

**MAUI PLANNING COMMISSION
REGULAR MINUTES
AUGUST 8, 2017**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Sandra Duvauchelle at approximately 9:03 a.m., Tuesday, August 8, 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, Molokai Planning Commission is now -- oh, my God, Maui, Maui. We're on Maui. Sorry, I was on Molokai Saturday. Maui. Maui County Planning Commission is now in session of August 8, 2017. Excuse the slip of tongue. Good morning everybody, welcome. Good morning Director, Deputy Director.

B. PUBLIC TESTIMONY - Public testimony will be taken when each agenda item is discussed. **Testimony will be limited to a maximum of three (3) minutes.**

Ms. McLean: Good morning Chair, Commissioners. As noted on the agenda Public Testimony will be taken when each agenda item is discussed. The first matter on the agenda is the resolution thanking former Commissioner Pua Canto. Is that in that in our packet? Chair, shall I read the Resolution into the record.

Chair Duvauchelle: Please, Deputy.

C. RESOLUTION THANKING FORMER COMMISSIONER PUA CANTO

Ms. McLean: Resolution of the Maui Planning Commission

WHEREAS, The Maui County Planning Commission was established in 1958; and

WHEREAS, since September 2016, Pua Canto has served as a member of the Maui Planning Commission; and

WHEREAS, Pua Canto, has served the Maui Planning Commission with dedication and provided valuable guidance in serving the needs of the people of Maui County; and

WHEREAS, Pua Canto resigned from the Maui Planning Commission on July 7, 2017, now therefore

BE IT RESOLVED, by the Maui Planning Commission that it does hereby express its deepest gratitude and appreciation to Pua Canto for her service during the past ten months and does hereby extend its best wishes in her future endeavors; and

BE IT FURTHER RESOLVED, that copies of this resolution be transmitted to the Honorable Alan M. Arakawa, Mayor of the County of Maui and the Honorable Mike White, Chairperson of the Maui County Council.

Chair Duvauchelle: Thank you.

Ms. McLean: Motion to approve?

Chair Duvauchelle: Yes.

Mr. Robinson: I move.

Mr. Castro: Second.

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

Ms. McLean: Five ayes.

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

**VOTED: To Approve the Resolution Thanking Former Commissioner Pua Canto.
(Assenting – K. Robinson, S. Castro, L. Carnicelli, C. Tackett, S. Duvauchelle)
(Excused – T. Gomes, R. Higashi, L. Hudson)**

Chair Duvauchelle: Okay, the first agenda item Deputy Director?

Ms. McLean: The first agenda item is a Public Hearing for a request from Mr. Alan Berman for State Land use Commission Special Permit in order to use two farm dwellings with a total of five bedrooms to operate a short-term rental home in the State Agricultural District on approximately 2.058 acres of land located at 680 Kai Hele Ku Street, TMK: 4-7-010: 063 units 0001 and 0002 in Lahaina. Kurt Wollenhaupt is the Staff Planner.

D. PUBLIC HEARING (action to be taken after public hearing.)

- 1. MR. ALAN BERMAN requesting a State Land Use Commission Special Permit in order to use two farm dwellings with a total of five (5) bedrooms to operate a Short-Term Rental Home (STRHH) in the State Agricultural District on approximately 2.058 acres of land located at 680 Kai Hele Ku Street, TMK: 4-7-010: 063 (0001) and (0002), Lahaina, Island of Maui. (SUP2 2017/0007) (K. Wollenhaupt)**

Mr. Kurt Wollenhaupt: Good morning Members of the Maui Planning Commission and a special welcome to everyone in the audience today. Looks like today is all gonna be about short-term home rentals. The first item before you is a request by the Berman Family to operate a short-term rental within the Agricultural District. Now many of you have heard the process before but just to brief you on the process for getting a short-term home in the Ag District.

There are two permits that are required. The first one would be the Short-Term Home Rental Permit. That's done through a process by notifying all the neighbors within 500 feet. If there are two short-term rental homes already there that triggers a public hearing. If there are a number...level of objections that meet a threshold then that's a public hearing. In this case, the applicant sent notice to all the neighbors within 500 feet and no triggers for the Short-Term Home Rental application part of this were in place. That being said, therefore if this property were located outside of the Ag District the Department could have administratively given this applicant a Short-Term Home Rental Permit. Therefore, that brings us today. Because it's in the State Ag District it's required that the applicant then file for a Special Permit. And since this is under 15 acres the Maui Planning Commission acts as the Land Use Commission in determining whether this is an unusual but reasonable use, the short-term rental use within this particular property. There are five criteria which are explained in the report by which this commission reviews this particular permit.

That being said, the request is for the use of two dwellings with a total of five bedrooms. There is a main farm dwelling and then there is a two-bedroom cottage on the property. It's located at 680 Kai Hele Ku Street in Launiupoko in both the State and the County Agricultural District. In the Maui Island Plan which was done it's actually in the Rural Growth Boundary so should this property have been or in the future be rezoned to Rural then this Special Permit process would not have been required. I will indicate by way of a complete record that the applicant was issued Notices for Violation for the operation of a short-term home rental and the Council, and I believe that the applicant and I believe a testifier today will explain that process in far more depth. However, the Council, in passing their revised Short-Term Home Rental Ordinance believe that people who were cited for operation without a permit should be given a rigorous test of going through a number of different steps in order to be able to come and apply for a short-term home rental legally. The applicant has complied with all of these. They did apply by the end of last year. That was the cut-off date for this amnesty provision. They've been to the Finance Department paying all necessary taxes. They have a State Clearance from the State of Hawaii for taxes. They have paid the fines that were required from the Department of Planning and they also paid a considerably higher short-term home rental application fee. So they are in compliance with the provisions of the ordinance that did allow for this amnesty. I think this may be the only one that you've ever seen that's applied under this ordinance provision. Now I believe there might have been one or two others that have been administratively approved but because of the Special Permit you're seeing this particular case I believe for the first time.

Critical to reviewing an application for a Special Permit is whether or not the applicant has an approved farm plan. The farm plan was approved. It's been verified by the Zoning and Enforcement Division. The schematic of the farm plan is in the report and it will also be reviewed in great depth by Mr. Croly who is the applicant's consultant. Just by way, I know the committee likes to know there are currently according to the records 65 short-term home rental approvals in West Maui. The lid on that is 88. So we're not, we're not there yet. While it seems we're close it takes a long time to actually add, you know, 10 to 12 more. That being the case, Tom has a power point and Mr. and Mrs. Berman are in the audience today for questions.

Chair Duvauchelle: Thank you. Mr. Croly you can proceed, we'll take public testimony after.

Mr. Tom Croly: You want to do public testimony?

Chair Duvauchelle: No, no after.

Mr. Croly: Okay. Aloha Chair, aloha Commission Members. I'm Tom Croly. I helped the applicant put together his application here and helping him with this presentation. As Kurt already said, this is for a State Special Use Permit at 680 Kai Hele Ku Street in Launiupoko.

So to be very clear what's before the Commission today is only the State Special Use Permit because we're located in the Agricultural District. And as Kurt stated, Launiupoko is in the Rural Growth Boundary although it still is Agricultural zoning but should someday Launiupoko be rezoned Rural which most folks kind of agree that that's the right designation for this area then we wouldn't be before you today because the Short-Term Home Rental Permit has met all of the criteria, and specific to what Kurt was talking about with respect to the amnesty program. There is a provision in our Short-Term Rental Home Ordinance that says if you previously operated you cannot come forward to apply for a permit for a period of five years, so you get banned for five years.

So when the Council reviewed the ordinance for a second time they came up with a program where if the person showed that they were paying proper GET and TAT taxes during the time that they previously operated, if the applicant did not take a homeowner exemption, if the applicant agreed to pay real property taxes at the rate that would have applied if they had a permit during the period that they operated without a permit which meant in 19 -- in 2013, that meant hotel rate taxes. And then in 2014 and 2015 it meant commercial rate taxation, and paid a higher application fee and made amends for any past transgressions that is paid any fines that were issued, then they restored their ability to make application. And this applicant has met all those criteria to the tune of about \$24,000 in these fees and fines and so forth in order to have ability to come before. And we do have the tax clearances for, for that here as well.

The State Special Use Permit criteria is different than the criteria that's, that's set up for a Short-Term Rental Home Permit. And I'm going to go through that criteria and how I believe we meet that in just a second. But first I just want to point out that when this permit would be issued it would carry with a conditions from the Short-Term Rental Home conditions. And that -- these conditions are up here. This isn't a complete list of them, but the most important ones are up here which is each dwelling must be rented to a single party. That the maximum occupancy of the main house is six guests because it's a three-bedroom house, and it's two guests per bedroom that's allowed. And the maximum occupancy in the cottage would be four guests because it's a two-bedroom cottage. All parking is required onsite. There's a rule, a strict rule, that there's no parties or group gatherings. Only registered guests are allowed on the property. And that there's quiet hours from 9:00 p.m. to 8:00 a.m. And then as I've just described there's a change in the way in the classification for property tax that the permit triggers. And also, and very importantly, the permit is not transferrable. Only upon death of the applicant it can be transferred to an immediate heir who's a family member is the only transferability that's built into that permit.

So getting to the State Special Use criteria that's before you today, the first of those criteria and perhaps the most important one is that the proposed use is not contrary to the objectives of HRS 205. HRS 205 is the State statute that governs uses in the Agricultural Districts. And basically they want to make sure the Agricultural District is being used for agricultural uses. Well here in Maui County we ensure that through the use of a farm plan. And the farm plan must show that at least 50% or a majority of the land is being used for agriculture. This started in 2004. That's when the County started implementing this requirement for a farm plan. Many, many properties, thousands of properties, were developed prior to 2004 and were built with no Farm Plans whatsoever. Then when someone wants to come forward to get a permit they have to establish a farm plan and have it inspected. This applicant, when he built the original house, filed the farm plan, and when he built the cottage, had that farm plan inspected for implementation. And that was more than 10 years ago, and he passed those. And specific to this farm plan, it's got a one acre fruit orchard containing more than 87 fruit bearing plants.

And this is an aerial view of this property, and you probably can't read it from here, but each of those, those colored designations indicate the plant that is in that area and what's there. And I just want to kind of highlight what's there. There's 30 banana plants, six papaya trees, eight mango trees, four grapefruit trees, eight lime trees, four avocado trees, six orange trees, eight coconut palms where the coconuts are harvested for, for use, five guavas, and eight lemon trees. So that's the 87 fruit bearing plants. And you can see from this picture that the majority of this lot is being used for agricultural use. There's a few more pictures here of the orchard specifically, and yes, it's a very aesthetically pleasing orchard but it is a productive orchard. And the fruit that's right here in front of me is fruit that was picked today from this orchard and we welcome anyone here to partake of this fruit here.

What the applicant has been doing with his fruit is he has been donating the fruit to a company called Aloha Blue Charters. Aloha Blue Charters takes people out on snorkeling tours and whale watch tours and so forth. And there's a letter in your packet there from the owner of Aloha Blue Charters, Tim Collins. And I'm sad to say that Tim was supposed to be here today to give testimony to this regard and quite unexpectedly Tim passed away just last month for suddenly and he can't be here. But the applicant will continue to make these donations to Aloha Blue Charters to Tim's partner in that business.

The second criteria that the State Special Use Permit needs to be evaluated under is that the proposed use will not adversely affect surrounding properties. And I want to point out that when the Council made the Short-Term Rental Ordinance they were very careful to constrain it. To make sure that it wasn't creating an impact any greater than any other residential use. And it is defined in County Code as a residential use. The quiet hours, the limit on the number of guests, and the all parking onsite. Often times I hear these, these properties referred to as hotels and there really is no comparison between a short-term rental home and a hotel. In that the folks coming here it's always just one party and they're typically staying for a week or more. When they come in, there's not an in and out. There are no commercial activities that go along with this so it is defined as a residential use.

In your packet and on top today you'll find support letters from three of the immediate neighbors and three more support letters from three other owners of properties in the neighborhood. And I

just want to take a second to point out where these letters of support came from and so forth. If you look at the map shown here on the right-hand side it shows the applicant's property. And the stars that are surrounding it, the two on top and the one on the bottom are from the immediate. Those are the support letters from the immediate neighbors. Letter no. 1 was from Hayden and Wendy Pogni who live immediately next door to the south. And letter no. 2 is from Paul Ratterman who lives immediately next door to the north. And next to Mr. Ratterman lives Eric Scott Fitzgerald who also provided a letter of support. So the very immediate neighbors have all voiced their support for this application, and I hope you take the time to read those letters because they're fairly well thought out and they speak to the character of the, of the applicant. There's three other letters that are in the neighborhood from folks in the neighborhood as well, a couple of blocks away, and three blocks away. And I think one of the writers of one of those letters is here to give testimony as well.

Okay, so the third Special Use criteria is that the proposed use will not unreasonably burden public agencies to provide roads, streets, water, drainage, school improvements, police and fire protection. And we have a lot of short-term rentals operating today and we really have no evidence that any of them have caused a greater need for any of these services. In fact, we do have to recognize that there are times when short-term rentals have no one in, in -- the place is vacant and therefore there's no need for most of these services. In this particular case there's been no reports of police calls to this property.

The fourth criteria is that unusual conditions, trends, and needs have arisen since the district boundaries and rules were established. And Maui County updated its Code in 2008, and again in 2012 to recognize the changing travel demands of the visitors to Maui, and created the bed and breakfast and short-term rental home ordinances to address this. However, the rules at the State level really haven't been revised in this regard since the 60's when of course tourism was not a major part of Hawaii's economy as it is today.

Finally the last criteria is a determination as to whether the land is unsuited for permitted uses in the district. This would be the case of some properties where either there is no soil, it's just all rocks or they're on a slope that's so severe that it couldn't be legitimately used for agricultural uses. In this case, the applicant makes no claim that the land is unsuited for uses in the district. In fact, he points out that he is using it for agriculture, has a one acre fruit orchard, but it is notable that it took quite a bit of effort to create that fruit orchard. It wasn't a matter that this was leveled ground, that fertile soil that he was able to put the trees in the ground. He had to remediate that soil. He had to remove a lot of big rocks. There was a lot of effort, a very high expense to create something that, that is a fruit producing orchard in an agricultural use here.

One condition of the SUP and also of the Short-Term Rental Home Ordinance is the continuation of these agricultural uses. I think it's very important to recognize this because while we have the farm plan that says people have to establish a farm plan and implement that farm plan before they can built their second dwelling, they don't have anything that ensures that they continue that Farm Plan. When you grant someone one of these permits they do have to continue that. And every time the permit gets renewed they have to show the Planning Department that they are continuing their agricultural uses. So this is one way where this permit helps ensure that we are furthering the agriculture in the Agricultural District.

Notice of application as Kurt said were sent out to the 36 property owners within 500 feet. And during the 45-day notice period no objections were received. A notice sign was placed in front of the property during that notice period. Also during that notice period the applicants invited neighbors to an open house at their property. They sent out the invitation that you see on the right to all their neighbors within 500 feet and about a dozen of their neighbors did come, and they told them what they were intending to do here, and they got a lot of support from their neighbors. And finally notice of this public hearing was sent to the adjacent neighbors which is the requirements for the State Special Use Permit and was published in The Maui News on July 3rd.

In the area there are some other short-term rental uses that have been permitted. There is one permitted bed and breakfast that is nearby. It's not within 500 feet, but it's nearby in this particular neighborhood. And there are three other short-term rental homes with State Special Use Permits that were granted by this Commission. And for reference this particular neighborhood, this part of Launiupoko is approximately 160-lots. The permit that this body unanimously granted to Helen Hunt in September of 2015 is really the most similar to this particular applicant's application. The homes are almost identical. The fruit orchard area is almost identical except for one primary thing and that is this fruit orchard has been maturing for about the last 10-years and is producing fruit. The one that Helen Hunt planted and was just in, just before the Commission considered that application. And I'm not sure if it's producing fruit yet, but this one has I've demonstrated fruit production.

I do want to point out that there was a Facebook post made and a property was identified in that Facebook post as this property, and it was not. And recognize that in Launiupoko there are many properties up there that aren't complying with the Agricultural Rules. I think that we can see that this property is one that is complying with the Agricultural Rules, and I hope that, that this particular hearing doesn't turn into a referendum either on the Agricultural Rules or Agricultural Subdivision or, you know, whether we should have short-term rentals there but rather just on this applicant's application for this State Special Use Permit.

We hope that the applicant respectfully request the Commission's approval of the State Special Use Permit with the conditions that the Planning Department has put on there. And I have the applicant here who would like the opportunity to address the Chair if you may.

Ms. Duvauchelle: Okay, during public testimony.

Mr. Croly: Do you want to do it during public testimony? We can do that.

Ms. Duvauchelle: That would be fine.

Mr. Croly: Okay, thank you.

Ms. Duvauchelle: Okay, thank you. So at this time I'll open up the floor for public testimony. I have registered to testify Allyson Harney. Please state your name and you'll have three minutes.

Ms. Allyson Harney: Good morning. Allyson Harney. I live in Launiupoko and the testimony I'm going to give today is going to change a little from that wonderful presentation. But I did want to tell you that I did go along with your rules, that 45-day criteria to send a letter in. I sent in a letter -- two letters in fact -- a protest. Well, protest is kind of a tough word; disagreement I'd say more like and somehow it got lost in the shuffle. So I did adhere to your 45-days.

I'm just confused with this whole situation. You know, our Mayor had an article in The Maui News which I'm sure I'm talking to the choir here. But that Maui is projected to have shortage of 13,949 units within 10-years. We don't have enough places for our workers, our people. As we know it's unrealistic to think that recent homes being built for affordable housing would make a dent in this number. We need rentals for our workers. So why would we approve short-term rentals when these units in Launiupoko make wonderful excellent homes for families? We put our ohana on short-term, long-term rental. We were inundated with unbelievably qualified families wanting to rent this cute little cottage with a front yard. I mean, it's just unheard of to get this kind of home. And so the biggest thing that made me even think about this for this meeting is I met these people it was heart wrenching what they're going through to find some place to live for their families. I mean they're in these condominiums with like two and half families and a dog and things like that. And that's what made me really -- when I went to rent ours what really made me become passionate about getting places. I mean we could rent our probably three, four, or five times more in short-term rentals. But I felt as my obligation to the community to keep rentals available and really nice family rentals. And also when I moved to Launiupoko I feel it's my obligation to my neighbors too to keep it a real true Ag land. And Ag land it's so unique because you know in addition to have fruits and vegetable to give to your neighbors and to take them to work and everything else, you know you'll have on our website you know, okay, there's a friendly goat in my backyard, who does it belong to? It's just charming living on Ag land and I would like to keep it that way.

So and then, you know, the other thing is when we first moved to Maui we went to Kapalua and that's all short-term legal condominiums. And then we moved, when we decided to live here full-time, we moved to Alaeloa in Napili which does not have short-term rentals but just a lot of illegals. So then we really did our research and we found out about Launiupoko. You know I knew there were three short-term rentals, but I did think that --. You know, I made sure I did not buy on a street with a short-term rental. I'm a retired realtor, and a successful realtor and I know what havoc that can play. First of all the noise. I mean, in my, in my little testimony here that I was going read from if I needed to I stated how up in that area there was a short-term rental, illegal. I had no idea it was this home, not a clue. And the noise, it would be like for a week straight, the noise would just funnel right down to our house. We're within the 500 feet. Every night. And you know like I said I had no idea it was their house, but that was just an illegal, which it was, but you know what I mean. And the noise is outrageous. And then I take my dog every week, every day twice a week, and you can see a difference in traffic when it's in traffic there.

Ms. Duvauchelle: Please conclude.

Ms. Harney: Pardon me?

Ms. Duvauchelle: Please conclude. Three minutes are up.

Ms. Harney: Okay. So I guess as a resident of the community I would like to have the rate just stay in this community as it's designated. I think we should worry about our people more so and I'm going to use a term I hear constantly in our paper about California people making rich people richer. Thank you.

Ms. Duvauchelle: Thank you. And for the Commission, her testimony is in your packet as Exhibit 16, so we do have it.

Ms. Harney: . . . (Inaudible) . . .

Ms. Duvauchelle: Yes. Are there any questions from the Commissioners? Would you please come back up Ms. Harney? Commissioner Robinson?

Mr. Robinson: I apologize I missed your name in the beginning.

Ms. Harney: Allyson.

Mr. Robinson: Allyson. Allyson, I'd just like to say thank you for your thoughts. Thank you for realizing that being a part of community is actually being a part of the community and not living somewhere else and have somebody else be in your community.

Ms. Harney: I have to admit, I wouldn't have been there except for the people to come to our house to rent. They broke my heart, these families.

Mr. Robinson: Thank you. Thank you.

Ms. Harney: You're welcome. That's it?

Mr. Robinson: No, plus you're a realtor so it's very refreshing to hear that from a realtor. Thank you.

Ms. Harney: Retired, yay.

Ms. Duvauchelle: Thank you very much. All right next testifier Francine Aarona? Good morning, please state your name, you'll have three minutes.

Ms. Francine Aarona: Good morning. My name is Francine K. Aarona, I'm known as Auntie Mopsy from Protect Paia and we have to stop meeting like that. Aloha. If I may --

Ms. Duvauchelle: Talk into the microphone.

Ms. Aarona: If I may, my testimony is directed to both items on the agenda so if that's permissible.

Ms. Duvauchelle: If you would --. We're all looking. Can you confine the testimony to the agenda item, and then when the next agenda item is heard you could also testify again to that agenda item.

Ms. Aarona: Okay. Okay, that's great. Thank you. Mahalo. Well, aloha again Commissioners. I'm here to speak on behalf of the residents and the people on Maui who have issues with short-term vacation rentals. Launiupoko is another area of invasion for vacation rentals. In educating myself with sale of land not to our people but to people who come to visit and turn it into a vacation rental spot troubles me to no end. You know it's always nice to put a power point up and to show what you're doing. I caught the point where they offer fruits to a tour group. I mean, you're offering it to tourists not to your residents or not to people. But this bothers me. And I'm sorry that I don't live in that area where I can visually see what's going on like she just testified. But the whole point of this island turning into a vacation rental island is we're not going to be called Maui Island anymore but vacation rental island. We're going to lose a lot. So for you as people that make decisions I urge you to make the right decisions to be aware of what's going on on your island. Rules that you set in place, rules that you contradict each other and so we need to be more mindful of that. So I'll continue my rest of that testimony and end it up at the next issue. Thank you so much.

Ms. Duvauchelle: Any questions? Thank you very much. Our next testifier, please, Don Couch. Please state your name, you'll have three minutes.

Mr. Don Couch: Thank you Madame Chair. Aloha, my name is Don Couch. I'm speaking on behalf of myself. Just to remind you guys I served as Chair of the County Council Planning Committee when the Short-Term Rental Ordinance, which Maui County Code 19.65, was originally established, and again two-years later when it was amended. The Council intended for this permit to help better regulate and control short-term rental uses. You heard about illegal uses and there was really no way to enforce on this. We put in some rules to allow for enforcement. These unregulated uses were occurring and have been occurring for many years without proper permits or zoning to legally allow such uses. We had all hoped that the property owners who wished to make use of these permitting process would do so. They -- not a lot did. Now you heard about this turning it -- and it's so hard to follow Mopsy -- but the Maui Island turning into a short-term rental homes.

Out of 55,000 units of residential units only 400, we have a cap of 400 that are allowed for short-term rental homes. And a cap of 400 for bed and breakfast, so there's a really small percentage, really small percentage. The other thing that I need to talk about is we asked for, when we came back around on the revisit of this ordinance we gave the people who were not in compliance one more chance to come into compliance and we were hoping everybody would do that. That's generally what the Planning Department does. If they find violators they want them to come into compliance. That's what we tried to do here. These folks, not saying whether or not --. Apparently this is the first one of the ones that came into compliance that have to come before you. The issue here though is a Special Use Permit which if these folks were in Rural which the Maui Island Plan says that they should be in then they wouldn't need to come to you for a Special Use Permit. They have met the criteria for a short-term rental home. So the issue

is do they get the Special Use Permit? And there's a list of criteria that needs to be met there. So I just encourage you to take a look at all of the facts. Yes, we do have a housing shortage. We definitely do. You know 88 in West Maui of which there are I believe in the 50's or I'm not quite sure are already given out, permits have already been given out. It's iffy, and some of these homes you know --. Okay, sorry, three minutes. If you have any questions, I'm here to answer them. Just want to make sure you guys separate the issues, and this is what we asked for in Council is people to come in and pay their fair share of taxes. Okay, thank you.

Ms. Duvauchelle: Thank you Don. Any questions? Commissioner Robinson?

Mr. Robinson: Aloha Don.

Mr. Couch: Aloha.

Mr. Robinson: First thank you for your service that you did for the County.

Mr. Couch: Thank you.

Mr. Robinson: It was never an easy job.

Mr. Couch: Nope.

Mr. Robinson: And asking people to vote for you is never an easy thing to do so appreciate all the work you did.

Mr. Couch: Thank you.

Mr. Robinson: This Commission prior sent letters to the Council when you were there asking for a moratorium to be clearer on things, and we had a big consultant earlier tried to describe what the Council's agenda was and what they were trying to do, and it's great that you're here so that we don't have to take a third party's opinion. But the question is was your votes always in unanimous in numbers in, in thought process of what the Council is trying to do with short-term rentals?

Mr. Couch: Actually no. There was never --. Well, there was some unanimous votes. But, yeah, there were some people that had concerns. But that's why we have the representation form of government we have is to try and make sure everything fits for everybody which is really hard to do. But, no, there were, there were some no votes. But as far as I remember and you know, I don't recall of it ever being close. Maybe a couple of no votes versus, you know, 4-3, or -- because we are a seven person committee.

Mr. Robinson: Is, is it not true that it was part of Council's, I guess, wanting to make sure that there wasn't a short-term rental in a place that they don't want to be, that there's protest letters? That there wouldn't be an automatic short-term rental permit?

Mr. Couch: Correct. We put in some criteria. And that's, that's an interesting thing you bring up.

Hopefully, I don't want to step too far out of the bounds of this thing but part of the situation was, look, there's going to be people complain. Sometimes it's neighbor against neighbor just a frivolous complaint. This body has been very good at ferreting out those frivolous complaints. I'm not saying that this one is or is not. But we put a threshold. If you have an issue and we've seen, you know, people come to our office, our offices all the time saying this, this neighbor is bad. And when you, when you work through all those noise and everything it's just personality conflicts, not really things that are happening in the neighborhood. But, if there is something that a preponderance of neighbors around say, yeah, this is what's happening, generally this body has been for years very good at weeding that out. And that's what we put up. We said this in the committee over and over again that we trust the Planning Commission to come up with whether or not the complaints are frivolous or if it's a personality issue or if it's actual, there's an actual problem.

Mr. Robinson: Last question. So on that note, Don, I guess with the Commission us being tasked with that and your guys thinking on that process, is it a, is it a percentage thing? I mean, is, is, is one, is one oppose not enough to, to take a, a neighbor seriously? Does it have to be a preponderance of letters on both sides?

Mr. Couch: We did say, yes, that there needs to be a preponderance. If you have a single one that's certainly -- that didn't trigger coming to you. I think it was two of adjoining neighbors or a certain amount within so many next adjoining. We did say if there's enough which is only a couple in that near vicinity then there's something that needs to be discussed in length at a public hearing. That's why we wanted to bring it to you. But we said if there's one, generally if it was real bad issue there would be a lot of complaints as opposed to just one. Even if it's a letter coming in. I mean people coming in to testify is really all good as you all know but even a letter. If you got letters from everyone around them saying, no, these guys are bad apples, then it would be up to you to determine, yes or no. We had one, if I may, the very first short-term rental home done under this was the impetus for all the rules we have because it was a bad apple. But this Commission said we'll give you one year, if you even blink wrong, your permit is revoked. This guy has become the model renter if you will. He will not have allow people with loud parties or anything. He's very strict who comes in and how, how well they interact with the neighbors.

Mr. Robinson: . . . (Inaudible) . . .

Ms. Duvauchelle: One more please.

Mr. Robinson: So Don, I want to go with what you brought up again. You brought up 55,000 homes, there's only, you know, 400 total on the island.

Mr. Couch: Allowed.

Mr. Robinson: Allowed, right. Yeah, we know there's more on B&B. But anyway we won't go there. I guess the question is how do you guys think about that 400. Do you think it's going to be splattered around? Do you think it's going to be --? Because we have clusters now. And as we know there's, there's areas where people prefer to rent, right, and so we have clusters. We

have none inside the Lahainaluna area, but then we have clusters in different areas. And we have another topic today where we have 15 to 20 in one single property.

Mr. Couch: You know we discussed that quite a bit, and for instance Makena, the coastline of Makena. That's going to be where there should be --. I mean I actually think that that might be -- we should have a zoning category called resorts or whatever and that should just be allowed in certain areas that were built for that purpose.

Mr. Robinson: Well, I mean, we have TVR's right?

Mr. Couch: Correct.

Mr. Robinson: So, I mean, so isn't everybody able to try to ask for a different Change of Zoning for a TVR instead of STRH?

Mr. Couch: Well, we have. You would have to change your single-family home to a Hotel District, and it's really difficult to do. If you want to do a single-family home into a Hotel District, all of sudden that lot now can be a hotel at some time. And all of sudden it can be six or --

Mr. Robinson: The height restriction will change and all that.

Mr. Couch: Yeah. Right.

Mr. Robinson: I see. I got you.

Mr. Couch: So that's why it's better to allow small permitted uses versus change in zoning on that, in that case.

Ms. Duvauchelle: We have another question. Commissioner Carnicelli?

Mr. Carnicelli: Morning Don.

Mr. Couch: Morning.

Mr. Carnicelli: Thank you for being here and actually being able to shed some light on some of this stuff that we guess about. How many years was it that the Council wrestled with the STRH ordinance?

Mr. Couch: Well there was no STRH ordinance for a long time.

Mr. Carnicelli: Right.

Mr. Couch: It was -- it all ended up being a bed and breakfast. And there was a bed and breakfast ordinance that they tried for years and they finally came out, I think, in 2008, somewhere around there with the bed and breakfast ordinance. The next thing was short-term rentals and there's a distinction. Short-Term Rental Homes are homes that the owner is not

there. Generally that happens when somebody's living there three months out of the year and then, you know, nine months out of the year it's vacant. They wanted the ability to then rent it out to at least keep people in there so that it looks like --. I don't know why they would do that, but that never came up and that still wasn't allowed so in my first year, I think, they said that they were going to -- they wanted to do it and had an item when I first came in. So what we did is we got the people for and people against in a room, we put them in a room and gave them some food and said you guys work it out, and they did. For eight hours the people very vocal for, very vocal against got together and came up with some pretty good compromises. And so that's why we came up with the lot that we did.

Mr. Carnicelli: Okay, so I see where I was heading with this is I'm just curious about the vetting process for and I get there's a different B&B versus STRH. So when we're talking about the STRH's that there was a vetting process of, you know, years of working on it, hours and hours of testimony, public hearings, group charrettes committees. We had a lot in all of that. So there was a tremendous amount public input into what the Council ultimately made law, correct?

Mr. Couch: Yes, yes.

Mr. Carnicelli: So I guess is in 2012 do you feel as though that was a fair even though it may or may not have been, you know, unanimous? I don't think it would be unanimous because you still have people showing up saying that they don't like, you know, this particular law which, you know, is fine. Is do you feel as though that was a fair representation at that time when it was passed?

Mr. Couch: Well, amongst the people who were vocal for and against they finally came up with a compromise and said this is a fair law that we can live with. You know we had mix and tweaks because we had more people come in the public and discussed, but we had hours of testimony and discussion.

Mr. Carnicelli: One last question. I promise this is only one. So the, the caps. Because at that the time, 2012, that was a very forward thinking, you know, almost like a ground breaking type of ordinance nationwide to have the caps. How is that you guys sort of came up with the caps and why?

Mr. Couch: We came up with the caps because that's what the bed and breakfast had. We said we did not want the island to be overrun with short-term rentals and bed and breakfast. And we said there are caps already established, they discussed them, let's just make them the same. It's still a small percentage. That means less than a tenth of a percent. I didn't do the math off the top of my head, but it's a very small percentage so that we didn't get overrun. The issue was we wanted to make people to come into compliance and give the Department teeth to enforce. That's another issue that we can deal with at a different time but at least we have that ability now to do that. The Department is doing as much enforcement as they can. I've had people come and complain to me, hey, I got this letter. I said, well, you didn't follow the law, now you've got five years you've got to wait.

Ms. Duvauchelle: Any other questions? Okay, thank you very much.

Mr. Couch: Thank you.

Ms. Duvauchelle: All right, anybody wishing to testify please come up. You'll have three minutes. State your name. Oh, you don't need to sign in. Yeah, just go ahead and come on up.

Ms. Tiare Lawrence: Aloha Commission. My name is Tiare Lawrence. I work for the Hawaii Alliance for Progressive Action. Let me just get to --. Sorry. Where did it go? Anybody else is going to go so I can find my notes again? I pressed the button. Okay, I'm back on. So a quick history. These kind of activities were disallowed on Oahu in order to maintain the Ag inventory of land and to discourage non-bonafide Ag activities on Ag land. Recognizing that hotel accommodations in Hawaii, Maui and Kauai Counties are very limited some time ago, the counties were allowed to create bed and breakfast and vacation rentals. However times have change. There's a substantial amount of hotel room inventory and there appears to be clear of these activities. The property owner is asking for Special Use Permit in order to operate short-term vacation rentals out at these houses. In Maui County any short-term vacation rental on Ag land has to be accessory to Ag activities on that land. What Ag activities --. My question is what Ag activities are ongoing here for those short-term rentals to be accessory to?

In 2007 the 2050 sustainability plan was published which made mention that Hawaii did not have enough Ag land to be self-sustaining. That was 10 years ago. Ag land in Hawaii has been scooped up because it's cheaper than urban and used for urban development. These people who exploit these thought systems are making a killing in more ways than one. Short-term rental homes permitted under 19.65 of this Code provided that an approved farm plan has to be fully implemented. Criteria for the permit also considers past non-compliance as well as community complaints which we know has been an issue with other home owners in that area. So even home owner has a farm plan the criteria for the permit must take into account the community complaints. Unfortunately notwithstanding county land use ordinances that prohibit their operation in certain areas illegal short-term vacation rentals have proliferated throughout the state. Certain vacation rentals may have removed much needed units from the residential rental market and exacerbated the rising housing cost that now exceed what may state residence are able to afford. Without meaningful enforcement of county land use laws the potential impacts of illegal short-term vacation rental operations on the long-term housing market will remain unaddressed. Even though there may be permits available there's a serious housing crisis on your hands. Out of the 55,000 homes a recent study indicated that there's about 10,000 illegally short-term rentals on Maui, and you can reach out to Elle Cochran's staff. They had reached out. They had a software company that specializes in looking at all the different vacation rental sites, and that's the number that they came up with. You can reach out to her office for more information.

You know, you have the power to stop issuing these permits until adequate enforcement measures are in place. I urge you to stop issuing these permits until such time because we are in a serious dire need of more rental housing on Maui. Mahalo.

For the record, I was the one that put out that Facebook post. It's probably me. I posted a picture and I'd be happy to show it you, but it's just an example of what's taking place at Launiupoko where a majority of the land is being used for homes and there's no Ag activity happening whatsoever, so I just kind of wanted to put that out there.

Ms. Duvauchelle: Any questions? Thank you very much.

Ms. Lawrence: Mahalo.

Ms. Duvauchelle: Anybody else wishing to testify please come forward. State your name, you'll minutes, sir.

Mr. Jeffrey Pazer: Jeffrey Pazer. I first came to Maui about 47 years ago. I just want to put this in perspective. The concern really shouldn't be about whether Maui is known as being the short-term rental vacation. I think the bigger concerns for the Planning Board and I may be speaking out of turn is that Maui becomes the hotel island, you know, not the short-term. And what the Planning Board allows to happen to this island with the 36,000 acres that are no longer in sugar. So that's the future of Maui. I understand people want to have short-term application approved, but I think to the Planning Board I speak to I beg of you to save this island by development by A&B and make sure that the agricultural land on this island is used for agriculture so that Maui can be self-sustainable. Thank you.

Ms. Duvauchelle: Thank you. Any questions for the testifier? Thank you. Anyone else wishing to testify at this time? Please come forward, state your name, you'll have three minutes.

Mr. Ian Hollingsworth: Aloha Commission, my name is Ian Hollingsworth. I'm fortunate enough to live in Launiupoko for 12 years, and neighbors of the Bermans. And I support their STRH application. I feel that they would be --. You know they farm. I'm pretty familiar with many of the 160 lots up there. These guys clearly practice the agriculture and have been for over 10 years. And they do give fruits and vegetables to neighbors and fundraiser and schools also, not just to Tim Collins of Blue Charter. Yeah that's all. Thank you.

Ms. Duvauchelle: Thank you. Any questions? Thank you very much. Anyone else wishing to testify please come forward. State your name sir you'll have three minutes.

Mr. Alan Berman: Good morning and aloha, Alan Berman. My wife Sandi and I would like to thank you for this opportunity to obtain a Short-Term Rental Permit on our property. We recognize that this permit is a privilege and not a right and would always continue to respect that and to operate in a way that is respectful to our neighbors and to oblige by the rules that go along with the permit.

My wife and I actually met in Maui 37-years ago at the airport. We were both arriving on our first visit here and were at the baggage claim and reached for the same piece of luggage. And thank goodness our luggage looked the same because we fell in love with each other and with Maui on that first visit. A couple years later we were able to obtain or buy a small studio condominium in Kihei which we kept for 22-years and realized that our life's dream was to

eventually retire in Maui and become full-time residence here and would really need a house to be able to accommodate our large extended family from time to time. We've owned our house now in Launiupoko for 13-years, and visit with our family several times a year. We have continually been expanding our farm plan in agriculture and have been donating our fruit mainly to as you heard to Mr. Collin's charter boat business as well as to neighbors and fundraisers. We have been blessed to know our neighbors and respect their privacy and friendship. Mahalo for your consideration of our application.

Ms. Duvauchelle: Thank you. Any questions? Commissioner Robinson, you had a question?

Mr. Robinson: That's a nice story. That's a good way to meet you know.

Mr. Berman: Yeah.

Mr. Robinson: You got lucky, yeah.

Mr. Berman: I did. We did I think.

Mr. Robinson: The question is, is why not just a B&B instead of two houses to rent out to people?

Mr. Berman: Well I think because you know we have such a large extended family that we sort of need to have that much space to accommodate them. So therefore you know we kind of were hoping that we were able to obtain those units as well.

Mr. Robinson: I apologize I don't understand the size having to do a difference between a bed and breakfast and a short-term rental. So if you have --. You own both.

Mr. Berman: Correct.

Mr. Robinson: So if you have a bed and breakfast it's only rented when you want to rent it, and the other house is still available for your family. You know, same thing with -- so your house is always --. In fact, your house is available right now for your family.

Mr. Berman: Right. That is correct, yeah. We basically use income to help maintain and tend to our farm and want to pretty much keep that going.

Mr. Robinson: Okay, thank you.

Mr. Berman: Thanks.

Ms. Duvauchelle: Would anyone else like to testify at this time? Okay seeing none, public testimony is closed and we'll open the floor -- public testimony is closed, we'll open the floor for questions from the Commissioners. Do we have questions? Would like the applicant like to continue to speak or did you have --?

Mr. Berman: I just wanted to mention that we don't live here full-time. I just wanted to mention that. Thanks.

Ms. Duvauchelle: Okay, any other, any questions from the Commissioners for the Department or the applicant? Commissioner Castro?

Mr. Steve Castro: To the applicant.

Ms. Duvauchelle: To the applicant.

Mr. Castro: So currently you're only here part-time?

Mr. Berman: Correct.

Mr. Castro: So you rent out your main house?

Mr. Berman: We would like to, yeah. But we are here several times a year.

Mr. Castro: The other two units?

Mr. Berman: Yes.

Mr. Castro: As well.

Mr. Berman: We would like that.

Mr. Castro: Thank you.

Mr. Berman: Thanks.

Ms. Duvauchelle: Any other questions? All right, seeing none. Can we get the Department's recommendation?

Mr. Wollenhaupt: Hello again Commissioners. It's been found that the application presented by the Berman family for this Land Use Commission Special Permit does comply with the applicable standards for an unusual but reasonable use within the State Agricultural District for reasons that were stated in the report dated August 8, 2017 for Docket No. SUP2 2017/0007. The five conditions have been explained in the report and also in discussion today with regards to criteria for a Land Use Commission Special Permit.

That being the case and looking at the preponderance of the testimony that was given in the staff report by the various neighbors, looking on balance that the operation, the farm plan implementation, the Department does recommend to the Planning Commission approval of the Special Permit subject to seven conditions. One of the most important is Condition 7 that the farm plan shall remain implemented throughout the duration of the State Special Permit. And

evidence of this implementation should this permit be granted would be required upon renewal for a time extension. Therefore the Department is making a recommendation for approval. Thanks.

Ms. Duvauchelle: Thank you. Discussion? Motions? Commissioner Carnicelli.

Mr. Carnicelli: I move to approve as recommended by staff.

Ms. Duvauchelle: Move to approve Commissioner Carnicelli. Do we --?

Mr. Robinson: I'll second for discussion.

Ms. Duvauchelle: Okay. Motion to approve by Commissioner Carnicelli, seconded by Commissioner Robinson. Discussion on the motion.

Mr. Carnicelli: Thank you Commissioner Robinson for the discussion. I don't even know where to start. I guess I'll start with this is you know what is before us is a Special Use Permit. You know I understand that there's a lot of conversations about should Ag be Ag, should Ag be Rural, farm plans, implementations of farm plans, what are farm plans, affordable housing, affordable housing shortage, STRH's, illegal STRH's, enforcement of illegal STRH's. But what's before us is a Special Use Permit with five criteria. Global warming, right, sea level rise, the island is sinking. Yeah, this isn't on the shoreline so we don't have to talk about shore hardening. But what's before us right now is a Special Use Permit with five criteria. And when I look at these five criteria, does this particular applicant meet what it is before us? I believe that they do. Do I think that if we deny this will this particular property go into affordable, you know, long-term rental? I don't know. I would think that this is probably one of those people that probably can afford to leave it vacant rather than rent it. And so then that --. But that's not up to me to tell them what they should do with their property. Whether they should you know rent it long-term or not. All that's before me is whether or not I should, you know, vote in favor of a Special Use Permit. So...I'll guess I'll stop there Chair.

Ms. Duvauchelle: Thank you.

Mr. Carnicelli: Thanks.

Ms. Duvauchelle: Any other discussion? Commissioner Castro?

Mr. Castro: Thank you Chair. The only issue I really have with it is being a short-term rental when there's such a shortage of affordable rentals. I would probably give this more consideration if it was a long-term rental rather than a short-term rental.

Ms. Duvauchelle: Thank you. Any other discussion? Commissioner Robinson?

Mr. Robinson: I guess I disagree with the findings that this an automatic STRH to begin with. I think we have adequate complaints or oppositions. I think what's epidemic in Launiupoko is we have gentleman's estates that have landscaping and it's not a farm. It's not farm plan.

Donating fruit, I can get a box of that in my background right now and I have a 10,000 square foot lot. You know it's, it's nothing against the applicant. It's advantageous for an applicant to have a short-term rental. They're not here. They can rent their home out. We all get it. It's a monetary thing and it's good. But also monetary is to rent out the cottage to help supplement from the applicant's testimony, to help supplement the control of the orchard. And I think that's reasonable and that's why farms have second dwellings. They have second dwellings so they can have farmers live rent free and subsidize labor so that farms can then afford farm workers. There's also with the farm there's an amount of monetary that they would sell to help provide for a farm. We're farm friendly. We want to be farm friendly and so we have to make sure that the farm zoned lands are used for farming. We can't keep on turning it into landscaping. We can't keep on turning it to short-term rentals because that's the opposite of what our intent was a planning. And I don't think it hits the criteria for, for being a professional farm. I don't think it hits the criteria for being an automatic STRH because of the opposition. And for those things I won't be supporting it. Thank you.

Ms. Duvauchelle: Commissioner Carnicelli.

Mr. Carnicelli: One of the things I guess I just did want to speak to in regards to the motion was...regards to the applicant being you know the first person --. I mean what they're doing is they're doing what the law says they should do. They got caught. They were operating illegally and quite honestly that's not good. But, the wisdom of the law says okay you get caught we're going to give you the opportunity to do what's right and to make it legal. And they jumped through all the hoops and they spent all of the money, they did all the things and say okay we got caught, we did it wrong, but now we're going to come forward. And I think that it's also important for us as these numbers start to get --. As we start getting close to the 400 and this becomes you know more of an issue, and as the Department starts to squeeze and start really enforcing. Because you know you've got the new money from the Council to be able to do enforcement. And as the enforcement ramps up we're going to start seeing more and more of these of people that got caught and they're going to try to do what's right. And so you know that part of it is I think also something that I just, in regards to this particular application and this particular State Land Use Permit I just think I want to be able to just recognize the applicant for at least trying to do it the right way even though you didn't. But you got caught and you are and the law says that you know we're going to give you a chance to rectify and so anyway I just wanted to recognize that as well. Thank you Chair.

Ms. Duvauchelle: Thank you. Any other discussion? All right Director would you repeat the motion?

Ms. Michele McLean: The motion is to approve the State Special Permit subject to the seven conditions in the staff report.

Ms. Duvauchelle: Thank you. All those is favor please raise your hand?

Ms. McLean: One aye.

Ms. Duvauchelle: One aye. Opposed? Three.

Ms. McLean: Three noes. So the motion fails.

Ms. Duvauchelle: Motion fails. So do we have another motion on the floor?

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

The Motion to Approve the State Land Use Commission Special Use Permit FAILED.

(Assenting – L. Carnicelli)

(Dissenting – K. Robinson, C. Tackett, S. Castro)

(Excused – T. Gomes, R. Higashi, L. Hudson)

Mr. Robinson: I'd like to make a motion to defer.

Mr. Castro: Second.

Mr. Robinson: I'd like to speak to the motion please.

Ms. Duvauchelle: Please.

Mr. Robinson: Unfortunately our Commission is is very thin today which means it has to be unanimous vote. I'm not sure if we're going to have a unanimous vote. I don't think you would -. And I don't think it's fair to an applicant. I think an applicant should always have -- should be able to be heard and unfortunately for the applicant today...doesn't look it seem to me that they're going to get an approval. That doesn't mean that you don't get your day in front of a Commission that's why I think we should have a deferment. I think we're one seat short to begin with with resignation and you know people have unfortunately been sick. And I think we should you know postpone it for another time. Thank you.

Ms. Duvauchelle: Any further discussion? Director would you repeat the motion?

Ms. McLean: The motion is to defer.

Ms. Duvauchelle: All those in favor please raise your hand?

Ms. McLean: Four ayes with the Chair five ayes.

Ms. Duvauchelle: Five ayes. Thank you. Motion will be deferred at a later time. And we will take a break and reconvene at 10:20 a.m.

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

VOTED: To Defer the Matter in Order to Have Additional Members Present.

**(Assenting – K. Robinson, S. Castro, L. Carnicelli, C. Tackett,
S. Duvauchelle)**

(Excused – T. Gomes, R. Higashi, L. Hudson)

(The Maui Planning Commission recessed at 10:08 a.m. and reconvened at 10:22 a.m.)

E. UNFINISHED BUSINESS

- 1. MS. DEBBIE MITCHELL, consultant, requesting Short-Term Rental Home Permits for the current owners of the following units at the International Colony Club in the R-3 Residential District at 2750 Kalapu Drive, Unit # 22, 29, 38, and 45, TMK: 4-4-006: 006, (0021, 0028, 0037, and 0044), Lahaina, Island of Maui. (STWM T2016/0030, STWM T20160031, STWM T2017/0002, STWM T2017/0007) (K. Wollenhaupt) (Public hearing was conducted at the April 11, 2017 meeting and the matter was deferred until the August 8, 2017 meeting. The 120-day deadline for the Commission to act on the matter is August 9, 2017.)**

These applications require a public hearing because there are at least two (2) permitted short-term rental home operations located within 500 ft. of the subject property.

Ms. Duvauchelle: County Planning Commission is back in session. Director, would you read our --? Deputy Director. You're going to be Director I think. Would you read our next agenda item?

Ms. McLean: The next item is a request from consultant Debbie Mitchell for short-term rental home permits for four units at the International Colony Club which is located in the R-3 Residential District at 2750 Kalapu Drive. These would be units 22, 29, 38, and 45 which are located at TMK Nos. 4-4-6 parcel 6, units 21, 28, 37 and 44 in Lahaina. And once again Kurt Wollenhaupt is the project planner.

Mr. Wollenhaupt: Good morning Commissioners once again. The item before you is as indicated a request at the International Colony Club located in Lahaina for the permitting of short-term home rentals. Each of these would have their own permit should they be granted for the units as indicated by the Deputy Director. Just to give you the back history.

At the August 11th, 2017 meeting of the Maui Planning Commission, detail --

Ms. McLean: Kurt, April 11th.

Mr. Wollenhaupt: April 11th, 2017. Extensive review of these applications, power point presentation, Department presentation, and staff report were reviewed. After due deliberation the Commission voted to defer this matter to a future date. That date being the closest date to 120-days therefore that's today being 119th day under the 120-day rule that the Commission needs to make a decision on a project. At the April 11th, 2017 meeting there was no ability of the Commission to get five votes either way. Therefore should today's meeting result in something similar then it's my understanding that the applications would be approved. I did not

recopy as I gave you the hyperlink to the application before. It was requested by the Department after listening to some of the testimony and after listening to some of the Commissioners for the consultant, Debbie Mitchell, to update you on some new information that she's learned to give a sense of the history of this community at the International Colony Club and to update the Commissioners as needed. The reason we had the hearing in the first place is not because there were triggers of protest. The protests did not make any trigger for this hearing. It was because they are indeed other short-term home rentals within 500-feet. In fact, at the International Colony Club there are 18 approved short-term home rentals. The Department in this case does not believe this is necessarily negative. In fact at the hearings a couple of years ago some of the Commissioners felt that clustering them within a community that has had a past familiarity from the 60's with vacation rentals could be in fact be a good thing. So in any event Ms. Mitchell has a presentation that she'd like to give if that's okay with the Chairwoman.

Ms. Duvauchelle: Yes please.

Ms. Debbie Mitchell: Thank you Kurt. Good morning Commissioners. My name is Debbie Mitchell and I'm here representing four owners at the International Colony Club which is located in West Maui.

Just to bring you in to the general location you'll see that it's located just mauka of the highway, Highway 30, in the black rock area of North Kaanapali Beach. Zooming in as you'll see here this is really the heart of the resort community. The Westin Kaanapali Villas now run in three locations. Northward, the Royal Lahaina Resort, several resorts that were developed during the AMFAC days as was the International Colony Club which was built right around 1964.

Moving in this is an overhead view where you'll see that it is surrounding by the Royal Kaanapali Golf Course. It's the area lined in red, and then just across the street is the Aston Maui, the Royal Lahaina, and the Westin Villas. Across the street to the north is the -- excuse me -- Kaanapali Coffee Plantation and the old Sugar Cane Train Station.

This is the layout of the development. There are 45 cottages located here on approximately 10 acres. And as you see I've kind color coded you of the cottages in green for those that have already been granted their permits and those in pink are those that are requesting their permits at this meeting.

Just some views around so that you can understand the area. This is just directly to the west and it's the main entrance to the North Kaanapali Beach area. Facing east going up the hill to Kaanapali Hillside and the Kaanapali Coffee Farms as well as the new hospital that's being built up there going straight up that way. And facing south you see the old railroad tracks of the Sugarcane Train and again to the north is the Sugarcane Train Station itself. They got it running up for Christmas this year and it was good to see it again. I missed that going by.

And again this is indeed the entrance to the resort area there in North Kaanapali Beach. The golf course crosses the border several times of the property so very much kind of separated from the rest of the housing developments by the golf course itself. So it is really kind of an island onto itself.

This is a little aerial shot taken from the ocean and you can see the large resorts there. And then just up at the top left is the International Colony Club so you can kind of see how it lays. The main street there where you enter is Kalapu Drive. And you can see facing north and facing south. And there are several parking places located throughout the 10 acres. This is the main parking lot and then there are four additional parking lots and there are adequate parking per the ordinance so that each residence has two parking spaces as required that are not on street. They are within the parking lot. You'll see street parking but that is not the resident parking.

This is the general floor plan. They are very similar in layout. There are three-bedrooms as well as two-bedrooms and those are the --. There aren't any that differ from that. So you can see they're are nice and tidy around 1,000 square feet of living space.

Some of the exterior. Here you can see each of the four cottages. It's a very neat and tidy development. It has mature landscaping. It's very well kept. And these are some of the views that you can see the pool. And there are actually two pools and the landscaping that is quite mature.

Interiors showing you the bedrooms. They're nice and light. They try to follow the plantation style living. And as, as I was looking through it I wanted to find something that showed when this came into existence, what was happening in West Maui when the International Colony got started. And so I found at the University of Hawaii I found an aerial view of the old Kaanapali Airport and you'll see from the red line you'll see that's the beginning, the genesis of the first section of International Colony Club as it was being developed, as the rest of the resort area was being developed. Again these were a couple of promotional materials that I found from the era showing the location of the Kaanapali Airport. And on the bottom one, at the very lower left corner you'll see the International Colony Club called out. And on the top, it's at the top right. So in their resort materials that they were handing out to folks this was called out as part of the resort community.

Again these are postcards from that era as well that showed the initial building of cottages there. And they mentioned maids, daily maid service. They mentioned rental service. So the point is these were built as part of the rental vacation area. These were built as rental units, vacation rental units. This again was another one that talked about the putting greens and shuffle boards and again kitchen and maid service. The house and ground rules that have been given out for years all that it talks about renters and short-term renters and provide rules for those. So a little bit of history about why we're talking about this separately originally the ordinance called, well short-term rental ordinance, called for one permit per tax parcel number, and this is indeed on tax parcel number. But all these folks had been living in these units and renting them because they thought that was what -- they were told that was legal for them. They paid the highest tax. They had chose the hotel tax. They paid that tax. They paid GET and TA taxes as well. They all thought they were legal. When the ordinance came around and one of them tried to apply they found out, oh, wait we're the only ones that can get it. So they, County Council, took it under advisement and actually made some changes to allow each of these homes to apply it separately. So that's why you see them all. There wasn't enough . . . (inaudible) . . . to make a zoning change. We didn't have the records to do the grandfathering so this was the way we

had to go. So that's --. But it was done with that in mind that it was always a rental area.

The four applicants here you can see these are shown at the last presentation. They're a mixture of local residents, part-time residents and frequent visitors. They are all new applicants. Some have owned but never rented but they decided to apply well before the permits ran out.

I did a little work because last time it was an important bit of information for you as why these were not suitable for affordable renting and they're --. I just did a little study. The main reason is that they pay \$1,100 a month in management fees, in maintenance fees. So I looked at each of the four units. I gave you the assessed value which is lower than the market value obviously, and the current units that are on the market are those three. I did a little calculation for you just did some round numbers and you can see the \$1,100 maintenance fee. So the break even cost for the owner without utilities, without repairs, without maid service or landscaping or any of that is almost \$3,800 a month. So I just wanted to bear that although these are small and tidy they still bear a great expense to the owner. So to provide them as long-term housing it may push it out of that affordable area for folks to be able to maintain. In fact two of my owners have said if they have to maintain the long-term they will have to sell because it doesn't bring in enough to cover their expenses. So just that for what it's worth.

All the neighbors in 500 feet were notified about the permit and the Department placed an ad in The Maui News. We did have one protest from a neighbor which should be in your packet. It was a gentleman that mistook the location for an area down into the Royal golf course. It was quite some ways away. It was obvious from his letter he was not talking about the --. Because he was talking about it being right at the ocean. And so we did try to call him, we wrote him letters as I mentioned the last time he agreed that it was the wrong place but he did not provide us with a retract. He did not spend anything to retract it, but we did contact him with the explanation.

There are actually 22 other permits within 500 feet. There are 18 already in the International Colony Club itself. And then up at Kolepa Place there are three other three short-term rentals and one B&B, so that...so that is the story with that.

Just a little justification, the owners on every single case want to maintain these homes for their own use. They have kids. They have family members, people that they would like to come and stay, and if they have a long-term renter in there that doesn't work out for them. It makes them not be able to use their property. The maintenance fees again being so high, \$3,500 a month, they would be in a losing money if they were to bring it down to that level. And the last it is always been assumed that these short-term rentals were okay. They were sold with that in mind. So when people bought they just assumed that that was what they were able to do, that's why they paid the high hotel tax rate. And finally it was a part of the resort community, designed by AMFAC, and therefore considered a part of that resort that was built up. Again, you talk about clustering but if there are going to be four homes granted in West Maui at least these four are in a community that's already doing this and they are...it's not spreading them out through places, neighborhoods where that might trouble the other neighbors. This is in a neighborhood that's already functioning that way.

So thank you very much. I appreciate it. If you have any questions for me please let me know.

Ms. Duvauchelle: Thank you. At this time we'll open the floor for public testimony. Our first testifier Francine Aarona.

Ms. Aarona: Okay hi again.

Ms. Duvauchelle: Please state your name.

Ms. Aarona: Francine K. Aarona, Aunty Mopsy, from Protect Paia. Can't leave that out. I'll just go through my testimony. I wanted to comment on the power point. I think later on they're going to change your name to International Colony Vacation Rental Resort instead of Club. But as you know I'm here representing the people of Lahaina, Launiupoko, on the issues of vacation rentals. You know in educating myself with sale of lands, condos, not to our people but to people who come here to visit and turn it to a vacation spot troubles me to no end. The question is what are you doing for our people of Maui? Inch by inch our land, our home is being sold off to the highest bidder. No longer affordable for any resident to keep their home, and their last option is to become homeless. You have laws and guidelines for you to follow that contradict itself: zoning, Ag land, bed and breakfast, shoreline use. I think this Board needs to challenge the Planning Department in their submitting of bills, applications, et cetera.

Also the enforcement of illegal usage. They need to develop a plan to check on these rentals instead of waiting for an RFS. Not too many of our residents know of this form or even know how to fill one out. I believe that an owner should live here for at least 10 years before they put an application in for a short-term rental, regardless if the house was built five years or more. We need strict laws in place of our Maui Island, or our Maui Island will be a vacation rental island with no residence, no culture, no people, of this a'ina, no homes for your children, your children's children. We will have no legacy to hand down to our keiki. We the people ordain you to make decisions for us. I urge you to make the right decisions today. God has given us a beautiful place to live and malama. And that beauty is crumbling right before our eyes. Mahalo for your time.

Ms. Duvauchelle: Any questions? Thank you very much. Our next registered testifier Mapu Kekahuna. Is that on the Nahiku? All right. Anybody else wishing to testify at this time on the current agenda item? Please come forward, state your name, you'll have three minutes.

Mr. Croly: Aloha Commission, Tom Croly. Whether you like short-term rentals or you don't like short-term rentals you should be in favor of this application. Because this application as Debbie said are properties that have been short-term rentals since their inception. And essentially by granting these permits all you're really doing is reducing the cap, the numbers that are available for any other home to be a short-term rental. When this, before this issue came up at International Colony Club, 29 of the 42 units were paying the hotel taxation. That means these individual owners were raising their hands saying yes I'm using this for short-term rental and I'm told that I'm supposed to pay hotel taxation and they said they would do that. So when this change in the ordinance came about that allowed individual condominium owners to make their own individual applications I figured what we would end up with is 29 applications that would come in. As it turns out we have 22. I'm not sure what the other seven have decided to do, whether they decided to stop operating or whether they just are waiting to see what happens

with these guys. But the bottom, bottom line on this is this is a subdivision in R3 zoning that --. It's not subdivision actually. It's one R3 Zoning lot. That from its very inception, from the time that it was built in 1964 was built specifically for this use. And we're essentially just granting those people the proper way by today's zoning laws to allow it to legally exist. I'm sure all these people were shocked in there when they found out that they had been renting for 20 plus years and that it wasn't in concurrence with our law. So the Council took the opportunity to fix the law and do this. But again if you don't like short-term rentals, then grant these guys these permits because that's I guess there's four today, that's four less short-term rentals that will ever come before you as part of the cap. Thank you.

Ms. Duvauchelle: Any questions? Thank you very much. Anyone else wishing to testify?

Mr. Couch: Aloha, my name is Don Couch. I'm here speaking on my own behalf. This one is another one that that fell into a little bit of a loophole or fell through the cracks kind of thing. Whenever in the late 60's, early 70's or early 80's, I can't remember when they changed the laws, the Zoning laws to disallow transient vacation rentals. As you saw this whole complex was already built for short-term rentals. There were other areas that the Council during the Planning Committee that I was on, Chair of, we kind of took that these places were built for that specific purpose. Puamana it was so convoluted the zoning and whatnot so we basically said okay it was built for short-term rentals so allow short-term rentals there. Same with Alaehoa and a few other places around it that we allowed retroactive use. This one we didn't do because of the 88. By the way there's only 88 allowed in West Maui so we're not going to make the whole island nothing but vacation rentals. There's only 88 allowed in West Maui. This will take, if you use all 29 as Mr. Croly said, this will take up 29 of those 88 so they can't be elsewhere.

I'd like to correct some things. The amnesty period for people coming in is over. It's done. If they operated they can't do it for another five years. There was mention that 10,000 illegal vacation rentals. There's a software that the company that I discussed in the Planning Committee that said they came up with about 12,000 units without permits that were advertising for vacation rentals. Well 10,000 or approximately 10,000 of those are condominiums that are in areas that allow transient vacation rentals; Kaanapali Alii on the west side and few of those places over there, and certainly on the south side, all of those don't require permits. So this software looks and says oh they're advertising they don't have a permit they're illegal. That is not true. About 10,000 units are legal. They don't need permits. And therefore they don't need to put their permit number in the advertising because they don't have a permit number. So that's the other thing.

There was concern about agricultural land, the HC&S agricultural land going away. 27,000 of the 36,000 acres of HC&S, former HC&S land are designated important Ag land. What that means is there can be no --

Ms. Takayama-Corden: Three minutes.

Mr. Couch: Sorry. May I have one minute more? Okay. There can be -- it has to stay in Ag forever unless the State legislature by a two-thirds vote of both houses reverses that important Ag land. So just so you know we are not going to build over Maui. We have a Maui Island Plan that says where we can build and where we can't. We worked really hard on that Maui Island

Plan to make sure that there's no building in the Ag lands that we want to continue as Ag.
Thank you.

Ms. Duvauchelle: Any questions? Commissioner Robinson.

Mr. Robinson: Hey Don. I got a question for you. You just talked about the legislature and the majority vote. When we had the water issue last year was that, was that a two-third vote as well?

Mr. Couch: Which?

Mr. Robinson: For the waters to be returned that A&B is using? You said A&B will never be able to turn it over. Wasn't the water the same situation in that whole past?

Mr. Couch: I didn't follow the water.

Mr. Robinson: I'm just saying legislature, two-thirds it's been historically and I want to you know we're cognizant of that. But that was just my comment on that.

Mr. Couch: Okay.

Mr. Robinson: Thank you.

Ms. Duvauchelle: Any questions? Commissioner Castro.

Mr. Castro: Don, you mentioned 36,000 acres or roughly around 36,000-37,000 acres?

Mr. Couch: 36,000 -- HC&S apparently has 36,000 acres that they no longer use for sugarcane. 27,000 of them are considered or designed important Ag lands. And it would be hard for any County Council if the State Legislature decided to take it out for any County Council to pull it out.

Mr. Castro: And what becomes of the remaining 10,000 acres?

Mr. Couch: If they're outside of the Maui Island Plan, they still have to either come in for a General Plan amendment which is very difficult as well. I believe that has to be a two-third. I can't remember now. For the Urban Growth Boundaries there is -- they would have to get a change in that. So it's a huge process. It's not just going to be oh we can build houses there.

Mr. Castro: Thank you.

Ms. Duvauchelle: Thank you. Thanks Don. Anybody else wishing to testify on this agenda item? Okay seeing none we'll close public testimony. Any questions from the Commissioners? Deputy Director?

Ms. McLean: Thank you Chair. I just wanted to let the Commission know that when the --. Well I'll first say that the short-term rental home issue has been by far the most problematic permit

and process that this Department had to administer in the time that I've been here which is 6 ½ years, and probably going back far before that. You've seen many, many applications whether it's the STRH or whether it's the State Special Permit needed on Ag land for an STRH. It is incredibly time consuming. It is exhausting. It is frustrating for staff. It's frustrating for you guys, the Council. Don can say how many times and years, and Tom as well the effort that has been spent on this one issue is phenomenal. If we spent that kind of time and energy trying to solve affordable we probably wouldn't have an affordable housing problem.

That being said it's for us to administer this thing and to enforce it we have to look really carefully at the criteria that's in the Code that the Council adopted. Whether we like it or not whether we agree with it or not that's what we have to follow and we make our recommendations based on that. They're the State Special Permit. Those are State requirements. We don't lay those out. Those are established by the State. We try to administer following that. What ends up coming before you, you might look at and not like it for whatever reasons you may have. But I'm just asking that you please understand our recommendations are based on the criteria in the law and we try to administer them as best we can.

With the International Colony Club we really tried to establish the short-term rental use as being grandfathered because we do not doubt that that was established at a time it was lawful. And the way grandfathering works is if you establish it when it's lawful and it continues uninterrupted then it's grandfathered in, and even if the law changes mid-stream and doesn't allow that use anymore. We've had to grandfather many kinds of uses Countywide whether it's business use or what have you, and we try to be as consistent as we can with the documentation needed to establish grandfathering. We weren't able to have that continuous document for this property. If we had been able to do that and I believe that was case. We just weren't able to verify it that we would have established this as vacation rental use being grandfathered. Since we weren't able to do that then they have to come through the STRH Rental process. And from the Planning Department's perspective in administering the law with the caps as Don described and this becomes where the Commission has a role is are there areas that are appropriate for this and are there areas that are not. And we do believe that this is a resort area, it was a part of the resort area we felt that it was appropriate for this concentration of short-term rental homes. Because this isn't a long-term resident community like you see in some of the other places of the island that where you need that kind of scrutiny to see should these uses be allowed to proliferate because they've been there since the property was developed. So thank you Chair for that time.

Ms. Duvauchelle: Thank you Deputy Director. Commissioner Carnicelli.

Mr. Carnicelli: So Deputy Director, it's just that break is the reason why this doesn't fall under Minatoya. Is it the Minatoya law that you're saying is the break?

Ms. McLean: The Minatoya law dealt with apartment zoned properties and this is residential zoned so it did fall under that.

Mr. Carnicelli: Right, right. So the same concept though just different.

Ms. McLean: Yes.

Mr. Carnicelli: Okay, thank you.

Ms. Duvauchelle: Okay, any other questions from the Commissioners? Commissioner Robinson.

Mr. Robinson: This is for Kurt. Kurt how long has the ownership been for these four applicants?

Mr. Wollenhaupt: It's going to take a minute to try to find the --. Unless Ms. Mitchell know particularly off them. Go into the real property tax and look at the records.

Ms. Mitchell: I can give you approximations. Debbie Mitchell. One of the properties, Mr. Jack Mathers owns which is number 45 has been in his family for years using as their family property. And recently he's the only living member of the family and he has his business in Seattle, Washington. But he wanted to do once he heard what was happening decided he would like to join in. The other three are new owners since within the last eight months.

Mr. Robinson: Thank you.

Ms. Duvauchelle: Any other questions? All right can we, Kurt, get the Department's recommendation please?

Mr. Wollenhaupt: Good morning Commissioner again. The recommendation based upon additional information that we would have received in today's power point continues a recommendation of approval from the time that this was first heard back on April 11th, 2017. That being the case these four applications for a Short-Term Home Rental Permit complies with the standards in 19.65.030 as listed. And under the applicable regulations of the Maui Planning Department's Report to the Commission on April 11, 2017 and the addendum report that was given for today's meeting is August 8th, 2017. Therefore the Department recommends approval of the Short-Term Home Rental Home Permit subject to the 22 conditions. These conditions . . . (inaudible) . . . effects to the neighborhood, speak to issues to insurance, noise, fire safety, compliance to the representations made, therefore in consideration the Department would recommend approval of today's Short-Term Home Rental Permits.

Ms. Duvauchelle: Thank you Kurt. Commissioners, discussion, a motion? Commissioner Carnicelli.

Mr. Carnicelli: I move to approve as recommended by staff.

Ms. Duvauchelle: Thank you. Move for approval, Commissioner Carnicelli.

Mr. Castro: Second.

Ms. Duvauchelle: Seconded by Commissioner Castro. Any discussion on the motion? Commissioner Robinson.

Mr. Robinson: The Colony came in front of us over eight months ago with about I think 17 applications. And I think like the Deputy was saying these people were always using it as a short-term rental. And that's one way to look at it. But I look at it differently. And you know, we always seem to look to -- look towards where the money is. Okay we have Ag land. We don't want to keep Ag land because we want to turn it over to make it profitable to put a commercial or housing. Or we don't want to change the hotel because it is hotel so we don't want to turn it back over to Ag. So it's always for the money. So there's a reason why things change and things don't change. This was an opportunity I thought for things to could change for the better.

We had the cost of \$3,500 to rent a unit. Well people purchase because they get a tax deduction, and that would have been a \$24,000 tax deduction which would bring their cost down and they would probably \$1,800 to \$2,000 a month net which I think is affordable. But these applicants also bought this home and they're buying because now there's 17 other people has a short-term rental and now we saw the prices the assessed was \$400,000 and now they're selling \$600,000 to \$700,000. And this the crux that's happening in Maui where our housing is becoming out priced for people to buy it. We could have bought it four year ago. If this didn't have a short-term locals could have bought these properties, they could have lived in it. They could afforded \$1,100, but they can't because they're getting priced out from people who don't want to live but people who want to use Maui for a profit. And like the Deputy said we waste so much time with this short-term rental instead of fixing the housing. If we just gave a moratorium and just ban them all together we wouldn't have to waste all this time. It doesn't mean that nobody could ever use their house for rental. But we could do a pause on it which is what this Commission asked for from the Council a few years ago which we got no reply for. So we're continually coming again and again saying can you approve this because we think this and we think that, but it's not fixing anything. There's a cap. There's not a minimum. We don't need to give 88 permits out. We're allowed up to 88 until the Council wants to move it to a higher number, but it's not a minimum. I'm not for this again. I understand that Mr. Mathers had this unit for a long which means he's only paying \$1,100 a month. Which means he could rent it out for \$1,500 to \$2,000 and still make some money off it, and he could still rent it out for six months at a time. I don't think there's a need for these people to have it. I understand the theory of well you know what if you don't like short-term rentals give these four because they're in this cluster and it will help the cap. If you don't like short-term rentals you don't like short-term rentals it doesn't matter where it is. Because it's not fitting. And when it takes housing that is the \$400,000 to \$600,000 range this is the special ones that we don't want to have people renting out. The \$2 million homes nobody is going to rent that out locally. The four to six these are the ones. These are the ones that I want to protect. These are the ones that we should have protected, and unfortunately it didn't happen. I'm not in support of this. Thank you.

Ms. Duvauchelle: Any other discussion? Commissioner Carnicelli.

Mr. Carnicelli: Thank you Chair. For the record in speaking to the motion I'll just go ahead and you know when we approved, when this body approved the 17 last year I went on the record and stated my reasons why. When this particular application these four came before us a couple months ago I went on the record and stated why. And so I'm not going to restate those positions but just stand, let the record show that I stand on those positions. I also want to I guess just acknowledge what the Deputy Director said and that I concur what it is that she said and agree and so I will be supporting the motion. Thank you.

Ms. Duvauchelle: Any other discussion? Director, would you please repeat the motion?

Ms. McLean: The motion is to approve the Short-Term Rental Home Permit subject to the 22 conditions in the staff report.

Ms. Duvauchelle: Thank you. All those in favor please raise your hand.

Ms. McLean: Three ayes.

Ms. Duvauchelle: Opposed?

Ms. McLean: One no. The motion fails for lack of a majority vote.

It was moved by Mr. Carnicelli, seconded by Mr. Castro, and

The Motion to Approve the Short-Term Rental Home Permits FAILED.

(Assenting – L. Carnicelli, S. Castro, C. Tackett)

(Dissenting – K. Robinson)

(Excused – T. Gomes, R. Higashi, L. Hudson)

Ms. Duvauchelle: Commissioner Carnicelli.

Mr. Carnicelli: James, welcome to the conversation. I can't remember, Corp Counsel, I cannot remember if we do not come to a decision does this get approved without conditions or did we internally change that already to where this body, it gets automatically approved as recommended by staff?

Mr. James Giroux: We had that discussion I think because we had a lot of concerns for the SMA process, but it didn't, it didn't bleed over to STRH's. Yeah as far as that goes we just have to follow your rules as far as the issue of non-action.

Ms. McLean: If I may Chair. If non-action means that the permits are approved the conditions that go along with the permit are generally and Kurt can confirm are generally a recitation of what is required in the Code. So those are going to be applied to these applicants even if isn't in a Commission approved action. I don't know -- there are numerous, there are numerous requirements listed in the Code and we have to do a side by side to compare which of those end up . . . (inaudible) . . . But that's where the conditions came from. That's how we generated those conditions because those are what the Code specifies as requirements.

Mr. Robinson: It's a template? Do you know?

Ms. McLean: The rules -- or excuse me -- the conditions that we layout in our permits whether they're administratively approved or whether they're approved by the Commission are identical. What we put in our administrative approval letters are the same conditions that we recommend to the Commission. And sometimes the Commission adds to those or make changes to those,

but they are identical as they go forward. And those were taken from Chapter 19.65 of the County Code. Whether we cover all of them I, I would have to look, but, by in large they would be covered.

Ms. Duvauchelle: Thank you. Do we have another motion or discussion?

Mr. Robinson: Motion to deny.

Ms. Duvauchelle: Motion to deny by Commissioner Robinson.

Mr. Carnicelli: I'll second for discussion.

Ms. Duvauchelle: Seconded by Commissioner Carnicelli. Discussion on the motion.

Mr. Robinson: There is 45 units and not every one of them chose to become part of this and that's why they didn't choose the zoning because they could have moved their zoning all together. And from what the testimony from Mrs. Mitchell was that they couldn't come to a consensus on that so then everybody had to go individually. So to say that everybody in this community is for short-term I think it's an assumption. It's not a guarantee. There's not letter supporting it, just the neighbors say they want it. They're probably people like us, local people who don't verbally go and speak out against other people because that is not just in our nature. And to always to assume that because there's not an opposition letter that it's then a proponent I think is a mistake and I don't think that way. I know the votes are against me, but I just think this is another area, another cost of the housing where it's an opportunity where people could actually live and work and provide for a family in Maui and not just be a transient visitor. Thank you.

Ms. Duvauchelle: Any other discussion? Deputy Director would you please repeat the motion?

Ms. McLean: The motion is to deny.

Ms. Duvauchelle: All those in favor please raise your hand?

Ms. McLean: One aye.

Ms. Duvauchelle: Opposed?

Ms. McLean: Three noes.

Ms. Duvauchelle: Motion fails. Deputy Director.

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

The Motion to Deny the Short-Term Rental Home Permits FAILED.

(Assenting – K. Robinson)

(Dissenting – L. Carnicelli, S. Castro, C. Tackett)

(Excused – T. Gomes, R. Higashi, L. Hudson)

Ms. McLean: The Commission can make a formal motion to defer but if it does not do that then no action can be taken then as of 120-days which is tomorrow then the permits will be considered approved.

Ms. Duvauchelle: Okay. All right any other discussion or a motion? Okay hearing none. Deputy Director it sounds like the permits will be approved.

Ms. McLean: After 120-days yes.

Ms. Duvauchelle: Of non-action. All right thank you very much.

With August 9, 2017 being the 120-day deadline for the Commission to take an action, and no action could be taken at this meeting, the permits are automatically approved after the 120-day deadline due to non-action by the Commission.

Ms. Mitchell: Thank you very much.

F. ACCEPTANCE OF THE ACTION MINUTES OF THE JULY 25, 2017 MEETING AND REGULAR MINUTES OF THE OCTOBER 25, 2016 AND APRIL 25, 2017 MEETINGS

Ms. Duvauchelle: Okay, Director, next agenda item.

Ms. McLean: The next item is acceptance of the action minutes of the July 25th, 2017 meeting and regular minutes of the October 25th, 2016 and April 25th, 2017 meetings.

Mr. Carnicelli: So move.

Mr. Castro: Second.

Ms. Duvauchelle: All those in favor raise your hand. There's four ayes. Five ayes.

Ms. McLean: Including the Chair, five ayes.

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

**VOTED: To Accept the Action Minutes of the July 25, 2017 Meeting and Regular Minutes of the October 25, 2016 and April 25, 2017 Meetings.
(Assenting – L. Carnicelli, S. Castro, K. Robinson, C. Tackett,
S. Duvauchelle)
(Excused – T. Gomes, R. Higashi, L. Hudson)**

G. DIRECTOR'S REPORT

1. **Designation of the Hana Advisory Committee to conduct the public hearing and provide their recommendation on the following requests:**
 - a. **MR. WILLIAM SPENCE introducing the following land use changes for the proposed Nahiku Community Center (P. Fasi)**
 - 1) **Community Plan Amendment from Agriculture to Public/Quasi-Public;**
 - 2) **State Land Use Boundary Amendment from Agriculture to Rural; and**
 - 3) **Change in Zoning from County Ag. to P-1 Public/Quasi-Public District**
 - b. **MR. KAALA BUENCONSEJO, Director, DEPARTMENT OF PARKS AND RECREATION requesting a Special Management Area Use Permit for the Nahiku Community Center Project and related improvements located at 0 Nahiku Road, TMK: 1-2-002: 023, Nahiku, Hana, Island of Maui. (SM1 2017/0002) (P. Fasi)**

The proposed action includes the replacement of the former grammar school building site with a Community Center building of approximately 2,472 square feet in size and related improvements, including a paved parking lot and driveway and installation of an individual wastewater system. The proposed Community Center includes a social hall, kitchen, storage areas, restrooms, and a covered entry lanai.

The Commission may designate the Hana Advisory Committee to the Maui Planning Commission to conduct a public hearing and provide its recommendations on the request.

Ms. McLean: And the next item is the Director's Report. The first item is designation of the Hana Advisory Committee to conduct a public hearing and provide their recommendation on a request, on two requests. First from the Planning Director introducing land use changes for the proposed Nahiku Community Center, a Community Plan Amendment from Agriculture to Public/Quasi-Public, a State Land Use District Boundary Amendment from Agriculture to Rural, and a Change in Zoning from Country Agriculture to P-1 Public/Quasi-Public District. And additionally a Special Management Area Use Permit for the Nahiku Community Center project requested by the Department of Parks and Recreation at 0 Nahiku Road, TMK: 1-2-2 parcel 23 in Nahiku.

Ms. Duvauchelle: Thank you. I believe we have public testimony on this item registered to testify Mapu Kekahuna. Please state your name, you'll have three minutes.

Ms. Mapu Kekahuna: Aloha and almost lunch time. Thank you Commission, my name is Mapu Kekahuna and I'm the Vice-Chairman of the Nahiku Community Association. I don't know if all of you know where Nahiku is but it's at the far east end of Maui. Almost seven generation from the Moku. Today I guess there's an agreement, a full support of the association and my family that has been there for eons. In full support of the Director's Report in supporting the SMA process permitting as well as the Director of Parks and Recreation. And I give you guys props you guys get one pretty harsh job. I thank you. Thank you for giving us the opportunity.

Ms. Duvauchelle: Thank you. Any questions for the testifier.

Mr. Carnicelli: Thank you for driving out from Nahiku.

Mr. Kekahuna: It was a beautiful drive coming out from Nahiku and I don't envy you guys on this side.

Ms. Duvauchelle: We appreciate that. All right thank you very much for your testimony. Anybody else wishing to testify on this item please come forward, state your name, you'll have three minutes.

Mr. Jeffrey Pazer: Hi, Jeffrey Pazer. I've owned property in lower Nahiku since 1971. I want to say first of all that I am in full support of Nahiku having a community center, but I do object to the location of where the planning board where they want to put it. I believe the residents of Nahiku and the local people in Nahiku of a Hawaiian ancestry have every right to want to promote and preserve their culture in this beautiful part of the island. There's tremendous tradition in Nahiku, but there are tremendous problems with the location that you're choosing to put this. I believe --. The road to lower Nahiku is very narrow, dangerous for vehicular traffic. I don't know if any of you have been up and down that road. That road just so you know traverses through many private properties so there is no real true legal easement to even get to the Nahiku Community Center. It can be proven that the lower Nahiku Road goes to other private lands. I believe that the community center should be put off the Hana Highway where there is true accessibility to it for all residents of Nahiku and for tourists. If there is an emergency why put a community center down lower to sea level if there could be an emergency with a tidal wave it makes no sense to put it down at a low elevation. It should be at a higher elevation.

Also as a matter of priorities we have a bridge in Nahiku over the Makapipi Stream which has been closed now for three years. It don't know if any of you have walked over that bridge. I can supply photographs. It's incredibly dangerous. Tourists go there all the time to walk to the landing. There are holes in the bridge. It's only a matter of time before the County of Maui and the State of Hawaii are sued because of an accident, people trying to cross that bridge. So in terms of funds I don't want to get into an argument about funds should go toward to the community center or the bridge. I believe funds should go towards both. I think Nahiku deserves that the County budget acknowledge the liability that exists for the bridge. The, the Nahiku landing is a community center of sorts. That is where people in Nahiku have traditionally always gathered. There's very little recreational facilities or parks in lower Nahiku. So having

accessibility to our landing for all of the residents of Nahiku is a tremendous importance to the community.

But once again I want to say that I am in full support of there being a Nahiku Community Center. I just object to where the location of where it's going to be. The Nahiku Community Association let's be clear they are for the most part a family run organization. Their board of governors are mostly 80-90% of the same family. You know I don't object to what their interests are in having a Nahiku Community Center, but they do not represent the majority of opinion of the lower Nahiku residents. And I think when you have a public hearing you will find out that many people in lower Nahiku do not want the community center in that particular location.

Ms. Duvauchelle: Please conclude.

Mr. Pazer: Thank you.

Ms. Duvauchelle: Anybody else wishing to testify or any questions? But she can testify. She hasn't testified yet. Please state your name. You'll have three minutes.

Ms. Corinna Kekahuna: My name is Corinna Kekahuna, and I'm a six generation of that ahupuaa. And just for the record the property that the community center we want to put on was the old Nahiku School run by the Department of Education, State of Hawaii, given by the land from my Tutu . . . (inaudible) . . . So I know what and what. I know what the landing means beyond the bridge. So I just want to say we have followed every step that we needed to take to give back to our community regarding the community center in place of the school which was housing for the ohana, family visitors, whatever. And we want to give it back to the community in place of with a community center. And the property is on the straight-of-way. It has nothing to do -- one tidal wave come not going even hit the school lot. You know so I just want to say we've been fighting this. I shouldn't say we've been fighting it. We went to the processes. It was ground break. We ground broke on the property for the community center back when Mele Carroll. And she helped the NTA start this process to give back to our community, to give back to our kupuna. We have sat with my Tutu . . . (inaudible) . . . my uncles, my grand uncles, and have their mana'o. What you guys want to do uncle? What you guys like do? Baby, we go do this, for give back. That's what we want to do with this community center. It's not just for us. As far as family, yeah, we get plenty family. All us is family down there from the top to the bottom you know. So we just want to give back. In our time to give back from what my Tutu . . . (inaudible) . . . gave when he when give the community center, the school for educate the children in there you know. And like I said we ground broke already. We went through the whole process with the permits and everything and now we doing this again. Come on people. All we asking is one little community center for give back for our keiki. I get grand nieces and nephews. They only two, one, four. That's all I'm saying. Mahalo.

Ms. Duvauchelle: Thank you. Any questions? Thank you very much. Deputy Director.

Ms. McLean: Thank you Chair. The action today is to designate the Hana Advisory Committee to conduct the public hearing and provide to you their recommendation on the request.

Ms. Duvauchelle: Do I hear a recommendation?

Mr. Carnicelli: Move as recommended.

Mr. Tackett: I second.

Ms. Duvauchelle: Moved by Commissioner Carnicelli, seconded by Commissioner Tackett. All those --? Discussion? Commissioner Carnicelli.

Mr. Carnicelli: I just want to say that this is why the Hana Advisory Committee exists is -- I think that this is really beyond my own personal knowledge, my own personal understanding. So I think it is important that we go ahead and allow the people from Hana and Nahiku to come to a decision there rather than us trying to do it here. So anyway just speaking to the motion and I'll be in favor of it.

Ms. Duvauchelle: All those in favor of the Hana Advisory Committee hearing this please raise your hands.

Ms. McLean: Five ayes with the Chair.

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

VOTED: To Designate the Hana Advisory Committee to the Maui Planning Commission to Conduct the Public Hearing and Provide Its Recommendation.
(Assenting – L. Carnicelli, C. Tackett, K. Robinson, S. Castro, S. Duvauchelle)
(Excused – T. Gomes, R. Higashi, L. Hudson)

Ms. Duvauchelle: Thank you very much.

2. SMA Minor Permit Report

3. SMA Exemptions Report

Ms. McLean: Chair, the next two items are the SMA Minor Permit and SMA Exemptions Reports. Do you have any questions or need any further information?

Ms. Duvauchelle: No questions? No, we're good.

4. Discussion of Future Maui Planning Commission Agendas

a. August 22, 2017 agenda items

Ms. McLean: Okay, and last item is discussion of future Maui Planning Commission agendas. You have your memorandum from Clayton Yoshida with the August 22nd regular meeting agenda items listing two public hearings.

H. NEXT REGULAR MEETING DATE: AUGUST 22, 2017

I. ADJOURNMENT

Ms. Duvauchelle: That's it. All right Commissioners thank you very much. Oh, we have on our desk a booklet from Hawaiian Ocean Resources Management. From Tara. Okay. All right, thank you very much. Planning Commission has now adjourned.

The meeting was adjourned at approximately 11:19 a.m.

Respectfully submitted by,

Leilani A. Ramoran-Quemado
Secretary to Boards & Commissions II

RECORD OF ATTENDANCE

Present

Lawrence Carnicelli
Steven Castro
Sandy Duvauchelle, Chairperson
Keaka Robinson
Christian Tackett

Excused

Tina Gomes
Richard Higashi, Vice Chairperson
Larry Hudson

Others

Michele McLean, Deputy Director, Planning Department
James Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel