand the hardships, you know, and we're trying to balance these people  
16 from the mainland of them being a good people or not. Everybody's good people, but the  
17 homes were made residential for people to live in not for people to buy now because they have  
18 enough money, they're gonna rent out and then in five years they're gonna become residents.  
19 You cannot ever say that every single person I'm gonna have live in a home on a residential  
20 area is gonna be a good person that's a visitor. You don't know. You hope that you're gonna  
21 try to rent out to good people. You hope that your neighbor that calls you up on your cell phone  
22 while you're busy with your own things saying that there's a complaint that after the second,  
23 third time that they're still gonna be friends. You don't know because it's a financial situation.  
24 This is what it is. It's a short-term rental, it's a financial situation. And the Council in all their  
25 wisdom said when here's over a certain amount of homes in a certain amount of area we need  
26 to look at it and to see if there's congestion. There's congestion. There's more applicants  
27 coming about. There's opposition to this for people's neighborhoods changing, good working  
28 long living Maui residents that our families need to help take care of our keiki, doctors, and  
29 they're against this. They're not against the people living there and that's what people mix up.  
30 Oh, well I'm not against the guy living there and him coming to pick flowers out of my yard, I'm  
31 against people that aren't living here that aren't my neighbors. My neighbors pick flowers at my  
32 house all the time because I know them. That's what a residential, that's what a neighborhood  
33 is and that's what's happening here, that's what we're losing and all of this area is residential,  
34 none of this is resort. We have short-term...we have TVRs already zoned in the area. We have  
35 hotels zoned in the area. There's condos, there's a lot of areas where people who want to buy a  
36 place in Maui and rent it out part-time they have that available to them but they're choosing to  
37 take the resident's homes from the local people that live here and want to raise our kids here  
38 and that's in essence what's happening and I will not support this short-term rental because  
39 these people can have another place to choose to live. They don't have to live on this street.  
40 Thank you.

41  
42 Chair Duvauchelle: Commissioner Hudson?  
43

44 Mr. Hudson: Promise not to take as much time as Keaka. I have no doubt that the applicant  
45 is...high integrity and the statements of the neighbors are genuine. My only concern is will it  
46 change the neighborhood? And I think there's too much of a cluster so I will not be supporting  
47 it. Thank you.

1  
2 Chair Duvauchelle: Thank you. Any further discussion? Commissioner Higashi?

3  
4 Vice-Chair Higashi: I think we're at a point where we're running into a lot of requests for  
5 vacation rentals in residential area and apparently the County Council is now giving the  
6 Commission the authority to make the determination of whether we're gonna allow a short-term  
7 rental to be in a certain area in the residence. I kinda agree with Commissioner Hudson and  
8 also, I totally agree with Commissioner Robinson about this idea about where are we gonna set  
9 the limit as to the amount of rental homes we're gonna have in a residential area. And more so  
10 with the...if I was living in that area and I had six more vacation rentals and it's gonna now affect  
11 the traffic in that particular area no matter how wide the road might be. I think we are at a point  
12 where I think we...I have to recognize Chris to say that he's financially burdened with being  
13 away and paying a mortgage that's a family problem. However, we are not doing that with every  
14 vacation rental request that comes across our table. There might be another person that might  
15 not be like Chris where they're going to rent it like a hotel. Now if you have six of those vacation  
16 rentals that's gonna just be open to rent every day that place is gonna be a havoc with traffic.  
17 That's my major concern about the amount of vacation rentals you have in the area. I hope  
18 most of them would be like Chris where they're accommodating for traffic and the amount that  
19 they're allowing to be rented in their home. So I'm in support of Chris's request because he's  
20 reasonable enough to look at what's there for the community. Thank you.

21  
22 Chair Duvauchelle: Thank you. Any further discussion? Commissioner Gomes?

23  
24 Ms. Gomes: I just wanted to add that you know I had seconded Commissioner Canto's motion  
25 in support in regards to this short-term rental for Mr. Smith. I do find that he's sincere in his  
26 efforts in regards to returning back to Maui. I can understand that his children is in a program  
27 not on the island and it's the very same if my children in a Hawaii emersion program you know  
28 on the mainland so to say and I was tied here with a mortgage and you know, if it was flipped  
29 around that way I can completely understand that he wants to return back here. He has  
30 contributed to Maui in ways as he explained his history here back in the '90s and appreciated  
31 you know past tense of watching the landscape of Maui change. I think that he is devoted to  
32 returning. I can understand Commissioner Robinson's concerns. I honestly feel that when  
33 we're talking about housing, you know specifically pertaining to local individuals even for myself  
34 being a local girl, we're talking about affordable housing that's a whole other issue. That's a  
35 whole other County Council issue. That's in a whole other place. And I can understand you  
36 know when someone is talking about complaints I think something was brought up in regards to  
37 that and I apologize Commissioner Vice-Chair Higashi had stated I believe that there was a  
38 complaint regarding the police and nothing was done. I think that was a police issue not a  
39 management issue. But...and I'm gonna state that on that. But you know, I am in support of  
40 this short-term rental. We are up against another one that's coming up. I think that we take this  
41 case by case as in anything else. And again, as Commissioner Robinson said everyone is good  
42 when they come here to the podium their intentions are good. We are considering every factor.  
43 Unfortunately in the past there were problems with the property and unfortunately he's catching  
44 the brunt a little bit from his neighbors and I just wanted to state that I do understand where  
45 Commissioner Robinson comes from because it is something that is stated continuously when  
46 we look at short-term rentals you know, how...how do we look at all of this in, you know, in the  
47 scheme of things long term when we're thinking about accommodating everyone. Eventually

1 these clusters will start happening and we want to see the people who plant the seeds here and  
2 our residents are the local people, the people of the aina stay here and not just purchase  
3 property and go away and you know, do this. So I do have compassion for what he does...he  
4 feels, but I am in support of this.

5  
6 Chair Duvauchelle: Commissioner Tackett?

7  
8 Mr. Tackett: So given the testimony that we had my feelings on it are the opposition that we had  
9 are actually the type of people that we would most like to have in those types of homes and  
10 although I'm supportive of Chris and seems like a straight and upright fellow, though the way I  
11 see is we've got residents that have lived there for a huge portion of their lives and they're trying  
12 to keep the place where they managed to live and they managed to stay the whole time the way  
13 that it has been for them. So I think I'm not gonna be in favor of this one because the neighbors  
14 that have been there the longest and that are very close to that property are against it and it's  
15 hard for me to go against people that have put in that kind of time in that neighborhood.

16  
17 Chair Duvauchelle: Thank you. Okay, no further discussion, let's take a vote. All those in favor  
18 please raise your hand. That is one, two, three, four ayes. Opposed?

19  
20 Mr. Spence: Three opposed.

21  
22 Chair Duvauchelle: Three opposed.

23  
24 Mr. Spence: That's why you get paid the big bucks.

25  
26 Chair Duvauchelle: I think it's all been said by my fellow commissioners. I am very passionate  
27 about our housing shortage and I do actually a lot of work to try to make that situation better. I  
28 do feel like that we have to look at each one of these applications and have them stand on their  
29 own merit. The guidelines are created, the applicant...and until we I think are passed down  
30 further decisions by County Council then I'm gonna proceed to do that. So I'm going to vote yes  
31 on this application but I do, I do have the same feelings as Commissioner Robinson. Thank you  
32 very much. Motion passes.

33  
34 **It was moved by Ms. Canto, seconded by Ms. Gomes, then**

35  
36 **VOTED: To Approve the Short-Term Rental Home Permit as Recommended**  
37 **by the Department.**  
38 **(Assenting – P. Canto, T. Gomes, L. Carnicelli, R. Higashi,**  
39 **S. Duvauchelle)**  
40 **(Dissenting – L. Hudson, K. Robinson, C. Tackett)**  
41 **(Excused – S. Castro)**

42  
43 Chair Duvauchelle: We're going to take a 10-minute break. We'll resume at 10:35ish. Thank  
44 you.

45  
46 A recess was called at 10:26 a.m., and the meeting was reconvened at 10:40 a.m.

47

1 Chair Duvauchelle: Commission is back in session. Director do you want to read our next  
2 agenda item?  
3

4 Mr. Spence: Sure. The second public hearing of the day is Mr. Steven Gatchell requesting a  
5 Short-Term Rental Home in Kaanapali Vista and our Staff Planner is Evelyn Aako.  
6

7 **2. MR. STEVEN GATCHELL requesting a Short-Term Rental Home Permit in**  
8 **order to operate the Summit Residence at Kaanapali Vista, a 4-bedroom**  
9 **short-term rental home located in the R-3 Residential District at 41**  
10 **Holomakani Place, TMK: 4-4-009: 030, Kaanapali, Lahaina, Island of Maui.**  
11 **(STWM T2017/0001) (E. Aako)**  
12

13 **The subject application is being brought to the Maui Planning Commission**  
14 **for review because there are at least 2 permitted short-term rental home**  
15 **operations located within 500 ft. of the subject property.**  
16

17 Ms. Evelyn Aako: Thank you Director. Good morning Chair, good morning Commissioners.  
18 Staff Planner Evelyn Aako. So as the Commission is already aware this is now the second  
19 proposed STRH you're seeing within the Kaanapali Vista Subdivision. This one is located at  
20 41 Holomakani. And this proposed STRH is for four bedrooms in one dwelling. And pursuant to  
21 Maui County Code, Chapter 19.65 the Commission is the approving the authority for this STRH  
22 as there are two or more permitted STRHs within 500 feet.  
23

24 If you'll look at Exhibit 5 of your staff report you'll see that the gray lot is the proposed STRH lot.  
25 The two permitted within 500 feet are close within that Holomakani circle. I believe Staff  
26 Planner Callentine mentioned that we've just found out that the circle was in renewal but  
27 actually has expired and the applicants have not...have decided to not renew it. So that is no  
28 longer a permitted STRH. And then the agenda item obviously right before this one, the  
29 Commission just approved the one that's just right there on the edge of 500 feet. And then  
30 there are two permitted STRHs which are outside of the 500-foot boundary but within the  
31 subdivision.  
32

33 Some of the same issues obviously that Staff Planner Callentine mentioned in looking at the  
34 previous item are relevant as you review this item so keep that in mind. There are some  
35 differences though because of the location of this proposed STRH being on Holomakani as  
36 opposed to Halelo.  
37

38 The applicant, Mr. Steven Gatchell is here, and the project consultant, Debbie Mitchell is now  
39 gonna review the full scope of the project and then after that I will return with the Department's  
40 analysis and recommendation. Thank you.  
41

42 Ms. Debbie Mitchell: Thank you Evelyn. Good morning Commissioners, Mr. Spence,  
43 Counselor. My name is Debbie Mitchell and I'm a consultant who is assisting Mr. Steven  
44 Gatchell today with his short-term home...rental home application at Kaanapali Vista, 41  
45 Holomakani Place. Obviously you've just been through this so I'm going to try to move through  
46 it quickly. Obviously West Maui located right in the heart of the resort district just mauka of the  
47 highway, and moving closer again showing the proximity there to the resort area just across the

1 highway and right smack in the middle of the golf resort particularly Kaanapali Kai Course. This  
2 takes a little look from the ocean showing again the Kaanapali Royal Course, all of the resort  
3 areas and then just crossing the highway moving up the hill which you'll see the...just right there  
4 in that area. This is a direct aerial view and you can see how it is laid out in kind of J shape as  
5 was pointed out before the Highway 30 runs here and Kaanapali Parkway runs here, to reach  
6 the home you travel briefly on Halelo Street and then turn to the right up here to Holomakani.  
7 So it only touches this very beginning portion of Halelo Street and does not move down this  
8 direction but comes this way. Here's a little different look at it coming from the other direction,  
9 again it is located there and then this is the sixth tee box of the Kaanapali Kai Course and the  
10 end of the 15<sup>th</sup> hole is right here in this location. Directly above you can see it is a large lot of  
11 about 14,000 square feet and it is a two-bedroom home. We are only considering the top floor  
12 which is four bedrooms and this gives you a little view from the tee box itself showing someone  
13 teeing off and right there straight ahead is Holomakani.

14  
15 This is actually taken from the Kaanapali Kai website and you can actually see on their  
16 particular view of the hole you can see Steven's house right here on the corner. These are  
17 some views coming up the highway from Highway 30 and this direction takes you down  
18 Kaanapali Parkway, a right turn takes you up Halelo Street. Moving further it continues up the  
19 hill and intersects Halelo Street takes off this way and Holomakani continues to the right.  
20 There's very little intersection with Halelo itself and these are the views both on the north and  
21 south side of Halelo so you can see that it definitely is part of the golf course community. This is  
22 Holomakani Street where it ends and the property is located. It is a cul de sac.

23  
24 And an overview of the house shows that there are six parking spaces. So there's very  
25 adequate parking space for a four-bedroom home and an additional parking for family members  
26 using the downstairs. Some exterior views of the house. A very nice upscale home. And  
27 taking the views of the house, obviously the golf course covers three sides of the house so  
28 that's what you're gonna see out of three, the three different corners of the house and then it  
29 does have view forward to the ocean and the island of Lanai.

30  
31 This is the floor plan of the proposed short-term rental home. Again, the downstairs is being  
32 reserved for family. He has a young daughter who is attending cottage and she is using the  
33 house and it will be used for other family members as well. So this is the pertinent area for the  
34 short-term rental home. It's laid out so that the bedrooms are in the four corners and the  
35 kitchen, living room and dining room is all central. It has two large lanais both in the front and in  
36 the back and the adequate smoke detectors and fire extinguishers per the ordinance.

37  
38 Just to show you a little bit of the inside. It's a beautiful home with a lot of woodwork and great  
39 art, very nicely laid out. A lot of wood in the kitchen. Very bright. Dining room, living room.  
40 Very nice media room for relaxing and then the four bedrooms. He has three bedrooms  
41 currently and he will be converting the office to a bedroom upon approval if this application is  
42 approved. Bathroom again lovely touches, great work with the art and wood. And a large  
43 swimming pool which faces the ocean.

44  
45 Onto the particulars of this, all neighbors were notified within 500 feet regarding the permit  
46 application. They were notified again when their notice sign was installed and also for the public  
47 hearing. An ad was placed in *The Maui News* about this hearing. We did receive two protest



1 letters from neighbors who live on Halelo Street which is further down than is actually contacted  
2 by the home, anyone traveling to the home. They were the same individuals that protested  
3 Mr. Smith's and they had the same protests. So we reached out, we sent letters to them which  
4 you have in the handout and we did attempt to call but were not able, unsuccessful in reaching  
5 them this week. There are two other permitted short-term rental homes as Evelyn mentioned  
6 the one has been...has expired and has not renewed so there are two that are within that  
7 500-foot radius. Actually there will be...I take that back there'll be three now Mr. Smith is since  
8 you granted that there will be three.

9  
10 This is an amazing amount of support has been generated for this of all the permit applications  
11 I've done I've never had this much support. We have...there are eight homes within the  
12 Holomakani portion of this neighborhood and he received six of those eight letters from every  
13 occupant on that street. Three of them are from adjacent neighbors. So all of his adjacent  
14 neighbors who have lived there, one has lived there 21 years, one 20 and one 17, so these  
15 aren't just new folks or folks that only come in half time. They live there and they know Steven  
16 and they have given him their strongest support for this. In addition, the owner has been very  
17 active in his community with the roadway initiative trying to improve and maintain the roadway.  
18 He's reached out to his neighbors to come up and develop a plan to make those roadways  
19 better and to limit on street parking. Obviously with this particular one there is so much  
20 adequate parking that here's no question of any on street parking at all, but he is working with  
21 his neighbors and has...I think you see the result with all the support he has.

22  
23 In your packet that I handed out to you I kind of made a little graphic. This is the one we found  
24 out today is no longer a valid short-term rental home. It's expired. So there are two right next to  
25 Steven who's represented by the purple dot and both of those two have written him letters of  
26 support. So if you look at him all three sides he has support and the forth side is all golf course.  
27 I know some questions were made about people walking through the neighborhood but it is a  
28 golf course and dozens of people go by every day. It's just a part of the public. The golf course  
29 was put in first and the neighborhood was put in several years later. So those people buying  
30 homes knew they would be buying a home in a golf course resort. So they basically...there are  
31 folks that do pass by but it is again especially from the protestors who are located here and here  
32 they are not impacted by the traffic which is routed again in this direction. So we just feel that  
33 Mr. Gatchell has participated in this...he hired me to do this for him but he has been an active  
34 participant with me. He's has been reaching out to his neighbors, gaining their support, talking  
35 to each one of them so he's been a very active owner. He lives here on island. He will be  
36 managing his own operation so it won't be that he's handing the keys off to a management  
37 company. He will be handling it himself. His kids will be living in the bottom portion so he has a  
38 great tie for the home itself. And with the way the current map looks because that one over  
39 here is not valid any more, it's expired it won't change the density right in that area if this permit  
40 is granted. It will remain the same right in this Holomakani area.

41  
42 So Mr. Gatchell is here today. I know he would love to say a few words to you and I just thank  
43 you for your attention and I hope that you will approve our application. Thank you very much.

44  
45 Chair Duvauchelle: Thank you.  
46

1 Mr. Steven Gatchell: Aloha Chair and Council members, my name is Steven Gatchell. I reside  
2 at 41 Holomakani and thank you public. My family is deeply rooted in Hawaii. My father moved  
3 here in the early '50s and was an enlisted Marine and was a personal aide to Admiral Radford.  
4 I grew up in Honolulu. I attended public schools there. I graduated from high school in 1976. I  
5 a graduated from University of Hawaii at Manoa in 1983 with a Bachelor's Degree. In 1984 I  
6 moved to Maui to start a business. I went to work for TS Restaurants at first as a waiter and  
7 one of the primary owners of TS Restaurants ended up opening a limousine service with me.  
8 Silver Cloud Limousine we did that from 1985 to 1992. In 1986 I got my real estate license and  
9 I also did that full-time and do that full-time till today. So I've had my license for 31, 32 years  
10 and I'm a broker. As mentioned before, I will be on island to manage. My primary occupation  
11 right now is actually vacation management. So I take care of seven units at the Honua Kai  
12 which is a resort just down the street and I do very similar rentals for this. For of my rentals are  
13 three bedroom condominiums, a couple of my rentals, three of my rentals are two bedrooms  
14 and I have one, one bedroom rental. I have a family, quite a large family. In 2001, I had my son  
15 Kai who resides with me, he's 15-years-old. He's in high school now. I have one daughter  
16 who's in college and I have four other children that I've raised here as well all local children. I've  
17 owned several homes on Maui and I've been involved in every HOA where I've lived. So I've  
18 been actually on the board of every HOA. I've been in numerous committees, design review  
19 committees, all kinds of committees. And moved to 41 Holomakani in 2011 and the reason that  
20 I moved to that residence in 2011 was I needed a larger home. My father had the onset of  
21 dementia and he lives with us now, but our family is kind of in the process of...it's dwindling  
22 down, a few of my children left. My daughters are off to college. It will just be my son and my  
23 girlfriend of 10 years. My father unfortunately is going to have to go to Hale Makua in the next  
24 year. He's declining pretty rapidly so our life is changing. I decided not to make the whole  
25 home a rental because housing is tough here and the expenses are tough and I wanted to keep  
26 the downstairs for my family, for my children so it affords us an opportunity to have income to  
27 gather as a large family when we want to and also affords me the ability to have a place for my  
28 children to reside while they're going through college. When I moved to Kaanapali Vista, being  
29 a broker one of the things that concerned me most about Kaanapali Vista and I was kinda  
30 wishing Wayne Hedani was still here because one of Wayne's big problems with Kaanapali  
31 Vista was the roads. Our roads are terrible. So since I've been there there's been three kind of  
32 ambassadors to the road, myself, Greg Arnds who owns Tropic Water and another gentleman,  
33 Ben Leland who owned that TVR that recently closed. And Ben was the person who started  
34 the road repairs as Livit had mentioned we originally had CC&Rs in that neighborhood, but the  
35 association never came to fruition ever so there's no association. There's no way to get our  
36 roads done. Kaanapali Land Company does own the road. It was originally Amfac then it was  
37 Kaanapali Land Company, now it's actually Kaanapali Road LLC of which Wayne Hedani was  
38 connected. I spent a year of my time and thousands of my own dollars so far in legal fees and  
39 met with Jeff Rebugio of Kaanapali Land Company on several different occasions to try and get  
40 this going and so on March 29<sup>th</sup> we had a big meeting and he was shocked I got 27 people in  
41 our neighborhood, 27 people of 35 to sign a paper saying that they would spend as much as  
42 \$5,000 a piece to join...to pay for new roads and 25 of the 27 applicants actually said they join  
43 an association including Dr. Gilbert that was just here and Cherry Harrison. So I've been...I  
44 don't think anybody in the community has ever been more proactive in trying to do something  
45 for the community than myself.

1 My long-term goal like I said is to have that, this home in our family for generations to come. It's  
2 in a trust now. It's in a revocable trust right now but I have plans to actually in the future make it  
3 irrevocable because I just cherish the home and like I said we've live here forever and I want it  
4 for generations to come. So I hope you'll grant my permit today. Thank you.

5  
6 Chair Duvauchelle: Thank you.

7  
8 **a) Public Hearing**

9  
10 Chair Duvauchelle: Okay, at this time we'll open the floor for public testimony. I have a couple  
11 of people signed up. Gerry, you're waiting. Ian Hollingsworth?

12  
13 Mr. Ian Hollingsworth: Hello Council. My name's Ian Hollingsworth and I'm in here to support  
14 my friend Steve. He's very active in the community, cares about his neighbors. He's had  
15 several successful businesses and just cares about people. He takes in kids, treats them like  
16 his own family, very loving guy. Always seems to do the right thing so just want to support  
17 Steven.

18  
19 Chair Duvauchelle: Thank you. Any questions Commissioners? No? Seeing none, anybody  
20 else wishing to testify on this agenda item? Please come forward, state your name you'll have  
21 three minutes.

22  
23 Mr. Michael Lyon: Aloha again. Michael Lyon from 144 Halelo Street. I'm here to support my  
24 friend and neighbor Steve Gatchell. As Steve mentioned he is part owner of a successful  
25 property management business and I'm confident that that experience will serve him well as he  
26 rents his own home.

27  
28 Chair Duvauchelle: Can you speak a little bit louder in the microphone please?

29  
30 Mr. Lyon: Sure thing. Is that better?

31  
32 Chair Duvauchelle: Thank you.

33  
34 Mr. Lyon: He has been extremely active in our community and our neighborhood and has  
35 helped you know small projects like replacing the street signs that have been the original street  
36 signs since you know 1977, yeah, so we just got those replaced last year. And he's been  
37 leading this forefront effort to repair our road which are in desperate need of repair. So we are  
38 as neighbors very grateful for Steve's efforts and his commitment to our neighborhood. I do  
39 support his short-term rental permit and I do think he will treat his guests fairly and his  
40 neighborhood even more fairly 'cause he represents the neighborhood very well. So I again  
41 support his approval. Thank you.

42  
43 Chair Duvauchelle: Thank you. Any questions? Thank you very much. Anybody else wishing  
44 to testify? Okay, seeing none, public testimony is now closed. We'll take questions from the  
45 Commissioners? Commissioner Canto?

46  
47 Ms. Canto: Mr. Gatchell?

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Mr. Gatchell: Yes, Steven Gatchell.

Ms. Canto: Thank you. So you said that you met with community members on March 29?

Mr. Gatchell: Yeah, I had a meeting with Jeff, actually it was, actually I had a meeting with Jeff Rebugio and Jeff Rebugio is the main contact from Kaanapali Land Company. We can do this without Kaanapali Land Company...I mean we can't do it without them because they own the road. But my meeting with Jeff Rebugio was to try and get some financial support and other support from them because the neighborhood...this is a long story and so I'll try and keep it brief. The reason that the road is in such ill-repair is the neighborhood believes that it's Kaanapali Land Company's responsibility, but it's not. There's an express easement and I could get into a lot of legal stuff, but—

Chair Duvauchelle: One moment please. Commissioner Canto was that your question? You didn't let her finish the question.

Mr. Gatchell: Sorry.

Ms. Canto: So I just wanted to know where you're at with this and if you're going through something with Kaanapali Land that's...I don't need to know the specifics, just where you're at.

Mr. Gatchell: Yeah, no, no, no, it's fine. So I've got 27 letters from residents that have all decided to contribute financially and join the association, 25 of them of the 27. All 27 to contribute financially.

Ms. Canto: Okay, and—

Mr. Gatchell: What I'm trying to do with Kaanapali Land Company is get them to contribute as well. They're going to extend legal expertise to help us, to help us form an association which will be tremendously helpful because we could spend 50, 60, 70, \$80,000 in just legal fees. So they've already said that they would do that for us. And I'm looking to see if we can get financial commitment and some other commitment as well.

Ms. Canto: Okay, thank you. Thank you, Chair. Commissioner Robinson?

Mr. Robinson: Aloha.

Mr. Gatchell: Aloha.

Mr. Robinson: I've seen you around.

Mr. Gatchell: Yes.

Mr. Robinson: So I just want clarification. Is the pool house is not gonna be part of your short-term rental?

- 1 Mr. Gatchell: Yeah, I knew that was...the pool house is not really anything. It's got a big noisy  
2 motor in one side and on the other side is just an opening.  
3
- 4 Mr. Robinson: So it's not a habitable?  
5
- 6 Mr. Gatchell: No, no, no it's not.  
7
- 8 Mr. Robinson: So earlier, was I mistaken I heard you say that your kids live below or something  
9 like—  
10
- 11 Mr. Gatchell: No, actually my children, my children live inside the house right now, inside the  
12 main house right now. My daughter's attending UH here. And when, when and if we move the  
13 idea was that she wants to get her independence at some point in time and she would stay  
14 there and then that would be there for my son, Kai when he's of the appropriate age which  
15 works out pretty good because they're about four years apart.  
16
- 17 Chair Duvauchelle: Commissioner Robinson?  
18
- 19 Mr. Robinson: So they're not gonna live there or they're gonna live there while you rent? I  
20 mean is this a bed and breakfast opportunity or am I misunderstanding?  
21
- 22 Mr. Gatchell: No, it's not a bed and breakfast at all. Originally I was going to keep the  
23 downstairs for family members. I just wanted the downstairs. I wanted a place to have because  
24 we have family that comes out here. Recently my daughter's expressed interest to stay there  
25 and I said if you know in the next year if we do this I will certainly consider that.  
26
- 27 Mr. Robinson: So you have like a door you can lock off and the upstairs is separate from the  
28 downstairs—  
29
- 30 Mr. Gatchell: Yes, yes.  
31
- 32 Mr. Robinson: --and you'll keep all your goods and everything downstairs?  
33
- 34 Mr. Gatchell: That's correct.  
35
- 36 Mr. Robinson: Okay.  
37
- 38 Mr. Gatchell: Completely separate.  
39
- 40 Mr. Robinson: But you're not going to live there so therefore that's not a bed and breakfast  
41 'cause you won't be on property.  
42
- 43 Mr. Gatchell: I will not be there.  
44
- 45 Mr. Robinson: Yeah, okay. I understand now. Thank you.  
46
- 47 Mr. Gatchell: And my children won't be running the business.

1  
2 Mr. Robinson: Thank you.

3  
4 Mr. Gatchell: Thank you.

5  
6 Chair Duvauchelle: Any other questions? Commissioner Higashi?

7  
8 Vice-Chair Higashi: Mr. Gatchell, I just want a correction. In our background presentation did  
9 you mention that you own several homes or did I miss something?

10  
11 Mr. Gatchell: In the past I've owned several homes.

12  
13 Vice-Chair Higashi: So presently what do you own?

14  
15 Mr. Gatchell: I own the home that live in.

16  
17 Vice-Chair Higashi: This one.

18  
19 Mr. Gatchell: Yeah.

20  
21 Vice-Chair Higashi: That's the only one.

22  
23 Mr. Gatchell: Yeah.

24  
25 Vice-Chair Higashi: Okay, thank you.

26  
27 Chair Duvauchelle: Any other questions? Thank you very much. Can we get the Department's  
28 recommendation?

29  
30 Mr. Gatchell: Thank you.

31  
32 **b) Action**

33  
34 Ms. Aako: Staff Planner Evelyn Aako again. So just a brief review of some of the numbers and  
35 contacts before I get onto the recommendations. So there are now three permitted STRHs  
36 within 500 feet. There are now five permitted STRHs within the larger Kaanapali Vista  
37 Subdivision. There are 63 permitted STRHs in the West Maui Community Plan area and the  
38 cap is 88. On this property no RFSs have ever been filed. There were no reports filed with  
39 MPD. Again, as Ms. Mitchell mentioned there were two letters of opposition who were the same  
40 folks who opposed to the previous item and in that packet that Ms. Mitchell passed out there is  
41 the response that she and the applicant prepared in response to those opposition letters. And  
42 then in total there were eight letters of support. There were four at the time of writing of the staff  
43 report so those are attached to your staff report and then there we four additional ones in the  
44 packet that was handed out this morning.

45  
46 So as such, the application complies with the applicable standards for a short-term rental home  
47 permit and as such, the Department recommends approval subject to the 22 standard

1 conditions for STRH Permit. The Department recommends that the Maui Planning Commission  
2 adopt the Planning Department's report and recommendation prepared for the May 9, 2017  
3 meeting as its findings of fact, conclusion of law and decision and order and to authorize the  
4 Director of Planning to transmit said written decision and order on behalf of the Planning  
5 Commission.

6  
7 Chair Duvauchelle: Discussion, motion?

8  
9 Mr. Carnicelli: Move to approve as presented by Staff.

10  
11 Ms. Canto: Second.

12  
13 Chair Duvauchelle: Moved by Commissioner Carnicelli to approve and seconded by  
14 Commissioner Canto. Discussion on the motion? Commissioner Robinson?

15  
16 Mr. Robinson: Director I have a question for you regarding complaints and RFSs. I know we  
17 encourage community members when they have a complaint to reach out to the manager of a  
18 short-term rental property. Now when that complaint goes to that manager are those managers  
19 required to report that to the County or do they just take it and we'll never know if it happened or  
20 not?

21  
22 Mr. Spence: No they're not required to notify us if there's a complaint. I'll tell you that people  
23 are not shy about complaining to the County however. So—

24  
25 Mr. Robinson: And the reason why I'm saying is that in the prior permit process a person  
26 testified that she wrote...she gave a letter of a complaint to the property manager of the prior  
27 one but we have no RFS to say that was and they also noted on their testimony that they've had  
28 no complaints. So we had people opposing that. I'm just wondering for if in the future that  
29 might be a condition that we could impose on management companies they have to pass it over  
30 to the County.

31  
32 Mr. Spence: Okay. And the whole purpose of having that manager...you know if we get an  
33 RFS, you know, it's going to take several days to work through the system and send out an  
34 inspector and by that time the party's over. I hope the party is over after several days or they  
35 didn't invite me, but you know that manager is supposed to be able to respond within a very  
36 short amount of time. So yeah, I suppose if we want to know, you know, the if the manager's  
37 responded or whatever we can talk about that.

38  
39 Mr. Robinson: Yeah, I mean, I'm sure the manager is responding, I'm just...you know if there's  
40 ten complaints in a year to a manager and we don't know about it and we're holding a permit  
41 that's special permit, it's not you know, they're not a normal citizen that's where the concern is.  
42 There might be a loop hole in the system to where people are thinking that they're doing the  
43 right thing and they're going through the right procedures and they want to be good neighbors.  
44 They don't want to call the cops on their neighbors but they're thinking giving that notice is kind  
45 of somebody should be able to be notified I would think or put in some column somewhere  
46 under review so when you say you're gonna review the permit the next time you have...the

1 manager would have to turn over all, all the maybe notices they got. You know what I'm trying  
2 to say, just not nothing.

3  
4 Mr. Spence: That's fair. And just so the Commissioners know too, when we process  
5 applications we do inquire of the Police Department if there have ever been any kind of  
6 complaints or noise or whatever, so we do inquire, you know, have there ever been any  
7 problems with this property? So, but understood for the future.

8  
9 Chair Duvauchelle: Any other discussion on the motion? Okay, seeing none, Director, you  
10 want to repeat the motion?

11  
12 Mr. Spence: The motion is to approve as recommended by Staff.

13  
14 Chair Duvauchelle: All those in favor please raise your hand. That's three ayes.

15  
16 Mr. Spence: Three ayes.

17  
18 Chair Duvauchelle: All opposed?

19  
20 Mr. Spence: Two opposed, three opposed. So that would be...abstention is recognized as in  
21 favor.

22  
23 Chair Duvauchelle: You guys are making me work for my pay today, huh? You know, I'm going  
24 to support the application. I believe that he is a long-term resident. He's going to do right by the  
25 community. The fact that he's put in so much time and effort to develop the roads and the  
26 different things he's done for this development I don't see him going anywhere anytime soon.  
27 So my vote is a yes. Thank you. Motion passes.

28  
29 **It was moved by Mr. Carnicelli, seconded by Ms. Canto, then**

30  
31 **VOTED: To Approve the Short-Term Rental Home Permit as Recommended**  
32 **by the Department.**  
33 **(Assenting – L. Carnicelli, P. Canto, C. Tackett, R. Higashi,**  
34 **S. Duvauchelle**  
35 **(Dissenting – L. Hudson, K. Robinson, T. Gomes)**  
36 **(Excused – S. Castro)**

37  
38 Chair Duvauchelle: Okay Director next—

39  
40 Mr. Carnicelli: So Chair I just have a quick question. To what Commissioner Robinson brought  
41 up is that something that we can then have as a standard condition from now on being  
42 something to the effect of complaints levied to the managing...to the manager of the property  
43 has to at least keep those whether they pass them onto the Department or something like that  
44 but at least keep them.

45  
46 Mr. Spence: Sure, we can...yeah

47



1 Mr. Carnicelli: To where we can then go back and look at this file?

2

3 Mr. Spence: I don't know about a standard condition but we can make it a part of our practice.  
4 Really where it would come up would be during renewals.

5

6 Mr. Carnicelli: And that would be exactly it because as Commissioner Robinson said if we  
7 straight to RFSs we're not going to know. If the neighbor says hey listen I called the  
8 management company 27 times there's zero RFSs.

9

10 Mr. Spence: We would...well, okay we'll discuss it with staff.

11

12 Mr. Carnicelli: Okay. Do we need to agendize that to address our rules?

13

14 Mr. Spence: No, I don't think you'd need to.

15

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

17

18 Mr. Carnicelli: I mean we can if it needs it.

19

20 Mr. Robinson: ...(inaudible-not speaking into mic)...

21

22 Mr. Carnicelli: Alright so, I'd like to make a motion that we place that on the agenda as to  
23 something that we do for our rules.

24

25 Mr. Robinson: Second.

26

27 Chair Duvauchelle: ...(inaudible)...vote?

28

29 Mr. Robinson: Yes.

30

31 Chair Duvauchelle: This is a little out of the ordinary here. Don't quite know which way to go.  
32 Okay, all those in favor of placing this request to...I'm not sure what we're requesting.

33

34 Mr. Spence: On a future agenda.

35

36 Chair Duvauchelle: On a future agenda.

37

38 Mr. Spence: They just want to know during renewals or some other circumstances.

39

40 Mr. Robinson: Yeah, I mean I have more to say, so just put it on the agenda and that way we  
41 can ...(inaudible)...

42

43 Mr. Spence: Okay, just have the discussion of complaints to managers be put on the agenda.

44

45 Mr. Robinson: Thank you.

46

1 Chair Duvauchelle: Okay, all those in favor, raise your right hand. That's seven ayes. Yeah I  
2 don't have to vote. Motion carried. It will be put on the agenda. All right next, shall we power  
3 through or does anyone need to take a quick break? All right, Director next agenda item?  
4

5 Mr. Spence: Commissioners, we're on your third public hearing for this morning is Ms.  
6 Marianne Wheeler requesting a Land Use Commission Special Use Permit to operate the  
7 Kula 4200 Bed and Breakfast at 570 Hapapa Road and we have Tara Furukawa our Staff  
8 Planner.  
9

10 **3. MS. MARIANNE WHEELER requesting a Land Use Commission Special**  
11 **Permit in order to operate the Kula 4200 Bed and Breakfast, a 2-bedroom**  
12 **bed and breakfast home located in State Agricultural District at 570 Hapapa**  
13 **Road, TMK: 2-3-039: 012, Kula, Island of Maui. (SUP2 2017/0003)**  
14 **(T. Furukawa)**  
15

16 Ms. Tara Furukawa: Good morning Commissioners. This item is under your review because  
17 the applicant's requesting a Land Use Commission Special Permit for her Kula 4200 B&B.  
18 Marianne Wheeler wishes to operate a two-bedroom bed and breakfast in one dwelling that sits  
19 on 2.45 acres of land in Kula. The application is before you today because the B&B is on State  
20 Land Use District designated Agricultural land therefore a State Land Use District Special  
21 Permit is required. At this time, I'll introduce you to the applicant, Marianne Wheeler who will  
22 present you with the scope and details of the proposed B&B and agricultural operation and after  
23 the presentation I'll provide you with the Department's recommendation.  
24

25 Ms. Marianne Wheeler: Good morning Commissioners and Council Members. My name's  
26 Marianne Wheeler. I am a 25-year employee with the Department of Education. I'm currently  
27 employed at Maui Waena Intermediate as a Vice-Principal so doing a bed and breakfast is  
28 something that allows a little extra income to help me meet the needs that we have operating a  
29 farm up in Kula. We constructed the cottage in 2014 and shortly thereafter my parents informed  
30 me that they were gonna be moving out to spend few winters with us and at the age of 70 our  
31 main house has multiple flights and they're not able to climb the stairs so at that point we  
32 decided to look at doing a B&B and allowing my parents to be able to stay with us for about  
33 three months of the year. And on top of that, my brother...my husband's brother has special  
34 needs and as his parents have passed on the five siblings are responsible to take care of him  
35 and one of the things is we will be able to then bring him to the house and allow him to stay in  
36 the B&B while we're not renting it. So the B&B is more of a part-time B&B, two or three times a  
37 month when our family members are not staying with us.  
38

39 Kula 4200 is located on Hapapa Road. It's 570 Hapapa Road. We're at the top of it. The main  
40 property is 592 and this is the cottage. On the property you'll see at the top is the main dwelling  
41 followed by the site plan down below. We have parking for one in the garage and one in front of  
42 the garage and there's no street parking, we're off the road.  
43

44 The floor plan we have two bedrooms, one bath, a 1,000 square foot ohana. There's the  
45 parking area, the view of the property in the front. The backyard and the side view of the  
46 property that's the street side. The entryway and the other side view. So we have the open

1 great room, living room, dining room and kitchen all in one. We have two bedrooms there it's  
2 similar in size and then we garage where it will have the washer and dryer in it for our guests  
3 and one bathroom.

4  
5 Currently we have 69 percent of our farm...our property in ag. The farm plan has been fully  
6 implemented. We have about 33 percent in protea which is up here and down around the  
7 cottage and then we have citrus, produce and then we have our chickens where we have about  
8 50 chicken...hens, laying hens right now on the property. So these are the protea. All this...we  
9 bought the property in 2011 and we have completely replanted everything on the property as it  
10 was old and was not producing flowers any more. So we have protea, more protea, more  
11 protea, our citrus, and then more citrus. The chickens and their red chicken house and the eggs  
12 that we produce.

13  
14 This is the new planting right below the cottage that we are looking to B&B and so those were  
15 all planted about eight, nine months ago and everything's on a irrigation system. These are the  
16 planting boxes and this is the produce that we produce on site.

17  
18 Ms. Furukawa: So we transmitted out to the State Office of Planning and State Land Use  
19 Commission and we received no comments. We also received no protest letters from  
20 neighbors. So as previously mentioned the item is before you because the bed and breakfast  
21 sits on agricultural land. There are 11 permitted B&Bs and the cap is 40 for the Makawao-  
22 Pukalani-Kula Community Plan area and there are 10 permitted STRHs and the cap is 40.  
23 There was one letter of protest from someone outside of the 500-foot boundary after notice was  
24 provided. Neighbor notice was provided twice, once for the B&B and State Land Use Special  
25 Permit applications and more recently for the Special Permit application public hearing. The  
26 application complies with the applicable standards for a Land Use Commission Special Permit  
27 and the Department is recommending approval of the permit subject to seven standard  
28 conditions. This concludes the presentation.

29  
30 Chair Duvauchelle: Okay, thank you. Questions from the Commissioners? Oh, I'm sorry,  
31 public hearing. Thank you.

32  
33 **a) Public Hearing**

34  
35 Chair Duvauchelle: I'd like to open the floor at this time for public hearing. If anybody wishes to  
36 testify please come forward. State your name, you'll have three minutes.

37  
38 Ms. Greta Bandy: Aloha I'm Greta Bandy and I live next door to Marianne Wheeler at 590  
39 Hapapa and we have great confidence that she will run a very tight ship for her bed and  
40 breakfast. She and her husband are lovely people. I live next door with my daughters and  
41 husband. We're not worried about the traffic and she's home since she's a vice-principal, she's  
42 home in the evenings and her husband as a pilot is usually home during the day and should be  
43 able to monitor the activity of the vacationers and personally I'm hoping you do it so I can have  
44 my family come and rent there also. Thank you.

45

1 Chair Duvauchelle: Any questions for the testifier? Seeing none, thank you very much. Okay,  
2 anybody else wishing to testify at this time? Okay, seeing none public testimony is closed.  
3 Okay, now questions from the Commissioners? Commissioner Canto?

4  
5 Ms. Canto: Hi, this is for the planner. So you mentioned there was one in opposition? Do I  
6 have a copy of...do you have a copy of that and why was—

7  
8 Ms. Furukawa: Yeah, it was just emailed out to your yesterday and I think there are copies  
9 here.

10  
11 Chair Duvauchelle: Right there. Director?

12  
13 Mr. Spence: It's an email printed out.

14  
15 Ms. Canto: Okay, I got it.

16  
17 Chair Duvauchelle: Commissioner Robinson?

18  
19 Mr. Robinson: Tara, this cabin is far from the dwelling. What kind of requirements are there to  
20 make this a bed and breakfast? Do they have to have contact with the renter every day? Why  
21 instead of it being a straight short-term rental?

22  
23 Ms. Furukawa: No, they just have to live on site, on the property.

24  
25 Mr. Robinson: Just live on the property that's the only regulation?

26  
27 Ms. Furukawa: Yes.

28  
29 Mr. Robinson: Okay, thank you.

30  
31 Chair Duvauchelle: Any other questions? Seeing none, Tara you wanna read the Department's  
32 recommendation?

33  
34 Ms. Furukawa: Okay so the special permit has seven standard conditions and the Department  
35 is recommending the Maui Planning Commission adopt the Planning Department's report and  
36 recommendation prepared for the May 9, 2017 meeting as its findings of fact, conclusion of law  
37 and decision and order and to authorize the Director of Planning to transmit said written  
38 decision and order on behalf of the Planning Commission.

39  
40 Chair Duvauchelle: Thank you. Discussion or a motion?

41  
42 Vice-Chair Higashi: So move.

43  
44 Chair Duvauchelle: Moved by Commissioner Higashi?

45  
46 Mr. Robinson: I have a question.

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46

Mr. Carnicelli: Second.

Chair Duvauchelle: Seconded by Commissioner Carnicelli? Discussion? Commissioner Robinson?

Mr. Robinson: On the opposition it says that there have been some accidents on this road. Is anybody able to talk about it?

Ms. Wheeler: I'm not aware of any accidents. We've lived there since 2011, but it's from Camille Lyons and ...is that the email you have?

Mr. Robinson: Yes.

Ms. Wheeler: She did come up to the house. We had a...showed her the property. I think there was previous unsettled business with the owner that owned the house before us and she left and told me she didn't want to make any waves and she was happy that we were gonna B&B the property and she liked what we did and the feeling that it had up there on the property. I'm not aware of any accidents. I really meet a car when I come and go. I'm not sure, Ghretta do you rarely meet car 'cause there's not that many homes.

Chair Duvauchelle: Commissioner Hudson?

Mr. Hudson: Could you please describe Hapapa Road?

Ms. Wheeler: Hapapa is a county road and it goes all the way up until our mailboxes and that's where it becomes a private road. And it's like most upcountry roads, I mean you need to be alert and drive safely on the roads just like the one-lane bridge by King K, you just need to be aware of your surroundings.

Mr. Hudson: Thank you.

Chair Duvauchelle: All right we have a motion on the table to approve. Any other discussion on the motion. Okay, seeing none, Director you want to repeat the motion?

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

Chair Duvauchelle: All those in favor, please raise your hand? That's seven ayes, motion passes. Congratulations.

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

**VOTED: To Approve the Land Use Commission Special Use Permit as Recommended by the Department.  
(Assenting – R. Higashi, L. Carnicelli, L. Hudson, K. Robinson, P. Canto, T. Gomes, C. Tackett)**

1                                   **(Excused – S. Castro)**  
2

3 Mr. Spence: Okay, Commissioners we're into Item D, Communications. The first one on your  
4 agenda is Mr. David Dantes, M.D., requesting a five-year time extension on his Land Use  
5 Commission Special Permit in order to operate the Maui Tradewinds Bed and Breakfast in  
6 Haiku. And our Staff Planner is Evelyn Aako.  
7

8 **D. COMMUNICATIONS**  
9

- 10           1.     **MR. DAVID DANTES, M.D. requesting a 5-year time extension on the State**  
11                   **Land Use Commission Special Permit in order to continue to operate the**  
12                   **Maui Tradewinds Bed and Breakfast, a 3-bedroom B&B located in the State**  
13                   **Agricultural District at 4320 Une Place, TMK: 2-8-002: 158, Haiku, Island of**  
14                   **Maui. (SUP2 2002/0002) (E. Aako)**  
15

16 Ms. Evelyn Aako: Hello again Chair and Commissioners. Thank you Director. So this item now  
17 under review is for a request by the applicant, Dr. David Dantes and Ms. Beverly Livingston for  
18 a five-year time extension for the State Land Use Commission Special Permit or SUP to allow  
19 the continued operations of the Maui Tradewinds Bed and Breakfast on State Agricultural land.  
20 Condition No. 2 of the 2009 time extension which is attached to staff report as Exhibit No. 2  
21 requires that the applicant obtain time extension approval by the Commission. And from my  
22 understanding from speaking with senior planners historically SUPs were conditioned to come  
23 back to the Commission for review and approval. In recent years the direction has been to  
24 allow those to be reviewed and approved by the Director. So you will notice that amongst the  
25 Department's recommendation condition is to have subsequent time extension approvals be  
26 reviewed and approved by the Director as opposed to coming back to the Commission but this  
27 one was still a condition on the 2009 approval.  
28

29 I'm just gonna really briefly review the project and the project history and this time line is in the  
30 staff report I believe on Page 1 or 2 if you need to follow along with me there. But the subject  
31 property has two detached farm dwellings with a total of three bedrooms permitted for B&B use.  
32 The primary dwelling has one B&B room and the accessory dwelling has two B&B rooms. The  
33 property does have an implemented farm plan that was approved in August of 2009 and the  
34 farm plan approval, farm plan map and photos of the agriculture can be seen as Exhibits 5 and  
35 6 of your staff report respectively.  
36

37 Just a little history, the SUP was originally approved by the Commission of September 2002 and  
38 prior to the amendment to Title 19 of Maui County Code that allowed B&Bs as a permitted use  
39 within the County Agricultural District applicants who were seeking to operate a B&B had to get  
40 a Conditional Permit. So a Conditional Permit was approved by the Council for the applicants in  
41 December 2007. Both the SUP and CP were approved for a length of two years. So they were  
42 set to expire in 2009. In 2009 after the amendment to the Title 19, the applicants chose to allow  
43 their CP to expire and instead get a B&B Permit and they did receive that in September of 2009.  
44 Commission approves an SUP time extension for eight years so it lined up with the B&B and so  
45 both those were renewed in 2009 and that brings us up to now 2007. The permits are due to  
46 expire in September of this year and so the applicants are now asking for a renewal of the SUP.

1 If the Commission does approve the SUP time extension the Department plans to approve B&B  
2 renewal administratively.

3  
4 There have been no request for service on the property. The applicants, I mean as you hear  
5 from the history the applicants have been operating a successful B&B with no problems, no  
6 complaints for quite some time. No reports filed with MPC and the Department has not received  
7 any letters of public testimony or opposition.

8  
9 Chair Duvauchelle: Okay, I would like to open the floor for public testimony at this time. Jerry  
10 and then you're gonna get to tell me your last name.

11  
12 Chair Duvauchelle: Very good. Thank you. Please state your name you'll have three minutes.

13  
14 Ms. Jeri Zintgraff: I'm Jeri Zintgraff and I live right next door to Bev and Dave, my husband and  
15 I and we've been there for close to 30 years and they've been fabulous neighbors and we've  
16 never had any problems with any of their guests. I know they do a great job of orienting the  
17 guests with the activities and as well as the accommodations. So I certainly would support their  
18 request for extension. They're an asset to the community. They also do...involved with the  
19 neighborhood watch in our neighborhood too and also taking care of looking in on other  
20 neighbors as they're nice, caring people. They do good work. Thank you.

21  
22 Chair Duvauchelle: Any questions? Thank you very much. Okay, look for any questions  
23 Commissioners? Commissioner Robinson?

24  
25 Mr. Robinson: Is the applicant here?

26  
27 Ms. Aako: Oh they are present. I'm sorry, yes they are.

28  
29 Dr. David Dantes: Good morning. Dr. David Dantes.

30  
31 Mr. Robinson: Aloha Doc.

32  
33 Ms. Beverly Livingston: Hi, I'm Beverly Livingston, his wife. I'm a retired R.N.

34  
35 Mr. Robinson: Aloha. And I have no problem with you guys doing your bed and breakfast. I  
36 heard you guys have been doing a really good job. Your neighbors seems to be happy. My  
37 question is usually when bed and breakfast come with us on top of ag land they need some time  
38 for the bed and breakfast to help get their ag growing and then they start growing some product  
39 and then that way they can sustain themselves on ag land. It's kind of a we use bed and  
40 breakfast to help support ag. So my question is, I've seen...in the pictures I saw I see  
41 landscaping but I don't really see agriculture as a economic solution that you guys are using on  
42 top your property. So I hope that there is. That's all that I saw. So are you guys selling  
43 produce or different types of things to the public or donating that we have some proof of it?  
44 Thank you.

45

1 Ms. Livingston: It's a fairly steep slope and so a lot of it has to be in conservation to prevent  
2 slide because it's a pu`u that's the old cinder cone and it's hard to stabilize the hillside without  
3 the grass and things like that. But we do have 18 clumps of genetically identical apple bananas  
4 from UH. They're cultivars from UH. And I have also some lilikoi, I have some pineapple  
5 things like that and what I usually do instead of selling it, I take it to Maui Food Bank 'cause  
6 there's a lot of people that need a lot of food. So whatever we can do I usually do that. I don't  
7 try to...I mean the volume that we can produce based on the topography isn't really worth it for  
8 commercially. But I can produce something for the benefit of people.  
9

10 Chair Duvauchelle: Any other questions Commissioners? Okay, thank you very much. If we  
11 can have the Department's recommendation?  
12

13 Ms. Aako: The application complies with the applicable standards for State Special Use Permit  
14 and a B&B Permit and as such the Department recommends approval of the time extension.  
15 Recommendation of approval is based upon the seven standard conditions for B&B related  
16 SUP. The Department recommends that the Maui Planning Commission adopt the Planning  
17 Department's report and recommendation prepared for the May 9, 2017 meeting as its finding of  
18 fact, conclusion of law and decision and order and to authorize the Director of Planning to  
19 transmit said written decision and order on behalf of the Planning Commission.  
20

21 Chair Duvauchelle: Motion, discussion? Director?  
22

23 Mr. Spence: Commissioners if there is a motion to approve I would just like to throw out would  
24 you like to modify that first condition to allow the Director discretion to approve future time  
25 extensions?  
26

27 Ms. Aako: That's how it was written in the recommendation.  
28

29 Mr. Spence: Okay.  
30

31 Mr. Carnicelli: So move.  
32

33 Ms. Gomes: Second.  
34

35 Chair Duvauchelle: So moved by Commissioner Carnicelli. Seconded by Commissioner  
36 Gomes. Commissioner Canto?  
37

38 Ms. Canto: No, she seconded.  
39

40 Chair Duvauchelle: Okay. All right any further discussion? All those in favor please raise your  
41 right hand or left. That's seven ayes. Motion carries. Congratulations.  
42

43 **It was moved by Mr. Carnicelli, seconded by Ms. Gomes, then**  
44

45 **VOTED: To Approve the Five-Year Time Extension on the State Land Use**  
46 **Commission Special Use Permit as Recommended by the**



1                                   **Department.**  
2                                   **(Assenting – L. Carnicelli, T. Gomes, L. Hudson, K. Robinson,**  
3   **P. Canto, C. Tackett, R. Higashi)**  
4                                   **(Excused – S. Castro)**  
5

6 Chair Duvauchelle: Would we like to power through or break...we'll power through. I'm good  
7 with that too. Everybody? Okay, Director please read the next item.  
8

9 Mr. Spence: We have Ms. Lorraine Grace of Sunrise Center doing business as Launa Io Eco-  
10 Education Center requesting a five-year time extension on their Special Use Permit.  
11 Commissioners I have some disclosure to make. Ms. Grace was a former client of mine. It has  
12 been, oh my goodness, better part of a decade since she has been a client. I have not handled  
13 any part of this application. So...there was financial tie at one point in time. Client, I was a  
14 consultant in a former lifetime.  
15

16 Mr. Hudson: I remember.  
17

18 Mr. Spence: Yes, I did work for Larry too, actually for the Police Department.  
19

20 Chair Duvauchelle: Okay, Commissioners let's take a five-minute break while we wait for  
21 Ms. Flammer.  
22

23 A recess was called at 11:37 a.m., and the meeting was reconvened at 11:42 a.m.  
24

25 Chair Duvauchelle: ...Ms. Gina?  
26

27 Ms. Gina Flammer: Okay, sorry for the delay. Clayton and I thought we were gonna be on right  
28 after lunch. We didn't realize Michele was available. So we're here today, did you read the item  
29 or you wanna or did you do that previously.  
30

31 Chair Duvauchelle: Can you reread the agenda item?  
32

33 Ms. McLean: Thank you, Chair. This is a request by Ms. Lorraine Grace of Sunrise Center,  
34 Inc., dba Launa Io Eco-Education Center for a five-year time extension and an amendment to  
35 the State Land Use Commission Special Use Permit for the Hale Akua Garden Farm Retreat  
36 Center in the State Agricultural District at 110 Door of Faith Road, TMK: 2-9-007: 056, 057, and  
37 053 in Huelo.  
38

39 **2. MS. LORRAINE GRACE of SUNRISE CENTER, INC.dba LAUNA IO ECO-**  
40 **EDUCATION CENTER requesting a 5-year time extension and an amendment to**  
41 **the State Land Use Commission Special Use Permit for the Hale Akua Garden**  
42 **Farm Retreat Center in the State Agricultural District at 110 Door of Faith**  
43 **Road, TMK: 2-9-007: 056, 057, and 053, Huelo, Haiku, Island of Maui. (SUP2**  
44 **2005/0004) (G. Flammer)**  
45

1           **The amendment request is to add a condition to allow one child age 12 or under to**  
2           **also occupy a room to be consistent with a condition of the Conditional Permit,**  
3           **Ordinance No. 4404.**  
4

5 Ms. Flammer: Okay, so in March of 2011 a State Special Use Permit was granted to allow  
6 agriculture and wellness education and overnight accommodations for the Hale Akua Garden  
7 Farm Retreat Center. The farm center, the farm and the retreat center operates across three  
8 separate parcels. Some of you might remember the property because in March of this year a  
9 Short-Term Rental Home Permit was granted for five of the bedrooms on the middle parcel. I  
10 told you at that time I would come back for this permit.  
11

12 Sometime after the SUP was granted in 2011, the County allowed agricultural education without  
13 a Conditional Permit. So the applicant was allowed to do the agricultural education and she  
14 began doing the retreats and internship programs. She saved up money, did permitting of a  
15 number of structures on the property, water tanks, a car port, shed, a recycle structure, things  
16 like that. There's a full list in your report. Once all these were done, the Council took up the  
17 Conditional Permit. They approved it, but they also added an amendment. The amendment  
18 was to allow one child age 12 or under to occupy a bedroom, but for this to be effective, the  
19 SUP also needs to have the amendment. So that's why you have the amendment before you.  
20

21 You also have the time extension which is for five years that will then make the end dates the  
22 same as the Conditional Permit. So as you can see from the report photos the permit holder  
23 does run a commercial farm. So has greatly expanded it over the past five years. The  
24 Department is recommending that you go ahead and grant the amendment as well as the time  
25 extension. Thank you.  
26

27 Chair Duvauchelle: Thank you. At this time we'll open the floor for public testimony. Anybody  
28 wishing to testify please come forward? Seeing none, we'll close public testimony. Questions,  
29 Commissioners? Okay, seeing no questions, you want to read the Department's  
30 recommendation please?  
31

32 Ms. Flammer: Okay. Our recommendation is to approve the five-year time extension as well as  
33 the amendment to allow an additional person being one child age 12 or under to occupy a  
34 bedroom.  
35

36 Chair Duvauchelle: Director...or Commissioners do I hear a motion?  
37

38 Ms. Canto: So move.  
39

40 Chair Duvauchelle: Moved by Commissioner Canto.  
41

42 Mr. Tackett: Second.  
43

44 Chair Duvauchelle: Seconded by Commissioner Tackett. Any discussion on the motion?  
45 Commissioner Higashi?  
46

1 Vice-Chair Higashi: This is for the applicant.

2  
3 Chair Duvauchelle: Oh, we already have a motion on the floor so we're past questions at this  
4 point.

5  
6 Vice-Chair Higashi: ...(inaudible)...

7  
8 Chair Duvauchelle: Sorry. Any more discussion? Okay, seeing none, Director would you  
9 repeat the...or Deputy Director repeat the motion please?

10  
11 Ms. McLean: Yes, the motion is to approve the five-year time extension and add the  
12 amendment to allow one child age 12 or under to also occupy a room.

13  
14 Chair Duvauchelle: All those in favor please raise your hand? That's seven ayes. The motion  
15 passes. Congratulations.

16  
17 **It was moved by Ms. Canto, seconded by Mr. Tackett, then**

18  
19 **VOTED: To Approve the Five-Year Time Extension and Amendment to the**  
20 **State Land Use Commission Special Use Permit as Recommended**  
21 **by the Department.**  
22 **(Assenting – P. Canto, C. Tackett, L. Carnicelli, L. Hudson,**  
23 **K. Robinson, T. Gomes, R. Higashi)**  
24 **(Excused – S. Castro)**

25  
26 Chair Duvauchelle: Okay, are we ready to break for lunch. Planning Commission is at lunch till  
27 1 o'clock.

28  
29 A recess was called at 11:47 a.m., and the meeting was reconvened at 1:03 p.m.

30  
31 Chair Duvauchelle: Maui Planning Commission is back in session. Director, do you want to  
32 give us our next agenda item?

33  
34 Mr. Spence: Okay, so Commissioners we're on Item E, Orientation Workshop No. 2. So I see  
35 Kathleen and Jim. Looks like we have everybody here.

36  
37 Ms. Aoki: We don't have Long Range. Long Range isn't here. She should go first, but I'll go  
38 first if that's okay?

39  
40 Mr. Spence: We could.

41  
42 Chair Duvauchelle: We can do that.

43  
44 Ms. Aoki: Kind of a little backwards, but you guys will get it.

45

1 Mr. Spence: Everybody knows Kathleen? This is Kathleen Aoki. She heads up the new Plan  
2 Implementation Division. For the longest time, you know we do our General Plan, our  
3 community plans and we've never had an active program to follow up on all the actions that our  
4 plans have in them. I mean, go do an ordinance for this, go do a study for that, and so I felt it  
5 was time...it wasn't working the way it was with just Long Range taking on little bits here and  
6 there so I thought it was best if we actually dedicate some resources to doing these projects and  
7 so we formed the Plan Implementation Division. It's small right now, but Kathleen heads it up.  
8 If you don't know Kathleen she used to be Planning Director, used to be Deputy Planning  
9 Director. She was in Current Planning and she was also in the Long Range Division. So she  
10 kinda knows the lay of the land very good. We're not going to falter. Anyway take it away.

11  
12 **E. ORIENTATION WORKSHOP NO. 2**

- 13  
14 **1. Update of the General Plan – Long Range Division and Plan Implementation**  
15 **2. Special Management Area Rules and Shoreline Setback Rules**  
16 **3. Flood Hazards**  
17 **4. County's Policy Against Discrimination**  
18

19 Planning Department Staff made presentations to the Commission.

20  
21 A recess was called at 3:54 p.m., and the meeting was reconvened at 3:58 p.m.

22  
23 Mr. Spence: Commissioners, we're on Item F, Communications discussion of Rules of Practice  
24 and Procedure for maximum time periods for decision.

25  
26 **F. COMMUNICATIONS**

- 27  
28 **1. Commission Discussion on amending Section 12-201-34 of the**  
29 **Commission's Rules of Practice and Procedure regarding Maximum Time**  
30 **Period for Decision.**  
31

32 Mr. Spence: I don't have any materials on this. I bet James does. So what this is, you know  
33 sometimes we get permits where the or a application for permits when the votes consistently  
34 four-four or something like that and it gets deferred and three, four and no decision is made and  
35 there's a 120-day clock starts once the public hearing takes place and—  
36

37 Mr. Giroux: There's two times

38  
39 Mr. Spence: Okay, there's two times period. And Mr. James Giroux is going to inform us. It will  
40 be quite educational about this.

41  
42 Mr. Giroux: I know you guys have had a long day and I'm just gonna like put the nail in the  
43 coffin. But what I gotta do is I gotta download all this information on you guys because there's  
44 going to be decisions that it's going to be up to you on how you want to deal with it and it's  
45 basically an issue of do you want to amend your rules to avoid certain legal actions in the future

1 because we are running into this issue a lot. I think we've already run into it about at least twice  
2 since I've been back.

3  
4 But the issue is is that when you have a development permit pursuant to Chapter 91-13.5 it says  
5 that the County have to have a deadline. And when they have a deadline, if they miss the  
6 deadline then there's an issue is is that permit automatically granted? So pursuant to your rules  
7 when processing SMA Permits you have your rules is 12-201-34, in that you state that there's a  
8 maximum time period for decision making and this is actually your, not your SMA Rules but it  
9 affects your SMA process. And even there there's this weird, you know, to wording says except  
10 for state administered permit programs delegated authorized or approved under Federal Law  
11 the commission shall review and make a decision on application within...that verbiage right  
12 there is real nebulous. For lawyers we look at it and we say, well that must mean it doesn't  
13 apply to the SMA Rules. But if you look at 19-13.5 it says that these types of rules are  
14 supposed to apply to even 205A which is an SMA application. So we're trying to get you guys  
15 out of this quagmire and the minimum we can do is look at is the timeframe too short? Are you  
16 guys giving yourself too little time to do these types of reviews because obviously you've hit  
17 deadlock twice. You know you came to a hearing, you had a motion, didn't get it passed, came  
18 to another hearing, came to a motion, didn't get it passed. Now that permit is in limbo. Is it  
19 automatically granted, are there conditions on that permit? We don't know. We're kinda just  
20 stumbling through the dark. So there's two issues. Is timeframe too short?

21  
22 The second issue is if you are gonna be put into a position where you're gonna be having  
23 permits that are automatically granted do you want to have verbiage that says that there's at  
24 least some type of mandatory conditions posted onto that permit. The law requires you to have  
25 some kind of finding of fact, conclusions of law when you're giving these types of permits so that  
26 they know that there was some type of review. And then there's all kinds of issues  
27 about...especially SMA Permit because there's constitutional issues, public trust doctrine  
28 issues, Native Hawaiian rights issues, and if all of these issues aren't taken care of in your  
29 conditions and you just grant somebody a permit by default we could end up in a lawsuit from  
30 the public saying that we haven't done our job in protecting those rights which are supposed to  
31 be by law the cases coming out of the Supreme Court that we have an affirmative duty to make  
32 those protections. And the only way we do it is through our conditions.

33  
34 So that being said, I downloaded this report about 180-page report just on this subject. There's  
35 no answers in here. I read it, but there's suggestions. One of the suggestions is that we look at  
36 our timeframe and are we giving ourselves not enough time. Your rules say you have a 120  
37 days. A 180 days is six months. If you give yourself more than a year I think you're gonna be  
38 pushing yourself over the edge of not actually following the State Law in saying that you should  
39 have deadline. So that's something that needs to be discussed, chewed on and then possibly  
40 decided whether or not that's something that you want to make a change to your rules.

41  
42 The other thing is that when are we starting the clock? According to your rules it says that the  
43 date the application is deemed complete by the Director that's the worst clock to start or the  
44 closing of public hearing on the application provided that there wasn't a contested case  
45 pursuant to Subchapter 4. That's a little bit better of a clock starter. You could even push it off  
46 more by including verbiage that says that the time doesn't start until you get information that you

1 deemed necessary at a hearing in order to make finding. So it has to be clear that if we're not  
2 gonna grant it or we made a vote and we didn't get it, you can say well, we want to have this  
3 report or this fact needs to be given to us so that we can make these decisions. I think  
4 sometimes where we've had situations where we...like a site view, right view plane analysis  
5 wasn't given to you. Well that means that you can't protect the view pursuant to 205A because  
6 there hasn't been a view analysis. So the public hearing is not deemed over because you're still  
7 requesting valid information that pertains to the permit. That's one tweakage that I can see.

8  
9 The report, what was great about this report was that it did look a couple of scenarios. The  
10 BLNR is running into the same situation you guys are. Similar rules slight differences, and then  
11 Kauai which also has the same issues that this board...the planning commission has the same  
12 issues that this board has and it has authority over the SMA they've included verbiage that has  
13 stated that well, if we cannot get a majority vote to pass or deny a permit then they'll  
14 automatically have a finding of fact, conclusion of law denying the permit submitted to the board  
15 and then at that time that's when those conditions are placed onto the permit. So even if the  
16 permit's automatically granted, the applicant knows that there's conditions that says you gotta  
17 protect this, you gotta protect that, so on and so forth.

18  
19 Mr. Carnicelli: Well, you said automatically denied, you mean automatically accepted?

20  
21 Mr. Giroux: Well, you know you can say one thing but the law does the other, right?

22  
23 Mr. Carnicelli: Right.

24  
25 Mr. Giroux: The board is denying it but by not having action you're violating your own rule which  
26 says that if you don't have action it is then automatically deemed to be granted.

27  
28 Mr. Carnicelli: Right so we could make a rule that says if we don't make a decision then it's  
29 automatically denied. That's the action. We could say that that's it. If we don't say yes, it's an  
30 automatic no.

31  
32 Mr. Giroux: There's another part of your rules that you would have to look at which says that  
33 there's no action taken unless you have an affirmative vote of the majority.

34  
35 Mr. Carnicelli: Okay.

36  
37 Mr. Giroux: So again, it's...I wanted to put these things on so we have these types of  
38 discussions because I think it's very important that because there's always a solution. It's just  
39 that we're gonna have to do solution making by committee which is really tough. That's why we  
40 love democracy because we know that it's gonna be a we can fix this, but we've got to talk  
41 about it enough that we're on the same page to understand what is the fix that we want because  
42 there's so many ways that we can come at this.

43  
44 The other thing is that in that same vein of saying well there's going to be conditions there's the  
45 option that the Planning Department I would say almost 99.999 percent of the time has a  
46 recommendation for an approval. There's conditions in the report already. So there can be a

1 reference to that if it is automatically granted, conditions as presented by the Department shall  
2 be attached to a finding of facts, conclusions of law and that would be a major fix in the right  
3 direction. So not to, you know confuse the issues but I think those are the ways that you can  
4 kinda chop at this tree is that you know take the low hanging fruit or you're not giving yourself  
5 enough time that's something you can change.

6  
7 The other one is are you starting the stop clock/start clock too soon? Can you find a way to  
8 extend that? And then the third is is that if you are gonna be even after all of these fixes you're  
9 still gonna find yourself having applications automatically granted do you have that safety net  
10 that says even if it's granted we want to adopt the report for the purpose of integrating those  
11 conditions that are in the report even though the application...you know, you obviously have not  
12 taken action to adopt the application itself or the report itself but as a default at least have those  
13 conditions attached to any permit that's automatically granted.

14  
15 Chair Duvauchelle: Commissioner Canto.

16  
17 Ms. Canto: Sorry I need to ask before I forget this, but you spoke about mandatory conditions.  
18 Okay, let's say application comes before us, no go, so the Planning Department has listened to  
19 all the deliberation going on they're gonna know what kind of conditions should apply. My  
20 question was when it comes back to us a second time, my question is while the Planning  
21 Department is working on the second go, do they come before the Commission at any point to  
22 share those mandatory conditions that you spoke of?

23  
24 Mr. Giroux: My—

25  
26 Mr. Spence: Those conditions are when we make a recommendation to you it's a chartreuse  
27 colored pages those include standard conditions.

28  
29 Ms. Canto: Okay, those are standard.

30  
31 Mr. Spence: And they include both standard conditions as well...and those apply to every SMA  
32 Permit, every Short-Term Rental Home Permit, I mean depending on the type of permit we have  
33 a set of standard conditions and then we have special conditions that are tailored toward that  
34 particular development or permit.

35  
36 Ms. Canto: Okay, so the talk of mandatory conditions it's like cast in stone when you say  
37 mandatory conditions. So do we get those mandatory conditions as a commission before we go  
38 around the second time?

39  
40 Mr. Spence: The second time?

41  
42 Ms. Canto: Let's say we deferred it.

43  
44 Mr. Spence: Yeah, those are still a part of the recommendation that we make to you.

45

1 Mr. Giroux: Yeah, I mean from what I've seen is that the original recommendation what they do  
2 is they split. They say well, these are the conditions that we pretty much put on an SMA and  
3 then they've split and then they say well because of the special circumstance that it's near the  
4 ocean there's a special condition regarding beach access or there's a special condition  
5 regarding gathering, you know what I mean?

6  
7 Mr. Spence: Or special uses or maybe hours of operation. There may be I don't know  
8 something special about that particular—

9  
10 Mr. Giroux: How many party tables can be put on during any event?

11  
12 Mr. Spence: Stuff like that.

13  
14 Chair Duvauchelle: Commissioner Higashi?

15  
16 Vice-Chair Higashi: James is there another option I heard you say that we could increase the  
17 time line if we were on our third scheduled meeting which we haven't made a decision on  
18 coming close to the 120 days.

19  
20 Mr. Giroux: Yeah again it's gonna depend on how you frame the rule. I mean, if you increase  
21 the amount of time you give yourself--

22  
23 Vice-Chair Higashi: Right.

24  
25 Mr. Giroux: It just increases the amount of meetings you can in between right, so if right now  
26 we're kind of been close to two meetings. If you don't make a decision on your first meeting the  
27 clock starts ticking. We have a second meeting, the clock is already ticking and it's still ticking  
28 and then by third meeting we're kind of you know, we're in ground zero, we're like right on that  
29 day. If that day we don't make decision so that only gives us three meetings to deliberate and  
30 discuss. If you extend it, you could add four meetings. But even at your fourth meeting you  
31 might not be solving the issue. The issue might still be there. So like I was saying that's a low  
32 hanging fruit it adds a little bit more time but the underlying issue may not go away.

33  
34 Chair Duvauchelle: Commissioner Carnicelli.

35  
36 Mr. Carnicelli: So here's a question. Can we put in a clause that would say we can grant  
37 ourselves a time extension with the applicant's approval if the applicant's okay with it?

38  
39 Mr. Giroux: Oh yeah. There's --

40  
41 Mr. Carnicelli: Like say...so we come up to the 120 days and we can't make a decision and we  
42 go to the applicant and say we want, you know, another one and the applicant says okay, I don't  
43 know what that would accomplish but I'm just for the sake of the conversation.

44  
45 Mr. Giroux: No, it's a good.

46



1 Mr. Robinson: ...(inaudible-not speaking into a mic)...

2

3 Mr. Carnicelli: I guess that's true.

4

5 Mr. Giroux: If they agree—

6

7 Mr. Robinson: ...(inaudible)...deny.

8

9 Mr. Carnicelli: Yeah, that's true why would they—

10

11 Mr. Giroux: My caveat would be that if that were to be added to your rules that it be very clear  
12 that there is an agreement and waiver of the automatic approval because if you just say  
13 well...you ask the person, well can we just extend this or have another thing and he says, yes  
14 and there's no waiver of his...of this section then you might find yourself finding at the next  
15 meeting they say well, it's actually automatically approved because—

16

17 Mr. Carnicelli: Well, and that's like, like you know Commissioner Robinson just said if I get an  
18 automatic approval why would I even ask for an extension. So I guess here's —

19

20 Mr. Giroux: There are circumstances where people—

21

22 Mr. Carnicelli: Here's where I think what we also came up with is saying, okay what if at the end  
23 of whatever timeline we come up with it is...it reverts to not approval based on the conditions  
24 but it reverts to the recommendation of the Department. Because in that off chance that there's  
25 somebody that really the Department goes you know what you shouldn't do this, we can't  
26 recommend it, this is a bad idea, and they just say you know what we're going to charge forward  
27 and we're going to muddy the waters for 120 days and you know, hope to get this thing passed.  
28 What if it...can it revert to whatever the recommendation of the Department is so if the  
29 Department in that off chance recommend denial it actually goes to that not approval?

30

31 Mr. Giroux: But you're not solving the issue of that by law it would actually be approved  
32 because you haven't taken action.

33

34 Mr. Carnicelli: But what if the...no the action is, the action is we revert to the Department's  
35 recommendation.

36

37 Mr. Giroux: The issue coming down to is can you get five affirmative votes to do that what you  
38 just said? So that's the issue is that the circumstance that you're finding yourself in is that every  
39 time you go to vote you get four votes to do whatever you want to do and whatever you want to  
40 do doesn't happen because you need five votes. So it's always coming to the issue of that is  
41 not considered action and that's the Hawaii Electric Light Company v. Department of Land and  
42 Natural Resources. That's the latest case coming out of the Supreme Court that says if you  
43 didn't get the quorum to vote, you didn't take action and therefore you're automatic rule takes  
44 place.

45

- 1 Mr. Carnicelli: One last thing is it seems like the only time we haven't taken action is when we  
2 don't have enough people. Is when we got nine we come to a five-four.  
3
- 4 Chair Duvauchelle: But that's not the applicant's fault.  
5
- 6 Mr. Carnicelli: Agree. I'm just saying for the sake of the conversation.  
7
- 8 Chair Duvauchelle: Commissioner Gomes.  
9
- 10 Ms. Gomes: Thank you Chair. And I, James I just want to address this my dear, I mean per  
11 Charter we are tasked with so many days. We changed this, I mean we can't...I can't...I've  
12 never known to amend. I understand house rules within a commission or board, but when you  
13 start, when there's something in Charter, we all know that this is something that has to go ballot.  
14 We know it goes to...we know how it works.  
15
- 16 Mr. Giroux: Yeah, yeah, there's a—  
17
- 18 Ms. Gomes: There's a process.  
19
- 20 Mr. Giroux: Yes.  
21
- 22 Ms. Gomes: So I'm trying to understand how this is being played out.  
23
- 24 Mr. Giroux: Well, the Charter—  
25
- 26 Ms. Gomes: This is 2017.  
27
- 28 Mr. Giroux: Yeah, let me try to put them...what I like to do is put things in boxes so we can talk  
29 about one thing and then move to the next. But the first box is the Charter I believe requires  
30 that there be an affirmative vote of five members to take action, right? Is that what you're  
31 looking at in your rules?  
32
- 33 Ms. Gomes: Yes, to review...I mean revisions and thereof...(inaudible)...180 days after the  
34 final public hearing so forth, yes.  
35
- 36 Mr. Giroux: Let me see.  
37
- 38 Ms. Gomes: Sorry. I mean, I'm just wanting to make sure that we're not going out of that  
39 because then we are definitely breaking the rules of the Charter.  
40
- 41 Mr. Giroux: Which section are you looking at?  
42
- 43 Ms. Gomes: I mean I'm just looking at what the Planning...the duties for the planning  
44 commission.  
45
- 46 Mr. Giroux: Planning Commission, powers duties?

1  
2 Ms. Gomes: Yes. I mean it quotes 180, then to 120 days. I know that in the past, I mean I've  
3 been here for several meetings and we do have two deferred items, one is the ICC and then  
4 there's another one, you know I'm fairly used to in the past for me that deferred items are  
5 usually on the agenda the next following meeting. I mean, that's just past practice for me in  
6 other commissions, but I can understand that we meet twice in the month. In the past I've only  
7 met once a month so it automatically gets put on as Old Business, it just gets put on. I just want  
8 to make sure that, you know, we're going...

9  
10 Mr. Giroux: Yeah, no I understand what you're saying.

11  
12 Ms. Gomes: You know it's a house rule that we're amending?

13  
14 Mr. Giroux: Yeah, it's just a house rule.

15  
16 Ms. Gomes: Okay.

17  
18 Mr. Giroux: Because what you're looking at here is dealing with the plans and you're dealing  
19 with ordinances. So this is telling you how when you process those because it goes from the  
20 Council, comes to you, goes back up to the Council that's what this timeframe is about.

21  
22 Ms. Gomes: Okay.

23  
24 Mr. Giroux: So what you're dealing with here and what I'm mostly concerned about with your  
25 own rules is the SMA because like you've heard is that you are the final decision maker on the  
26 SMA. So your own rules as far as process govern that and you have SMA Rules that govern it.  
27 So those you have power to change. And then we just have to stay within the framework of  
28 HRS.

29  
30 Ms. Gomes: Okay.

31  
32 Mr. Giroux: And what HRS in Chapter 91 is telling us is that we have to have some rule that  
33 says that these permits are processed in a timely fashion.

34  
35 Ms. Gomes: Timely manner.

36  
37 Mr. Giroux: Yeah.

38  
39 Chair Duvauchelle: Commissioner Robinson.

40  
41 Mr. Robinson: I just wanted to get some clarification. So an EA, does an EA have a...to get a  
42 FONSI is there a time limit on a EA?

43  
44 Mr. Giroux: See that's, that's a different process because those are governed by your...a  
45 different section of the HRS.

46

1 Mr. Robinson: Which is no, right?

2

3 Mr. Giroux: 343.

4

5 Mr. Robinson: So EA so there's no...they could come back three, four times till they get a  
6 FONSI.

7

8 Mr. Giroux: Because it's not a development permit it's not under the 91-13.5.

9

10 Mr. Robinson: Okay. So—

11

12 Mr. Giroux: I'd have to look because 91-13.5 has a litany of things that are development  
13 permits and if it's not in there then it's not governed by 91-13.5.

14

15 Mr. Robinson: Okay. So, and I guess what I'm trying to get at from you, you know, it's the EA,  
16 the SMA, those are the big things in my mind.

17

18 Mr. Giroux: Yeah, the SMA is the big one.

19

20 Mr. Robinson: You know, the SUPs, the STRHs, you know, that to me is a different, it's a kinda  
21 of a...some SUPs have the SMA involved and all that type of stuff, but as far as the dates go  
22 it's...I think we wanna, if we're gonna chip away at something, you know and maybe instead of  
23 lumping them all up in one sum, we could say okay for SUPs we want to give a date for  
24 ...(inaudible)...numbers for SUPs. If you want to give a amount of days for the short-term  
25 rentals. EAs doesn't have one. SMA that one we might come back two, three times  
26 theoretically, hopefully we don't. But that's a little bit more intense and it's a longer  
27 presentation. You know there's 12 points that we have to follow while STRHs as you know only  
28 a few points we have to follow. And so, you know I think it's, I think it might be advantageous us  
29 to look at each individual ones and getting back to Commissioner Gomes is prior is we would  
30 have an STRH and we'd have seven people and we'd be four-three, four-three and what  
31 happens is our agendas were starting to get built up and built up and to where the point to  
32 where we kinda figured out and we can still vote to say we don't want it to go 90 days. We said  
33 you know what it's not fair to these people that keep on coming, you know, and we have seven,  
34 eight people again, seven, eight people again, so you know what for the benefit of them we're  
35 going to push it back to the maximum date because if we as a body don't do what we're  
36 supposed to do on either affirming or denying it then they get whatever the Planning Director  
37 recommended. So it wasn't, it wasn't so much as a punitive for the applicant it was actually a  
38 benefit for them instead of having to sit here every month or every other stuff for you know six  
39 hours sometimes and doing it. And it's not a perfect system, obviously it would be better if we  
40 could agree on, you know, on awarding them or denying them. You know, it's I personally think  
41 that we're a board that's supposed to approve permits not, not default, you know, and this law is  
42 a default approval. And so, you know I always have a problem with that, but being the rules are  
43 what they are, you know that's why I'd like to keep the STRHs and you know the bed and  
44 breakfasts and something ...(inaudible)...on that too even 90 days and you know what we got  
45 two shots at it. If we can't come to a reason to deny the Planning Department is supposed to do  
46 their job. It's only a temporary permit. It's a build building or whatever it is and you know, and

1 so you know that's something I think we can kind of maybe go back and forth. SMAs you know  
2 to me that, you know that might be a 180 day. You know kind of come to not all for one type of  
3 deal.

4  
5 Ms. Gomes: Yeah.

6  
7 Chair Duvauchelle: Commissioner Carnicelli.

8  
9 Mr. Carnicelli: To just jumping right on what he said, I think the biggest kicker is, I think is that  
10 gray area of where we got to the last couple of times. Oh wait, it's approval but with no  
11 conditions like it's just approval. So then like there was one that we voted to approve that we  
12 really kinda didn't want to just because we didn't want them to get it unconditioned. So it's like  
13 okay, well we...so I think that's the biggest part whatever it is that you're going to address. It  
14 has to be that it's not just you know, approval you know like Commissioner Robinson said with  
15 no conditions. It's like okay, at the very least we gotta have that in there.

16  
17 Ms. Gomes: Right.

18  
19 Chair Duvauchelle: Commissioner Gomes.

20  
21 Ms. Gomes: And I'm sorry, and with all due respect Commissioner Robinson I do understand  
22 you know exceeding, I mean not exceeding but giving that time frame to a 120 days because of  
23 all of what you know what does come upon the agenda. In some way I do kinda feel it might be  
24 a little bit punitive to the applicant in some way, but somehow maybe if there's checklist as to  
25 when we're talking about like ICC that...that's one that's deferred and I believe there's another  
26 one I apologize, it's I have these deferred items, there's two that's in my binder here.

27  
28 Mr. Carnicelli: The approval of the –

29  
30 Ms. Gomes: The one that busted up—

31  
32 Mr. Carnicelli: --settlement agreement.

33  
34 Ms. Gomes: Yeah, the settlement agreement, correct. Thank you very much Commissioner  
35 Carnicelli. We needed that information to make a decision. Are we gonna get that information  
36 on the day of or prior to or...

37  
38 Mr. Spence: The information would be a part of your packet.

39  
40 Ms. Gomes: Okay. So, and then I guess right what James is saying where the countdowns  
41 begin are we going to start the countdowns with when you give it out or when we make our  
42 decisions to defer or is that, that what you're saying James?

43  
44 Mr. Giroux: Yeah, and reading it, you know, it...because the first one is the date it's deemed  
45 complete. So we know that there's a process and we usually never go off of that because we're  
46 usually going well, it was deemed complete a month ago and now it's on the calendar and then

1 we're gonna have a hearing. So we usually start the clock at least when we have the hearing.  
2 But what this is saying it's saying the closing of the public hearing and then there's a caveat that  
3 provided that if a contested case proceeding is conducted pursuant to Subchapter 4 of these  
4 rules and I've brought this up before is that we for some reason in your rules bifurcate contested  
5 cases into public hearings and then formal contested cases and that's not really the way the law  
6 looks at it. The law says that if it's a contested case then you're not in a public hearing  
7 anymore. You're in a contested case hearing. And if you haven't received all of the evidence in  
8 a contested case you can't make a decision and that's why we had this here because we  
9 always looked at it as well of course if you're in a trial you don't automatically approve  
10 something before you hear all the evidence. And so that has to be looked at I think in its totality  
11 is that why are we using the word, public hearing when we're talking about a contested case  
12 and that's the reality. The reality is is that if somebody has an SMA Permit and they're sitting  
13 there and the public came to testify, we're bifurcating, we're saying public hearing, three  
14 minutes. Okay, public is done testifying. Contested case applicant present your evidence. And  
15 now we're saying wait, where's the site view, where's the drainage report, where's this, where's  
16 that? And here we are we are the litigant but we're also the judge in the middle of a contested  
17 case going wait, we have till when to decide this? Well, we have until we get all the information  
18 we need, and that's what's important I think that when we...if we're gonna reform these rules we  
19 also have to reform our thinking on how we process the contested case so you're not in a  
20 situation where you're like oh, well 4:30 I guess it's automatically approved. We haven't seen all  
21 the evidence so of course it would be. 'Cause we took that into consideration before but we are  
22 treating it as a formal contested case.

23

24 Chair Duvauchelle: I'm going to say a couple of words here real quick, my turn—

25

26 Ms. Gomes: Question.

27

28 Chair Duvauchelle: Some questions, say words, so I'm a little bit more simpler than that. I feel  
29 like we should stay with the 120 days. I think that that's really what is fair to the applicant. You  
30 know, we...I agree with Commissioner Robinson we have a duty to either I feel approve or deny  
31 and we are of course able to add conditions. I do feel like that the clock should start in all  
32 fairness to us and the applicant would be after the public hearing has been held the first one  
33 because at this point we have gotten all of our information from Planning and we've also  
34 collected all the information from the public that want to show up. So my vote would be to start  
35 the clock for this 120 days at the close of the public hearing. And then on the other, if we  
36 cannot reach an agreement I absolutely think that the automatic approval should be with the  
37 mandatory conditions as the Department recommends.

38

39 Mr. Spence: Okay, question on that. Is it...because every recommendation that comes to you,  
40 not everyone, almost everyone that comes to you has the standard conditions, but then there's  
41 also the special conditions. So basically are you saying you want just the standard ones or do  
42 you want the entire recommended conditions by the Department?

43

44 Chair Duvauchelle: I would say the entire recommended conditions and I really wouldn't see  
45 why we couldn't as a body if we know we're gonna go to automatic approval why we couldn't  
46 add a few more conditions are we allowed to do that?

1  
2 Mr. Spence: Well, then you're, then you're—

3  
4 Mr. Giroux: If...(inaudible)...

5  
6 Mr. Spence: Then it's not automatic.

7  
8 Chair Duvauchelle: Yeah, then it's not automatic.

9  
10 Mr. Giroux: If you can get the five votes to get it added on—

11  
12 Mr. Spence: Yeah.

13  
14 Mr. Giroux: --and that's the difficult part because even Kauai had this problem with their rules is  
15 that they did set up the procedure to say that a findings of fact, conclusions of law will be  
16 automatically presented to the board, but even at that meeting you might not adopt those  
17 findings of fact and conclusion and we saw that with the Baskin case where we were being  
18 asked to defer findings. Well, can you imagine at that hearing if we did decide to vote and all of  
19 a sudden we didn't adopt the findings even though we had a hearing. You made a decision,  
20 you had a hearing, but now we can't agree on the finding. And if we find a four to three vote on  
21 that then we...now we're sliding down that oh my God, did we just automatically that because  
22 we didn't take action even though you did make a denial.

23  
24 Mr. Spence: Yeah.

25  
26 Chair Duvauchelle: Yeah.

27  
28 Mr. Giroux: So it becomes very difficult when you're not getting the consistency of action  
29 throughout the hearing process.

30  
31 Chair Duvauchelle: Commissioner Robinson. Thank you for that Corp. Counsel.

32  
33 Mr. Giroux: You're welcome.

34  
35 Mr. Robinson: Is Chair, I think the Chairperson has control at the last meeting of when you  
36 have a tie vote and you don't have an affirmative action either way that you can still go out to  
37 our commissioners and say okay, guys we have a tie, would we like to try to work on certain  
38 conditions that certain commissioners be comfortable with before we give up? You know, that  
39 that that's up to the Chair. I mean, and we can also make a...we can also make another  
40 motion, once that motion fails we can keep on making motions and keep on trying to going to do  
41 it and you know, that's kinda why we only want to do two meetings, not three 'cause the process  
42 of that. But we do have a vehicle to prevent it from being a automatic. I wasn't here when that  
43 automatic happened, but if there's a automatic I probably would have made a motion to throw a  
44 couple on, you know. I know...unfortunately...well, you...so but if you keep on voting you know,  
45 and but see but then that becomes unfortunately right...that becomes where it goes around that  
46 circle then you're split, you're split, but we can still try to do that.

1  
2 Chair Duvauchelle: To try to—

3  
4 Mr. Robinson: Yeah, yeah and you know—

5  
6 Chair Duvauchelle: --to try to come to a decision.

7  
8 Mr. Robinson: Yeah, and you know and I'm not against shortening the time for STRHs and  
9 SUPs and you know, you know, it's because it's you know, it's something that should simpler. I  
10 am concerned about automatically starting something like an SMA where we ask for information  
11 and we don't get it but yet the clock already started and then it becomes a holiday or we don't  
12 have quorum.

13  
14 Chair Duvauchelle: But then if the applicant has not provided the information then there's  
15 always denial.

16  
17 Mr. Robinson: Well, but I guess is, is as long as we have the ability during the meeting to say I  
18 would like to postpone the date of the running clock you know, until you forward information.  
19 Because doing denial is—

20  
21 Chair Duvauchelle: ...(inaudible)...

22  
23 Mr. Robinson: That's not fair either because I mean we're here to try to pass people hopefully  
24 the Planning Department always does their job and you know, but there might be some  
25 information that we might need especially with SMA. You know SMA you got those 12 points.  
26 And so that's, that's where I'm saying well, I don't know if I want to stick to a 120 'cause 150 or  
27 180 might be better for SMA, but the SUPs, the STRHs, the bed and breakfasts, you know  
28 those kinds of stuff aren't as complicated where we're gonna be asking for more information.

29  
30 Chair Duvauchelle: Thank you. Commissioner Canto.

31  
32 Ms. Canto: I'm not sure whether to ask. Okay, I'm going back to the conditions and Will, so  
33 let's just say okay, the standard conditions are set, is there a way that the commission can defer  
34 decision under additional conditions to the Director rather than the...

35  
36 Mr. Spence: If we were talking about an automatic approval of a permit there's not really any  
37 opportunity to change the recommended conditions, the conditions that we've recommended to  
38 you. If you wanna change the standard conditions for each kind of permit that's a whole other  
39 question and whole other agenda item if you think those standard conditions are adequate or  
40 not.

41  
42 Ms. Canto: No, I'm not thinking of even touching the standard conditions, but conditions other  
43 than the standard conditions could apply after we go through the process. Do we have to go  
44 through the whole process again or can it be deferred to the Director to...

45



1 Mr. Spence: If it's an automatic approval it's...that's whatever we...if this is the decision you're  
2 gonna make whatever we submit to you it sounds like those things would be...those would be  
3 the conditions. There's no opportunity after that to change those.

4  
5 Ms. Canto: All right. Thank you.

6  
7 Chair Duvauchelle: Commissioner Tackett.

8  
9 Mr. Tackett: Seems to me that that we all know where we don't want to go. And if we do end  
10 up in that place the best remedy for that I've heard tonight is probably just to go with all the  
11 conditions and the special if we ever do get put into that place like Sandra said and then just try  
12 real hard not to ever get there.

13  
14 Chair Duvauchelle: Do we want to make a motion on this, do we want to continue further  
15 discussion?

16  
17 Mr. Spence: Or do you want to have Corporation Counsel draft something for your review.

18  
19 Mr. Giroux: Or Will Spence would draft something.

20  
21 Mr. Spence: No, no...

22  
23 Mr. Robinson: I'd like to move to discuss it further another time with some more information.

24  
25 Mr. Giroux: What a good suggestion would be is that if...let me and Will try to hammer  
26 something out and at least you have something that you can look at and scratch and put lines  
27 through it. And what we'll do is we'll bring it back to you, I mean, again it's just a draft. It's just  
28 so you have something. We're gonna try to gleam something that we got from this meeting, see  
29 what we can do to kind of massage this rule to make it a little bit more clarity and then we...it's a  
30 lot easier to wordsmith once you have a draft.

31  
32 Mr. Spence: Yeah.

33  
34 Chair Duvauchelle: Commissioner Canto.

35  
36 Ms. Canto: No, I just want to be able to include Commissioners Castro and Hudson.

37  
38 Chair Duvauchelle: ...(inaudible)...I agree. Commissioner Carnicelli.

39  
40 Mr. Carnicelli: Just lastly is when you're drafting it I think go from what the Chair had said which  
41 is basically you know, the clock...the clock starts when we've gotten all of our information and  
42 you know, have the conditions, all the conditions be a part of any sort of automatic approval. I  
43 think those are the two core ones, you know, and then do your wordsmithing from there, you  
44 your attorney thing.

45  
46 Mr. Giroux: Yeah, legalese.

1  
2 Chair Duvauchelle: Okay, Director. Moving on. So we'll have something...

3  
4 Mr. Giroux: So real quick about process. So you guys are gonna look over the draft, if you do  
5 like it, we're gonna have to start the Chapter 91 process which is gonna be following your rules,  
6 making sure we publish the rule changing, make sure we have the agenda, we have it worded  
7 correctly on the agenda and then we can have another hearing and then decide to adopt the  
8 rules if at that time there's at least five votes and they won't be automatically granted.

9  
10 Chair Duvauchelle: Thank you.

11  
12 Mr. Spence: Wouldn't that be ironic.

13  
14 Chair Duvauchelle: All right, Director.

15  
16 **G. ACCEPTANCE OF THE ACTION MINUTES OF THE APRIL 25, 2017 MEETING**

17  
18 Mr. Spence: Okay, Commissioners Item G, Acceptance of the Action Minutes of April 25, 2017.

19  
20 Mr. Carnicelli: So move.

21  
22 Vice-Chair Higashi: Second.

23  
24 Chair Duvauchelle: Moved by Commissioner Carnicelli, seconded by Commissioner Higashi.  
25 All those in favor?

26  
27 Commission Members: Aye.

28  
29 **It was moved by Mr. Carnicelli, seconded by Mr. Higashi, then**

30  
31 **VOTED: To Accept the Action Minutes of the April 25, 2017 Meeting.**  
32 **(Assenting – L. Carnicelli, R. Higashi, K. Robinson, P. Canto,**  
33 **T. Gomes, C. Tackett)**  
34 **(Excused – S. Castro, L. Hudson)**

35  
36 **H. DIRECTOR'S REPORT**

37  
38 **1. SMA Minor Permit Report**

39  
40 **2. SMA Exemptions Report**

41  
42 Mr. Spence: You have your SMA Minor and SMA Exemptions Report.

43  
44 Vice-Chair Higashi: So move.

45  
46 Mr. Carnicelli: Second.

1  
2 Chair Duvauchelle: Moved by Higashi, seconded by Commissioner Carnicelli. All those in  
3 favor?

4  
5 Commission Members: Aye.

6  
7 **It was moved by Mr. Higashi, seconded by Mr. Carnicelli, then**

8  
9 **VOTED: To Accept SMA Minor and SMA Exemption Reports.**  
10 **(Assenting – R. Higashi, L. Carnicelli, K. Robinson, P. Canto,**  
11 **T. Gomes, C. Tackett)**  
12 **(Excused – S. Castro, L. Hudson)**

13  
14 **3. Discussion of Future Maui Planning Commission Agendas**

15  
16 **a. May 23, 2017 agenda items**

17  
18 Mr. Spence: And future Planning Commission agendas. May 23<sup>rd</sup> is your next meeting. We  
19 currently have scheduled the public hearing for Makena SMA Permit. We do not...that's  
20 currently in front of the court however as you read in the newspaper so I'm not revealing  
21 anything. The acceptance of the EA has been challenged. That's in front of the Environmental  
22 Court with Judge Cardoza. He has issued a stay on proceedings. He will decide on Friday  
23 whether to lift that stay or not. So right now this is...well, if he lifts the stay we can go ahead  
24 with that hearing on the SMA Permit. If he doesn't lift the stay then we will probably pile all  
25 these deferred items all onto...

26  
27 Chair Duvauchelle: I have a question on the upcoming...Clayton, Mr. Yoshida, if we do end up  
28 with the SMA for Makena on our 23<sup>rd</sup> hearing is there any possible other venue than this  
29 location and I wanted to have a little discussion about possibly having security present and what  
30 everybody thought about that?

31  
32 Mr. Yoshida: I think the problem we've had in the past is being able to reserve a facility for  
33 eight, nine hours straight. I mean, we could use the community center sometimes but maybe  
34 just for the afternoon or if it's available and Council Chambers on the...I guess if the Chair  
35 approves it, you know sometimes we've asked but Council has had special meetings.

36  
37 Chair Duvauchelle: Have we ever held any of our meetings at the college or are we allowed to?  
38 I know they've got several rooms available. I don't know if they could accommodate us or not?  
39 So just a suggestion if we could find...we know that there'll probably be a great number of  
40 people here and we'd like to have them all have an opportunity to not only speak but also to  
41 hear what's going on. So if you can, and then...

42  
43 Mr. Carnicelli: Land Use Commission uses the McCoy.

44  
45 Chair Duvauchelle: And where...is that at the college.

46

1 Mr. Carnicelli: At the MACC. McCoy Theatre at the MACC is what the Land Use  
2 Commission—  
3  
4 Chair Duvauchelle: And I do think it would be a good idea to have security present either  
5 uniformed or not. Commissioner Robinson.  
6  
7 Mr. Robinson: Mr. Yoshida would there be any paperwork handed to us before this next one? I  
8 don't even know where we're at with what were supposed to be looking at for this SMA because  
9 there's different, different approvals on different things. So is there, is there paperwork that  
10 you'll be able to hand to us. I know our new commissioners are gonna need a couple sets.  
11  
12 Ms. Gomes: We had five binders.  
13  
14 Mr. Spence: ...delivered those.  
15  
16 Mr. Robinson: Well on the last one 'cause there was different views that were supposed to  
17 be...that was approved and to tell you the truth I don't know which one which. That's the thing.  
18 Like I said when...(inaudible)...SMA I want to be able to have what we're gonna be looking at  
19 and voting on or if you could send us a website that has it where we can download it, I'd  
20 appreciate that.  
21  
22 Chair Duvauchelle: Director.  
23  
24 Mr. Yoshida: Well, I guess we have the final EIS which is—  
25  
26 Mr. Robinson: EA.  
27  
28 Mr. Yoshida: EA I'm sorry, final EA that's on the OEQC website. You know...Ann had drafted  
29 the report but it depends on what the court decides on, you know, regarding the stay on Friday if  
30 we can consider the matter on the 23<sup>rd</sup> or not.  
31  
32 Mr. Robinson: Assuming that we are gonna consider the matter, am I hearing that the final EA  
33 will be mailed to us prior to the 23<sup>rd</sup> meeting? Can I assume that?  
34  
35 Mr. Yoshida: Well, I think the final EA was circulated to you at—  
36  
37 Mr. Robinson: But there's different sections that we voted on.  
38  
39 Mr. Yoshida: Yeah.  
40  
41 Chair Duvauchelle: Okay, we're all looking at each other. I believe the five binders that we  
42 received for the SMA is what you're gonna have in front of you but then in addition I'm sure  
43 there'll be a presentation by the applicant as well as Ann's report that will come in your packet,  
44 the planner's report.  
45

1 Mr. Robinson: Okay, and again Chair I was just talking about, talking about timing and getting  
2 information we want. So we have five binders, we went through it a few times, we've crossed  
3 off things, we agreed to things, we didn't agree to things, we have conditions, we came back  
4 with stuff, and for us to try to have that whole set again and try to remember everything...maybe  
5 give us...give me a cheat sheet or something that what we have voted on and what we  
6 approved and what we're looking at for in the SMA instead of having to wait for the presentation  
7 would be beneficial.

8  
9 Mr. Spence: You will have the staff report mailed to you as soon as we can and as soon as we  
10 hear what the court you know has to say.

11  
12 Mr. Robinson: If the court takes the stay off then we'll see it, right? Okay, that's all just a  
13 request.

14  
15 Chair Duvauchelle: Okay, anything else? Okay, Commissioners Planning Commission's  
16 adjourned. Thank you all very much.

17  
18 **I. NEXT REGULAR MEETING DATE: MAY 9, 2017**

19  
20 **J. ADJOURNMENT**

21  
22 The meeting was adjourned at 4:48 p.m.

23  
24 Submitted by,

25  
26  
27 Carolyn Takayama-Corden  
28 Secretary to Boards & Commissions II  
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**RECORD OF ATTENDANCE**

**Present**

- Pua Canto
- Lawrence Carnicelli
- Sandy Duvauchelle, Chairperson
- Tina Gomes
- Richard Higashi, Vice Chairperson
- Larry Hudson (excused at 11:47 a.m.)
- Keaka Robinson
- Christian Tackett

**Excused**

- Stephen Castro

**Others**

- Will Spence, Director, Planning Department (9:00 a.m.-11:37 a.m.)(1:00 p.m. – 4:48 p.m.)
- Michele McLean, Deputy Director, Planning Department (11:42 a.m. – 11:47 a.m.)
- James Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel
- Rowena Dagdag-Andaya, Deputy Director, Department of Public Works (on-call)