

**MAUI PLANNING COMMISSION
PORTION OF REGULAR MINUTES
ITEM F-1
APRIL 10, 2018**

Mr. Higashi: And with that, I'm gonna have Corporation Counsel do some explanation about our next part of our agenda.

Mr. Galazin: Thank you Chair. And Commissioners just for clarification and for anybody who's here perhaps wishing to testify as well, I want to make sure the discussion today, the agenda item the topic is the appointment of a hearing officer. It pertains to an underlying permit, but the discussion is not about that permit today. The discussion is about the appointment of a hearing officer to handle that. If a hearing officer is appointed, if findings of fact, conclusions of law come back it's going to come back before this body. There will be an opportunity for all of you to review anything that comes out of it and to approve it or disapprove and there will be opportunity for members of the public to also come and at that time talk about the same. I do want to make sure that everybody who's testifying understands what the topic is. It's the appointment of the hearings officer and to the extent you can confine your comments to such and for the Commissioner to the extent if you have clarifying questions just to try and stay on point to keep us all from being here the rest of the evening.

Mr. Carnicelli: Chair?

Mr. Higashi: Commissioner Carnicelli.

Mr. Carnicelli: So what happens if we fail to appoint a hearing officer today?

Mr. Galazin: We can go ahead and discuss the details of that but that's probably something that would be better served in executive session if you want to get into the nitty gritty.

Mr. Carnicelli: Okay.

Mr. Galazin: If we need to get there, we'll get there, but let's see what we can do first.

Mr. Carnicelli: Okay, thank you Chair.

Mr. Higashi: I'd like to also introduce to you Commissioner Robinson who just came in and I forgot to introduce myself, I'm Richard Higashi, the new Chairperson for the Commission.

At this time, I'm gonna have the Director start.

Mr. Spence: Commissioners we're on Communication Item for the selection of hearing officer for the remanded County Special Use Permit application for the nine-bedroom transient vacation rental Paia Inn at 93 Hana Highway. And Commissioners an executive session may be called for this after discussion.

F. COMMUNICATIONS (To begin at 1:00 p.m. or soon thereafter.)

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

The Commission will consider only the appointment of a hearings officer, and not the substance of the previously noticed application, although public testimony will be permitted and notice of the meeting was given to property owners within 500 feet of 93 Hana Highway, Paia, Island of Maui.

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

The Commission may act to appoint a Hearings Officer.

Mr. Higashi: We're gonna start off with public testimony and so what I'm gonna do is I'm gonna...there's 12 testifiers today so as I read your name will you step forward, identify yourself and then you will have three minutes to do your presentation. So first on the list is Lucienne de Naie.

Mr. Spence: Actually, it's Lucienne. I don't know if she's still here.

Mr. Higashi: Lucienne, Lucienne? No, okay we'll just move on for the next one. Francine Aarona.

Ms. Francine Aarona: Aloha Chairman Higashi and Commissioners. My name is Francine Aarona. Can you hear me now? Okay, I'm also known as Aunty Mopsy, Protect Paia. Before I start my testimony I want to mahalo you for your dedication in upholding the law and policies that govern Maui County through our General Plan and our community plan. The Paia-Haiku Community Plan does not allow hotels or TVRs and vacation

And that is my testimony. Unfortunately, you have been remanded by the Circuit Court for additional consideration of this SUP permit application or Paia Inn and this binder, the intent of this binder as part of my testimony is to bring forth information that was discussed in 2016 'cause I know that they will not prepare this for you and I wanted to highlight different things and I do have it written in the testimony what's included in this binder. The intentions of Seashore Properties, owner Michael Baskin is in pursuant for your approval of this application. So the intent of this binder again is to provide you and the hearing officer with the community concerns. December 2016 seems like yesterday, you denied my Petition that I had that time and I mahalo you for that because it would have been so expensive for me which the money I don't have. So much mahalo to the community who provided me at that point in time with a lawyer.

Now I want to highlight the Paia-Haiku that you have in there. I have all the things highlighted but the most important is the highlighted part in Part 3 that says, it prohibits hotels and resort areas in the Paia-Haiku District. So that is a biggie and this operation has been going on forever.

In there also you have an arbitration that went through for his three vacation rentals for Ae, 23 Nalu and 95 Hana Highway. They all operate under Paia Inn jurisdiction.

The other highlight is this really important one that is a concern for me and the community that was brought up in 2016 but there is future development in here and he wanted to sell this property, but as you can see if you grant Seashore Property a Special Use Permit the future development of Paia will just blow up.

The other concern that I want to highlight for you in the back—

Ms. Takayama-Corden: Three minutes.

Ms. Aarona: --are photos, there are letters from Nalu—

Mr. Higashi: Thank you very much.

Ms. Aarona: --yes, that was prohibited—

Mr. Higashi: We got your document.

Ms. Aarona: --yes, that was the intent of this binder. So today I stand before you a proud kupuna and a servant to the community. I ask that you hear your recommendations, after you hear it and I want you to take a firm decision to deny this application as you did in 2016.

Mr. Higashi: Thank you very much.

Ms. Aarona: And bring an end to this development and use enforcement. Thank you.

Mr. Higashi: Corporation Counsel.

Mr. Mike Hopper: Nothing else to add other than again, questions should be limited to whether a hearing officer will be appointed and any evidence or testimony received whether or not it's actually going to be considered as either part of a hearing officer contested case hearing or a contested case hearing that the commission has will have to be determined at that time. So at this stage, at this agenda item right now your decision is whether to appoint a hearing officer and so questions to the testifiers and the testimony should be dedicated to that otherwise there's really...there's not action the commission can take today to grant or deny the permit. The request is whether you want to appoint a hearing officer to hear the case and make your recommendation or not. So that's, that's again what we're saying, you know the agenda may provide because it was a Sunshine Law agenda some flexibility to testifiers but as far as commissioners and what the commissioners can discuss that's gonna be limited to whether or not to appoint a hearing officer today and the reasons for doing that.

Mr. Higashi: Thank you. Next testifier...oh Commissioner...

Ms. Gomes: I'm so sorry Chair Higashi I just, I just really wanted clear clarification that Aunty...

Mr. Higashi: Oh,...(inaudible)...

Ms. Gomes: Yeah.

Mr. Higashi: Have a question.

Ms. Gomes: Aunty, I apologize not that I want you know to extend you know and you get scoldings from us for us...

Ms. Aarona: Oh no.

Ms. Gomes: Yeah. I just, I just want clarification you are in denial, not denial but you are denying—

Ms. Aarona: I oppose.

Ms. Gomes: You're in opposition.

Ms. Aarona: --the application, yes.

Ms. Gomes: Okay, in opposition.

Ms. Aarona: And whoever the hearing officer is a conflict of interest...(inaudible)...

Ms. Gomes: Okay, thank you..

Ms. Aarona: Thank you.

Mr. Higashi: Any other questions for Aunty Aarona? Oh, Commissioner Hill.

Kahu Hill: Aloha.

Ms. Aarona: Aloha.

Kahu Hill: There can't be a hearing officer that would be able to hear what you're saying and what you all have to bring?

Ms. Aarona: Well, I have faith in this commission body and I believe that the denial at that time in 2016 if you were here, if you go back and listen to everything that was discussed that day I think that the Commissioners did their job, asked all the questions, and the due process of Seashore Properties look at the binder it has been extended. Where is our due process, the community? We are abiding by the fifth...the fourth amendment. We have liberty and rights as well as Seashore Properties. So I think that the commission did a wonderful job and I think that they should be firm and hold to that as well. A hearing officer is just to dictate to them what is law and I feel that they...you have followed the law.

Kahu Hill: Mahalo.

Mr. Higashi: Any other questions? Thank you.

Ms. Aarona: Thank you.

Mr. Higashi: Next testifier, Clint Gima. Is Aarona going to be doing the testimony?

Ms. Francine Aarona: Yes, Mr. Gima is in—

Mr. Hopper: Mr. Chair, testimony by proxy is generally allowed. If that could happen there could be 50 people who, you know, one person testifies for. So yeah, generally if that testimony is in writing you can definitely submit it.

Ms. Aarona: You have it in the binder.

Mr. Hopper: So that would be with the commission.

Ms. Aarona: Yeah, you have it in the binder and he just wanted it to be effective by voice.

Mr. Higashi: We'll accept that. Thank you.

Ms. Aarona: Okay, thank you.

Mr. Higashi: Next testifier Michele Navarro Nishiki. Please identify yourself.

Ms. Michele Navarro Nishiki: My apologies Chair. I was here on another situation. However, I will speak in to what I did come to share and I will follow too with Aunty Mopsy. Aloha Chair and Commissioners my name is Michele Navarro Nishiki and I'm a life-long resident of Paia. My parents were born and raised, children, nieces, nephews, grand nephews and grandnieces has also been raised in Paia. Five generations of Moolelos to share for our future about our community like Aunty Mopsy I do oppose the appointment for various reasons as she stated as well that the respect of the commission and the decision that they have made should be accepted. According to the community plan of Paia and Haiku it states no hotels or rentals. To date, I have watched as one of...as one by one every mom and pop store that served our community and its members are now gone. Stop sign is gone and now a traffic light. What used to take ten minutes to Wailuku now takes me that long, sometimes longer to get to the traffic light at the bottom of Baldwin Avenue and Hana from Pohaku Place situated right below the old Paia Mill. We don't let our kids go out to play on street anymore because of the traffic. This hotel will further threaten what little is left of the lifestyle we know and will virtually change the landscape of the Paia we all know. For the future of my family, friends and our community this is something we do not want to happen which is why I am in opposition of this process. Please listen to the pleas of our people and of our community. Mahalo for your time.

Mr. Higashi: Any questions from the Commission? Thank you very much. Next testifier Kimo Kahakauwila. Please identify, your name?

Mr. Kimo Kahakauwila: Hi name is Kimo Kahakauwila. Aloha. And basically I wanted for bring up like public notices about this kind meeting. There be a lot more people in here at this kind meeting if we got better notification about it. And I get three minutes. Kind of nervous right now

'cause you know, and yeah, Paia going through a lot of changes right now like Michele just said and we no like any more changes because we see all the pipes that the...the pipe store, all the pipes that is gonna go someplace and I know that a lot of that is for Paia, right? Well I just like all this stop if it's possible 'cause Paia is changing and just the whole thing of going through changes 'cause ...(inaudible)... old school Paia only had like what, yeah, like she said ten cars at the stop sign now we gotta wait fricken, oh sorry for swearing, we gotta wait, the traffic stay all the way up the road and they like make one other bypass going through one residential place so that's one other traffic light. I may be going off subject but you understand what I trying for say eh you guy? It sucks, yeah. That's it. Thank you. Aloha.

Mr. Higashi: Any questions from the Commission? Thank you. Next person, Nicole Kealoha.

Ms. Nicole Kealoha: Aloha, Chair and Commission. Thank you for your time. I was raised in Paia since birth. Paia is not the way I remember it was. I grew up at the time when there wasn't a traffic light, but a stop sign. The time when there were Ice Cream and Dream, Nagatas, ...(inaudible)..., Paia General Store, HFC Market and many other places that don't exist today. This town once accommodated local families. Families from this community. That is why I am here today to testify against this project. Please help me and the community to protect what is left of Paia. This project will impact our way of life that we live here and we hope to continue through our future generations. Thank you.

Mr. Higashi: Any questions from the Commission? Thank you. Next Moses Kane, Jr.

Mr. Moses Kane, Jr.: Aloha.

Mr. Higashi: Aloha.

Mr. Kane, Jr.: Good afternoon. My name is Moses Kane. I'm currently residing in Waiohuli but I'm a born and raised in Paia. I, on the agenda item I oppose the hearing officer for a hearing officer. The Planning Commission already had made a decision. I no understanding why it's being brought back up. But after seeing the review you folks had, I understand that the gentleman has his right for another hearing but I oppose for a hearing officer. Thank you.

Mr. Higashi: Any questions? No, thank you. Next Kealii Reichel.

Mr. Kealii Reichel: Aloha ka kou. My name is Kealii Reichel. Mahalo for making the time to listen to us and our testimonies. It's kind of difficult to just stick to the subject sometimes because have to have context that goes to that. I'm from Paia. I raised there by my grandmother and I current live up in Piipiholo which is part of the same ancient moku so the tie is still there. So I'm not being mahaoi, I'm just, I'm there, yeah and this is part of where I come from.

You know to echo Aunty Mopsy, to stay on topic as best as I can I would like to lend my voice and say I oppose the appointment that kind officer. The decisions were already made and I don't know why we're here again, yeah. It feels like when you know, you know when you have a big family and you have a child that goes to mom and says, can I do this, can I do that? And the maddah says, no. And then so, that child goes around in the back and talks to the dad, yeah, and tries to get the dad to override the maddah, yeah. It might be a bad analogy. Maybe it's a good analogy, but that's how it feels. You know growth going happen you know on this island,

it's inevitable. I go to Paia and I don't recognize anybody, yeah. But get good food, you know I'm not da kine, you know get good food over dea. But there's a certain bit of uncomfortableness that occurs for those of us who were born and raised in that particular area. And it's not because we don't like people. It's not like it's because we don't like outsiders it's strange. And so when you feel strange in a place that you were so familiar too and with familiar with you pull back and you become part of the fringe. And I'm glad that we have our fringes over here that are not uncomfortable in situations like this that they can speak their minds. That they are able to follow the legalities of this. I have no idea but I'm starting to learn. And so this particular process is new to me. So if I can lend my voice, if I can lend my appearance, if I can lend whatever it is to help at least stave off rash decisions and to make us all stop and think about what we are doing and I know you guys all do that so I not...you know I preaching to the choir. But like I said I oppose the appointment of an officer because it was already done. So let's not go to dad, just stick with mom's decision.

Ms. Takayama-Corden: Three minutes.

Mr. Reichel: Mahalo.

Mr. Higashi: Any questions? Next Mark Sheehan.

Mr. Mark Sheehan: Aloha Commissioners my name is Mark Sheehan. I'm in favor of the appointing of a hearing officer because I think the way this has been handled has been mishandled and needs a second thorough review. Everybody speaks about hotels. This is not a hotel. This is an inn. And just for a little bit of context, I've been involved in planning discussions for over 30 years and I recall 20 to 25 years ago when we were discussing Country Town Guidelines, one of the issues that was proposed is that rather than have all of our friends stay on the other side of the island some place in a hotel in Kaanapali or Wailea that there would be allowance for inns and the model was the Kula Lodge. And the idea was that country towns such as Paia and Haiku and Makawao would be able to have small inns and the limit was 12 rooms. So what do we have right now at the Paia Inn is five rooms and four additional rooms were allowed to be built by the Planning Department and the applicant complied with all those requirements, but it was somehow denied, I don't know what in the previous discussions and I think there needs to be a second consideration of these things to see if in fact the applicant was treated fairly and so I do recommend that you go ahead and approve the appointment of a hearing officer. That's it.

Mr. Higashi: Any questions for the testifier? I have one. Number one Mr. Sheehan, do you live in Paia?

Mr. Sheehan: I live in Haiku and I had a business in Paia.

Mr. Higashi: You live in Haiku/

Mr. Sheehan: I live in Haiku and I had a business in Paia for many years, a real estate office between Mana Foods and the bank and I specifically opened an office there because I could see that Paia was changing rapidly and I was hoping to have some influence on the direction that it was moving in.

Mr. Higashi: Thank you.

Mr. Sheehan: You're welcome.

Mr. Higashi: Thank you very much. Martin Brass.

Mr. Martin Brass: Aloha and good afternoon Chair Higashi and Council Members. My name is Martin Brass. I'm here to testify on the remanding of contested case for the inn and for the appointment of a hearing officer. I am currently one of the owners at Flat Bread Company which is the immediate neighbor of the Paia Inn for the last 12 years through October of last year I owned the property that abutted Paia Inn.

I've been Mr. Baskin's neighbor since 2005 and have witnessed firsthand the many steps he's taken to turn in the Maui Home Grown Retail Store to a multi-story, multi-property hotel operation. The sign he has for his business specifically states...(inaudible)...hotel. He is running a hotel across many properties. There is approximately 40 rooms that he's been advertising online and marketing through the different properties. This was all explored in detail in December of 16. I sat here with people in this room for over six hours listening to the commission review the facts. Mr. Baskin had over a year to prepare this special use permit application to present to the commission on that day. Part of that presentation was part of the settlement agreement that he agreed with the County, that was approved by the County Council and signed by the Mayor which had the support the Planning Department for his application and yet it was denied unanimously.

I wish...I'd like to agree or reiterate one of the previous comments, there needs to be better communication to the public why this is happening. I don't know the circumstances in which this was kicked back by Court, but the argument of due process is not the first time Mr. Baskin has used in the process to pursue his agenda. The District Court had ruled against this TVR several years ago and he went...he hires attorneys and they went to the Supreme Court and argued due process needs to be served...(inaudible)...

The facts are due process affects everybody. Due process is not a matter of convenience. There are ...(inaudible)...and pathways available to Mr. Baskin to obtain the appropriate permits to amend the community plan to allow for hotels to exist in the Paia-Haiku area. Right now he's not grandfathered, he has no hotel permit, and he does not conform to the Paia-Haiku community plan. Until those change, I don't understand why we keep revisiting this. It's been a decade of fines and penalties that have been paid and I'm embarrassed to see all the time and effort from the County and its members and its officials repeatedly spending time on this and poor people who have jobs to do who come in the middle of the day to speak their minds to address as one person pointed out someone going around to another parent in trying to ask for a different set of commissioners. This isn't a matter of denying as it was stated earlier it's living in denial of the reality of his operation. So I'm –

Ms. Takayama-Corden: Three minutes.

Mr. Brass: So I'm...I don't fully understand the role of...or the hearing officer in this case, but I'm against it.

Mr. Higashi: Thank you very much.

Mr. Brass: I think the Commission is capable of making their own decision.

Mr. Higashi: Any questions? Commissioner Robinson.

Mr. Robinson: Just want to thank you for taking your time every time this comes up. I know it's hard but not many people are as close to it as you are and you're information even though it does not sway our decision, it helps us make sure that we're thinking on the right path. Thank you.

Mr. Brass: I appreciate it. Happy to...(inaudible)...

Mr. Higashi: Any other? Thank you. Next testifier Nicole Hokoana.

Ms. Nicole Hokoana: Good afternoon and thank you for allowing us to testify. My name is Nicole Hokoana and I'm not adequately prepared for this because I, too, had to take off from work kind of last minute, I didn't hear about this. And I'm just one of those people that I feel compelled to be here. And yes, I'm from Paia. I have generations of kupuna that are from Paia. I should be at work but I'm here and it's because I love the place. And we're just a, we're just at a place where just the other day I was taking my daughter on a Sunday to soccer, her game was at 3:00. I left home at 2:00. I couldn't get through Paia until, I was at Hookipa, Hookipa, we were stopped in Hookipa, I live in Maliko. We were stopped at Hookipa for 20 minutes to get to through the stop light. You know, we're just at a place where our roads and our infrastructure cannot keep up with our popularity. I know Paia is a wonderful place. I know it. I love Paia as well, but the push for the development of Paia will destroy the character of this town that we love. Tourism has adverse effects. It does impact our natural resources. It impacts our communities and it impacts our local people that are just trying to live and get to work and find affordable food and eat out once in a while. Over tourism is the opposite of responsible tourism. In this case of Paia responsible tourism would limit the reach, the sprawl and the destruction that inevitably happens when millions of visitors visit our aina. I mean look at Haleakala since when do we need to sign up to go there for sunrise. It's millions of people on our beaches, on our roadways, it impacts our lifestyle. You know, there are adverse effects of it and we need to take the time to make sound decisions about what should happen to our communities. Currently I mean as it's been stated already Paia and Haiku do not allow for hotels or inns or overnight accommodations, but it's happening and we all know it's happening. It's in our neighborhoods, it's an inn but it's 40...40 spaces that are illegal and acting as a hotel online. So you know, I think we need to act responsibly. Development needs to be in alignment with what the community wants and what the community had planned. If a hotel or a inn or this type of accommodation is wanted on the north shore then it should be reflected in the communities buy in. If this was not 1 o'clock or 2 o'clock on a workday all of Paia would be here. No one who lives in Paia approves—

Ms. Takayama-Corden: Three minutes.

Ms. Hokoana: --or wants more development at this time. So we don't need a hearing officer. Please deny this application. Mahalo.

Mr. Higashi: Okay, three minutes are up. Thank you. Any questions? Next testifier Andrew, can you pronounce your last name?

Mr. Andrew Pamplona: Good morning Commission. My name is Andrew Pamplona. I don't live in Paia but I live in Kahului. I feel in love with a Happy Valley girl originally from Piihaha Camp. When I was kid I used to come here and visit family here because I'm a military brat. My father was originally from Kau District in a place called Pahala back in the day when sugar cane plantation was the main money maker there. I've seen things happen to expand and grow. I remember you know surfing around Paia Bay. But I just want to make this short that I wish that there was more of advance notice. I, too rushed over here from work, but I am strongly opposed. Please humbly ask that you think about it and ponder in making this decision. But I oppose this permit. Thank you very much for taking the time to listen. Mahalo.

Mr. Higashi: Any questions? Thank you very much. That ends the list of people who testified. Tiare Lawrence.

Ms. Tiare Lawrence: Aloha Commission. My name is Tiare Lawrence. I'm also the community organizer for the Hawaii Alliance for Progressive Action. I am more so here today to support Anake Mopsy and her ohana from Paia. I oppose a hearing officer because I feel due process was given and it's these type of situations that truly frustrate our community. It's difficult to see this process continuously be drawn out by appeal. In 2016, it should have ended but like always those who have lot to gain financially use the system to delay and at the same time continue to operate without proper permits. We all know Mike Baskin violated laws concerning short-term rentals, special management area, zoning and building codes. He has received at least 30 violations over the years and even after the settlement he racked up more violations. When he opened up a café at the Inn without adding the required parking stalls and obtaining proper permits, signs were also put up without permits and this was all after the settlement. So as you can see here is a business owner who thinks he's above the law, privileged and consistently seeking after-the-fact permits. In 2016 every commissioner gave their reasons for their denial which included community opposition to the Paia Inn which some see as a hotel. Along with Baskin and his families multiple short-term rentals in Paia and issues with Baskin's character while testifiers and commissioners spoke to the community plan which does not allow hotels in that area.

An illegal zipline in Haiku, illegal ziplines elsewhere on Maui and an illegal inn in Paia where's the backbone for Maui County? What is the point of having permits if they are not properly enforced? So I think at this point we need to look for due process and that that is with the community plan. And I realize the process is troublesome and frustrating for business interest who seek financial gain, but the community plan is what it is. And until that process is back on the table in Paia and Haiku I would urge you to not allow you any more TVR, special use permits. The community should decide their faith, not the Mayor, not the corporations, not the government, but the community who live there and suffer the consequences. Mahalo.

Mr. Higashi: Any questions? No questions. Thank you very much. Back up to Lucienne de Naie.

Mr. Wollenhaupt: She's not testifying on this item. She's testifying on the next item.

Mr. Higashi: Okay. Wilton Leauanae.

Mr. Wilton Leauanae: Aloha Commission, Commissioners, thank you for this time. My name is Wilton Leauanae. I am from...I work for Michael Baskin in Paia Properties. Just a little bit

background about myself. I grew up, was one of eight, when to...first one in my family to go college. My mom was widowed and so to see her...to see me go off and into the world was a big this for our family. I went to law school. I ended up there. I court for Judge Cardoza for a couple years, the Circuit Court here and I've seen many cases like this come up, emotions, issues come up and me and the Judge are going through stuff and sorting through all these things and I've had a chance to work with Michael Baskin for almost a year and I find myself in the same situation where, you know, I'm sorting through all these issues like what is Aunt Mopsy saying, what is this, you know what is Baskin saying. And I could say, just my personal take on this is that Michael Baskin is trying to do everything he can to try to be legal. You know I have a good relationship with Aunt Mopsy she has...she can text me whenever, we see each other at all the hearings, I give a hug. I have respect for her as a person who's fighting for her rights and I have respect for a kupuna, but at the same time you know there comes a point where, you ...(inaudible)...all the issues and Kealii Reichel had referred to a perfect analogy you know about kids 'cause I have three daughters, my youngest is a eight-year-old. She'll run to mom ask one thing and then she'll run to me and ask another thing, but what happens after that if there's a...is I go to mom, I go to mom and I say, hey what's going on, how can we sort this out? And that's exactly what's happening in this case where we're just going to a hearing officer. It's the right...he has a right to kinda question some the things that came up through the commission hearing. And he's just going to another source which was provided by law to hey, say hey can you look at this hearing officer and see what went wrong? ...(Inaudible)...see why we're here. That's all we're asking at this hearing is to say let's get it to a hearing officer, let's take another look. Just like I talked to my wife and my daughter wants a certain thing. I am always open to hear Aunt Mopsy. She could always come to me. We text each other. I go to her property and we talk and talk and she's always welcome to talk to me, and tell her I have Michael Baskin's ear. I know, I know all the issues, you're always welcome to come to me 'cause I can talk to Michael and I can come talk to you about things too. And that's how it's gonna be for the future. From this point on, I will listen to her or anyone else and that's my position, public's relations with Michael and so that's what I wanted just to bring before the commission is that we're not overriding your decision. We're saying hey, let's look at it again—

Ms. Takayama-Corden: Three minutes.

Mr. Laeauanae: --okay. Thank you.

Mr. Higashi: Thanks very much. Are there any other testifiers at this time who would like to testify? Otherwise, public testimony is now closed. Director.

Mr. Spence: I'm sure Tom wants to say something and then counsel for Mr. Baskin.

Mr. Hopper: And Mr. Kolbe because this involves a matter that the Commission was a party to on an appeal you see a need for executive session at any point in this discussion?

Mr. Tom Kolbe: I can make a few opening comments just to kind of provide you what the Department of Planning's position is in this matter, and then if it does come to you guys needing a little bit further information on terms of what our litigation strategy is I would want to go into executive session to discuss that with you. And if you want I can explain the procedural circumstances and how we arrived back here. But just generally wanted to start with this and say, well good afternoon. Terry Revere who is Mr. Baskin's attorney is also here. And we had

participated in a mediation to try to see if we can resolve some of the issues that are outstanding including the appeal of this Commission's decision up at the Circuit Court.

We made a lot of progress and one of the things that we agreed to is to try and find someone who can serve as a hearing officer for the inevitable hearing that needs to take place because of the appeal to the Circuit Court. And I'd rather not explain my take or the Department of Planning's take on all of the strengths or weaknesses in their appeal. That should happen in executive session. But the parties used John McConnell who's a retired Judge as the mediator and he was also the mediator on the original settlement agreements that Auntie Mopsy supplied with her packet. So that's information we'd be able to look at. Judge McConnell is a person who's kind of a professional contested case man that's what he does. He presided over a number of trials. After he retired he became a person who is an arbitrator, a mediator and has handled matters all throughout the state related to exactly the types of things we have here.

So what we have and I did note that there were several testifiers who indicated that there were opposed to a hearing officer and I don't know whether or not they were understanding that there's a joint request for a retired judge to be the hearing officer. But nevertheless I think the main thrust of the argument was that you as the commission would be the person who could handle this particular matter. I don't doubt that you could, but there's a number of rules and procedures that are set out in HRS 91, which is the statute of Administrative Procedures Act as well as specific Maui Planning Commission Rules. Keeping in mind what...(inaudible)...and the fact that it has been contentious up to this point what the benefit of having a hearing officer appointed is is they're gonna be the finder of fact. They're not the decider and they don't grant the permit and that's an important thing to keep in mind. This Commission ultimately is going to, if it appoints a hearing officer is going to come back and it's going to be presented with a detailed findings of fact that were based on the record that we provided to him. And the good thing about that is both sides have some modicum of trust in this particular arbitrator/mediator and so we agree that he can be with you know minds differing on this kind of an objective person and to provide the kind of record that you need to consider so that this thing doesn't yoyo back and forth between the Circuit Court and the Planning Commission, the Circuit Court and the Planning Commission and unfortunately several of the testifiers indicated that they didn't realize it was another hearing necessary. It gets complicated. There was outside information that was considered by the Commission. There were commentaries that were outside of the various elements there, these are allegations not necessarily my opinions on it. But it does get murky and difficult particularly in a complicated case with a lot of moving parts. So I want to say that it's the Department of Planning as well as the applicant that is asking for appointment of hearing officer and specifically that it be Judge E. John McConnell who I have worked with on a number of occasions and I have trusted his objectiveness and his thoroughness as a finder of fact. So those are my comments. I can explain more if you have any questions and I'll give Mr. Revere an opportunity also to address it. I think that would be appropriate. Thank you.

Mr. Terry Revere: Aloha folks. My name's Terry Revere and I'm the attorney for Seashore Properties and I understand there's confusion. It's confusing to Tom and myself about why certain things happened and your counsel will advise you folks during your executive session but for our procedural hurdles including in a case that I don't think has anything to do with anybody in the room called D&S it involved a Maui zipline case, but your counsel can explain to you. He's more appropriate to advise than I am for certain about why certain procedural things have to happen

not because anybody necessarily even wants it to happen but because the judges want it to happen, but they can talk to you folks more about that.

One of the things, just my very brief pitch about why hearing officers are important is because we all make good decisions. There's no one really likes trials. No one really like lawyers that much, maybe their own sometimes but there's a reason why we have what's called the adversary process where you're allowed to cross examine people. For example today binders were handed out about my client. I have no idea if everything in there is the Gods honest truth or it's made up. We simply don't know because it's just being handed out to you and that creates some of these procedural difficulties, where I can't say hey what they say on Page 43 isn't correct. We also in the adversarial process are allowed to ask questions and find out certain things like Mr. Brass who might have made a favorable impression on some of you folks. You might not have that favorable impression if I was allowed to have him up here and ask some questions like did he ask to buy the Paia Inn from Mr. Baskin where Mr. Baskin said no. Did that lead to a vendetta that keeps on going on and on against Mr. Baskin? So there's a lot of things that can be pointed out in an adversarial process that this type of process I'm not allowed to cross examine anybody and vice versa for their side. So that's just something I wanted to point out to you folks and I don't have anything further. Thank you very much.

Mr. Higashi: Commissioner Carnicelli, question?

Mr. Hopper: You have any questions for Mr. Kolby?

Mr. Robinson: I have a question.

Mr. Higashi: Commissioner Robinson.

Mr. Robinson: Question for you. What if we don't choose a hearing officer?

Mr. Kolby: Well, that's the question that I think the commission or the Deputy that's assigned to advise the Commission should provide. But generally there has to be some hearing officer even if it's the Commission appointing itself as a hearing officer. But we're moving this, we're making a motion to this body that it appoint Judge McConnell. So that is kind of where we stand.

Mr. Hopper: I think to answer that the Commission itself would hear the case but the...I think Mr. Kolby is talking about some of the issues that happened in this case and another case that on appeal the Department took a look at after a decision and believe that we may need to take a close look at some of the procedural aspects of the hearing. It's not necessarily the ultimate outcome but how to deal with the hearings procedurally. So if there's questions for Mr. Kolby on that history of the case I think we can go into executive session on it. But the short answer to your question is that if the hearing officer is not appointed the Commission's either going to have to hear the contested case itself or appoint, it could appoint a member for example rather than a judge as a hearing officer to hear the case and that hearing officer would have to follow all the procedures under HRS 91 and either come up with a recommendation for the Commission or the Commission itself if it's the hearing body itself would have to make a conclusion based on the process done by the Commission. I'd note if a hearing officer appointed either through this process or another process the Commission still has to look at their recommendation and decide to adopt it or reject it. So the Commission still going to have to ultimately make the decision. It's

not you give it to Judge McConnell, Judge McConnell decides one way or the other and then that's the Commission's decision. The Commission has to review the report that the officer made and decide if it's adequate or not adequate or if there's additional fact finding or not or it agrees or disagrees with the conclusion.

Mr. Higashi: Commissioner La Costa.

Ms. La Costa: I actually have a question for Corp. Counsel. Mr. Kolby I believe your name is he said that a hearing officer had to be picked is that correct?

Mr. Hopper: Mr. Kolby could you enlighten us 'cause it is a vote selection here.

Mr. Kolby: Once again, and I understand that you guys had an orientation and there was some suggestion that we're working through certain rules in contested case procedures but there is under Subchapter of the Rules of Practice and Procedure with the Maui Planning Commission, Rule 12-201-54 and it says, hearing officers powers. It says a) In all contested case proceedings a hearing officer shall be appointed. If more than one person is appointed a presiding officer shall be selected. This is under Subchapter 4 which has the title, Procedures Where Intervention is Granted, but this particular language and these rules as Mr. Galazin told you earlier are pretty old and they haven't been updated and certainly now that we have been provided with certain Supreme Court decisions that say that this type of proceeding even if there's no intervention is a contested case. These are the rules that seem to be most applicable. So some person or persons is gonna be the hearings officer for purposes of taking evidence and to make findings of fact. But I think in some capacity a hearings officer or hearings officers is necessary, yes.

Mr. Hopper: I think the Commission though could act as the hearing officer with the Chair as the presiding officer. I mean, I'm not...I don't know why we could not necessarily do that if the Commission wanted to decide that.

Mr. Kolby: That's correct.

Mr. Hopper: And again there could be reasons why you're recommending otherwise that we could discuss in executive session based on the history of this case, but I think those are several options the Commission has.

Mr. Higashi: Commissioner Hudson.

Mr. Hudson: Thank you Chair. In the past I've always voted no to executive session. However, in this particular instance I'd like to make a motion that we move to executive session because I don't want anything to jeopardize anything that comes up later on in Circuit Court.

Mr. Higashi: Is there a second?

Mr. Tackett: Second.

Mr. Higashi: It has been moved and seconded that we go into executive session. All those in favor raise your hand?

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

**VOTED: To Go Into Executive Session.
(Assenting – L. Hudson, C. Tackett, L. Carnicelli, A. Hill,
K. Robinson, T. Gomes, S. Castro, P D. La Costa)**

Mr. Higashi: We will not go into executive session. The audience will have to excuse themselves.

Mr. Hopper: And then again the purpose of the executive session is for the Commission to consult with its attorneys with respect to its rights, duties and liabilities under HRS 92.

(The Planning Commission recessed the regular meeting at approximately 2:30 p.m. to enter into Executive Session. The Planning Commission reconvened the regular meeting at approximately 3:22 p.m.)

Mr. Higashi: Will the Director...

Mr. Spence: No, we're still on the –

Mr. Hopper: You still have to decide on the hearing officer or not. You gotta vote on the issue.

Mr. Higashi: We'll now have to decide as to what we're going to do with the hearing officer. Is there a motion? Commissioner La Costa.

Ms. La Costa: I move that a hearing officer be appointed to review all findings of fact and conclusions of law in this matter.

Mr. Hopper: Do you have a specific? Is it going to be Judge McConnell or is there someone else that you have in mind?

Mr. Robinson: You can't just in and lead the Commissioners like that.

Mr. Hopper: The Commission needs to—

Mr. Robinson: ...second...

Mr. Hopper: The Commission needs to designate a hearing officer specifically, so I'm assisting in doing that if they want.

Ms. La Costa: I'm sorry for my incomplete motion. To appoint Judge McConnell as the hearings officer.

Mr. Higashi: Is there a second?

Mr. Carnicelli: Second.

Mr. Higashi: It has been moved and seconded that Judge McConnell be our hearing officer for this case. Any questions?

Mr. Robinson: Discussion?

Mr. Higashi: Discussion. Commission Hudson...Robinson.

Mr. Robinson: Thank you. I think...(inaudible)...first is one, we didn't even agree that there is gonna be a hearings officer and then two, and then to choose who the hearings officer is gonna be. So I see we combined it into one question. Having said that I know there was a lot of confusion earlier including ourselves about why we're at this situation, but after understanding that the denial that we gave was vacated and there actually it's back to, it's back to starting all over again in so many words now we understand, you know, and what's happening with this gravity. I, I'll lend my support to a hearing officer. I think that is the proper course even though I think we could do this board, I think we want to do it right. I think we want to make sure that we dot the I's and cross the t's but I'm not in support of the one offered. Thank you.

Mr. Higashi: Any other discussion? Commissioner Carnicelli.

Mr. Carnicelli: I think Commissioner Robinson stated it well in that finding out that the...our ruling had been vacated and so then therefore the terms of the settlement agreement have not been completed and we need to do that. I think that it's important that we set...that we find a hearings officer outside of this particular commission that knows how to handle these types of things, that has a history of handling these type of things and I believe in that the recommendation by the Department for Judge McConnell, it's because I seconded the motion I agree with Judge McConnell. However, I'm open if somebody, if another Commissioner has somebody that they feel would be better than Judge McConnell I would be open to hearing who that is. However, it's also someone in really trying to get this thing right, Judge McConnell has already been agreed to by both sides and so I just think that to have fair impartial person that both sides have already agreed to, to where we can get resolution to this as quickly as possible, I think that that's important so I'll be supporting the motion.

Mr. Higashi: Any other comment? If not, are you ready for the question? All those in favor of the motion to appoint Judge McConnell as a hearing officer please raise your right hand.

Mr. Spence: That's four—

Mr. Higashi: Opposed same sign.

Mr. Spence: That's four, four.

Mr. Higashi: Four opposed.

Mr. Carnicelli: It's up to you Richard.

Mr. Higashi: Motion not carried.

Mr. Carnicelli: No, it's up to you.

Ms. Gomes: It's up to you.

Mr. Higashi: What was the—

Unidentified Speaker: Got four to four.

Mr. Higashi: Four to four.

Mr. Robinson: So you could throw it back to us and we can discuss it more.

Mr. Hopper: The Chair would have to either vote yay or nay. He would have to vote yes or no on the motion, so again—

Ms. Gomes: Vote maybe.

Mr. Higashi: Based upon the split vote decision, the Chair will now make the decision to go with the recommendation to hire Judge McConnell as the hearing officer.

Mr. Spence: That's five to four. Motion carries.

Mr. Higashi: Motion carried.

It was moved by Ms. La Costa, seconded by Mr. Carnicelli, then

**VOTED: To Appoint Judge McConnell as the Hearings Officer.
(Assenting – P.D. La Costa, L. Carnicelli, L. Hudson, S. Castro,
R. Higashi)
(Dissenting – A. Hill, K. Robinson, T. Gomes, C. Tackett)**

Submitted by,

Carolyn Takayama-Corden
Secretary to Boards & Commissions II