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**MAUI PLANNING COMMISSION  
PORTION OF THE REGULAR MINUTES  
AGENDA ITEM E-2  
JULY 10, 2018**

Ms. McLean: Thank you Chair. And this is your final Public Hearing item. A request by Mr. Tien Doan for a Bed and Breakfast Home Permit in order to operate Maui Paradise, a three-bedroom bed and breakfast located at 372 (368) Front Street, Parcel 2...excuse me, Parcel 4-6-005: 006, Lahaina, Island of Maui and Tara Furukawa is the project planner.

**E. PUBLIC HEARING**

- 2. MR. TIEN DOAN requesting a Bed and Breakfast Home Permit in order to operate Maui Paradise, a three (3) bedroom bed and breakfast located at 372 (368) Front Street, TMK: (2) 4-6-005; 006, Lahaina, Island of Maui. (BBWM T2016/0002) (T. Furukawa)**

**There is at least one permitted bed and breakfast home operation located within 500 ft. of the subject property.**

Ms. Tara Furukawa: Good morning Commissioners. This item has come to you for review because there's one B&B within 500 feet. The applicant is proposing a three-bedroom B&B in a single-family dwelling along Front Street. The applicant and his wife will reside in the accessory dwelling located just adjacent to the proposed B&B. The consultant for the project is Debbie Mitchell and she'll present to you the project and respond to any questions that you might have regarding the application.

Ms. Debbie Mitchell: Good morning Commissioners. My name is Debbie Mitchell and I'm here representing Mr. Tien Doan in his application for a bed and breakfast permit for his home at 368 and 362 Front Street in Lahaina.

Just to give you a little idea where this is located. It is south of...on the south part of Maui and it is...I'm sorry, of Lahaina and it's just south of Shaw Street. Moving in a little bit further it's in a residential not far from the oceanfront. As you come in you can see that this is a neighborhood and they're all similarly, age similarly constructed homes.

The house itself sits, there are actually two houses in this project. It has one house which is 372 Front Street which is the subject of the rental application and 368 Front Street which is where the owners will live. They're both under the same tax parcel number and half of the records at the County show that the information is under 372 and half of it is at 368 so we had kind of combine them. The house itself sits on a lot that's 10,630 square feet. There are three bedrooms in this permit application and three bedrooms in the owner's residence next door.

This is some of the views around the area. You see looking northward on Front Street and looking south as well, and directly across the street. There is ample parking. We have seven parking spaces which is adequate for a bed and breakfast. There are additional parking requirements for the bed and breakfast and so we have adequate parking for that with seven spaces. The interior...exterior of the house is shown here. It is very nicely wooded...has a lot of mature landscaping which is wonderful noise abatement.

1 The views from around house. This shows you again, the character of the neighborhood, the  
2 quality of the street and again, on the bottom right, the denseness of the local landscaping of the  
3 property. The layout of the house itself that is under review today. It is three bedrooms and two  
4 bathrooms. It has a second floor which is a large family room and a large backyard area with a  
5 gazebo for relaxation. Again, the entry into the house. The interior of the house, this is the  
6 kitchen, the living room and the sitting room. The three bedrooms, the two baths and the gazebo  
7 outside.

8  
9 The particulars of this application. All the neighbors were notified about the permit application  
10 and the public hearing by mail as required. There is one other permitted home, B&B home within  
11 500 feet so that is why we are here speaking with you today. The owner also placed the required  
12 ad in the Maui News for three consecutive weeks regarding the public hearing and in terms of the  
13 protest letters, five protest letters were received from neighbors who live within the 500 feet radius  
14 of the property. Efforts were made to contact these neighbors. A little interesting note about this  
15 application. This application was originally filed back in August, on August 10, 2016. And it was  
16 signed for notification of neighbors and that notification went out in November of 2016. And then  
17 right around March, after the notification was mailed, we did receive four letters at that time. But  
18 back in March of 2017, ZAED tagged the application for not enough parking spaces because the  
19 application was originally for five bedrooms. So the information went out to those neighbors that  
20 filed a protest for a five-bedroom house. So at the point that ZAED flagged that, we reviewed the  
21 application to be only three bedrooms. So that was just a little change from what these neighbors  
22 actually were thinking about the application.

23 And then unfortunately due to the confusion between the two property numbers, a miscellaneous  
24 inspection was required by Planning and when we requested the building, electrical and plumbing  
25 they kept going to the wrong house and so they found nonconforming items at this house because  
26 they were not in the correct house and it was just a matter of how that tax parcel number because  
27 it was one tax parcel number they were not...they were confused. So unfortunately a lot of work  
28 was done to bring the house into compliance when it was actually just the wrong house that they  
29 were in. So that is why you see such a large gap in the time period between when we first mailed  
30 out, we first applied and mailed notice and then when it actually came time to come forward to  
31 public hearing. So again, we sent out the public hearing notices as required.

32  
33 We did receive a feedback from two out of the neighbors within 500 feet in opposition. We again  
34 reached out to them and tried to tell them, explain to them how it went but they were firm in the  
35 opposition. I'm sure you've seen the letters in the packet. We did however, the owners were  
36 extremely proactive with their neighbors, they went door to door explaining the situation,  
37 explaining how it would be run and they were able to get five letters of support from neighbors  
38 two of which were adjacent neighbors and then the remainder as you can see from the green dots  
39 shows you where the remainder of the support letters were from and in addition to that they  
40 received seven letters of support from people that know them as their...in their business, they  
41 have their own business so they received a total of 12 letters of support altogether. So they have  
42 been very reactive with their neighbors attempting to explain this to them.

43  
44 Just want to introduce you to Tien and his wife, Amy, and their children Patrick, Paris, and Celine  
45 and they thank you for your time today and hope that we can answer any questions you might  
46 have. Mr. Doan is here today in case you have questions of him as well. Thank you very much  
47 for your consideration.

48  
49 **a) Public Hearing**

1  
2 Mr. Robinson: Thank you. At this time we'll open up for public testimony if anybody here would  
3 like to testify. Seeing none, public testimony is closed. Commissioners any questions for the  
4 applicant? Commissioner La Costa.

5  
6 Ms. La Costa: Thank you Chair. I was looking through the letters both for and against and I  
7 notice that there were three family members. This is for one tenant, five that were actually not  
8 neighbors even though the letter said I live in the neighborhood and then four that actually were  
9 in the neighborhood. So this might be kind of manini but I wondered why included in the packet  
10 were letters that says I live in the neighborhood when five people actually do not and they aren't  
11 actually affected by the home. So I would like some clarification please. Thank you very much.

12  
13 Ms. Mitchell: Certainly. Any time that I deal with these applications the one point that I ask for  
14 owner support or owner cooperation is with support letters. And so I provided the owners with a  
15 sample support letter so they understood what they were asking for and at that time they took the  
16 support letter and printed it and then they went from neighbor to neighbor. So they just..it's  
17 essentially the same letter but they also received support from other people who know them as  
18 business people and would be willing to support them as well, but unfortunately the same...they  
19 took the sample letter that I had provided with them instead of having each of the people do their  
20 own, write their own letters. So that was just a unfortunate error in that part.

21  
22 Ms. La Costa: Thank you.

23  
24 Mr. Robinson: Commissioner Kahu Hill.

25  
26 Kahu Hill: Debbie? So yeah I was noticing that the letters from before did not support this project.  
27 Very much I was looking at the Lindseys because banyan tree was planted 145 years ago and  
28 they are firmly rooted.

29  
30 Ms. Mitchell: Sure.

31  
32 Kahu Hill: As well on that street and concerned about the environment and also a testimony about  
33 the children, walking their children to school. They took time to make these testimony and the  
34 other ones they just signed this letter just wondering where that might be as far as concerns about  
35 the environment, the ocean, safety for the children 'cause there's no crosswalks and things that  
36 were brought in testimony.

37  
38 Ms. Mitchell: Certainly, obviously the rules, the house rules for the bed and breakfast themselves  
39 state obviously the...especially the quite hours, the understanding of how the bed and breakfast  
40 will be run. The fact that the owners are right there on property and will greet each guest will be  
41 heavily involved with each guest. It's not just like a short-term rental where they are separate.  
42 This is their home as well and so that is something that we would attempt impart when guests are  
43 welcomed in was that this is a neighborhood and this needs to remain as such. So your  
44 quiet...your hours, your quiet...you're looking into the street being very careful, just recognizing it  
45 is a neighborhood would be important to apply each guest as they came in. And with the owners  
46 right next door they are there to do so when the guests check in. So that would be how they  
47 would handle that.

48  
49 Mr. Robinson: Commissioner Tackett.

1  
2 Mr. Tackett: I got a question on the third structure on the parcel. Is that a permitted structure and  
3 what is its use?  
4  
5 Mr. Robinson: Could you please approach the podium and give you name?  
6  
7 Mr. Tien Doan: My name is Tien Doan. I'm the owner. Yes, this is a storage. It's the three  
8 structure that was when we bought it was on the County record.  
9  
10 Mr. Tackett: So you bought it existing?  
11  
12 Mr. Doan: Yes. It was like that. It was right...same like that, since we bought.  
13  
14 Mr. Tackett: Okay, thank you.  
15  
16 Mr. Doan: Thank you.  
17  
18 Mr. Robinson: Any other questions? I have one for the applicant please. Hi, I notice that you've  
19 been accused twice of renting out your home without a permit in 2014 and again in 2015. You've  
20 been VRBO.  
21  
22 Mr. Doan: Yes.  
23  
24 Mr. Robinson: And you also have a website.  
25  
26 Mr. Doan: Yes.  
27  
28 Mr. Robinson: And were you not aware of the law the first time?  
29  
30 Mr. Doan: Yeah, we didn't aware the law the first time. And after we got the letter we stop right  
31 away and we worked with County and we, we applied right away that we want to apply the permit  
32 for it. So we was talking to the person were enforce Lahaina and that person say that and then  
33 we stop right away as soon, and we refund all the money to the people that we rented, we didn't  
34 know at all.  
35  
36 Mr. Robinson: You actually have two...you have two citations for operating illegally, one in 2014  
37 and then another one in 2015 of September. Are you aware of these two citations?  
38  
39 Mr. Doan: No. We just have the letters notify that we...that is illegal and then we stop right away.  
40 We don't have any citations at all. We just got the letter from them, from the County and we stop  
41 completely.  
42  
43 Mr. Robinson: Thank you. Tara are you able to corroborate this? I have a RFS ending in 965  
44 and then I have another RFS ending in 1492.  
45  
46 Ms. Furukawa: Yeah, yeah two Notices of Warning were issued.  
47  
48 Mr. Robinson: Can you verify that one was at 9/17/2015, the other one was 6/25/2015, three  
49 months apart?

1  
2 Ms. Furukawa: Yeah. June 26...wait hang on a second. February 9, 2015, June 26, 2015 that  
3 was when it was confirmed there were no more ads.  
4  
5 Mr. Robinson: That's when it was confirmed?  
6  
7 Ms. Furukawa: Yeah.  
8  
9 Mr. Robinson: By the neighborhood watch?  
10  
11 Ms. Furukawa: By our inspectors.  
12  
13 Mr. Robinson: The inspector.  
14  
15 Ms. Furukawa: Yeah.  
16  
17 Mr. Robinson: And does it show when the notice went out to the applicant?  
18  
19 Ms. Furukawa: Okay, sometime before February 9, 2015.  
20  
21 Mr. Robinson: Okay.  
22  
23 Ms. Furukawa: Yeah, for one of them and then the other before June 26, 2015.  
24  
25 Mr. Robinson: Director.  
26  
27 Ms. McLean: Thank you Chair. It looks like the 2014 RFS was entered in October,  
28 October 8, 2014.  
29  
30 Ms. Furukawa: Yeah.  
31  
32 Ms. McLean: And then the Notice of Warning was sent out on February 4, 2015 asking for  
33 compliance by February 9, 2015. And then it appears that there wasn't any other follow up until  
34 another RFS was submitted on June 9, 2015 and enforcement did not find any ads and didn't find  
35 any evidence of illegal operation so that 2015 RFS was closed. That's what it looks like to me.  
36  
37 Mr. Robinson: So Director it's just one RFS and the other RFS was just to verify that it was a  
38 second inspection is that what you're saying?  
39  
40 Ms. McLean: Well, the conclusion from the 2015 RFS was that the activity had stopped. That we  
41 could not find evidence that it had continued after they were told to stop in February that in June  
42 we couldn't find evidence that it was still going on.  
43  
44 Mr. Robinson: So there's just one violation notice?  
45  
46 Ms. McLean: One Notice of Warning.  
47  
48 Mr. Robinson: Okay, thank you. Commissioner La Costa.  
49

1 Ms. La Costa: I'd like clarification please on the RFS 14-0001492 received 10/8/14, under  
2 comments it says, website advertisement shows three separate dwellings on the subject property  
3 and all are being rented on a per night basis. Earlier when Mr. Doan commented he said that the  
4 third structure was storage so I'd like to know if that's ...(inaudible)...

5  
6 Mr. Robinson: Well, yeah I mean the RFS is just...it's not a investigation is that's what somebody  
7 reported that they're doing it. It's a claim and you just heard the Director say that they did a follow  
8 up a year later to verify that it was not being rented out any more.

9  
10 Ms. La Costa: I beg your pardon.

11  
12 Mr. Robinson: No, no problem. Anything further? Director.

13  
14 Ms. McLean: Just to confirm that the initial investigation showed that three separate dwellings  
15 were being rented but then that all of that activity did stop.

16  
17 Ms. La Costa: Did stop so it was rented.

18  
19 Mr. Tackett: So it was rented at one time...(inaudible)...

20  
21 Ms. McLean: According to our enforcement notes that three dwellings were...three separate  
22 dwellings were being rented.

23  
24 Mr. Tackett: Okay.

25  
26 Mr. Robinson: So again we have three options. We can approve, we can deny and we can defer.  
27 There are five of us so it has to be unanimous in no matter what we do. Commissioner Carnicelli.  
28 Would you like the Department's recommendation?

29  
30 Mr. Carnicelli: I would love the Department's Recommendation.

31  
32 Mr. Robinson: Tara please.

33  
34 **b) Action**

35  
36 Ms. Furukawa: So as mentioned by Debbie, there's one permitted B&B operation located north  
37 on the property about five properties away. There are three permitted STRHs within 500 feet as  
38 well. As of March 31, 2018 there are nine permitted B&Bs and the cap is 88 and then there are  
39 78 permitted STRHs in the region but now with the Minatoya ruling there are now 56 permitted  
40 STRHs in the region and the cap is 88. There are no open RFS. There are four protest letters  
41 and the consultant responded to each letter and there are five support letters. So the Department  
42 has no recommendation on this particular B&B. We're requesting that the Maui Planning  
43 Commission decide without our feedback this time. And the Department is asking that the MPC  
44 authorize the Director of Planning to transmit the written decision and order on behalf of the  
45 Planning Commission.

46  
47 Mr. Robinson: Thank you that's what we're here for. That's rare but that's what we're here for.  
48 Would you like to...anybody to discuss...would like to make a motion either way for discussion?  
49

1 Mr. Carnicelli: Hang on a second if I—

2

3 Mr. Robinson: Sure.

4

5 Mr. Carnicelli: I'm gonna... 'cause do we have conditions if—

6

7 Ms. Furukawa: Yeah...

8

9 Mr. Carnicelli: Do you have conditions in case—

10

11 Ms. Furukawa: Yeah, just the standard conditions for a B&B.

12

13 Mr. Carnicelli: Okay, so we don't have any site specific conditions?

14

15 Ms. Furukawa: No.

16

17 Mr. Carnicelli: Okay, so Chair I will make a motion to approve with the 17 conditions placed in  
18 the staff report.

19

20 Mr. Robinson: Thank you. Do we have a second? Seeing none, would somebody else like to  
21 make a motion?

22

23 Mr. Carnicelli: Motion fails.

24

25 **It was moved by Mr. Carnicelli to approve the Bed and Breakfast Permit with the**  
26 **17 conditions as noted in the staff report. There being no second, the motion FAILED.**

27

28 Mr. Robinson: Commissioner La Costa.

29

30 Ms. La Costa: I would like to move that this permit is denied based upon the letters and the  
31 density of current short-term rentals in the area.

32

33 Kahu Hill: I second that.

34

35 Mr. Robinson: I have a motion to deny, Commissioner La Costa, second by Kahu Hill. Would  
36 you like to speak to the motion?

37

38 Ms. La Costa: With the updated figures that were presented it seems that the density for the  
39 short-term rentals and bed and breakfasts in that area will cause more congestion and have a  
40 safety issue. And I just feel at this juncture that it is not applicable to issue the permit.

41

42 Mr. Robinson: Thank you. Discussion?

43

44 Kahu Hill: I'm also agreeing with Commissioner La Costa and it seems like it's changing the  
45 neighborhood. It sounds like a beautiful house for a B&B. I just looking at the amount that's  
46 happening in the area and the testimonies that were given feeling that it's all too much that maybe  
47 there is already so much B&B and STRHs there. So it seems with the density and possible safety  
48 'cause of sidewalks and the traffic that I'm with as what she say as well.

49

1 Mr. Robinson: Corporation Counsel.

2  
3 Mr. Galazin: Thank you Chair. And Commissioner La Costa in helping us make sure we have  
4 an accurate record specify within the restrictions and standards of 19.64.030 which subsection to  
5 which you're referring for your recommendation?

6  
7 Ms. La Costa: I'm sorry Corp. Counsel I don't have a reference here that I can.

8  
9 Mr. Galazin: It should be within the staff report.

10  
11 Ms. Furukawa: Under the recommendation portion, there's A thru S.

12  
13 Ms. La Costa: Thank you.

14  
15 Mr. Galazin: Yes, as the Staff Planner mentioned. So if you go to the first page, it's got...So I  
16 think, I think you may be...I don't want to speak for you but perhaps looking at the bottom of Page  
17 3 of the staff report's recommendation, Subsection M, it says, no bed and breakfast home shall  
18 create any impact greater than those there to for existing in that district and shall conform to the  
19 character of the neighborhood. I'm not sure if that's the one to which you're alluding.

20  
21 Ms. La Costa: That is correct and thank you for your assistance.

22  
23 Mr. Galazin: Thank you.

24  
25 Mr. Robinson: We have any discussion? Commissioner Carnicelli.

26  
27 Mr. Carnicelli: Well, I mean we are in a quandary because as you said Chair we need a  
28 unanimous decision. So anytime we're in a bare quorum situation the minority has the power  
29 unfortunately.

30  
31 Mr. Robinson: We have extreme opportunity here is what we have.

32  
33 Mr. Carnicelli: There you go not power, yeah it's opportunity. You know, I guess, I wanna say  
34 I'm not sold hard either way on this particular application. I understand why the Department gave  
35 no recommendation. They didn't recommend approval, they didn't recommend not approval  
36 because I can see all sides of this. One thing that I would like to put on the record that's not a  
37 part of this decision but I would like to put on the record for future applicants is that I think you  
38 alluded to it Chair in your questioning and that is had you been operating illegally in the past, I  
39 think that that is something that the commission is impacted by and I think that that's something  
40 that the people that are operating illegally right now and saying like okay, catch me if you can and  
41 then they get caught and then they go okay, now I'll go ahead and become "legal", more and more  
42 I'm having a very hard time with those types of folks. But again, not making that as part of my  
43 decision right now. If the four of you feel as though that you would like to support the motion, I  
44 will also support the motion and I have reason that I can, you know do that. I can see the impacts  
45 to the neighborhood. I can see the protest letters as the reason for that and so if the four of you  
46 would like to support the motion, then I will actually go with you because I can see that that would  
47 be the case. So I will leave it at that.

48  
49 Mr. Robinson: You have anything to say?



1  
2 Mr. Tackett: I believe the letters that we read all support what...(inaudible)..has to say that if  
3 those letters are saying that that what has already gone on in that neighborhood is impacting the  
4 neighborhood and that to increase it by one is just gonna have a more significant impact. So I'm  
5 gonna be in favor of the last motion.

6  
7 Mr. Robinson: You know, it's I think it's a good point about, about people not following the law.  
8 2014 was a long time ago and I do wanna, I do wanna give him credit that he stopped. Is I did  
9 read the support letters and I did read the opposition letters. Opposition seemed to be in the  
10 neighborhood. Support letters seem to speak more of the individual than of the area and of the  
11 rental. I think that weighted my decision and also it's in Front Street and the area, and the area  
12 as a whole you know it's we have businesses that take over houses there that we allowed you  
13 know. We have people that moved their offices into these homes because there wasn't enough  
14 office space and now rental home is also another business and I think it's unfortunate that the  
15 housing crunch as it is. But having said that I have to support the motion that it's just not in the  
16 right area, the opposition letters. The letters didn't speak to this business benefiting the area or  
17 the character of the neighborhood. At this time, Director?

18  
19 Ms. McLean: Chair there's a motion on the floor to deny the application.

20  
21 Mr. Robinson: All those in favor please raise your right hand.

22  
23 Ms. McLean: Five ayes.

24  
25 Mr. Robinson: All right thank you. Motion has carried. The application has been denied.

26  
27 **It was moved by Ms. La Costa, seconded by Kahu Hill, then**

28  
29 **VOTED: To Deny the Bed and Breakfast Permit based upon the letters and the**  
30 **density of current short-term rentals in the area.**  
31 **(Assenting – P. D. La L. Carnicelli, A. Hill, C. Tackett, P.D. La Costa,**  
32 **K. Robinson)**  
33 **(Excused – S. Castro, L. Hudson, T. Gomes)**

34  
35  
36 Submitted by,

37  
38  
39 Carolyn Takayama-Corden  
40 Secretary to Boards & Commissions II  
41  
42