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**MAUI PLANNING COMMISSION  
PORTION OF REGULAR MINUTES  
ITEM B.3  
JANUARY 22, 2019**

**B. PUBLIC HEARINGS**

Ms. McLean: Thank you Chair. This is your last public hearing item. It is a request from Mr. Abram Steve Horst for a State Special Permit in order to operate The Seahouse, a four-bedroom short-term rental home located in the State Agricultural District at 200 Pua Niu Way, TMK: 4-7-009: 006-00001 in Launiupoko and Ryan Quigless the Project Planner.

**3. MR. ABRAM STEVE HORST requesting a State Special Permit in order to operate The Seahouse, a 4-bedroom short-term rental home located in the State Agricultural District at 200 Pua Niu Way, TMK: 4-7-009: 006-00001, Mahanalua Nui, Launiupoko, Island of Maui. (SUP2 2017/0012) (R. Quigless)**

Mr. Robinson: Aloha Ryan.

Mr. Ryan Quigless: Good morning Commission. Ryan Quigless with the Maui County Planning Department, planner on the project. We meet today as mentioned earlier to obtain State Land Use Commission Special Permit to operate The Seahouse, a four-bedroom short-term rental home in the State Agricultural District on approximately 3.66 acres of land located at 200 Pua Niu Way, Lahaina, Maui, Hawaii, TMK: (2) 4-7-009: 076-001. At this time I'd like to pass the presentation to the consultant to continue.

Ms. Debbie Mitchell: Good morning Commissioners.

Mr. Robinson: Good morning.

Ms. Mitchell: My name is Debbie Mitchell and I'm here representing Mr. Steve Horst and his family in their Special Use Permit and Short-Term Rental Home Permit applications today. The location of the home is in the Launiupoko neighborhood as you see south of Lahaina. Coming in closer you'll see it's straight up the hill from what is now the bypass, goes directly past it.

Taking you in here...could someone turn the lights down please? My slides will show up a little better. Thank you. So as you can see the way the roads are laid out you'll see 200 Pua Niu Way is at the very end of the cul de sac and down a significant driveway like so to separate it from the rest of the homes to a certain degree.

Moving in, this is shows you a little bit more, the location right out at the end of the driveway. And this slide shows in relation to the other owners of the CPRd lot which are directly at the top of the delineation of the lot. Since there's a long driveway there is also ample parking as required for a four-bedroom there are three spots parking including the garage and exterior parking sites.

The house is laid out on one level with four bedrooms. It is three-bedrooms and a office in this particular sketch, but the fourth bedroom will be...the office will be used as a fourth bedroom. This is entry gate at the end of the cul de sac and as you can see the driveway precedes a long

1 way down to the house itself. These are the exterior of the house from all four sides. And then  
2 the views from the house. And as you can see he's significantly down terrain from the neighbors  
3 up above and the bottom right-hand photograph is the view directly from the house up the hill to  
4 where the next nearest neighbors are located. As you can see there's a lot of foliage and ground  
5 itself between the two. The parking again is ample.

6  
7 Taking you into the house, the entry both exterior and interior. Kitchen and dining area, living  
8 room, the four bedrooms again, as I've mentioned, the fourth bedroom is...was an office in this  
9 picture and it will be treated as a bedroom. The bathrooms. And the amenities, the lovely pool  
10 which is also located at the front side of the property with the house and landscaping in between  
11 the...that acts as a buffer for the...any sound that would come from there.

12  
13 Again, showing you...the red areas is kind of hard to see in this photograph but this is the  
14 agricultural product. There was a significant farm plan in place already by the previous owners  
15 and the Horsts have expanded upon that quite significantly by adding several original plantings  
16 and they're currently the lower portion of the slide shows the currently producing crops there on  
17 the property. In fact, he's brought a few samples for you if anyone care for fresh lemons or limes,  
18 also a very nice coconut. So that shows you how much he has put into the production of ag and  
19 continuing the agricultural production on the property. He's also made contact with several local  
20 restaurants to sell his product and has actually done so through a health café which is A`a Roots  
21 in Napili. So he's already made several deliveries to her and they have that ongoing. So they  
22 really wish to continue with the agricultural portion of the zoning on their property.

23  
24 The Horst Family are Steve and Amy and their children, Faith, Lucas and Anika. Faith is a very  
25 talented artist and has brought several of her, done several of her artworks there at the property.

26  
27 That's the end of our presentation. Mr. Steve Horst is here and would like to address you as well.  
28 All right, thank you.

29  
30 Mr. Robinson: Thank you.

31  
32 Mr. Abram Steven Horst: Good morning.

33  
34 Mr. Robinson: Morning.

35  
36 Mr. Horst: My name is Abram Steven Horst. I go by middle name which is Steve. Thank you for  
37 having me and my application.

38  
39 Mr. Robinson: Mr. Horst because you're the applicant and because we're going to do this we're  
40 gonna ask you that everything that testify to us will be truthful today?

41 Mr. Horst: Yes.

42  
43 Mr. Robinson: Thank you. That's good.

44  
45 Ms. La Costa: Could you please pull the microphone closer to you?

46  
47 Mr. Horst: Sure.

48

1 Ms. La Costa: Thank you.

2

3 Mr. Horst: Can you hear me okay now?

4

5 Ms. La Costa: Yes, thank you.

6

7 Mr. Horst: So five years ago I was diagnosed with thyroid cancer. I had a total thyroidectomy  
8 and a big scar here to remove a walnut size, Stage 2 tumor from left thyroid. Following surgery I  
9 receive radioactive iodine to hopefully wipe out the cancer permanently. My wife also has a  
10 thyroid problem it's called Hashimoto's Disease and causes her thyroid to not function. So why  
11 am I telling you all this? Because this is the reason why we set off on this journey to find a place  
12 where we can escape the harsh weather we experience in our home state in Pennsylvania. I live  
13 with the real possibility that cancer could return at any time. I have frequent follow up, you know,  
14 examinations and tests to see if it has returned. So while I have an active career in real estate  
15 business I own and manage back in Pennsylvania I'm not ready to retire and move here  
16 permanently yet. When I come here and spend time here it's kinda like I'm taking an advance on  
17 a retirement that I may never actually live to enjoy. The point I'm getting to is that we purchased  
18 the home in Launiupoko for our use with only the secondary idea of having some guests come  
19 and pay to stay in the home and enjoy it while we aren't there. In nearly two years since we  
20 purchased the home I've learned and experience much here and believe I've only scratched the  
21 surface of what this amazing land has to offer.

22

23 I read from the website part of the purpose of the short-term rental home ordinance is to allow for  
24 varied accommodations and experiences for visitors. I believe my home in particular has some  
25 truly unique features. First is a feature that took significant time for me to discover. At winter  
26 solstice the sun sets perfectly just off the east coast of Lanai with a sweet view of sweetheart  
27 rock. At summer solstice the sun sets just off the west coast of Lanai and Shipwreck Beach.  
28 Believe it or not Shipwreck is actually visible from my house. It's far but I can see it. So from my  
29 perspective the whole island of Lanai creates an annual calendar with the sun. On a clear day I  
30 can see the Big Island as well as Kahoolawe, Molokini, Lanai and Molokai.

31

32 On a recent visit with my wife's parents they arrived at night and I picked them up at the airport.  
33 They had traveled to Maui once before and stayed at a bed and breakfast in Lahaina. The first  
34 morning of their stay when I woke up they were already out enjoying the view. When I walked to  
35 join them I noticed that my mother-in-law was crying. She told me that this is the most beautiful  
36 place she's ever been. Yes, she had been to Maui before and stayed in Lahaina but this spot  
37 blew her away. I feel very fortunate and blessed to be the current caretaker of this property.  
38 Eventually someone else will have that privilege.

39

40 I know I have some neighbors who fear for the worst, but I am confident that I can manage for the  
41 best outcome. I respectfully request the opportunity to prove myself in doing some rentals of this  
42 very special place to qualified and carefully selected guests. I believe I can do this without any  
43 adverse impacts to my neighbors. I'm not looking to do a lot of rentals. One a month would be  
44 more than enough to satisfy me that someone got to enjoy the place instead of just sitting empty.

45

46 I thank you for your time and consideration of this request.

47

48 Mr. Robinson: Thank you.

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Mr. Horst: Any questions for me?

Mr. Robinson: Not at this time, we might come back to you. And Commissioners before I got to public testimony because I was just asking the Director this is we have SUP2 and we have STRH, but what it is, it's a procedural so we're gonna go SUP first and if this gets past SUP then we would then take on...they would apply for the STRH. Is that correct Director? So there's not a application for a short-term rental today. It's a application for a Special Use Permit. So if...

Mr. Carnicelli: It would be a whole separate thing.

Mr. Robinson: Because there's not a application for that yet. So just wanted to let you guys know because I was looking through the packet saying how come we don't have the criteria for the STRH and things and that's the reason why it's not in our packet. We just have the criteria for the Special Use Permit 2. Okay. And hopefully that...Ryan am I correct Ryan? Okay, that's correct. And hopefully the audience heard that too. So we are not here today for a STRH. We are here today for a Special Use Permit 2. So please be cognizant of that when you're testifying.

At this time, I'm gonna open up public testimony. I am going to be strict on our time lines today. We have a lot of testifiers. Please do not go over. It will not go well with this Commission. So at this time, Mr. Gordon Firestein. Could you please introduce yourself and you have three minutes sir. And oh, is...do you swear everything you say today will be truthful?

Mr. Gordon Firestein: Yes.

Mr. Robinson: Thank you.

Mr. Firestein: My name is Gordon Firestein and before I begin my remarks maybe I should ask a question because I'm not clear whether my remarks pertain to the SUP or to the vacation rental. Can you clarify for us what the differences between these applications?

Mr. Robinson: Corporation Counsel would love to.

Mr. David Galazin: Thank you so much Chair. These are the moments I live for. So because this is an Agricultural District, and thank you Chair for allowing me to address the testifier. The applicant's required to obtain a Special Use Permit before they can even apply for a Short-Term Rental Home Permit which is ultimately the desired use of the property. So you can make your comments about what is ultimately desired which is to use the home and short-term rental. But the criteria that the Commission is going to look at today for a Special Use Permit has its own specific criteria. So you would be...the difference is you would speak to those and not to the short-term rental home criteria which have their own unique characteristics but you can certainly provide your opinion and answer any questions and by either the commissioners here or whether the applicant has a question for you himself.

Mr. Firestein: Okay, thank you.

Mr. Robinson: Thank you. And that goes for everyone. So you know, and please continue 'cause you will have another opportunity if this were to pass when it came in front again. So you could

1 testify today or you could waive your testimony to find out if it's going to be moot or not. Would  
2 that being said would you like to continue?  
3

4 Mr. Firestein: Yes, I would thank you.  
5

6 Mr. Robinson: Okay.  
7

8 Mr. Firestein: And aloha Commission Members and Staff. I'm here today to oppose the  
9 application. I live in Launiupoko and have experienced firsthand the nuisance of short-term  
10 vacation rentals near us. And I'm sure you're all aware of the long list of potential negatives  
11 associated with these businesses in residential and agricultural area.  
12

13 I've tried hard to imagine what the positives might be and can really only think of two. There's  
14 profit to the owner and tax revenues to the County and the State both of which are fine. But only  
15 if the business is located in the business zone. Launiupoko is an Ag zone and inappropriate for  
16 this sort of business. These resort oriented businesses should be located in resort areas not in  
17 close proximity to full time residents who choose to live here because they value the quiet low  
18 density, low traffic quality of life that is exactly antipodal to a resort area.  
19

20 And the people most affected by a vacation rental are the immediate neighbors and among those,  
21 the ones whose viewpoints ought to count most heavily in this decision are the co-owners of the  
22 CPR property under consideration. So Mark and Suzanne who you'll hear from later are friends  
23 of ours. They're owners of Unit B of this property and they would be severely impacted by a large  
24 vacation rental next door. It would be completely unfair to them to approve this application.  
25 There's no benefit to the neighborhood and only negative impacts to be endured by the neighbors.  
26 So I respectfully urge you to reject the application.  
27

28 Mr. Robinson: Thank you. Next we have Doris...  
29

30 Mr. Galazin: ...(inaudible)...  
31

32 Mr. Robinson: I think our Commission understands our...oh, the applicant gets to. I apologize  
33 sir, it's because it's a contested case the applicant gets to ask you question if he so chooses. And  
34 I need to ask that every single time. Mr. Horst do you have any questions for the testifier?  
35

36 Mr. Horst: I have no questions.  
37

38 Mr. Robinson: Thank you. And Mr. Horst is maybe if you could just raise your hand if do you  
39 have one in the future and then we can get through this, that's all thank you so much. All right,  
40 next we have Doris Lang please. Please introduce yourself you have three minutes.  
41

42 Ms. Doris Lang: My name is Doris Lang and thank you all for being here and listening to us. I  
43 need my glasses sorry. Okay, start again. I'm Doris Lang. I'm testifying against this application  
44 for the reason that I think it's just wrong. Six neighbors within the 500-foot radius will be most  
45 affected and they've stated in letters of opposition. And 15 residents in Launiupoko have opposed  
46 via Next Door social media the proposed vacation rental.  
47

1 It doesn't matter how well vetted guests will be no how many rules posted. One cannot control  
2 the behavior of others. Surveillance cameras, property managers living elsewhere are ineffective.  
3 In the 10 years in Launiupoko we have had TVRs off and on next to us. They don't work and  
4 they're a detriment to all of us that live near them. The only person who will benefit is the owner  
5 of the TVR. They make quick money on vacation rentals while at the same time contribute to the  
6 many problems that come with vacation rentals in a quiet neighborhood and to mention taking  
7 away much needed housing for long-term renters on the west side.

8  
9 Their property can be sold easily whereas nearby neighbors have to disclose a TVR consequently  
10 losing potential sales. There are numerous places on Maui where tourist can stay. Launiupoko  
11 ag land neighborhood is not one of them. There have been many letters written to the Planning  
12 Department opposing Mr. Horst's application. If passed all of the opposing neighbors 500 feet  
13 near the TVR lose while one owner who resides on the mainland wins. Please deny this permit  
14 request.

15  
16 Mr. Robinson: Thank you. Mr. Horst any questions?

17  
18 Mr. Horst: I don't think so.

19  
20 Mr. Robinson: Okay, thank you. Next we have up Suzanne...it is...sorry I can't pronounce your  
21 last name.

22  
23 Ms. Suzanne Albers: Albers.

24  
25 Mr. Robinson: Albers.

26  
27 Ms. Albers: Good morning Commission.

28  
29 Mr. Robinson: Aloha. You promise your testimony will be truthful?

30  
31 Ms. Albers: Under oath.

32  
33 Mr. Robinson: Thank you. You have three minutes.

34  
35 Ms. Albers: Aloha everyone. My name is Suzanne Albers. My husband Mark and I have been  
36 permanent full-time residents at 204 Pua Niu Way since 2012 when we built our small 1,000  
37 square foot cottage. It is our only home. We are here to give testimony stating our strong  
38 opposition to this special use permit and a short-term vacation rental permit at 200 Pua Niu Way  
39 known as Seahouse. We are CPRd with this large main home and we are in very close proximity  
40 to it with our cottage being directly behind it. We are close enough to hear cars going up and  
41 down the driveway, people talking at the front entrance and voices from the pool area. We are  
42 over 65 years of age and building our cottage in 2012 was a 20-year dream of ours. Now we are  
43 threatened to lose or serenity as well as significant value in our home if this approved.

44  
45 Today we have provided with you folders that have multiple copies of opposition letters from each  
46 homeowner within the 500-foot radius of Seahouse. Also is a map showing the numbered lots  
47 with corresponding names and addresses of all six homeowners opposing this application. Six  
48 are here to testify here today. There is also a map showing the location of our home in relation

1 to Seahouse. It is within the 3.66 acre parcel and I was wondering why it wasn't shown on the  
2 map. It was omitted in one of those maps on the screen. Also included is an official document  
3 with the description of 3.66 acre parcel stating falsely that Seahouse is the only structure on the  
4 parcel. Our home is completely omitted and ignored. Why the deception?  
5

6 We were also informed that because we are CPRd with this home we could be liable if a renter,  
7 child or adult was hurt on our property. For example if a soccer ball were kicked from their  
8 driveway into the large boulders nearby in a gulch and someone tried to retrieve it, it would be  
9 very difficult and dangerous and that area is on our property.  
10

11 While Seahouse was in escrow in March of 2017 and I was going through radiation treatments  
12 for breast cancer, the applicant contacted us pleading that we sign off on allowing his home to be  
13 used as a short-term vacation rental. We politely but firmly said no, absolutely not. It would ruin  
14 our serenity as well as our home value. We stated to him the many other reasons why we objected  
15 and the reasons are obvious.  
16

17 Mr. Robinson: Ms. Albers please conclude.  
18

19 Ms. Albers: What?  
20

21 Mr. Robinson: Please conclude.  
22

23 Ms. Albers: Okay, it would be very disruptive in many ways. We have lived next to a short-term  
24 rental vacation before. We asked him why not rent out for six months at a time which is allowed.  
25 So it's a nightmare to live next to short-term vacation rental and Mr. Horst has only been there  
26 out of a year and ten months this has been going on. He's only been to the home two weeks  
27 every six months at the most.  
28

29 Mr. Robinson: Thank you for your testimony. Is there any questions for the applicant...I mean  
30 for the testifier? I'm sorry seeing none, Mr. Horst do you have any questions?  
31

32 Mr. Horst: I don't.  
33

34 Mr. Robinson: Okay, thank you so much.  
35

36 Ms. Albers: Please do not...  
37

38 Mr. Robinson: Next we have Sue Pepe. And folks I know three minutes doesn't seem like a lot,  
39 but we do really read all the testimony that we get on paper and we see it all, so please don't be  
40 discouraged. Hello, do you promise say everything today to be truthful?  
41

42 Ms. Sue Pepe: Yes, I do.  
43

44 Mr. Robinson: Thank you. Please introduce yourself you have three minutes.  
45

46 Ms. Pepe: Good morning my name is Sue Pepe. My husband and I own the property at 153 Pua  
47 Niu Way. We've been there for 10 years. We've traveled 6,000 miles to come over and enjoy  
48 our beautiful home, our wonderful neighbors and our peaceful neighborhood. We bought on the

1 cul de sac because it would be quiet with little traffic or so we thought. There are now two short-  
2 term rental properties on Pua Niu, one at 122 which is an art gallery/six-bedroom rental and also  
3 at 217 the Ocean Star Home by Greg Brown that rents up to \$10,000 a night. It was represented  
4 by a company, Pure Maui that represents luxury rentals. The legality of either one I don't know.  
5 It is a nightmare to live next to or close to this party house at 217. The noise goes on all night  
6 long. The cars back and forth. Taxis and Ubers parked in the cul de sac, beeping their horn  
7 because they cannot get in through the gate. This starts early in the morning picking up people,  
8 coming back to get them. The propane truck twice a week going up and down the driveway trying  
9 to keep up with the flow of people. It is a nightmare.

10  
11 I've read through all the documents and there were numerous trigger points that are refutable but  
12 with limited time I will say this, the objective for the goals stated are to enhance and protect the  
13 visitor experience while attempting to protect the residents with good governance. We are being  
14 exploited not protected. The idea this will provide increased employment is a moot point. We all  
15 employ people to maintain our homes as Mr. Horst will have to do whether he rents or owns. We  
16 use electricians, plumbers, landscapers.

17  
18 The directed growth plan states it is to protect the island's lifestyle, needs of residents and the  
19 aloha spirit. The aloha spirit is about respect, compassion, and consideration of others. The  
20 permit totally defies that spirit. There is no common benefit, economic benefit to this other than  
21 putting money in Mr. Horst's pockets.

22  
23 Land Use Commission states in Ordinance 3941 that STRs are permitted on Ag land if they assure  
24 the growth of crops and that the rental property will defray the costs. Well I would say nicely to  
25 Mr. Horst if this is a hardship in watering your plants and you need the rental income this is not a  
26 good fit.

27  
28 Mr. Robinson: Please conclude.

29  
30 Ms. Pepe: Okay. I just ask that you not approve this, that there's nothing to be gained. It will  
31 adversely affect the residents who have lived here for many years, pay our taxes, our dues and  
32 enjoy our neighborhood. Again, where is the aloha spirit.

33  
34 Mr. Robinson: Thank you for your testimony.

35  
36 Ms. Pepe: Thank you.

37  
38 Mr. Robinson: Commissioners any questions? Mr. Horst any questions?

39  
40 Mr. Horst: I have one question.

41  
42 Mr. Robinson: Yes, please tell it to the mic Mr. Horst and please introduce yourself.

43  
44 Mr. Horst: Yes, I'm Steve Horst. The question I have is that for my neighbor is if she can see any  
45 difference or possible difference between a rental property that is managed well and one that is  
46 managed poorly?

47



1 Ms. Pepe: Well, my response to that is people who rent rather than own have little regard for  
2 those around them and unless you have a property manager on there 24/7 it's useless. People  
3 who pay high amounts of money to rent a home are going to get their money's worth with total  
4 disregard for others. Owners have respect for others in the neighborhood. Totally different.

5  
6 Mr. Robinson: Thank you so much. Next testifying we have Yvonne McKernan.

7  
8 Ms. Yvonne McKernan: Yeah, my name is Yvonne McKernan.

9  
10 Mr. Robinson: Yvonne do you swear to say everything...everything is here today is truthful?

11  
12 Ms. McKernan: I do.

13  
14 Mr. Robinson: Thank you. You have three minutes.

15  
16 Ms. McKernan: My name is Yvonne McKernan and my husband and I own a home at 197 Pua  
17 Niu Way. Strangely enough I also have an autoimmune disease. I have rheumatoid arthritis and  
18 my husband has a kidney transplant. And one of the reasons that we are planning on retiring to  
19 Maui is exactly what Mr. Horst exhibited that it's very conducive to enjoying the atmosphere and  
20 we feel better here as I think most people probably do.

21  
22 The property under consideration today is three houses away from us at the end of a quiet  
23 residential cul de sac. Large parties of people do not rent homes on Maui to sit quietly and enjoy  
24 the ambiance. They are noisy. They usually drink heavily and strain services and resources.  
25 These parties create large quantities of trash and strain services. Sometimes require police  
26 intervention for noise and other complaints and often disregard local ordinances and rules of the  
27 road. STVRs are essentially small hotels in residential neighborhoods.

28  
29 Remote owners and managers see them as money makers, but those of us unfortunate enough  
30 to live in the same neighborhood the cause concerns about safety, tranquility and property values.  
31 STVRs can artificially drive up home prices making homes unaffordable to residents when they're  
32 eventually curbed or banned property values plummet. Many city councils in popular vacation  
33 areas have realized how disruptive STVRs can be to their community and are now taking steps  
34 to ban them.

35  
36 In July 2018, the San Diego City Council approved a city wide ban on second home vacation  
37 rentals when the owner does not live on site as Mr. Horst would not. This ban will go into effect  
38 in 2019. In December 2018, Las Vegas City Council voted to ban non owner occupied short-term  
39 rentals and to severely restrict even hosted rentals. In January 2019, New Orleans City Council  
40 ALso voted to restrict STVRs and so did Los Angeles in January 2019.

41  
42 Second homes and investment properties cannot be rented on a short-term basis in many areas  
43 that are equivalent to Maui as vacation areas.

44  
45 Mr. Robinson: Please conclude.

46  
47 Ms. McKernan: I guess that's all I have to say. Thank you for your consideration.

48

1 Mr. Robinson: Commissioners any questions? Seeing none, Mr. Horst.

2  
3 Mr. Horst: I have no questions.

4  
5 Mr. Robinson: Thank you.

6  
7 Ms. McKernan: Thank you. Thank you.

8  
9 Mr. Robinson: Next we have Lynn Fisher. And in the audience like I said you know it's...if you  
10 know for your sake is we're gonna go into lunch so the testimony we have about ten more  
11 testifiers. If they 10 testifiers, I'm not gonna say you can't testify but if you wanna...if it's the same  
12 testimony I think we can get gist and you guys wanna be able to, you know, see through our  
13 deliberations of having to come back at 1:15, 1:30 and go through that that's totally your right. I  
14 just wanna let you know, you know, I just wanna put that out there for you. But next we have Ms.  
15 Lynn Fisher. Please introduce yourself.

16  
17 Ms. Lynn Fisher: Oh under oath on the bible. Thank you.

18  
19 Mr. Robinson: Please introduce yourself?

20  
21 Ms. Mary Lynn Fisher: Mary Lynn Fisher.

22  
23 Mr. Robinson: Hi Mary Lynn you promise to be truthful with your testimony today?

24  
25 Ms. Fisher: Under oath on the bible.

26  
27 Mr. Robinson: Thank you. Is that a yes?

28  
29 Ms. Fisher: Yes.

30  
31 Mr. Robinson: Yes, okay.

32  
33 Ms. Fisher: Aloha. Having had lung cancer, I guess we can all throw those things out here.  
34 Having a lung removed I understand Mr. Horst's scaredness of not living long. And having it, you  
35 know enjoy your life here. It's stinky having cancer. I have no two ways...I know it, I've been it  
36 and done it. Anyway, just to add an additional comment to those who have been expressed here  
37 today, I live at 183 Pua Niu Way which is across from Mr. Horst's new home and right and above  
38 it. So everything I hear comes up towards the mountain. I can even hear whales singing. So it  
39 always comes up towards the mountain via the wind.

40  
41 Anyway, I would like...I thank you very much for listening to us. This decision will have  
42 consequences that will not impact you as a committee at your homes, the committee at a whole.  
43 It will impact Mr. Horst, the project management company and Maui County in a very good way  
44 they make money. The only detrimental consequence will be to those who lives will be impacted  
45 from then on, the families that have bought homes to live their lives in a family neighborhood. We  
46 lose property value, lose our quiet neighborhood and the aloha that we as our little cul de sac  
47 community have grown as neighbors to look out for one another and to take care of one another.  
48 So ask you, each of you please remember your decision regarding Seahouse and when closing

1 your eyes to sleep at night that it will be a decision that will not harm the residents that live there  
2 now which it will certainly do. Thank you very much.  
3  
4 Mr. Robinson: Thank you for your testimony. Mary Lynn we have a question for you. Over here  
5 Mary Lynn. We have a commissioner. Commissioner La Costa.  
6  
7 Ms. La Costa: Thank you Chair. You mentioned that you live across the street and up the hill,  
8 do you live on Lot 3?  
9  
10 Ms. Fisher: No, I'm 9.  
11  
12 Ms. La Costa: Nine. Okay, I see that. So you're at the back.  
13  
14 Ms. Fisher: I'm above yeah.  
15  
16 Ms. La Costa: Okay. Can you tell me has there been rental activity previous to the application?  
17  
18 Ms. Fisher: I can't tell you truthfully has there been people there prior to when the Horsts have  
19 come, yes. In my opinion, yes, I can't tell you that truthfully. You'd have to ask the property  
20 management group. But it looks like there have been there, but it's also...that could be going to  
21 2017 which is Greg Brown's house which is to us a short-term rental which we hear from even  
22 though it's beyond 500 feet, this one is probably 700 to 800 feet but we still get all the noise.  
23 We've had bands, we've had chanting, we've had it all up there and you can hear it. It's just...it  
24 travels via the air or the wind or whatever you all want to call it. It just travels.  
25  
26 Mr. Robinson: Thank you.  
27  
28 Ms. La Costa: Thank you so much.  
29  
30 Ms. Fisher: Okay, you're welcome.  
31  
32 Mr. Robinson: Mr. Horst?  
33  
34 Mr. Horst: I have no questions.  
35  
36 Mr. Robinson: Thank you. Next testifier we have Mark Allans, Mark Albers, I'm sorry.  
37  
38 Mr. Mark Albers: I would like to defer to Bob please.  
39  
40 Mr. Robinson: It's either...well Bob will have his own three minutes if he wants.  
41  
42 Mr. Albers: ...(inaudible-speaking from the audience)...  
43  
44 Mr. Robinson: One person three minutes. Sorry there's no yielding somebody's time.  
45  
46 Mr. Albers: Yes, good morning.  
47  
48 Mr. Robinson: Please introduce yourself.

1  
2 Mr. Mark Albers: My name is Mark Albers.

3  
4 Mr. Robinson: You promise to be truthful with your testimony?

5  
6 Mr. Albers: Yes.

7  
8 Mr. Robinson: Thank you. You have three minutes.

9  
10 Mr. Albers: A lot has already been said. I don't want to repeat it but we do live across the street  
11 or upwind of him. We are CPRd with him. We've been advised that we could be liable like my  
12 wife had said. Also I have PTSD, I'm a Vietnam Vet and I've struggled with that. I shudder at the  
13 fact of having strangers coming around and being around. We've lived next door to vacation  
14 rentals before and they have been nothing but trouble. This particular situation has caused so  
15 much stress for my wife. It's really hard for me to even watch and she shouldn't even be having  
16 to go through this. As a matter of fact, we feel like we're being you know on trial for some reason  
17 just so he can have his vacation rental. But there's a point well taken that I want to get in. We  
18 hear everything that goes on down there. There was a picture of a shower. We're very familiar  
19 with the property, we're good friends with the owners and we spend a lot of time taking care of  
20 the property, watching the property and visiting with them of course. She could holler up to me  
21 Mark bring down the shampoo and I'd be here it, bring it down, bring down some more drinks,  
22 ...(inaudible)...The way the whole situation is all the wind blows everything uphill. We hear all  
23 the noise and the driveway goes right down our property line. We hear the cars go up and down  
24 and well, I have to get this in also, we do have another vacation rental behind us. It's Greg Brown,  
25 Ocean Star thing. I don't know if it has a permit or not. But his driveway is directly behind us. It  
26 runs along the entire length of our property and there are cars going up and down it. There's  
27 usually two or three with each group and it's probably rented 90 percent of the time. So we're  
28 kinda stuck in the middle of it and our peace and serenity has just been greatly impaired by that  
29 and to have this happen is a real nightmare for us. It's just a real nightmare. I don't know if I can  
30 handle it. It's very detrimental to my wife. I could go on, and but I'd probably be repeating all the  
31 things. And I want to defer to Bob because he has an appointment.

32  
33 Mr. Robinson: I'll make sure he gets in before 12, but thank you. First of all, thank you for your  
34 service. Commissioners any questions for the testifier? Mr. Horst, any questions for the testifier.

35  
36 Mr. Horst: I don't have—

37  
38 Mr. Robinson: Oh, I'm sorry Commissioner La Costa.

39  
40 Ms. La Costa: Yes, thank you for your service. And I have the same question to Mr. Albers. Are  
41 you aware of any previous vacation rental activity on the property that you share the CPR with?

42  
43 Mr. Albers: I can't say that I have, no. But there's definitely a lot going on on the other side of  
44 our property. And there's nothing to be gained here for any of the neighbors at all.

45  
46 Mr. Robinson: Thank you so much.

47  
48 Mr. Albers: And thank you very much. This isn't my forte.

1  
2 Mr. Robinson: And the applicant will be under oath so that's a good you could ask him. Thank  
3 you. Next we'll have Aunty Mopsy.  
4  
5 Mr. Albers: Oh I had one more thing.  
6  
7 Mr. Robinson: I'm sorry I apologize, I apologize.  
8  
9 Mr. Albers: Just one quick thing.  
10  
11 Mr. Robinson: Bob can do it in for you. We got 20 people here.  
12  
13 Mr. Albers: Okay, was gonna say people that are on his payroll, but...  
14  
15 Mr. Robinson: Aunty Mopsy thank you. Corporation Counsel wants to just say one thing Aunty.  
16  
17 Mr. Galazin: Thank you Chair. And for the Commissioner Members as well as for the members  
18 of the audience. One of the reasons that we're hearing this today. This is a contested case which  
19 means it's a proceeding in which the legal rights, duties or privileges of a specific party are  
20 required by law to be determined after an opportunity for an agency hearing. This is the agency  
21 hearing. If the Commission is going to rely on public testimony in order for it to be reliable it must  
22 be given under oath. We've had a previous contested case where it did not happen, the applicant  
23 didn't like the outcome, it went to court, and this body has been told by a judge that we need to  
24 rely on if it is a contested case we need to rely on evidence that is sworn testimony in order to be  
25 reliable and is subject to cross examination by the applicant if the applicant so chooses. So I  
26 apologize for not being that clear to everyone up front. The reason why we have this procedure  
27 for this particular hearing, why we didn't have it for the other public hearing that wasn't a contested  
28 case and this is. Thank you Chair.  
29  
30 Mr. Robinson: Thank you. Please introduce yourself.  
31  
32 Ms. Francine K. Aarona: Aunty Mopsy. No, Francine K. Aarona and I—  
33  
34 Mr. Robinson: And you promise, testimony will be truthful today?  
35  
36 Ms. Aarona: Yes, I do.  
37  
38 Mr. Robinson: Thank you. You have three minutes.  
39  
40 Ms. Aarona: I know that on the agenda it does say Special Use Permit in order to operate The  
41 Seahouse, a four-bedroom short-term rental. And whenever you mention short-term rental my  
42 red flag goes up and that's why I'm here. Question that I would like to raise is was The Seahouse  
43 license terminated in 2013? And if that was what business are they requesting special use permit  
44 under?  
45  
46 Mr. Robinson: What...it's testimony not questions, sorry.  
47

1 Ms. Aarona: Yeah I know. I would like to really bring that attention to the Planning Commission  
2 that that is news for me that was given. And the amendment of the CPR was that amendment  
3 done before or after the buildings were built. It's brought to my attention that it wasn't approved  
4 when those building were built. And also, I would like to ask the Planning Commission to oppose  
5 this special use permit especially on an Ag property because in the presentation I'm looking at all  
6 of the things that they're producing in ag and I would have loved to see pictures of the production  
7 or the groves. We just saw single pictures of what is happening on the prem as an ag. And in  
8 specific subdivisions you know there's the Farm Act which this is area prohibits that and it violates  
9 the Farm Act. So and my quest to you I would like to have the Commission deny the special use  
10 permit because in the long run it is looking at a four-bedroom short-term rental and we've been  
11 hearing this all along for ag. And short-term rentals should not be allowed on ag property. Thank  
12 you very much.

13  
14 Mr. Robinson: Thank you for your testimony. Any questions? Seeing none, Mr. Horst?

15  
16 Mr. Horst: I have no questions.

17  
18 Mr. Robinson: Thank you Mr. Horst. Next we have up is Moksha McClure, did I say that right?

19  
20 Ms. Moksha McClure: Yeah, that's correct.

21  
22 Mr. Robinson: Hi, please introduce yourself.

23  
24 Ms. McClure: My name is Moksha McClure.

25  
26 Mr. Robinson: You promise that your testimony today will be truthful.

27  
28 Ms. McClure: I do.

29  
30 Mr. Robinson: Thank you. You have three minutes.

31  
32 Ms. McClure: Aloha Honorable Members of the Planning Commission and community. I am a  
33 realtor with Oceanfront Sotheby's International Realty. I had the honor of selling Steve Horst and  
34 his family their home. Mr. Horst was a pleasure to work with. He was always kind, calm and  
35 humble. He never swears or says unfavorable things about anyone. He is extremely ethical and  
36 only speaks the truth. Hr. Horst has been very pleasant and he has a friendly disposition and I  
37 encourage any neighbors that have not had the opportunity to meet him and his lovely family to  
38 do so.

39  
40 Selling a home to him was a unique experience. That's because Mr. Horst is very detail oriented.  
41 He requested and reviewed almost every piece of paperwork imaginable related to the home and  
42 his purchase prior to making an offer. He diligently researched everything and asked questions  
43 if he didn't understand something. Hr. Horst truly cares about the laws, his neighbors and the  
44 community as a whole which is why he reached out to his neighbors right off the bat and started  
45 adding plants right away. I am sure he would hold any management company to extremely high  
46 standards. I always felt that the community would be and ultimately is lucky to have a respectful  
47 neighbor like him.

48

1 Additionally, the Horst family home is rather isolated geographically. It is on land that feels a bit  
2 like a peninsula and juts out and away from his neighbors. The home is very well built and faces  
3 makai away from the neighbors. The pool is furthest away. No impacts should be felt by his  
4 neighbors or neighborhood.

5  
6 Due to his personality and professional background I am sure Mr. Horst knows more about the  
7 laws that govern vacation rental guidelines than most property owners would. He will also follow  
8 them. Mr. Horst is an example of the kind of person we should grant stewardship of vacation  
9 rental to. I sincerely found his character to be of the utmost caliber. I encourage the Planning  
10 Committee to grant his petition.

11  
12 Mr. Robinson: Thank you. Any questions? Seeing none, Mr. Horst?

13  
14 Mr. Horst: No questions.

15  
16 Mr. Robinson: All right, thank you. Next testifier is Molly, Molly McMillen.

17  
18 Unidentified Speaker: She had to leave.

19  
20 Mr. Robinson: She had to leave. Okay. Next would be Doyle, it is Shon?

21  
22 Mr. Shon Doyle: Yes. Okay, thank you. Please introduce yourself.

23  
24 Mr. Doyle: My name is Shon Doyle.

25  
26 Mr. Robinson: Shon do you promise your testimony be truthful?

27  
28 Mr. Doyle: Yes.

29  
30 Mr. Robinson: All right, you have three minutes.

31  
32 Mr. Doyle: I met Steve Horst about two years ago. He's the most honest person I think I've ever  
33 met. He's obliged by every rule that has...is put out there to oblige him the proper facilities to get  
34 his permit. He's never ever once even thought about renting it out to anybody. He takes care of  
35 his property. He takes care of his neighbors as much as possible. I just...I take care of two other  
36 vacation rentals down on the beach and this property is a very unique part of Maui. It's truly aloha  
37 and he would be a great property owner and if he could have his permit the people that came  
38 here would undeniably have the best time of their life. People follow rules that's what the rules  
39 are for that were instated by committees so that they could do this and that's all I have to say.

40  
41 Mr. Robinson: Thank you Shon. Any questions? Commissioner La Costa.

42  
43 Ms. La Costa: Thank you. So your relationship to Mr. Horst is what please?

44  
45 Mr. Doyle: Oh, sorry. I do property management, work on the yard, do whatever he wants me to  
46 do.

47  
48 Ms. La Costa: And your real estate license with which company?

1  
2 Mr. Doyle: I'm sorry, I'm not a property manager, I'm a property caretaker. I am a small business,  
3 Maui Residential Services.

4  
5 Ms. La Costa: Thank you.

6  
7 Mr. Robinson: Thank you. Next we have Dave Jorgensen. That would have been a good person  
8 to ask that question. Please introduce yourself.

9  
10 Mr. Dave Jorgensen: Good morning Chairman Robinson, Members of the Commission and Staff.  
11 My name is Dave Jorgensen.

12  
13 Mr. Robinson: Dave you promise your testimony be truthful today?

14  
15 Mr. Jorgensen: Yes.

16  
17 Mr. Robinson: Thank you. You have three minutes.

18  
19 Mr. Jorgensen: I'm appearing today on behalf of Dean and Becky Leffingwell who are building a  
20 home on 118 Huaniu Way which is the property immediately adjoining this property. It's identified  
21 on the map that I was given as Parcel, as Parcel 11. They're unfortunately unable to be here  
22 today so they asked me to attend. They are strongly opposed to this application. Their property  
23 is the neighboring property immediately north of the subject property. Their front yard has a direct  
24 line of sight to the subject property pool and entertainment area. There are no barriers to noise.  
25 They would be subject to noise, pool parties, and disruption virtually every weekend, sometimes  
26 during the week. They've experienced this before in Launiupoko and the sincerely hope they  
27 won't be subject to it again. I'm summarizing the letter they had sent and I guess I want to make  
28 sure...there was a letter sent January 9<sup>th</sup> to the Planning Department and it was emailed again  
29 on January 15<sup>th</sup>, but the letter does not appear in the packet that I printed out off the website, off  
30 the County website. This is the property immediately adjoining this property.

31  
32 Ms. La Costa: We do have a copy.

33  
34 Mr. Jorgensen: You do have it?

35  
36 Mr. Robinson: We have it in our packet.

37  
38 Mr. Jorgensen: Okay, thank you. In addition to the potential reduction in quality of life at their  
39 property there's a financial matter as well. They're concerned that the new home they're building  
40 will be...will lose financial value if there is a short-term rental home next door and again, they  
41 strongly oppose this application. There was some comments made before about the procedure  
42 and the County permit process, but I just did want to make sure on Page 12, it talks about that  
43 the Planning Department Staff could approve the County permit administratively. I just want to  
44 make sure that that is not true.

45  
46 Mr. Robinson: No, it's here in front of us for the SUP approval.

47  
48 Mr. Jorgensen: But then if this is approved it will come back before you?



1  
2 Mr. Robinson: Yes, it will come back before us.  
3  
4 Mr. Jorgensen: So the administrative approval would not be...  
5  
6 Mr. Robinson: It's...Director.  
7  
8 Ms. McLean: Given the information that we have today it's highly likely that the short-term rental  
9 home permit would meet the criteria to come to the commission.  
10  
11 Mr. Robinson: Triggers. And you know there's triggers so if you have you know opposition, you  
12 know, that type of stuff, in letters, then that of course that triggers it to come in front of us. If there  
13 was no opposition then it might be granted internally but seeing the opposition, the triggers will  
14 happen.  
15  
16 Mr. Jorgensen: And again, that's why I just want to make sure that my client's letter was received  
17 because I think it wasn't at the time that initial determination might have been made.  
18  
19 Mr. Robinson: Is you do have any information regarding the SUP on why you think that they don't  
20 qualify for SUP permit or it's just reserving for the short-term rental?  
21  
22 Mr. Jorgensen: Reserving mainly for the short-term rental permit.  
23  
24 Mr. Robinson: Okay, thank you. Commissioners, any questions for Mr. Jorgensen? Um...  
25  
26 Mr. Horst: I do.  
27  
28 Mr. Robinson: Applicant has a question for you sir.  
29  
30 Mr. Horst: Did you represent me—  
31  
32 Mr. Robinson: I'm sorry every time you have to introduce yourself again and ask the question.  
33  
34 Mr. Steve Horst: Steve Horst. And I'm wondering if Mr. Jorgensen had represented me in the  
35 purchase of my home.  
36  
37 Mr. Robinson: Okay.  
38  
39 Mr. Horst: I know I spoke to him about it, but...  
40  
41 Mr. Jorgensen: I don't believe I represented Mr. Horst in the purchase of his home. He did call  
42 me years ago, but I'm not aware of whether I represented him in this matter. I certainly didn't  
43 represent him in the question of a short-term rental home.  
44  
45 Mr. Robinson: Okay, thank you so much.  
46  
47 Mr. Jorgensen: Thank you.  
48

1 Mr. Robinson: Next we have Mr. Robert Sternhall. It's a virtue. Please introduce yourself.

2

3 Mr. Robert Sternhall: Yes, I'm Robert Sternhall.

4

5 Mr. Robinson: Robert do you swear that your testimony will be truthful today?

6

7 Mr. Sternhall: Yes sir.

8

9 Mr. Robinson: Thank you. You have three minutes.

10

11 Mr. Sternhall: Thank you folks for hearing me. My main concern and I'm not sure this is all under  
12 the special use permit but is the liability issue on a CPRd property. I live on a CPRd property and  
13 I've contacted the County in the past about some things that my neighbors wanted to do and what  
14 the County told me was that they consider the master lot. Anything you know between property  
15 owners is between property owners like setbacks or anything like that. So I'm not sure but I'm  
16 assuming that liability would be shared by everybody on that master lot. And this is what really  
17 concerns me if a special use permit is granted do the CPRd neighbors also fall under that special  
18 use permit. If a vacation rental is granted and there is a...some sort of a liability loss can they be  
19 subject to a lawsuit by a deep pockets lawyer who might want to go for the whole TMK, the master  
20 TMK. So that's my concern and because I have big questions about this I would really like it if  
21 you didn't approve the special use permit. Thank you.

22

23 Mr. Robinson: Thank you for your testimony. Questions? Mr. Horst any questions?

24

25 Mr. Horst: I do not.

26

27 Mr. Robinson: Thank you. Next we have Francis DeLorin. Please introduce yourself.

28

29 Mr. Francis DeLoria: I'm Francis DeLoria.

30

31 Mr. Robinson: Francis promise that your testimony today will be truthful?

32

33 Mr. DeLoria: Yes.

34

35 Mr. Robinson: You have three minutes sir.

36

37 Mr. DeLoria: I didn't plan to come here. Hello everybody. I'm just trying to gather it all in. I'm a  
38 homeowner in Launiupoko. As far as noise ordinances and all of this I've lived in Launiupoko for  
39 17 years in and around long-term home owner residents and what may appear to be illegal  
40 vacation rentals and they're both guilty of noise. Homeowners, long-term homeowners have  
41 bands and parties and all kinds of things as well as maybe a rowdy group of visitors. My  
42 experience with them, the rowdy visitors is I walk out my yard and I go, hey turn it down, and they  
43 turn it down. I've lived there 17 years and not once have I called the police on anybody anywhere  
44 for you know, violations. Basically that's what I have to say. The impression I get of Mr. Horst he  
45 seems very calm and peaceful from hecklers coming from behind me back there. Also what would  
46 stop one of Mr. Horst's neighbors from selling their property to somebody that would be  
47 troublesome to Mr. Horst you know whether or not they're having functions or weddings or  
48 whatever on their property? Basically for now that's what I have to say.

1  
2 Mr. Robinson: Thank you. Commissioners any questions? Mr. Horst?  
3  
4 Mr. Horst: I have no questions.  
5  
6 Mr. Robinson: Thank you for your testimony. Next we have Mark Marchello. Hey, there you go.  
7 Please introduce yourself one more time.  
8  
9 Mr. Mark Marchello: Mark Marchello.  
10  
11 Mr. Robinson: Promise that your testimony today will be truthful?  
12  
13 Mr. Marchello: Yes, I do.  
14  
15 Mr. Robinson: All right, you have three minutes.  
16  
17 Mr. Marchello: Thank you Commissioners for letting me have a moment here. Basically, you  
18 know I really want to...I feel bad for your guys that have had a lot of these noise and problems  
19 from these illegal vacation rentals. I'm here basically, I'm a property manager, I've been managing  
20 short-term rentals for 31 years in Lahaina. And I'm here basically to...'cause Steve said hey Mark  
21 how are you doing it and still have all your hair on your head. So basically we manage four, our  
22 company manages four legal permitted vacation rentals. And what we do, we abide by the rules  
23 that the Council set up through a lot of work with the MVRA and the County Council. And the  
24 guidelines that we have in place basically there's three things, basically you have the description,  
25 the rental agreement and phone number posted and these really work.  
26  
27 Basically all our online advertising, all the advertising we do has the County rules spelled out  
28 below the description. We have the you know, the permit, the legal permit numbers and we have  
29 the County rules, quiet hours from 9:00 p.m. to 8:00 a.m. during which time the noise from the  
30 short-term rental shall not unreasonably disturb adjacent neighbors. Number 2, amplified sound  
31 is prohibited. Number 3, vehicles not to be parked on the street. Number 4, this is the big one,  
32 no parties or group gatherings other than registered guests shall occur. Okay, so that's the first  
33 thing they see when they go to rent one of our properties. Now those guys who are looking for  
34 party, you know what they're gonna move onto somebody else. That's what we see right away.  
35  
36 But then the next step is when they go to actually book the property the rental agreement. The  
37 top copy of our...the first in bullet print of rental terms and agreement, no parties, pets or smoking  
38 is allowed at any of our properties and then we spell it out there. The top paragraph, occupancy,  
39 maximum occupancy limits, children included are strictly enforced. Our homes and townhomes  
40 are located in quiet residential neighborhoods, excessive noise, parties and occupancy violations  
41 may result in Maui County Police evictions and fines up to \$2,000 a day. Whaler's Management  
42 reserves the right to terminate occupancy without refund should violation of house rules or  
43 occupancy limits occur. That gets a lot of people's attention because they've signed an  
44 agreement, their credit card is on file. We have their security deposit in place and that  
45 really...that's the next step that they take in signing up with us.  
46

1 Okay, then basically the other thing of course is we have the phone number posted on the front  
2 of the home and for all the neighbors they know who to call or we have a office open 8-5, seven  
3 days a week, we have 24/7 number that's posted on that sign also.  
4

5 Mr. Robinson: Mark please conclude.  
6

7 Mr. Marchello: Okay, so my last point is a lot of these other testimonies...(inaudible)...might be  
8 included in this is that the ability ...(inaudible)...to be able to vacation rent home at some point in  
9 your life may be important to you. At some point you may lose your job, at some point this may  
10 actually help you keep your home which I've seen it do for other people. Thank you so much.  
11

12 Mr. Robinson: Commissioners any questions?  
13

14 Mr. Carnicelli: I got one.  
15

16 Mr. Robinson: Commissioner Carnicelli.  
17

18 Mr. Carnicelli: Good afternoon Mark, so there's been a lot of testimony about the other two  
19 "vacation rentals" in the cul de sac here. Are you aware if they are legal or not? Like the infamous  
20 they call it the Greg Brown rental. Do you know if that's a legal one?  
21

22 Mr. Robinson: And you, and you are I just remind you...(inaudible)...  
23

24 Mr. Marchello: I don't know. I personally don't know that. I heard recently that he stopped  
25 vacation renting since the \$20,000 a day was passed.  
26

27 Mr. Carnicelli: Okay, if you don't know, you don't know.  
28

29 Mr. Marchello: I don't know.  
30

31 Mr. Carnicelli: Okay, thank you.  
32

33 Mr. Robinson: Commissioner La Costa.  
34

35 Ms. La Costa: Mr. Marchello, will you be the managing agent for that property if it is approved?  
36

37 Mr. Marchello: Steve's approached me about that, but I haven't signed any agreement with him  
38 at this point.  
39

40 Ms. La Costa: Okay. Because you are giving us information about your rental agreement and it  
41 may not apply to this.  
42

43 Mr. Marchello: Yeah, I think it's important though for all, for...(inaudible)...as an industry, I'm sure  
44 you guys get a lot of testimony in the other direction, but you don't hear from the homes that aren't  
45 having problems. You don't hear about the permitted homes that have...are legally  
46 maintaining...(inaudible)...eight people. Here's a four-bedroom home, eight's the max. There's  
47 not going to be 16 people in that home. So it's really going to be...and who's running these homes  
48 that have all these rules, fines, to encumber them, families are renting these homes. We fill these

1 homes up and it's actually it's the parents bringing their kids and grandchildren. They want a  
2 quiet relaxing time to enjoy with their family, poolside, they want to cook their meals together.  
3 They want to have a quiet relaxing experience. They're not looking to have a party, they're not  
4 looking to hang out in the hotels. We have a five-night minimum. They can't come in and just  
5 take it for one night or two nights and have a party. That's the clientele that coming into these  
6 homes. These are families coming into a family neighborhood to enjoy quiet peaceful vacation.

7  
8 Ms. La Costa: Well I must disrespectfully disagree with you because I live next to a home that is  
9 illegally rented and if I have to hear Marco Polo one more time I will take a net out to the pool. So  
10 while that's the ideal, it's not, it's not quite the picture in everywhere in Launiupoko, but I was  
11 questioning whether you were going to be renting it because your stringent rules may not be the  
12 same as everyone else's that's why I wanted to get the clarification. Thank you.

13  
14 Mr. Robinson: Mark while you're ...(inaudible)... I got a question for you.

15  
16 Mr. Marchello: Sure.

17  
18 Mr. Robinson: Do you represent any illegal vacation rentals?

19  
20 Mr. Marchello: No, no I don't.

21  
22 Mr. Robinson: Okay, does your...does Whaler's Realty represent any illegal?

23  
24 Mr. Marchello: No we don't.

25  
26 Mr. Robinson: So the illegal rentals are all non-professional real estate agents, you're under the  
27 assumption, right?

28  
29 Mr. Marchello: If they are yes. Right, they'll acting illegally managing those homes.

30  
31 Mr. Robinson: And is when you guys hear about illegal rentals does Whaler's Realty report or  
32 have a hot line to the County that they could say well since this is our profession we want to have  
33 everybody to follow the law or are you guys don't ask, don't tell?

34  
35 Mr. Marchello: We don't...basically the properties...I don't...(inaudible)...involve that. I don't  
36 have time to go policing people, I don't. The neighbors can police their...

37  
38 Mr. Robinson: Yeah, and you're right there should be no comments. Thank you for that. I  
39 appreciate. At this time, there is nobody else signed up. Is there anybody here that want to testify  
40 that did not sign up at this time please step forward? Thank you Mark. Mr. Horst, you didn't have  
41 any questions for Mark did you?

42  
43 Mr. Horst: I do not have.

44  
45 Mr. Robinson: Okay, thank you. Aloha please introduce yourself.

46  
47 Ms. Zanda Amaral Crouse. Zandra Amaral Crouse. I am a realtor, Aina Hawaii Z Properties.

48

1 Mr. Robinson: One moment, Ms. Amaral you promise your testimony will be truthful today.

2

3 Ms. Amaral Crouse: Yes sir.

4

5 Mr. Robinson: Thank you. You have three minutes.

6

7 Ms. Amaral Crouse: The one thing that concerns me about this application is the fact that the  
8 applicant is a nonresident. And how often have we seen as realtors, as commissioners, as  
9 professionals we should not displace the way of life for those in existing communities to satisfy  
10 the dream of someone moving here to retire. Right now in North Kihei that's exactly what these  
11 residents are going through. And these are residents that has lived here for generations on end.  
12 But there's bulldozers going through their subdivisions running over dogs, cats, and all because  
13 the developer decided that it was not relevant to take one day, one hour or even five minutes out  
14 of his or her time to meet with the residents that it was impacting, the roads that they were going  
15 to be using. Quality of life needs to be maintained commissioners for our people and you are in  
16 that seats and I know most of you and I admire and I respect all of you, but I do need for you all  
17 to realize that a fact in point is that quality of life needs to be maintained within the existing  
18 residents that live in the County of Maui, State of Hawaii and it needs to start here. And the  
19 realtors and purchasers need to know it is not okay not to talk to the people who live there. It's  
20 not okay. And we embrace the aloha. We'd love to talk but unless you come and let us know  
21 what's happening on and we need to find out on the umpteenth hour, we are going to be insecure.  
22 We are going to be sad and we are going to retaliate because we want a place in our homes  
23 where we can feel tranquility. In my neighborhood that doesn't exist right now and unfortunately  
24 these are people who paid dearly for the houses and continue to do. I thank you for your time  
25 Commissioners.

26

27 Mr. Robinson: Mahalo. Commissioners any questions? Seeing none...

28

29 Ms. Amaral Crouse: Oh one more point. I'm sorry, Code of Ethics. You asked about illegal  
30 rentals, as a real estate broker and Denise probably could substantiate it, it is our duty to turn in  
31 any illegal rentals that we find and that is governed by our Code of Ethics to be truthful and honest.  
32 Thank you.

33

34 Mr. Robinson: Thank you. I hope they all feel that way.

35

36 Ms. Amaral Crouse: I do too. No I sincerely do. I thank you for the question.

37

38 Mr. Robinson: Mr. Horst do you have any questions for the testifier.

39

40 Mr. Horst: I do not.

41

42 Mr. Robinson: Okay, would anybody else like to testify? Seeing none, public testimony is closed.  
43 We will take a lunch recess. We'll be back here at 1:15. Thank you.

44

45 A recess was called at 12:16 p.m., and the meeting was reconvened with Vice-Chair Larry Hudson  
46 Chairing the meeting at 1:22 p.m.

47

48 Mr. Hudson: ...quorum before we continue. P Denise La Costa.

1  
2 Ms. La Costa: Here sir.  
3  
4 Mr. Hudson: Christian Tackett.  
5  
6 Mr. Tackett: Present.  
7  
8 Mr. Hudson: Tina Gomes who joined us at about 11:40, welcome.  
9  
10 Ms. Gomes: Thank you for pointing that out Chair.  
11  
12 Mr. Hudson: Lawrence Carnicelli.  
13  
14 Mr. Carnicelli: Aloha Chair.  
15  
16 Mr. Hudson: Kahu Hill.  
17  
18 Kahu Hill: Mahalo Chair.  
19  
20 Mr. Hudson: Kellie Pali.  
21  
22 Ms. Pali: Here.  
23  
24 Mr. Hudson: Dave, Corp. Counsel and myself, Director. Guess we left off, we're on Item Bravo.3.  
25 What we're gonna do is we're gonna read the recommendation then we're gonna open it up to  
26 questions. Because there's gonna be a lot of questions, we're gonna go three rounds of three  
27 with one follow up round. So I will roll one person at a time so we don't diss anybody. Does  
28 everybody understand the directions? Good. All right.  
29  
30 Mr. Quigless: Good afternoon Commissioners, Ryan Quigless with the Maui County Planning  
31 Department. Planner on the project. I'd like to note that the applicant did meet all the  
32 requirements for the short-term rental and for the State Land Use Special Permit with the  
33 exception of the location and the neighbor protests which resulted in the Maui Planning  
34 Department having no recommendation.  
35  
36 And also, should the Commission choose to grant the SUP2 there are six conditions that are  
37 provided in the recommendation for the Commission to begin its further deliberation.  
38  
39 Mr. Hudson: There's no recommendation?  
40  
41 Mr. Quigless: No recommendation from the Department. It's up to the Commission.  
42  
43 Mr. Hudson: Let's start with questions. Commissioner Carnicelli.  
44  
45 Mr. Carnicelli: Thank you Chair. I don't know if this is going to be for Corporation Counsel or the  
46 Department, but my question is in regards to a special use permit as I understand it is for the  
47 entire parcel not just for the CPRd unit. I guess is clarification on that is that true...you know, is  
48 this, is this gonna overlay onto enter parcel? I mean, I know that the STRH or at least as I

1 understand the STRH law that the County does attach an STRH permit to a CPRd lot. But the  
2 special use permit does this affect the entire parcel?  
3

4 Ms. McLean: Well, I'll just...I think we should get response from Corporation Counsel but I'll note  
5 two things on the agenda and in the staff report it references the acreage of what I believe is the  
6 entire parcel which is 3.66 acres, but then the TMK that's referenced is just the CPRd unit. So if  
7 the Staff Planner can clarify what was applied for it seems that both of those options are  
8 agendized and Corporation Counsel can confirm that but what did the application involve?  
9

10 Mr. Quigless: The application does state the total acreage is 3.66 acres but it also notes that the  
11 CPRd parcel each of the lots have their own TMKs 0001 and 0002. So for the purposes of the  
12 application each lot is viewed as independently.  
13

14 Mr. Carnicelli: So then Chair if I might follow up on that. How do we then view the farm plan and  
15 the implementation of the farm plan?  
16

17 Ms. McLean: The farm plan I believe was approved for the entire parcel not just for the CPRd  
18 portion.  
19

20 Mr. Quigless: It is for the CPRd portion.  
21

22 Ms. McLean: For the CPRd portion?  
23

24 Mr. Quigless: Correct. 0001.  
25

26 Mr. Carnicelli: And it meets the farming criteria?  
27

28 Mr. Quigless: It meets the farming criteria. It has a previous farm plan approval with the previous  
29 owners. And the farm plan has been updated with the owners and approved.  
30

31 Mr. Carnicelli: Thank you Chair.  
32

33 Mr. Hudson: Commissioner Kahu Hill.  
34

35 Kahu Hill: Mahalo Chair. A couple questions. I'm not seeing 0002 on the application is that  
36 here?  
37

38 Mr. Quigless: Yes, let me refer to the exhibit. One moment please. So I believe it's Exhibit 25  
39 and it's shown as Parcel 10 on the 500-foot neighbor notification and separated by a property line  
40 between the two but the entire parent parcel is highlighted in red.  
41

42 Kahu Hill: I just wanted to make sure as we're voting today 'cause I don't actually see it written  
43 on the agenda if that's something for Corp. Counsel or it's very clear, I'm just not seeing it written  
44 on the application.  
45

46 Ms. McLean: Unit 2 has not applied for a short-term rental home.  
47



1 Kahu Hill: Okay. And one other question I have is, is all the testimony here today can apply to  
2 the SUP?  
3  
4 Mr. Quigless: Only the SUP today.  
5  
6 Kahu Hill: Okay, mahalo.  
7  
8 Mr. Hudson: Commissioner Kellie Pali.  
9  
10 Ms. Pali: No questions at this time.  
11  
12 Mr. Hudson: Commissioner La Costa.  
13  
14 Ms. La Costa: Thank you Chair. I have a few questions. The photograph that was here I don't  
15 know if you or Deb is the one who should answer but when was this photograph taken do you  
16 know?  
17  
18 Mr. Quigless: I don't know. I'm going to defer that to the consultant.  
19  
20 Ms. La Costa: Okay, it looks like a Google Earth picture that's was...that's way old.  
21  
22 Ms. Mitchell: Debbie Mitchell. Yes, that's exactly what it is. I corresponded also with the Real  
23 Property Tax website. There's a way to view the parcel and it provides the same thing. So that  
24 was just intended to how the end of the length of the driveway and the home under question at  
25 the end of it.  
26  
27 Ms. La Costa: Okay. Chair?  
28  
29 Mr. Hudson: Go ahead.  
30  
31 Ms. La Costa: Thank you. Debbie please. Thank you. You said that the fourth bedroom is  
32 actually an office currently?  
33  
34 Ms. Mitchell: That's what is depicted in the photograph.  
35  
36 Ms. La Costa: Okay, does it have a closet?  
37  
38 Ms. Mitchell: Yes it does.  
39  
40 Ms. La Costa: And a window?  
41  
42 Ms. Mitchell: Correct.  
43  
44 Ms. La Costa: And 80 square feet minimum?  
45  
46 Ms. Mitchell: Correct.  
47  
48 Ms. La Costa: Okay, thank you.

1  
2 Ms. Mitchell: It did pass the home inspection report and was signed off by the home inspector as  
3 a bedroom.  
4  
5 Ms. La Costa: Okay, thank you.  
6  
7 Mr. Hudson: Commissioner Tackett.  
8  
9 Mr. Tackett: No questions at this time.  
10  
11 Mr. Hudson: Thank you. Commissioner Gomes.  
12  
13 Ms. Gomes: No questions.  
14  
15 Mr. Hudson: Commissioner Carnicelli.  
16  
17 Mr. Carnicelli: Thank you Chair. Ryan was there...was this, I guess, you know I'm gonna pass  
18 on the question. I'm good Chair. Thanks.  
19  
20 Mr. Hudson: Commissioner Hill.  
21  
22 Kahu Hill: I'm good.  
23  
24 Mr. Hudson: Commissioner Pali.  
25  
26 Ms. Pali: Is this just for our department or could I ask a question of the applicant?  
27  
28 Mr. Hudson: You can ask any questions you want.  
29  
30 Ms. Pali: I'd like to ask a question to the applicant please.  
31  
32 Mr. Horst: Steve Horst.  
33  
34 Ms. Pali: Hi, I just actually I wanted to ask you now having heard a lot of the testimony from your  
35 more immediate neighbors and across the street. Is there anything that you've been able to think  
36 about that could do anything different or to address their concerns that you could consider  
37 including after sort of considering any valid concerns that you may have heard today?  
38  
39 Mr. Horst: Yeah, I think I understand their concerns and I wanna be respectful to all my neighbors  
40 so, I mean I'm willing to limit the number of rentals to one a month. I'm not looking to do a large  
41 volume of business, people in and out constantly. It's not really my intention. I also, I'd be willing  
42 to make the pledge that if I am granted this and there are problems that I would cease and desist.  
43 It's not something I have to do, come hell or high water that you know that I'm doing my thing and  
44 disregarding my neighbors. I want to be a good neighbor. I want to live in community with  
45 everyone in the cul de sac and beyond.  
46  
47 Ms. Pali: Thank you.  
48

1 Mr. Hudson: Commissioner La Costa.

2

3 Ms. La Costa: Mr. Horst please.

4

5 Mr. Horst: Steve Horst.

6

7 Ms. La Costa: Thank you. So you are aware that most of your neighbors are in opposition  
8 because of experience in the past and you mentioned that you would shut it down if there were  
9 any complaints. So knowing the opposition do you still feel like you should move forward for the  
10 SUP?

11

12 Mr. Hudson: Denise could you please repeat the question?

13

14 Ms. La Costa: So Mr. Horst hearing the opposition and reading the letters that you have no doubt  
15 seen you mentioned that you would shut this, shut your vacation rental down if there were any  
16 problems. And again, hearing all the opposition if it's not something you need to do come hell or  
17 high water then why would you go ahead with it when you know there's so much consternation  
18 from your neighbors?

19

20 Mr. Horst: Yeah, thank you. So I don't feel that the fears my neighbors have are fair to me 'cause  
21 I've not operated a vacation rental. I know that there are illegal rentals and that there are bad  
22 managers and so there are problems I understand that. But I believe that it can be done without  
23 those kind of problems if it's managed properly. So I'm just asking for the opportunity to prove  
24 myself that I can manage it without having those kind of issues and negative impacts. And I'm  
25 committed to doing it right.

26

27 Ms. La Costa: So you have never rented the home previously nor have you had paying guests  
28 previously?

29

30 Mr. Horst: I have not.

31

32 Ms. La Costa: Okay, thank you.

33

34 Mr. Hudson: Mr. Tackett.

35

36 Mr. Tackett: I have nothing.

37

38 Mr. Hudson: Ms. Gomes.

39

40 Ms. Gomes: I have a question.

41

42 Mr. Hudson: Mr. Horst.

43

44 Ms. Gomes: No not ...(inaudible)...I apologize.

45

46 Mr. Quigless: Ryan Quigless.

47

48 Ms. Gomes: Director, there's no recommendation that is being made is that correct.

1  
2 Mr. Quigless: That's correct.

3  
4 Ms. Gomes: Based on the fact that there's the location—

5  
6 Mr. Quigless: Of the protests.

7  
8 Ms. Gomes: Of the protests. We've, we've had in the past many though other places of this sort  
9 is there a reason that this particular project or this particular request SUP that you guys are taking  
10 this stand?

11  
12 Mr. Quigless: Well, I can't—

13  
14 Ms. Gomes: Is that okay? Director...(inaudible)...I'm sorry.

15  
16 Ms. McLean: Yes, thank you for the question and I'm glad we have the chance to respond to that  
17 because the staff report and recommendations are finalized about two weeks prior to your  
18 meeting so that they can get finalized, they can get copied, they can get sent to the  
19 commissioners, they need to be posted online at the same time. The public hearing notices  
20 though have gone out and so we continue to get comments even after that date. And so by the  
21 time the report and recommendation went out we had received some opposition so we really  
22 weren't sure where we were in terms of making a recommendation because we were concerned  
23 about opposition but couldn't go so far as to include that that one criteria was not going to be met.  
24 And so that's why we left it open so that we wouldn't have to change our mind or anything like  
25 that because we anticipated that there would be more input today and so we left it open for the  
26 commission to decide. It's not often that we do that and especially with these operations the  
27 Commission has discussed before well, what threshold has to be hit in order for the Commission  
28 to make a conclusion to deny. And again, it comes down to the criteria that you're looking at for  
29 that particular permit and does the testimony that you've received lead you to conclude that one  
30 of those criteria have not been satisfied. By the time we did the recommendation we couldn't  
31 make that conclusion nor were we comfortable though recommending approval. So that's why  
32 we said no recommendation at that time.

33  
34 Ms. Gomes: Chair, I'm sorry Director may I just to follow up? So you mentioned a criteria. The  
35 criteria that you guys, for your Department that is looking at that criteria would be in regards to  
36 the amount of opposition? Is there a number or is there a specific criteria that I'm unaware of that  
37 makes a difference?

38  
39 Ms. McLean: For this application for a State Special Permit if you look on Page 2 of your  
40 recommendation sheet it lists five criteria. So these are the tests that the applicant needs to meet  
41 in order for the Commission to grant approval and so it's that Number 2, which Ryan has pointed  
42 out, the desired use will not adversely affect surrounding property.

43  
44 Ms. Gomes: I see. And this is what is basically why there's no recommendation?

45  
46 Ms. McLean: Because we were not able to conclude on Number 2 that that has been satisfied.

47  
48 Ms. Gomes: Okay. Thank you.

1  
2 Mr. Hudson: Mr. Carnicelli.

3  
4 Mr. Carnicelli: Thank you Chair. So Director I have a question that I don't know if you can answer  
5 and that is, of all of the STRH Permits and B&B Permits that have been issued since the  
6 ordinances were adopted how many of those have been revoked because of like say, you know,  
7 whether it's complaints, noise complaints, you know. I know that some of them through just  
8 attrition people haven't renewed or whatever it is, but how many have actually been revoked  
9 because they have not met the conditions with which we've placed on them?

10  
11 Ms. McLean: I would guess that it's fewer than 10, but there have been some that have been  
12 revoked. I know that there are ones that have been revoked because they were advertising rooms  
13 or accommodations that weren't included by their permit. Let's say they got a permit for three  
14 bedrooms and we find out that they're renting five or they added on a cottage that wasn't covered  
15 by their permit. So have, we have revoked permits but not many at all.

16  
17 Mr. Carnicelli: If could follow up then just roughly how many have been issued over the years, I  
18 mean...cause I know we have the different caps and things like that, about how many do we have  
19 out there, you know running legally not the illegals, but the legal ones?

20  
21 Ms. McLean: Total B&B and STRH is about 400 permitted.

22  
23 Mr. Carnicelli: Okay, thank you Chair.

24  
25 Mr. Hudson: Commissioner Hill.

26  
27 Kahu Hill: No questions Chair.

28  
29 Mr. Hudson: Commissioner Tackett, Commissioner Gomes.

30  
31 Ms. Gomes: No thank you.

32  
33 Mr. Hudson: Any other Commissioners? Okay, before we open it up to motions and having them  
34 read the recommendation. I remind the Commission that we're voting on the Special Use Permit.  
35 We are not voting on the Short-Term Vacation Rental, okay. And when we vote on this we have  
36 to make sure that it matches all the criteria or if it doesn't...if it doesn't it has to be basic  
37 preponderance of evidence, something 51 percent versus 49. If it's not clear and convincing, it's  
38 not proof beyond a reasonable doubt, it is a preponderance of evidence. Is it more likely than  
39 not? You have to consider the five criteria and I'll let Corp. Counsel go into that right now.

40  
41 Mr. Galazin: Thank you Mr. Chair. So again as the Director pointed out it's on Page 2 of the  
42 recommendation sheet or it's on Page 3 of the beginning of the packet. But Number 1, is that use  
43 shall not be contrary to the objectives sought to be accomplished by Chapter 205 and 205A, HRS,  
44 Rules of the Land Use Commission. Basically does it, does it meet the intent, underlying intent  
45 of the agricultural statute that's put forth by State Law? Number 2, the desired use would not  
46 adversely affect surround property. Number 3, the use would not unreasonable burden public  
47 agencies to provide roads and streets, sewers, water, drainage, and school improvements, and  
48 police and fire protection. Number 4, unusual conditions, trends and needs have arisen since the

1 district boundaries and rules were established. And Number 5, land upon which the proposed  
2 use sought is unsuited for the uses permitted within the district.

3  
4 Now generally speaking as the Chair has mentioned there's a preponderance of the evidence  
5 standard. It is incumbent upon the applicant to meet that standard. So just to clarify it's not that  
6 you need to find by preponderance of the evidence that one of these is not met. You have to find  
7 by a preponderance of the evidence that all five are met. And that's based on what the applicant's  
8 provided, that's based on the testimony you've received. You've gotta consider that you know  
9 some of the testimony had opinions, some were factual statements about things that people  
10 witnessed and observed, some were just opinions about people's experiences with other things.  
11 And I think we've already heard from the applicant that this hasn't been or at least the applicant  
12 has not rented this out on a short-term basis prior to today. So we don't have a record of the  
13 specific applicant, the specific property and this proposed use. So you've gotta kind of rely on  
14 what's presented to you, what evidence you have, and that's on the basis on what you've gotta  
15 make your decision and I would just encourage you to again think about what you've received  
16 and what you've heard today, what you discussed and look at it through the lens of these criteria  
17 and not only say what criteria if you are inclined to grant it that's fine. If you're include to deny do  
18 make sure that you tie in the facts, the evidence you've received to the points of law, the criteria  
19 so that they mesh and we can understand and the applicant can understand and the public can  
20 understand exactly what decision you're making and why. Thank you Chair.

21  
22 Mr. Tackett: I got a question for Corp. Counsel.

23  
24 Mr. Hudson: Go ahead.

25  
26 Mr. Tackett: I would like to know if you see any circumstances in which the CPR where they have  
27 that shared parcel where the liability would be shared between those two parties, do you see any  
28 circumstances where liability would be shared between the two parties even though they have  
29 different numbered lots.

30  
31 Mr. Galazin: Thank you for that question Commissioner Tackett and Chair. I honestly wouldn't  
32 want to render an opinion as to the liability on that because I would be providing legal advice on  
33 something that frankly the County isn't going to weigh in on. You know anybody who is concerned  
34 about potential liability being on a parcel that's been CPRd should seek independent legal  
35 counsel. Thank you.

36  
37 Mr. Carnicelli: Chair, chair?

38  
39 Mr. Hudson: Go ahead.

40  
41 Mr. Carnicelli: Clarification David. The applicant's got the burden but how does, how does the  
42 applicant prove a negative? If I go to, if I go to Number 2, right? 'Cause that's really, this whole  
43 thing comes down to whether or not this is going to adversely affect the neighborhood or not.  
44 That's kinda what for me personally feels like this is where the decision lies. So how does the  
45 applicant prove a negative?

46  
47 Mr. Galazin: Chair?

48

1 Mr. Hudson: Go ahead.

2  
3 Mr. Galazin: Thank you. They prove that through you folks. Your questions, your discussion and  
4 the way that you weigh the evidence that you have. It is, it is difficult to make a decision. I think  
5 you've highlighted what a lot of people may not appreciate about the difficulty that you folks are  
6 often put in that you are as you said oftentimes trying to find out if somebody has proven a  
7 negative. The other thing I would also add is even if you think that this might have an impact is  
8 there a way that you can put conditions on it that would mitigate that impact? That's another way  
9 to say okay, there's a potential for risk, we could see that. We however feel that if we do X, Y,  
10 and Z that we have controls in place that would take whatever the perceived harm is and lessen  
11 that risk of perceived harm whether it's, you know, pertains to revocation, whether it pertains to  
12 time frame of the initial permit. You know, there are all sorts of different ways you could go with  
13 it in terms of how you try to avoid something that is really an unknown. You're trying to quantify  
14 something that has not happened yet and you want to make sure it doesn't happen. You don't  
15 want it to happen and then come back and say, well we should have done this. But you also don't  
16 want to be chasing ghosts. So that's why sometimes it's easier to be here than there.

17  
18 Mr. Hudson: Go ahead.

19  
20 Kahu Hill: This is for Corp. Counsel. I heard three people mention today...that came up, were  
21 concerned about possible liability and I wanted to know if you could give any input on that with  
22 the property lines if that could have that experience, if they could be liable from something  
23 happening on their property, on this property.

24  
25 Mr. Galazin: I can't comment on that, but thank you.

26  
27 Mr. Hudson: Go ahead.

28  
29 Ms. Pali: May I make a comment Chair? So this is a, this is a Special Use Permit. I believe we  
30 just approved a Special Use Permit and if I may just collaborate the one similarity that was  
31 mentioned and I also would like to correct my statements. I stand corrected on the fact that  
32 associations for Ag zoned neighborhoods cannot limit the uses of that ag land per Zoning Code  
33 therefore, I suppose if Mr. Horst wanted to put a pig farm on his property then I suppose he would  
34 have that right and I so I would like to just clarify and stand corrected on my last comment. Having  
35 said that, he's not trying to put a pig farm on the property which I'm sure the neighbors are  
36 probably super excited about and so I would like to say though that my heart goes out specifically  
37 and directly for the neighbor who is sharing the larger, the actual lot that's been CPRd. I feel like,  
38 for me, his testimony I weighed...I would weigh more heavily on since he was kind of closest. I  
39 mean it sounds like based off of his testimony he could cause him distress. So I did ask Mr. Horst  
40 if he had any other additional items he could consider to try to mitigate the concerns that could  
41 totally be true once this started going and you were able to answer some things. I don't know  
42 though if it's enough to make your neighbors feel comfortable. I don't know if I can find right now  
43 a happy medium so that's just what I'm struggling with.

44  
45 Mr. Hudson: Denise.

46

1 Ms. La Costa: I was just going to say if the CC&Rs and this may be totally irrelevant, if the CC&Rs  
2 forbid pig farms, roosters and cows within a subdivision and even if it's Ag you probably don't get  
3 to do that.  
4  
5 Mr. Carnicelli: You can't restrict that.  
6  
7 Mr. Hudson: All right Commission let's get back to the task at hand. Mr. Tackett.  
8  
9 Mr. Tackett: Nothing at this time.  
10  
11 Mr. Hudson: Ms. Gomes.  
12  
13 Ms. Gomes: Chair, I mean, I just...my clarification the SUP is for two years?  
14  
15 Mr. Carnicelli: Can do it for whatever we want.  
16  
17 Ms. McLean: Well, if the Commission were to approve the State Special Permit then you could  
18 determine the amount of time that it would be granted.  
19  
20 Ms. Gomes: Over two years or?  
21  
22 Ms. McLean: You could grant it for one year, you could grant it for five years. What's listed in the  
23 recommendation is if you choose to grant it these are provided for your consideration. So you  
24 can, you can make a different determination on the time frame if you choose to approve.  
25  
26 Ms. Gomes: Okay, so I apologize, just for clarification purposes Recommendation 1, states shall  
27 be valid two years from the date of approval. We as a commission can change this two years to  
28 five years, ten years, "X" years? Is that my understanding?  
29  
30 Ms. McLean: That's correct.  
31  
32 Mr. Hudson: Mr. Carnicelli.  
33  
34 Mr. Carnicelli: So I have another question for Mr. Galazin since he likes being in that chair versus  
35 this one. It's kind of an interesting play on words here, I'm trying to just reread back through the  
36 five criteria. But Number 5, the land upon which the proposed use is sought is unsuited for the  
37 uses permitted within in the district. So suddenly...I mean, it's zoned Ag, it's not suited to do ag  
38 so then therefore, they need this special permit, but they're doing ag.  
39  
40 Mr. Galazin: Chair? I would probably direct that analysis to the Staff Planner to analyze that.  
41  
42 Mr. Hudson: Ryan if you would please?  
43  
44 Mr. Quigless: Ryan Quigless, Staff Planner. This is the general basis for our analysis. So I guess  
45 this kinda brings me to the reason for not having a recommendation is because when collectively  
46 we meet and discuss it amongst each other there's room for coming to a conclusion that I was  
47 not able to come to during the analysis.  
48



1 Mr. Carnicelli: I'm just gonna say this now calls...I'm just reading this differently for the first time.  
2 It now calls into question every single STRH in Ag 'cause we're saying to get the STRH Permit  
3 you have to be doing Ag. But the Special Use Permit is saying it has to be unsuitable...unsuited  
4 for ag. So they're now in conflict as I'm, you know, now taking Mr. Galazin's seat unless he wants  
5 to reinterpret what I'm now compondering.

6  
7 Mr. Galazin: Chair, if I could try and summarize all this back together here. What you're gonna  
8 look at is every time if you're talking about a Special Use Permit in Ag and you're less than  
9 15 acres you're here. Every time it's going to be some kind of use that's something other than  
10 just agricultural use. If the parcel really isn't self-sustainable as just flat out agriculture with, you  
11 know a farm dwelling and farming activities, your traditional stuff then anything that requires a  
12 Special Use Permit they're going to come into you or come into the State Land Use Commission  
13 depending on the size of their parcel. So there is some agricultural growing activity. I think  
14 Mr. Quigless analysis referred to the agricultural rating of Class E for the property used as grazing  
15 for the past. It's rocky, not suitable for modern commercial mechanized agricultural operations.  
16 So there is some farming going on. There's an approved farm plan. However, this property is  
17 not a self-sustaining farm property. So this is another use that could be permitted if it's not  
18 something that's supportable through just ag.

19  
20 Mr. Carnicelli: Okay.

21  
22 Mr. Galazin: And a lot of times because there's so many properties that are state designated ag  
23 that a lot of parcels especially the smaller ones it may not be suitable as the entire thing. So  
24 you're gonna look at in terms of...well, parcel we're talking about CPR lot right now just to make  
25 sure we're clear about that. Just that use can't be in its entirety.

26  
27 Mr. Hudson: Commissioner Hill.

28  
29 Kahu Hill: I just wanted to say no matter what we all decide here really just hearing everyone  
30 today and your intention and your property and your wife and everyone here as far as healing and  
31 health and life itself and I just saw a common ground between all of you besides being neighbors  
32 but many of the testifiers as well speaking about why they're in this area and on that straight and  
33 within this place for their healing for their life. Mahalo.

34  
35 Mr. Hudson: Commissioner Tackett, anything? Ms. Gomes.

36  
37 Ms. Gomes: I'm good. Thank you.

38  
39 Mr. Hudson: Okay, this is considered a contested case. This is why testimony must be sworn to.  
40 Before any could testify we had to ask them if they were gonna tell the truth because if they  
41 weren't going to tell the truth, we weren't gonna consider their testimony. Kinda goes without  
42 saying. And this is also why the applicant had a chance to rebuttal. In other words, the applicant  
43 had a chance to talk to the person who was testifying against him. We're setting up everything  
44 for a contested case hearing to make sure that we played all of our bases. And the last base we  
45 have to tag, David, is voting privileges.

46  
47 Mr. Galazin: Thank you Chair. And so you know, pursuant to E & J Lounge case which is probably  
48 in the State of Hawaii, you know, one of the controlling cases for contested case administrative

1 law. If any member of the commission or body has not heard or received all of the evidence that  
2 was presented before the body then that member should refrain from making a vote on the final  
3 decision lest the decision itself be challenged on the bases that one of the members did not  
4 possess all the information that all of the members did. So Commissioner Gomes if you're okay  
5 with that, you know, certainly your participation and questions are all very relevant and helpful  
6 and useful to this Commission but because you missed a portion of testimony just ask that—

7  
8 Ms. Gomes: I understand.

9  
10 Mr. Galazin: Thank you.

11  
12 Mr. Hudson: Okay, there is no recommendation. So we know what's before us. Reminder that  
13 it's a Special Use Permit. I'll open up the floor up to any motion. This is why we get paid the big  
14 bucks.

15  
16 Mr. Carnicelli: Chair?

17  
18 Mr. Hudson: Go ahead.

19  
20 Mr. Carnicelli: So I honestly just said Chair and I don't know which way I'm gonna actually make  
21 a motion here. Everybody else is probably just as confused as we are. As for the sake of, for the  
22 sake of conversation what I would like to do is make a motion to approve the State Special Use  
23 Permit with the recommendations 1 thru 6 that were in the staff planning report with the exception  
24 of the permit shall be valid for one year instead of two under Item No. 1. So my motion for the  
25 sake of conversation is going to be grant the permit with the six conditions changing it from two  
26 years to one.

27  
28 Mr. Hudson: Thank you. Is there a second? No second? Seeing no second, the motion dies.

29  
30  
31 **It was moved by Mr. Carnicelli to approve the State Special Permit for a one-year time**  
32 **period with the six conditions. The Motion Died for Lack of a Second.**

33  
34  
35 Mr. Hudson: Do we have another motion? Go ahead.

36  
37 Ms. Pali: I'd like to...I don't mean to be tedious but I think this is...I think a lot of us are just really  
38 on the fence and so I think I would be okay with...I'd like to make a motion to approve it as well,  
39 but I'd like to go six months. I feel like six months just really gets him to get the manager in place,  
40 maybe test two or three people and then just have an opportunity to talk story with the neighbors.  
41 You know, talk story with your neighbors, how did it go and just really work on trying to, you know,  
42 work together as a community and then come back. I would have gone for the one year but I  
43 don't...one year can be a long time, and so anyway that's my motion. With, with...along with the  
44 recommendations 1 thru 6 as Planning Department.

45  
46 Mr. Carnicelli: Second for the sake of discussion.

47  
48 Mr. Hudson: Okay, we can now discuss the motion for six months. Go ahead.

1  
2 Mr. Carnicelli: So, six months is gonna be tough just solely from the standpoint of your talking  
3 about like he may not be able to get reservations. It may take him another three months to get  
4 his STRH permit.

5  
6 Ms. Pali: Oh okay.

7  
8 Mr. Carnicelli: You know there's still...

9  
10 Ms. Pali: ...(inaudible)...

11  
12 Mr. Carnicelli: You know there's that. The other parts of this, I mean it is and I don't know if we  
13 can make this as conditions of the SUP or if it has to be part of the STRH, but you know he made  
14 the representations of you know a cease and desist should he get any RFSs. One rental per  
15 month, so you know, things like that which...so again, and if there's not consensus here, you  
16 know I have no problem you know saying we'll vote this one down and we can go a different  
17 direction, but I just think for the sake of discussion to say hey, is there way with which we can  
18 recommend this for approval and put mitigations in place to address the neighbor's concerns.

19  
20 Ms. Pali: I would like to withdraw my motion.

21  
22 Mr. Hudson: You're gonna withdraw your second.

23  
24 Mr. Carnicelli: I will withdraw my second. Thank you.

25  
26  
27 **It was then moved by Ms. Pali, seconded by Mr. Carnicelli to approve the State Special**  
28 **Permit for a six-month time period which Ms. Pali then withdrew her motion and**  
29 **Mr. Carnicelli withdrew his second after discussion.**

30  
31  
32 Ms. Pali: And if he's willing to put his original motion, I would second yours. No, because there's  
33 one more step and you're right it could take many more months. So by the time if that even went  
34 through, even if the second step went through then he would only have a few months left anyway  
35 with the one year. So whatever you decide.

36  
37 Mr. Hudson: The floor is open for a motion though.

38  
39 Ms. McLean: If you'd like to consider the timing, whatever timeframe you may choose it could be  
40 that amount of time from the date of approval of the STRH permit so that could be an option for  
41 them to coincide with each other.

42  
43 Ms. Pali: If I can speak to the motion?

44  
45 Mr. Carnicelli: There is no motion on the floor. So you can make it.

46  
47 Ms. Pali: Oh, discussion?

48

1 Mr. Hudson: Yeah we're in discussion.

2  
3 Ms. Pali: Okay, so I think that all of the neighbors have valid concerns of what could potentially  
4 happen due to other neighbors with illegal uses and even people that have permits maybe they're  
5 not cracking down and managing well. So those are all valid and real. My person problem is that  
6 he's not yet rented so we don't know if that would be his behavior of his guests. So I'm having a  
7 hard time imposing something on him that he has not yet been guilty of. So I'm just trying to find  
8 a happy medium. That's where I'm at.

9  
10 Mr. Hudson: Denise.

11  
12 Ms. La Costa: Thank you Chair. I'm looking at this and all of us are struggling with this, but when  
13 I see the preponderance and they majority of neighbors are opposed to this, they live there full-  
14 time, their experience has been not good as many people who live and I live nowhere near this  
15 property. I live a mile and a half away, but all of us who have lived next to vacation rentals whether  
16 they're legal or not have this noise issue and this nuisance issue and when you live there full-time  
17 and you have this coming and going, there are sometimes when you just have enough is enough  
18 and I understand neighbors living there full-time so I can't support any motion on this.

19  
20 Mr. Hudson: Well, we still don't have a motion. Kahu.

21  
22 Kahu Hill: This is very challenging. But I'm looking at the conclusions of law so for me, I'm hearing  
23 everyone today, it's just weighing, I'm feeling a weight. And here in this place in Launiupoko  
24 where you could...where you could hear the whales, where you could hear the waves and this  
25 very special place, I think it's a beautiful place to be and to share their homes and for the grounds  
26 that are here I would like to make a motion to deny because of Number 2, that the desired use  
27 will not adversely affect surrounding property and I think it already has begun.

28  
29 Ms. La Costa: I second.

30  
31 Mr. Hudson: We have a motion on the board to deny. It has been seconded. We're now open  
32 for discussion.

33  
34 Kahu Hill: I'll speak to the motion. With such overwhelming testimony that was given to us that  
35 I've read through all of it and heard from everyone that took their time today, some of those which  
36 are in here most of them which are living on Pua Niu Way and I can hear about what things that  
37 have been, others that have not done the right way in the past, but just looking at this community  
38 and the reasons people are living there and I have to look at the conclusions of law, Number 2 is  
39 not being met and it's for that reason, I don't know about Number 5, Carnicelli that is possible, but  
40 it's for that reason that I just...it's not pono for me to vote it forward. Mahalo.

41  
42 Ms. La Costa: And I'd like to speak to the second. Not only is Number 2 in my mind and heart  
43 also not met, but also the question of liability whether we're here to decide that or not, yes an  
44 attorney should be consulted to find out whether that is true, but I'd hate to have somebody on  
45 my property and have a death or an injury and then me get sued because I'm part of the master  
46 parcel. So I decided I can't vote for, I vote with the denial as well.

47  
48 Mr. Hudson: Carnicelli.

1  
2 Mr. Carnicelli: Thank you Chair. So again, still wrestling with all this because a lot of the testimony  
3 was about...I don't think that everyone is clear on the difference between SUP2 and an STRH  
4 Permit. And most of the testimony was really geared more towards an STRH Permit. Most of it  
5 was opinion not based necessarily in fact. A lot of it is fear. You know we get these permits in  
6 front of us all the time, every neighborhood. You know there's someone whether it's, you know,  
7 a couple of neighbors, whether it's the whole neighborhood are afraid what's gonna happen to  
8 the neighborhood. Everyone in our community deals with illegal vacation rentals. They're a gnarly  
9 animal. They're crazy.

10  
11 To put the burden of what illegal vacation rentals are onto people that are trying to do it the proper  
12 way I feel for us is unfair. So as I'm going through this and I'm going okay, has the applicant  
13 proven a negative? The other part too is, you know, Number 5, unsuited for uses permitted within  
14 the district. The other piece of this though that I'm gonna drag in in support of the motion and this  
15 is why I'm gonna go ahead and support the motion is Number 4, unusual conditions, trends, and  
16 needs have arisen since the district boundaries and rules were established. And where I'm gonna  
17 go with that is affordable housing. Is that since these ordinances were put in place, since the  
18 districts were put in place, housing for our local people has become more, and more, and more  
19 of an issue and so what I'm gonna do is I'm going to for the record say that I'm gonna support the  
20 motion based on Condition Number 5, I'm sorry Condition Number 4, unusual conditions, trends,  
21 and needs have arisen since the district boundaries and rules were established. So I'm gonna  
22 support the motion by citing Number 4.

23  
24 Mr. Hudson: Thank you. Any further discussion?

25  
26 Mr. Galazin: Thank you Chair. Commissioner Carnicelli. If I could get you to clarify something  
27 for me. So the criterion that you're referring to Number 4 says that a State Special Use Permit  
28 can be granted if these five things have been demonstrated. And Number 4 is demonstrated that  
29 unusual conditions, trends and needs have arisen since the district boundary rules were  
30 established. So that is something that would have to be shown that unusual conditions and trends  
31 have arisen. So you're saying they haven't or that they have because you kinda sounded both  
32 ways.

33  
34 Mr. Carnicelli: See now you know what it's like to be inside my head. Okay, I'm gonna retract  
35 then since I have twisted it up in my head and I'll just I'm gonna support the motion based on  
36 Number 2, the desired use will not adversely affect the surrounding the properties.

37  
38 Mr. Hudson: Very Well. Any further discussion? Go ahead.

39  
40 Ms. Pali: I will support our group and then and also the neighbor who shares the CPRd lot and  
41 also decide to support the motion that Number 2 would impact the neighbor with the shared lot.

42  
43 Mr. Hudson: Thank you. Any further discussion? No further discussion. All right, all those in  
44 favor of the motion to deny the application say, aye.

45  
46 Commission Members: Aye.

47  
48 Mr. Hudson: We have five ayes. Motion carries. Application is denied.

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

**VOTED: To Deny the State Special Permit.**

**(Assenting – A. Hill, P. D. La Costa, L. Carnicelli, K. Pali, C. Tackett)  
(Recused – T. Gomes)  
(Excused – S. Castro, K. Robinson)**

Respectfully Submitted by,

CAROLYN TAKAYAMA-CORDEN  
Secretary to Boards and Commissions II