

**MAUI PLANNING COMMISSION
REGULAR MINUTES
APRIL 23, 2019**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Lawrence Carnicelli at approximately 9:01 a.m., Tuesday, April 23, 2019, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

Mr. Carnicelli: Maui Planning Commission of April 23, 2019 is now called to order at 9:01. My name is Lawrence Carnicelli. I am the Chair. Also in attendance Commissioner Pali.

Ms. Pali: Good morning.

Mr. Carnicelli: Good morning. Kahu Hill.

Kahu Hill: Aloha Kakahiaka Chair.

Mr. Carnicelli: Good morning. Commissioner Robinson.

Mr. Robinson: Aloha Chair.

Mr. Carnicelli: Good morning. Commissioner La Costa.

Ms. La Costa: Aloha Kakahiaka Chair.

Mr. Carnicelli: Good morning. Commissioner Castro.

Mr. Castro: Same thing.

Mr. Carnicelli: And Commissioner Tackett.

Mr. Tackett: Good morning Chair.

Mr. Carnicelli: Good morning. Also in attendance is Director McLean.

Ms. McLean: Aloha Chair, good morning.

Mr. Carnicelli: Corporation Counsel, Mr. Galazin.

Mr. Galazin: Good morning Chair.

Mr. Carnicelli: And Staff, Carolyn. Quorum has been established. Please everyone silence any noise making devices that you may have. I'd like to start off, Kahu Hill could you start us with a pule please?

Kahu Hill: Sure. ...(prayer said in Hawaiian)...Amen. God bless all of us today.

1
2 Mr. Carnicelli: Thank you very much. And with that as we discussed before the meeting today
3 will be your last meeting with us and so then therefore, Commissioners I would like a resolution
4 to...I'm sorry a motion to change today's agenda to include a resolution thanking Kahu Hill for
5 her service.

6
7 Ms. La Costa: I so move.

8
9 Mr. Carnicelli: So moved by Commissioner La Costa.

10
11 Mr. Castro: Second.

12
13 Mr. Carnicelli: Seconded by Commissioner Castro. Any discussion on the motion? Seeing
14 none, all in favor please raise your hand. It is unanimous. The motion passes. So we will now
15 add that resolution to the agenda.

16
17 **It was moved by Ms. La Costa, seconded by Mr. Castro, then unanimously**

18
19 **VOTED: To Amend the Agenda to Add Kahu Alalani Hill's Resolution to**
20 **Item B.**

21
22 **(Assenting – P D. La Costa, S. Castro, K. Pali, A. Hill, K. Robinson,**
23 **C. Tackett)**
24 **(Excused – T. Gomes)**

25
26
27 Mr. Carnicelli: So then, Director why don't we go straight to Item B?

28
29 Ms. McLean: Okay. Thank you Chair and with that motion there are two resolutions before the
30 Commission. Would you like me to read them in full into the record?

31
32 Mr. Carnicelli: Please.

33
34 Ms. McLean: So I need to get those, I believe Commissioner Pali has them so I can...

35
36
37 **B. RESOLUTIONS THANKING FORMER COMMISSIONER LARRY HUDSON and**
38 **OUTGOING COMMISSIONER KAHU ALALANI HILL**

39
40 Director McLean read the Resolution for Commissioner Kahu Alalani Hill:

41
42 WHEREAS, The Maui County Planning Commission was established in 1958; and

43
44 WHEREAS, since November 2017, Kahu Alalani Hill has served as a member of the
45 Maui Planning Commission; and

46

1 WHEREAS, Kahu Alalani Hill, has served the Maui Planning Commission with dedication and
2 provided valuable guidance in serving the needs of the people of Maui County; and
3

4 WHEREAS, Kahu Alalani Hill will resign effective May 15, 2019, now therefore
5

6 BE IT RESOLVED, by the Maui Planning Commission that it does hereby express its deepest
7 gratitude and appreciation to Kahu Alalani Hill for her service during the past one year and six
8 and a half months and does hereby extend its best wishes in her future endeavors; and
9

10 BE IT FURTHER RESOLVED, that copies of this resolution be transmitted to the Honorable
11 Michael P. Victorino, Mayor of the County of Maui and the Honorable Kelly King, Chairperson of
12 the Maui County Council.
13

14 Mr. Carnicelli: Thank you Director. Would anybody like to speak to the Resolution?
15 Commissioner La Costa.
16

17 Ms. La Costa: Thank you Chair. I would like to say that Kahu you have been an inspiration and
18 have guided us and the community in the archaeological and historical and cultural aspects of
19 our County and I vote no for you leaving. But you will be sadly missed and wish you all the
20 best, Me Ke Akua.
21

22 Kahu Hill: Mahalo.
23

24 Mr. Carnicelli: Commissioner Castro.
25

26 Mr. Castro: Well Kahu it certainly been an honor working with you and I'm just amazed of your
27 knowledge in the Hawaiian historical ideas, you know, of Hawaii and Maui County. I've learned
28 a lot in a short time. So I'm just amazed and I hope you continue doing what you're doing in
29 your future endeavors and wish you all the best and I second that.
30

31 Mr. Carnicelli: Commissioner Tackett.
32

33 Mr. Tackett: Good morning Kahu. Just wanted to say thank you you know for all you did thus
34 far and I'm gonna miss you. I wish you weren't going. Thank you.
35

36 Mr. Carnicelli: Commissioner Robinson. You're good? Okay. Commissioner Pali.
37

38 Ms. Pali: Kahu Hill and I go quite a ways back and I can't ever imagine when I first met her that
39 we would end up here together and so it was very special for me that our paths cross again and
40 I appreciate the balance, I appreciate the care and the love that you've exercised while you've
41 been on the Commission and so from the bottom of my heart I thank you.
42

43 Mr. Carnicelli: Kahu I had the privilege of sitting next to you. So not only did I get the wisdom
44 that everybody else did, but I got to establish more of a personal relationship just 'cause we got
45 to whisper in each other's ears so I'm forever grateful for that. And I want to say that being the
46 very first Hawaiian practitioner on the Maui Planning Commission you've set the bar very high

1 and so whoever follows you I hope they do equally as well as what how you've shown yourself
2 and so you will be missed. You know we did try to make a motion last time to not let you leave
3 but that didn't work, but anyways, you'll be missed and thank you for your service. So and with
4 that...motion to adopt the Resolution.

5
6 Ms. La Costa: So move.

7
8 Mr. Carnicelli: Moved by Commissioner La Costa.

9
10 Mr. Castro: Second.

11
12 Mr. Carnicelli: Seconded by Commissioner Castro. I don't think we need discussion on that.
13 All in favor? Unanimous.

14
15 **It was moved by Ms. La Costa, seconded by Mr. Castro, then unanimously**

16
17 **VOTED: To Adopt Kahu Alalani Hill's Resolution.**

18
19 **(Assenting – P D. La Costa, S. Castro, K. Pali, A. Hill, K. Robinson,**
20 **C. Tackett)**

21 **(Excused – T. Gomes)**

22
23 Mr. Carnicelli: Resolution is adopted. Director.

24
25 Director McLean then read the Resolution for former Commissioner Larry Hudson:

26
27 WHEREAS, The Maui County Planning Commission was established in 1958; and

28
29 WHEREAS, since April 2015, Larry Hudson has served as a member of the Maui Planning
30 Commission; and has served as Vice-Chairperson of the Maui Planning Commission from
31 May 2018 to March 2019; and Acting Chairperson of the Maui Planning Commission for the
32 month of March 2019; and

33
34 WHEREAS, Larry Hudson, has served the Maui Planning Commission with dedication and
35 provided valuable guidance in serving the needs of the people of Maui County; and

36
37 WHEREAS, Larry Hudson has resigned effective April 30, 2019, now therefore

38
39 BE IT RESOLVED, by the Maui Planning Commission that it does hereby express its deepest
40 gratitude and appreciation to Larry Hudson for his service during the past four years and does
41 hereby extend its best wishes in his future endeavors; and

42
43 BE IT FURTHER RESOLVED, that copies of this resolution be transmitted to the Honorable
44 Michael P. Victorino. Mayor of the County of Maui and the Honorable Kelly King, Chairperson of
45 the Maui County Council.

46

1 Mr. Carnicelli: So we were able to you know speak to Larry last, you know last time so it would
2 feel a little bit like post mortem I think if we spoke to the Resolution now. So if I could just have
3 a motion to adopt the Resolution. Moved by Kahu Hill, seconded by Commissioner Pali. All in
4 favor of adopting the Resolution. Unanimous. Thank you very much Commissioners.
5

6 **It was moved by Kahu Hill, seconded by Ms. Pali, then unanimously**

7
8 **VOTED: To Adopt Larry Hudson's Resolution.**

9
10 **(Assenting – A. Hill, K. Pali, K. Robinson, C. Tackett, S. Castro,**
11 **P D. La Costa)**

12 **(Excused – T. Gomes)**
13

14 Mr. Carnicelli: So now we will move onto the Public Hearing portion of our agenda and just so
15 everybody understands and knows how this work. The items will be brought up one at a time.
16 What we'll do is we will have a Staff...the Staff will do a quick report, the applicant will then do a
17 presentation, after that presentation we will have testimony, after the testimony we will have
18 questions from the Commission, we'll get a recommendation from the Department, and then we
19 will go ahead and act on that.
20

21 And just so everybody understands when we have testimony what will happen is I'll call you up,
22 I'll ask you to state your name. I will ask you if you will be truthful. You will have up to three
23 minutes and please do not go longer and this is just to remain fair for everybody 'cause if
24 somebody gets to go four, if somebody else went only three, and it's just not fair. So at three
25 minutes Carolyn will say three minutes, I will ask you to conclude. Please be relevant, stay on
26 the topic at hand. If you're an expert in something please state your qualifications. Address
27 only the Commission and at the end of your testimony the applicant will have the opportunity to
28 ask you questions. The Commission also has an opportunity to ask you questions. Those
29 questions are based on your testimony and not to say hey, listen can I just get a question so I
30 can add time onto my three minutes. So just stating that so everybody understands kinda
31 where we're coming from. So with that said, Director if you would first...bring up the first item
32 please?
33

34 Ms. McLean: Thank you Chair. You have four public hearing items on the agenda today. The
35 first is a request from Lawrence and Jacquelyn Longsworth for a Bed and Breakfast Home
36 Permit to operate Maui Beachside, a one bedroom B&B in the County Interim Zoning District
37 and State Urban District located at 1382 Hiahia Street at TMK: 3-2-020: 025 in Wailuku.
38 Tara Furukawa is the Project Planner.
39

40 **C. PUBLIC HEARING**

- 41
42 **1. LAWRENCE AND JACQUELYN LONGSWORTH requesting a Bed and**
43 **Breakfast Home Permit to operate Maui Beachside, a one bedroom B&B in**
44 **the County Interim Zoning District and State Urban District located at**
45 **1382 Hiahia Street, TMK (2) 3-2-020:025, Wailuku, Island of Maui.**
46 **(BBWK T2018/0006) (T. Furukawa)**

1
2 **The Maui Planning Commission is the approving authority for the Bed and**
3 **Breakfast Home Permit because "an existing bed and breakfast home is**
4 **operating on a lot within a five hundred-foot distance from the lot on which**
5 **the bed and breakfast home is proposed." §19.64.050(A)3(c), Maui County**
6 **Code.**
7

8 Ms. Tara Furukawa: Good morning Commissioners. This item has come to you for review
9 because there's at least one B&B operating within 500 feet of the proposed B&B. In this case,
10 there's actually two permitted B&Bs. The applicant is proposing a one bedroom B&B in a single
11 family dwelling along Hiahia Street in the Oceanview Estates in Wailuku. The applicant and his
12 wife will reside upstairs in the same dwelling. The consultant for the project is Susan Netra
13 Halperin and she'll be presenting you the project and responding to any questions that you
14 might have regarding the application.
15

16 Ms. Susan Netra Halperin: Okay, I guess starting at the slide show. Can we dim the lights or
17 do you usually do it?
18

19 Ms. McLean: I can get that Tara.
20

21 Ms. Halperin: So okay, next one please. Okay, it's kinda hard to see, do you guys have a
22 pointer?
23

24 Mr. Carnicelli: You have to speak into the mic.
25

26 Ms. Halperin: Take the mic with me and go stand there, okay perfect. Okay, so here is the
27 property right here and then here is the airport. So the guests will be coming up like that. Next
28 slide. Okay, we're having a little...oh here we go...we're having to switch, we're having
29 technical difficulties, we're having to switch between...okay, so here is the subject property.
30 Here's Hiahia Street and then except the driveway is yes, there's the ocean over there, and then
31 the driveway is here and the parking space is here so the guests will come out, turn left on
32 Akake Street and be right on Waiehu Beach Road and that's important because it...next slide
33 please...no there was a different, there was another one right after that...oops I don't know
34 where it went...okay, yeah that's it. Okay, just to kinda...this is farther off here so you can see
35 that the guests will not be going through the subdivision here 'cause that's a concern with the
36 neighbors is traffic. So they will be going straight on Akake Street, on Lower Waiehu Beach
37 Road to Waiehu Beach Road and off to where they're going. So that keeps them from driving
38 around in the neighborhood. So they'll be just skirting the neighborhood. Okay, next slide
39 please. Okay, and this is hard to see but here's the subject property right here, here is...okay,
40 that's good Ruby's Oceanview right there and then here is Maui Beach House right here. So
41 those are this, this and then here's the subject property. That's a STRH right there.
42

43 Okay so entrance...here is...okay, so as I said the person, the guest comes up Akake Street,
44 turns right and then they park right here on the driveway. And you can see this driveway is very
45 big, it's big, it's flat, it's wide, there's no reason...and then they walk...you can't really see, but
46 then they walk straight like that to this entrance. So there's no reason the guest would ever not

1 park in the driveway 'cause it's the most convenient for them. It's the easiest and it's just very
2 convenient so they will never park on the driveway. Okay, yeah, next slide please. Yeah, as
3 you can see there, so the guests comes up the street, they go in, they park right there, and then
4 over here that's where we just showed before. So then they go into their unit right there, so
5 they're just...so very convenient. There's the owner's car. So the owner will be in the garage
6 so they will not be in this driveway. So the driveway will be free and clear for the guest.

7
8 Okay, so north side of the house. South side. That's the front. The east side as you can see
9 and then this is where as I was saying so the car is right here and then they just kind of walk
10 down this little pathway into their front entrance. Okay, north view, south view, east view. Oh,
11 oh, view east and view west.

12
13 Okay so here's the...that's the entrance when you come in the entrance you see there's a little
14 desk there and you see the bed, there's the bed and then there's the bathroom. And then this
15 they call the hospitality room so it's like living, dining, so there's a microwave, a coffee maker, a
16 small little frig. So it's basically, it's a wet bar and so they can go...but the owners will allow
17 guests if they need to go upstairs to do anything fancy or any fancy cooking or whatever, but the
18 owners will be providing breakfast of course. Fire extinguisher, smoke alarms.

19
20 And then the Longsworths have done a lot of community service since they've been living there.
21 For the last four years because this subdivision has no homeowner's association the front
22 entrance was looking a little scruffy so they created fundraisers and then these are all the
23 payments to the gardeners so input is the fundraisers and output is to the gardeners. So
24 they've been...yeah really putting their best foot forward really helping out the community a lot.
25 And beautiful views.

26
27 Okay, and then this is basically just as I mentioned there was CC&Rs, the developer when they
28 built it of course they made CC&Rs but those expired and the homeowner's association I think
29 there was an association briefly but they never registered their own CC&Rs so basically in effect
30 there are no CC&Rs for this neighborhood. So that's it. I guess let's let the...should I let the
31 owner talk now? Okay, so this is Larry Longsworth.

32
33 Mr. Lawrence Longsworth: Aloha and mahalo for allowing me to be here. My wife, Jacky...oh
34 okay, I'm Lawrence Longsworth and I prefer Larry, but...and my Jacky and I feel we have an
35 ideal B&B situation here as was pointed out by Netra. We've done a lot of good things in the
36 neighborhood that she pointed out. For four and a half years I've been running the front
37 entrance and making sure it is maintained and I'm very much community minded. When we first
38 sent out all of our certificate...certified letters to everybody we sent out a letter with all the
39 mailings talking about all the things that we want to do and our intent for this neighborhood and
40 our B&B. We had all sorts of positive comments coming back and when we put up that big sign
41 the B&B notice sign we had fliers box out there and we put the same letter in that flier box with
42 our phone number on it and the box never got emptied. It was always full for people to look at,
43 talk to us about our B&B. We had all sorts of positive comments and we feel that we have
44 the...like I say, the ideal situation. I think I'm just gonna leave it there and Netra already pointed
45 out about the thing that we only have one bedroom, two people maximum. We got the flattest
46 and biggest, probably the biggest driveway for people to park in. And they won't be parking in

1 the street. They won't be impacting our neighborhood and we just feel that we have a good
2 quality B&B and if everything's done right which it's going to be we're gonna have a very
3 successful for everybody a B&B situation. And be assured we will be strict in all the demanding
4 rules that you require. So I think that's enough for me.

5
6 Mr. Carnicelli: Thank you Larry. Tara, do you guys have anything else?

7
8 Ms. Furukawa: No, that's it.

9
10 Mr. Carnicelli: That's all, okay thank you. So—

11
12 Ms. Halperin: Oh, should the testifiers start?

13
14 Ms. Furukawa: No.

15
16 Mr. Carnicelli: I'll get there. I get there. Thank you. So we will go ahead now and open up
17 public testimony. The first person to sign up on this item is Gail Nagasako. Actually Tara would
18 you actually give them the mic.

19
20 Ms. McLean: Tara give them the microphone.

21
22 Mr. Carnicelli: Yeah so then they don't have to hold onto it. So please state your name.

23
24 Ms. Gail Nagasako: Gail Nagasako.

25
26 Mr. Jordan Nagasako: Jordan Nagasako.

27
28 Mr. Carnicelli: Do you promise to tell the truth?

29
30 Ms. Nagasako: I do.

31
32 Mr. Carnicelli: You have three minutes.

33
34 Ms. Nagasako: Thank you. We own the B&B at 1360 Hiahia. So we're the ones that trigger
35 the hearing and we totally support Jacky and Larry. They've been a great addition to the
36 neighborhood. They've done a lot of work in helping improve the neighborhood. They help us
37 check in our guests if we can't be there at the time that the guests are arriving. So we totally
38 support them and they do have a bunch of letters too of other people in the neighborhood who
39 support them.

40
41 Mr. Jordan Nagasako: Yeah, they've been great neighbors. So honorable and nice people.
42 You know I've been there 20 years, this is a great addition to the community. Always did good
43 things, fundraisers. Yeah, so they're great and we support them.

44

1 Mr. Carnicelli: Thank you. Does the applicant have any questions for them? Seeing none,
2 Commissioners do you have any need to clarify the testimony? Great. Nikki Jackson. Please
3 state your name.
4
5 Ms. Nikki Jackson: I'm Nikki Jackson.
6
7 Mr. Carnicelli: Do you promise to tell the truth?
8
9 Ms. Jackson: I do.
10
11 Mr. Carnicelli: You have three minutes.
12
13 Ms. Jackson: Thank you. I'm a neighbor on Hiahia of Larry and Jacky. I've known them the
14 whole time they've lived there. They're wonderful neighbors. He's just such an asset to our
15 community and I...the only thing I would add to what you've already heard is that the property is
16 fronted by the sewer utility so there is just virtually no one around the property that could be
17 disturbed. They're very quiet people. They have welcomed many Europeans that would
18 probably otherwise not come to our island and I just strongly recommend them as B&B owners
19 because you just couldn't have a more qualified couple. Thank you for listening.
20
21 Mr. Carnicelli: Thank you Nikki. Does the applicant have any questions? No. Commissioners
22 any need to clarify?
23
24 Ms. La Costa: I have a question.
25
26 Mr. Carnicelli: Okay, Commissioner La Costa. Nikki come back up please.
27
28 Ms. La Costa: Thank you Nikki. Where do you live in proximity to the subject property please?
29
30 Ms. Jackson: About one block down in the cul de sac, 1441.
31
32 Ms. La Costa: Okay, mahalo.
33
34 Mr. Carnicelli: Andrew Mahaney. Did I say that correctly?
35
36 Mr. Andrew Mahaney: Yes you did. Most try to make it Mahoney, it's a more common Irish
37 name.
38
39 Mr. Carnicelli: Please state your name for the record.
40
41 Mr. Mahaney: Andrew Mahaney.
42
43 Mr. Carnicelli: Do you promise to tell the truth Andrew?
44
45 Mr. Mahaney: I do.
46

1 Mr. Carnicelli: You have three minutes.

2

3 Mr. Mahaney: Thank you. I've been a long time resident, 12 ½ years I guess that's a long time
4 for the neighborhood. I'm acquainted with a few of you here as well, P Denise and this young
5 lady over here. I was one of the 50 odd people that solicited petitions for no bed and breakfast
6 operations in our neighborhood because the neighborhood as it stands is very crowded. The
7 parking is a tremendous headache particularly up at 1232 Kilou Street where I am located. We
8 have an applicant next door that is trying to get a permit as well.

9

10 I recognize the very, very positive things that Larry and his wife have done and I do support
11 them at least for offering them a provisional application or a provisional approval as you have
12 done with the lady up on the lower end of Kilou. I might inform you that the people on the Kilou
13 Street that was the Chinese lady and her husband, two houses on either side of them and the
14 one across the street is currently for sale because people don't want bed and breakfasts in our
15 neighborhood. But Larry's application certainly doesn't impact all of the residents that are up
16 above his area. And you do have copies of the 50 odd petitions of people that don't want B&Bs
17 in our neighborhood. That's pretty much what I have to say today. I do think that perhaps a
18 provisional approval would be in order. Are there any questions?

19

20 Mr. Carnicelli: Thank you Andrew. Does the applicant have any questions? No.
21 Commissioners? Commissioner Pali.

22

23 Ms. Pali: Hi sir I've got a question for you. Can you help me understand if in general you're not
24 wanting them what makes this applicant unique to where you would be supportive of his? You
25 did mention that he's in the different area where the main traffic area is congested above. You
26 did distinguish that but—

27

28 Mr. Mahaney: His entrance, and his entrance and egress from the Lower Beach Road as
29 opposed to the road that's coming off of the Kahekili Highway and I might pronounce that
30 wrong, I apologize for that, but it is less crowded where he is. His access is the best means to
31 go down the Lower Beach Road and come out onto his property. He does have off street
32 parking. His parking lot is about the size of this room times two.

33

34 Ms. Pali: Okay.

35

36 Mr. Mahaney: Unlike—

37

38 Ms. Pali: Others.

39

40 Mr. Mahaney: --my neighbors in the area that we have a conglomeration of parking. The
41 neighbor that has applied at number 1238 has seven automobiles that are in and out of that
42 area consistently.

43

44 Ms. Pali: Okay. Well, to keep on this topic so when we say that we're not for these types of
45 permits in the neighborhood are just specifically referencing then parking and access or are
46 there other reasons?

1
2 Mr. Mahaney: I'm representing the character of the neighborhood. This is a neighborhood. It is
3 not a commercial area.

4
5 Ms. Pali: Okay.

6
7 Mr. Mahaney: That commercial type properties belong in the Hotel District.

8
9 Ms. Pali: Sure, so—

10
11 Mr. Mahaney: Many of the people that have bought in this neighborhood have bought as long
12 term residents and don't want any changes.

13
14 Ms. Pali: So is there anything distinguishing about this application that allows you to sort of
15 negate that fact?

16
17 Mr. Mahaney: Yes there is. I think it is the character of the owners, I think it is the location that
18 they have that is not going to obstruct or increase congestion as it exists in our neighborhood
19 now and that the impact to the neighborhood will be probably positive.

20
21 Ms. Pali: Okay.

22
23 Mr. Mahaney: ...(inaudible)...

24
25 Mr. Carnicelli: Commissioner Robinson.

26
27 Mr. Robinson: I have a question for you. You mentioned a provisional permit. What is your
28 understanding of—

29
30 Mr. Mahaney: As you have granted Ruby Li.

31
32 Mr. Robinson: But what is your understanding? What do you think a provisional permit is as far
33 as your understanding of ...(inaudible)...

34
35 Mr. Mahaney: I believe a provisional permit as had been explained to me is that it's a trial and
36 error type of thing. If it looks like it's going to succeed for a year you have the authority to make
37 it permanent, but being that all of our deeds state no rentals in the neighborhood of this nature,
38 bed and breakfast nature, the board chose to ignore that in the past and they chose to ignore
39 the 58 signatures of which I gathered about 48 or 50 in the neighborhood of people that don't
40 want any commercial venture in our neighborhood.

41
42 Mr. Robinson: Tara or the Director can you help me is there a provisional permit inside this
43 neighborhood.

44
45 Mr. Carnicelli: I tell you what, Commissioner Robinson we'll get to that, let's stick with testimony
46 for now.

1
2 Mr. Mahaney: I believe you've done that for Ruby Li, the Chinese lady that was here whose
3 husband by the way brought in over a half a million tax free dollars that earned living outside the
4 U.S.

5
6 Mr. Robinson: Thank you and I don't think there is a provisional but we'll get that cleared up
7 later. Thank you so much.

8
9 Mr. Mahaney: Thank you. Anyone else?

10
11 Mr. Carnicelli: Commissioner La Costa.

12
13 Ms. La Costa: That's up to him, that's not up to you two to...Thank you very Mr. Mahaney. So
14 you mentioned that there are deed restrictions. On your warranty deed that transferred the
15 property to you is there specific language that says that short-term rental is disallowed on the
16 deed?

17
18 Mr. Mahaney: That is what I've been apprised by Jan Apo who is a well-known Hawaii lawyer
19 who lives three homes down on Kilou Loop where I am located, yes. And I think Jan is a very
20 knowledgeable person. I think you're acquainted, many of you are perhaps acquainted with him
21 as well.

22
23 Ms. La Costa: Thank you.

24
25 Mr. Carnicelli: Thank you Andrew.

26
27 Kahu Hill: Question.

28
29 Mr. Carnicelli: Oh, wait, wait. Kahu Hill.

30
31 Mr. Mahaney: I haven't found any bones in my yard. Don't worry. I've got three dogs that dig
32 all the time but no bones.

33
34 Kahu Hill: You know what to do if anyone finds some.

35
36 Mr. Mahaney: We know what to do.

37
38 Kahu Hill: I wanted to know if you have any of the petitions that are specific to this application,
39 specifically to this address.

40
41 Mr. Mahaney: This is a general objection, because we do not go into specifics of individual
42 applicants. And I believe that the Planning...this lady here, whose name I—

43
44 Mr. Carnicelli: Director Michele McLean.

45

- 1 Mr. Mahaney: Exactly right. And she has copies of this that were submitted to the Planning
2 Department and she no longer has a person by the name of Willenbrink who is employed in that
3 Division, who kind of screwed up a lot of these permits by pushing them to one side and not
4 getting them approved when they were in fact legitimate approved type signatures of all of the
5 owners in the neighborhood.
6
- 7 Mr. Carnicelli: I think you answered the question.
8
- 9 Mr. Mahaney: We have—
10
- 11 Mr. Carnicelli: I think you answered the question Andrew.
12
- 13 Mr. Mahaney: We have a very desirable neighborhood that—
14
- 15 Mr. Carnicelli: So, Andrew, Andrew, Andrew, I think you answered the question 'cause again
16 what we're trying to do here is just clarify the testimony that you gave and not give you
17 additional time to you know go ahead and state your opinions. So we appreciate it. Thank you
18 very much for your testimony.
19
- 20 Mr. Mahaney: Could I add one other item?
21
- 22 Mr. Carnicelli: No. No, no, no, no, that's not what this is. You've had your three minutes.
23
- 24 Mr. Mahaney: Thank you.
25
- 26 Mr. Carnicelli: No, no, hang on, hang on, wait, wait, wait Commissioner Tackett has a question
27 for you, right here.
28
- 29 Mr. Mahaney: Yes, sir.
30
- 31 Mr. Tackett: My question is if the people that will be using this bed and breakfast if they were to
32 go through your neighborhood as opposed to Lower Waiehu Beach Road would that have an
33 impact on how you feel about this project?
34
- 35 Mr. Mahaney: Not necessarily because the entryway from K Highway onto Hoana Street.
36 Hoana goes directly down the ocean onto Hiahia Street and it's within what two blocks is your
37 house the end of the Hoana Street and it will not impact the congested areas which include
38 Owaka Street, Kilou, Kakae Street which was recently been vacated from the county--
39
- 40 Mr. Tackett: I understand.
41
- 42 Mr. Mahaney: ...(inaudible)...
43
- 44 Mr. Tackett: Your answer was exactly what I was looking for. Thank you.
45
- 46 Mr. Mahaney: Perfect.

1
2 Mr. Carnicelli: Richard Wallace.
3
4 Mr. Richard Wallace: Good morning.
5
6 Mr. Carnicelli: Please state your name.
7
8 Mr. Wallace: My name is Richard Wallace.
9
10 Mr. Carnicelli: Richard do you promise to tell the truth?
11
12 Mr. Wallace: I promise to tell the truth.
13
14 Mr. Carnicelli: You have three minutes.
15
16 Mr. Wallace: I live at 1235 Kilou. Across the street right now there is an application for a bed
17 and breakfast so I'm here mostly to talk about that. Mr. Longworth is—
18
19 Mr. Carnicelli: I'm sorry, Richard I'm gonna ask you to speak to the topic is the item that's on
20 the agenda. I'm just gonna ask you to please speak to that.
21
22 Mr. Wallace: Okay, to his bed and breakfast specifically?
23
24 Mr. Carnicelli: To Mr. Longworth's application.
25
26 Mr. Wallace: Okay.
27
28 Mr. Carnicelli: That is what is...that's what we're talking about right now is that.
29
30 Mr. Wallace: Okay, his application is different because it has off street parking and he's down
31 close to the water and the beach and the people will probably not come down our street in order
32 to get to or from where he's at so I have no absolutely no problem with his bed and breakfast
33 down in the lower area of the neighborhood. My problem was with the top of the neighborhood.
34 Can I speak at all about that or?
35
36 Mr. Carnicelli: That's not before us today and that's not before us right now. So when that
37 comes, I would highly encourage you to come and speak on that one when that comes before
38 us.
39
40 Mr. Wallace: Well, that's my main, my main event. So thank you so much for my two seconds.
41
42 Mr. Carnicelli: Thank you. Does the applicant have any questions? Okay, hang on, hang on a
43 second Richard. Larry's gonna ask you a question.
44
45 Mr. Longworth: Oh, I just want to do a general question.
46

1 Mr. Carnicelli: No, it's do you have a question specifically for Richard?

2

3 Mr. Longworth: ...(inaudible)...some of the petitions that were...

4

5 Mr. Carnicelli: No, that's not where we're at right now. Does any of the Commissioners find a
6 need to clarify Richard's testimony? Okay, seeing none, is there anybody else who would like
7 to come forward and speak on this item? Go ahead and come forward. Please state your
8 name.

9

10 Ms. Karen Gerhard: Karen Gerhard.

11

12 Mr. Carnicelli: Hi Karen, do you promise to tell the truth?

13

14 Ms. Gerhard: I do.

15

16 Mr. Carnicelli: Thank you. You have three minutes.

17

18 Ms. Gerhard: I live on Kilou Place which is a block up from Hiahia and I've known the
19 Longworth since they moved in and they've created a great neighborhood for us. They've had
20 parties every Halloween for all the neighborhood, Larry...they have both had a fundraiser so
21 that we can have our entrance beautiful and the lawn taken care of. At their house having all
22 these people you know, have Mexican food there. Larry, if you call either one of them at any
23 time whatsoever for any problem in the neighborhood they're, there. Their particular bed and
24 breakfast is a perfect location. There's another one which is Gail's down the street they don't
25 create any parking problems because they have their own driveway and then they can come in
26 from Lower, the Lower Beach Road and I'm sure that they would make sure that the people that
27 come and stay with them would come in that way because these people follow every rule and
28 regulation, they make everything good for everybody else in the neighborhood and they're, and
29 I...I'm on a cul de sac so I don't have any problem with the parking, but I go through the
30 neighborhood every single day walking my dog and see where there's parking problems and
31 they're all parking in the street, but this would never be the problem here with this particular bed
32 and breakfast. And I think that this family is an asset to our neighborhood and I want to see
33 them stay and survive here and I see no problem whatsoever in that particular area because it's
34 not where it's congested. It's down by the beach and there would never be a parking problem.
35 That's it.

36

37 Mr. Carnicelli: Thank you Karen. Larry do you have any questions? Okay, Commissioners any
38 need to clarify the testimony? Seeing none, thank you. Would anybody else like to come and
39 speak to this item? Okay, if there are no objections we'll go ahead and close public testimony.
40 Okay, public testimony is now closed. I guess at this point we'll go to discovery from the
41 Commission. Questions? We'll start with you Commissioner Robinson.

42

43 Mr. Robinson: You're going to do your round?

44

45 Mr. Carnicelli: We'll go around this way. We'll start this way.

46

1 Mr. Robinson: I just have a request and sitting in this chair I realized it, even though I didn't do it
2 for a whole year is, we never asked the applicant or the professional if they would be truthful
3 and I've never done that. And please, please, and the reason why I'm saying that is 'cause I
4 know this neighborhood and there were some comments made by the presenter that's just not
5 true. So I don't know what the protocol is on that. I don't want to call people out. I just kind of
6 you know state facts, state facts, and kind of you know do it that way. But if, if in the future
7 you're open to that I wish I did that. I know I didn't do it so I just wanted to state that.

8
9 And also a second thing and this is just for clarification too, is I read that, that cluster up there
10 and it said Maui Meadows permit and so, and because it's part of our testimony and because
11 part of the facts that's being presented Chair, I just wanted to kinda point that out because I was
12 very concerned when I saw that, when I saw that cluster.

13
14 Ms. Furukawa: It's just the legend showing you, so the approved bed and breakfasts are the
15 green squares, the approved STRHs are the pink squares, the B&Bs in renewal are the green
16 circles, pending B&B Permit are the green triangles, pending STRH pink triangles and then the
17 pink circles are STRH Permit in renewal. So I didn't select the Maui Meadows STRH Permit
18 because I know it's not in that area. So this is when I searched for the permitted B&Bs and
19 pending ones.

20
21 Mr. Robinson: So Tara all those star looking clusters that's in that neighborhood that says Maui
22 Meadows Permit.

23
24 Ms. Furukawa: No, actually it's plus signs and all of the blue plus signs are actually—

25
26 Mr. Robinson: It's plus signs.

27
28 Ms. Furukawa: Yeah, support letters or signatures from people. So there were 12 total in
29 support of the B&B and then there's one minus sign on there and that's Hoffman who had been
30 emailing back and forth with the applicant and submitted the petitions for other applications. So
31 he's the—

32
33 Mr. Robinson: So Tara if one person gets a petition of 50 people it's considered just one?

34
35 Ms. Furukawa: Well, actually it doesn't even pertain this particular application. On it, the
36 address was for the other applications and it stated it as well. So we don't even normally
37 include that information just because it might taint this current application review, but we did just
38 because you know Michele was sent Hoffman's email and he said it's the whole neighborhood
39 feels that way, that's how he was representing it so we included as well. And then I just wanted
40 to point out that the proposed Hale Aloha Maui B&B with the green triangle that's Livit's project
41 and you know we were planning on sending you both to review at the same time just so you
42 could consider them but hers is not near sending it to the commission, so...

43
44 Mr. Robinson: So, so is people have to have fresh petitions every single time each item came
45 up it couldn't be a blank or a past history for a general cause is that the—

46

1 Mr. Carnicelli: Director.

2

3 Ms. McLean: Thank you Chair. We would look at those on a case by case basis. In this
4 particular case the petition specified an address that the petition was in opposition to. If we had
5 a petition related to this address then we might create a map that shows where all the signers
6 reside.

7

8 Mr. Robinson: I mean you added it to our packet, it's just not on the map that's all, right?

9

10 Ms. McLean: Right because in this particular case the heading of the petition was a B&B permit
11 on Kilou Street which is not this one and so we provided it for information because it does talk
12 about the community not supporting B&Bs in the neighborhood so we provided it 'cause it is still
13 relevant but it wasn't specific to this application so we didn't create a map showing where all
14 these folks live.

15

16 Mr. Robinson: Thank you Director.

17

18 Mr. Carnicelli: Kahu.

19

20 Kahu Hill: I just wanted to have full disclosure on here that I do know this house and I did bless
21 this house and got to meet many of the neighbors. So I just wanted to put that on the floor if
22 there's anything in conflict here.

23

24 Mr. Carnicelli: Do you feel as though you can be impartial and fair in making a decision on this
25 application?

26

27 Kahu Hill: Yes, always.

28

29 Mr. Carnicelli: Do any of the Commissioners have a problem with Kahu Hill having that
30 information. Okay, seeing none...

31

32 Kahu Hill: Mahalo.

33

34 Mr. Carnicelli: Yeah. Commissioner Pali.

35

36 Ms. Pali: This is discussion Chair?

37

38 Mr. Carnicelli: It's questions.

39

40 Ms. Pali: Oh, no questions.

41

42 Mr. Carnicelli: No questions right now. Commissioner La Costa.

43

44 Ms. La Costa: Thank you Chair. I have a question for the applicant please.

45

46 Mr. Longworth: Yes.

1
2 Ms. La Costa: Thank you. Have you rented your home in the past on a short-term basis?
3
4 Mr. Longworth: Yes.
5
6 Ms. La Costa: Okay. And when was that done please?
7
8 Mr. Longworth: It was done prior to our application and when we did our application we shut
9 everything down.
10
11 Ms. La Costa: Okay, and when was that please?
12
13 Mr. Longworth: Probably eight months ago.
14
15 Ms. La Costa: Okay, are you currently long term renting?
16
17 Mr. Longworth: No, no. As we applied we did what it said in the application manual to shut
18 everything down and apply and not do any type of renting at all.
19
20 Ms. La Costa: Thank you. I do have a question for Corp. Counsel if I might please? Would a
21 deed restriction that specifically excludes short-term rental take precedent over County
22 codification?
23
24 Mr. Galazin: Thank you. Actually in this case it would not. And furthermore if you look at
25 19.64.030(l), it states specifically that in permitting bed and breakfast homes the Planning
26 Director, the Planning Commissions and the Council shall not consider nor be bound by any
27 private conditions, covenants or restrictions upon the subject parcel. But not only does it not
28 have a bearing, you are specifically told not to consider it.
29
30 Ms. La Costa: Thank you.
31
32 Mr. Carnicelli: Commissioner Castro. Any questions?
33
34 Mr. Castro: None.
35
36 Mr. Carnicelli: Commissioner Tackett.
37
38 Mr. Tackett: I have a question. A question about the access and egress from the property. I
39 understand that you said that you were gonna send them down towards the ocean and then out
40 on Lower Main which in my opinion it does lessen the traffic for your neighborhood but it sends
41 you through the original neighborhood. Neighborhoods that were there before that
42 neighborhood was ever built. Neighborhoods that have multiple generations living in that kind of
43 house because they never had the financial abilities that a lot of the people that live and moved
44 to the neighborhood that you're talking about have. So where you're gonna be sending, where
45 you're saying that you want all the traffic to go down you're sending them through the old
46 neighborhood where the grandmas and grandpas and the kids and the children and everybody

1 are all smashed into one house trying to survive. So I just wanted to know if you guys had given
2 that any consideration because that's exactly what you're doing. You're keeping the traffic out
3 of your own neighborhood and you're sending it through Lower Waiehu which is the original
4 neighborhood.

5
6 Mr. Carnicelli: State your name for the record.

7
8 Mr. Longsworth: I don't think there's a gonna be a problem with the people going through that
9 neighborhood at all. We go through there all the time because that's the quickest and the
10 easiest way to get to Kahului and I don't see any objections or any problems and we're only
11 having one person coming into our place and I just don't see there's gonna be a problem there.

12
13 Mr. Tackett: What makes you think that that is a better access for people that aren't familiar
14 with the area as opposed to your own entrance to your own neighborhood?

15
16 Mr. Longsworth: It's just the way the GPS will send you in there. They don't have to go to the
17 upper part of Oceanview Estates and come down Hoana Street and it's just an easier way to
18 get in and get out without going through our neighborhood.

19
20 Mr. Tackett: 'Cause the interesting thing the way the circle of your property maps out is you
21 lose the entire upper part of Oceanview Estates and you lose the entire old school
22 neighborhood like it comes right to the border, border so everybody that's gonna be driving
23 through there and it is...why it is important to me is because there's a huge amount of children
24 in that neighborhood. You know there's...it's a multi-generation neighborhood. I've been in that
25 neighborhood my whole life so I understand it well. So that's why I asked because there are a
26 lot of children and hopefully nobody speeds to airport or nobody thinks you're gonna get to an
27 airport on an early morning flight because upper...the back road and the bottom road are loaded
28 with people with the school traffic.

29
30 Mr. Longsworth: But they also have about seven speed bumps in there to make people go—

31
32 Mr. Tackett: And that's exactly why they're there, exactly why they're there.

33
34 Mr. Longsworth: And that's why you can't speed through there and it's 20 miles an hour and
35 I've never seen anybody going fast on that Lower Waiehu Beach Road.

36
37 Mr. Tackett: I'm just saying people do weird things to make a flight.

38
39 Mr. Longsworth: I understand.

40
41 Mr. Tackett: So anyways that was my question.

42
43 Mr. Carnicelli: Hang on Larry. Larry, hang on just real quick. Thank you Commissioner. So
44 Corporation Counsel did remind me that I didn't give you a chance to say anything after public
45 testimony. Is there anything that you would like to add at this point?

46

1 Mr. Longworth: The only thing I was gonna add at that one point is on the petitions that Andy
2 had. A lot of them were signed petitions but there was no...if I can show you real quick...A lot
3 of them were generated signatures with nothing of what they are signing about. They're just
4 signing something so a lot of those signatures that are on here we don't even know, they don't
5 even know what they were signing about, they're just general things and that's one thing I
6 wanted to say. So the people that are objecting about B&Bs in the neighborhood they don't
7 even know what they were signing in many cases.

8

9 Mr. Carnicelli: So Larry are you aware that he actually testified in favor of your B&B?

10

11 Mr. Longworth: Yes, I do. Yes I do. Yes I am but he wanted to make a very strong point
12 about the people in the neighborhood are not happy with the B&Bs in the neighborhood and he
13 was testifying about CC&Rs which are—

14

15 Mr. Carnicelli: Okay, you answered my question thank you.

16

17 Mr. Longworth: Thank you.

18

19 Mr. Carnicelli: Commissioner Robinson, I actually have a question for you. You did state that
20 there were some questions as to say the truth in the presentation so I guess at this point do you
21 have any questions for the applicant's presenter or something. You want to like sort of...I'm just
22 putting it out there you want to ask a question or try to clarify anything?

23

24 Mr. Robinson: I'd like to ask a couple questions when it's my turn.

25

26 Mr. Carnicelli: It's your turn right now.

27

28 Mr. Robinson: I guess is we're gonna ask them if they promise to be truthful or not I think is the
29 question to the Chair because I already heard their testimony so if without them saying that and
30 then if I ask them again and they give the same answer there might be a different result. And if
31 it's not, then I won't ask the same question 'cause I've already heard what they had to say.

32

33 Mr. Carnicelli: Okay. So I'm gonna defer to Corporation Counsel since they're the ones that
34 actually had us ask the truthful question.

35

36 Mr. Robinson: Yeah, thank you.

37

38 Mr. Galazin: Thank you Chair and Commissioner Robinson. So as you're aware when some of
39 these decisions that have been made in the past couple of years by this Commission, what this
40 body have gone through with the courts. We've had a couple judges look at it and say the
41 testimony of witnesses during a public hearing must be under oath and subject to cross
42 examination in accordance with Chapter 91 in the Hawaii Revised Statutes in order to be
43 considered ...(inaudible)...and admissible. The applicant, the applicant's representative differs
44 in that respect in that what the applicant says is part of the application and if anything the
45 applicant has said is not true they can have their permit if it's even granted revoked, they can
46 have their permit denied if it is found that they're presenting false evidence, but they are not

1 required to swear in. They are the ones who are putting forth what they're saying as the truth
2 because that is what they are giving to the Department and saying these are the facts and this
3 is what I base my application on. If the Department finds out that some of that material is not
4 true, like I said there's ...(inaudible)... is built into the Code, so we don't have to swear them in.
5
6 Mr. Robinson: Does that also include their representatives and their presenters?
7
8 Mr. Galazin: Yes it does.
9
10 Mr. Robinson: Okay, thank you.
11
12 Mr. Carnicelli: Any further questions?
13
14 Mr. Robinson: I do.
15
16 Mr. Carnicelli: Okay.
17
18 Mr. Robinson: I'd like to speak to the applicant please.
19
20 Mr. Longworth: Yes.
21
22 Mr. Robinson: Hi, I've owned a property in that neighborhood for over 20 years and I apologize
23 but I've never met you. I'm actually the one with Marvin that put up that first wall and did all that
24 things to get it going and we're all part of the association.
25
26 Mr. Longworth: Right.
27
28 Mr. Robinson: And so, I guess thank you for...I'm not sure what you're doing now that has to be
29 have fundraisers for, I mean...
30
31 Mr. Longworth: Well, you know the front entrance to our property Oceanview Estates—
32
33 Mr. Robinson: Which front? The front that tourists are gonna go through or the front that
34 everybody else goes through?
35
36 Mr. Longworth: The front that everybody goes through that has the big sign says Oceanview
37 Estates.
38
39 Mr. Robinson: Yes, that's the one.
40
41 Mr. Longworth: Since we don't have a homeowners association it's not maintained. The only
42 way it's gonna be maintained and mowed is to have a professional do that or volunteers. We
43 tried volunteers at one time that didn't work. So now I've done fundraisers for the last four and a
44 half years to pay a professional to mow that every month so when you come through there it
45 looks nice and it's maintained.
46

1 Mr. Robinson: So were you part of the homeowners association when it was in existence?

2

3 Mr. Longworth: No.

4

5 Mr. Robinson: Is do you know why the homeowners association is expired?

6

7 Mr. Longworth: Not exactly.

8

9 Mr. Robinson: It's because of all these, 'cause all my awesome neighbors refused to pay into
10 the association to keep the upkeep in doing it so the person who was in charge says I'm tired of
11 doing this for ten years—

12

13 Mr. Longworth: Right.

14

15 Mr. Robinson: And he just stopped.

16

17 Mr. Longworth: Right.

18

19 Mr. Robinson: Okay, and so that's why our association changed. We didn't stop being good
20 neighbors is we just stopped doing everything because nobody else wanted to jump in so I'm
21 you guys picked it up at the back end.

22

23 Mr. Longworth: Right.

24

25 Mr. Robinson: But for 15 years we were doing a lot over there.

26

27 Mr. Longworth: Right and I probably raised over \$3,000 to maintain that front entrance.

28

29 Mr. Robinson: That's fantastic. I probably donated at least half of that myself.

30

31 Mr. Longworth: Thank you, appreciate that.

32

33 Mr. Robinson: You know, but that's not here or there, I guess, I wanted to kinda
34 ...(inaudible)...history of that. I heard in your testimony that you were running an illegal short-
35 term operation is that true?

36

37 Mr. Longworth: We wanted to test the waters because we knew this was going to be a very
38 expensive, in fact we're into this for about \$8,000 to try to get this permit going and time
39 consuming. We wanted to see if that was going to be our cup of tea and soon as we did it and
40 we decided we liked it, we shut everything down and we wanted to do what was right, and what
41 was right is to shut everything down and get legal. There are so many illegal people out there
42 that are just taking advantage of it and we don't want to be part of that. We want to be what's
43 right and that's what we're doing right now.

44

45 Mr. Robinson: Sir, you were a part of that. I don't understand why you were testing the waters.
46 Like I wanted to drive a hundred to see how it feels or I wanted to kind of you know sell alcohol

1 to minors to see how it felt, I mean against the law is against the law. And again, this is just my
2 opinion, you have yours but you purposely broke the law. You're over here stating that you're
3 part of the community but in our community you purposely put in a illegal rental and you're here
4 saying that you're one of the community and I've been in that community and I never...I wonder
5 how it would be to do a short-term rental but I wouldn't break the law to find out. I'd maybe do
6 some research, I maybe would apply and if everybody in Maui thought the way you thought
7 we'd be in serious, serious trouble and I'm not for your application just because of that.

8
9 Mr. Carnicelli: Kahu Hill do you have any questions?

10
11 Kahu Hill: No Chair.

12
13 Mr. Carnicelli: Commissioner Pali any questions? Commissioner La Costa?

14
15 Ms. La Costa: No further.

16
17 Mr. Carnicelli: Commissioner Castro.

18
19 Mr. Castro: No.

20
21 Mr. Carnicelli: Commissioner Tackett?

22
23 Mr. Tackett: I have a question. I don't know who to question it to, but my question is we have
24 these lists of names included in our agenda that aren't weighted to that property but they're still
25 included in this agenda and the problem I have with that is there are a multitude of names on
26 there what if they felt that the reason why they're not showing up today to say their opinions on
27 this is because they feel that they signed in a petition that has some sort of weight or bearing
28 here. So that's kind of a ...it's kind of an odd thing for me to weigh. And so I would like to know
29 what kind of weight are we to put with that multitude of names and is there a way that maybe
30 those that listen or watch this in the future could be, it could be clarified to them so that they
31 know that you cannot blanket one thing, you know because we could have had ten, fifteen or
32 twenty people show up and share testimony, but instead we got a paper with a whole bunch of
33 names on it that I don't know if I should attach any weight to it whatsoever. But the gist of it is
34 that there's a multitude of names on there that don't want what's going on in that neighborhood
35 in that neighborhood and there's already one against it. So that's the problem I'm having with
36 this in front of me. Sorry about that.

37
38 Mr. Carnicelli: Director.

39
40 Ms. McLean: Thank you for the question that's –

41
42 Mr. Mahaney: Can I clarify his...(inaudible-speaking from the audience)...for you.

43
44 Mr. Carnicelli: No.

45

1 Ms. McLean: That's a great question and it really comes to the heart of what one of this
2 Commission's responsibilities is. That's why we have discretionary review. If something is
3 black and white like a building permit, requirements are met, it gets issued. In these cases, the
4 bill that the Council adopted under certain circumstances applications come to you so it's not
5 just black and white. Testimony comes to the Commission in many forms you get it in person,
6 you get written and then written testimony can be individual letters or it can be petitions and
7 there isn't a straightforward answer to your question. It's one of the responsibilities as a
8 Commissioner to take this input in and decide you know do these individual written letters in
9 support have more weight than a petition. Does testimony in person have more weight than
10 testimony in writing. My guidance would be to look at the substance of what the testimony is
11 and then you have to weigh that out.

12
13 Mr. Tackett: Okay, so it does have some weight but whatever weight is put upon it it's up to
14 each individual on this council as to how they read those facts.

15
16 Ms. McLean: And that's why we included it because it does relate to this neighborhood even
17 though it's not specific to this application it does relate to this neighborhood.

18
19 Mr. Tackett: Thank you Michele.

20
21 Mr. Carnicelli: I'm gonna let Corporation Counsel weigh in as well.

22
23 Mr. Galazin: Thank you Chair, thank you Commission Tackett. It's a good question to bring up
24 right now. You've got three of these things today just for B&B Permits. So to recap something
25 we talked a little bit before and I got up there to sort of go over some of the differences the
26 biggest one being the Short-Term Rental Home Permits and B&B Permits are very different in
27 the kinds of requirements that they have the applicants and the kind of things that you are
28 tasked as the Commission to look at. One of the main things in 19.64.030(M) says no bed and
29 breakfast home shall create any impact greater than those theretofore existing in that district
30 and shall conform to the character of the neighborhood. And then in 050, you are supposed to
31 look at the effects of proposed use would have on surrounding uses and the cumulative impacts
32 within the region and then you can put conditions on to mitigate any effects that the proposed
33 land use would have. So really there's a narrow set of things you want to look at and it's going
34 to be what is the impact of this application? And when I've talked before about you get a
35 petition that just might say we don't like visitors in our residential area at all, but they're not
36 specific about what the impacts are or what specifically about having these things in that
37 neighborhood would do. It's really hard for you to take that and say, all right well it's gonna
38 have an impact more than just a residence in there, you're gonna have six bedrooms and each
39 one could be rented out to somebody different, there's gonna be cars coming in and out all the
40 time. That's a very clear impact that somebody might have. If you got something where it's one
41 bedroom is gonna be rented out and it's got plenty of parking space you need to look at
42 something like a blanket petition and say okay is this putting forth specific facts about the
43 impacts of this specific application. If you think it is then you go ahead and cite that if it's a
44 reason for disapproval. But that's what you have to do because in approving or denying we're
45 going to issue a written decision and that written decision can be appealed and it's not
46 everything that you said, it's not everything in your head, what gets appealed is what's down on

1 that paper, and if what's down on that paper isn't supported by the evidence you have it's going
2 to be overturned.

3
4 Mr. Tackett: So that being said, what is the difference with the circle, people of protest within
5 the circle, the difference between the two?

6
7 Mr. Galazin: Thank you. The difference is just in the notification process and 500 feet is a
8 general distance for a lot of Planning's applications and notification requirements. However, it's
9 anybody who would be affected by it can come in even if they're a thousand feet away if they
10 are on the one main access road that goes into they may have a legitimate concern. And so the
11 500 feet is just to provide notification. It's presumed that anybody outside of that region is not
12 going to be so immediately impacted that they need to get special notice. But geographically
13 sometimes it turns out that somebody who is farther away actually feels the impact more than
14 somebody who is closer and the fact that you know you might have topography just separate
15 them in a way that distance doesn't.

16
17 Mr. Tackett: And what is the weight that should be given to the point that Keaka brought up the
18 fact that people are doing something illegal to find out if they can make money doing something
19 legally? I mean is that something that should be weighed into this equation or what is
20 what...how does that fit into the puzzle?

21
22 Mr. Galazin: I will say that if...this is 19.65.065, oh sorry, 64.065, thank you. In subsection (E) it
23 does state that operating a B&B without a permit is prohibited and that operating without a valid
24 permit shall result in a property owner being ineligible to apply for a permit for two years so
25 that's an application provision and that would be something that's up to the Department to
26 determine. If there's no evidence that this has happened then when the application's received
27 the Department won't bounce it. If they do have evidence that this has occurred I'll leave it to
28 the Director to explain what that process is.

29
30 Ms. McLean: That provision took effect and gave a grace period for people to apply and this
31 applicant came in while it was still lawful to do so. Had this application come in the door today
32 we would not have been able to process it and they would have been banned from applying but
33 that was not the law in effect at the time they applied.

34
35 Mr. Carnicelli: Clear as mud?

36
37 Mr. Tackett: Absolutely.

38
39 Mr. Robinson: Chair?

40
41 Mr. Carnicelli: Commissioner Robinson.

42
43 Mr. Robinson: Director what is that date please for the grace period and when it takes effect so
44 as these future things come up?

45

- 1 Ms. McLean: The date I have in my head is the end of September but I would need to verify
2 that. I don't know if David has it on his iPad.
3
- 4 Mr. Robinson: Of 2018 or 17?
5
- 6 Ms. McLean: Yes.
7
- 8 Mr. Robinson: 18?
9
- 10 Mr. Carnicelli: While he is...oh, he's got it.
11
- 12 Mr. Galazin: Thank you Chair. It was approved on July 11, 2018. I'll check for the effective
13 date is though. And then it took effect on its approval so it be July.
14
- 15 Ms. McLean: Exception...(inaudible)...
16
- 17 Mr. Galazin: There is, yeah, within the ordinance itself there is an exception and I could...iPad
18 and look through that for just a second.
19
- 20 Ms. Furukawa: Is it okay if I chime in? Actually the grace period was from July 1, 2016 to
21 December 31, 2016. This application came in 2018 and at that point we did check into
22 Hoffman's claim that there were operating illegally. We did go ahead and file an RFS and our
23 inspectors were looking into it but we checked with Hoffman and there was no evidence that he
24 was illegally operating. So I just learned of this today so that's why it was forwarded to you.
25
- 26 Mr. Carnicelli: So my question then is for either the Director and/or Corporation Counsel is we
27 have the applicant now on the record stating that they did.
28
- 29 Ms. Furukawa: Yes.
30
- 31 Mr. Carnicelli: So now I guess how do we...how do we handle that since...I mean, since it is
32 upon application we didn't know about it when he applied.
33
- 34 Ms. Furukawa: Yes.
35
- 36 Mr. Carnicelli: But as of you know, nine something this morning we did find out about that. So
37 Corporation Counsel this is what you're paid for.
38
- 39 Mr. Galazin: Thank you Chair. My advice would be to take a recess.
40
- 41 Mr. Carnicelli: Recess on the call of the Chair.
42
- 43 A recess was called at 10:09 a.m., and the meeting was reconvened at 10:26 a.m.
44
- 45 Mr. Carnicelli: The Maui Planning Commission meeting of April 23rd is now back in session. I
46 guess I'm deferring to the Director or am I deferring to Corporation Counsel?

1
2 Mr. Galazin: Thank you Chair. You can continue discussion if you want. I don't know if you
3 want to go straight to a recommendation from the Department. If you have any more questions
4 for anybody you can do that, but you might want to get the recommendation and then go from
5 there.

6
7 Mr. Carnicelli: That sounds good. So Tara after taking the break and going over everything at
8 this point would you please let us know where the Department stands on this?
9

10 Ms. Furukawa: Okay, so given the new information that came up about operations you know
11 we're changing our recommendation to denial just because we didn't know about it ahead of
12 time.
13

14 Mr. Carnicelli: Okay, thank you. As the Commission knows that is a recommendation. Doesn't
15 mean that we have to proceed that way, we can. However, at this point in time you know that is
16 new information for all of us. So with that being said I guess where I'll go as the Chair is saying
17 do we all have enough information to make a decision at this time or do you have more
18 questions that you would like to ask? Commissioner La Costa.
19

20 Ms. La Costa: Thank you Chair I have one more question for the applicant please.
21

22 Mr. Carnicelli: Okay, Larry.
23

24 Mr. Longworth: Yes.
25

26 Ms. La Costa: Thank you Mr. Longworth. For how long did you operate your short-term rental
27 before you shut it down?
28

29 Mr. Longworth: Approximately a year.
30

31 Ms. La Costa: Thank you.
32

33 Mr. Carnicelli: Larry, could you give me the approximate dates?
34

35 Mr. Longworth: I'd have to look that up.
36

37 Mr. Carnicelli: Approximate?
38

39 Mr. Longworth: I would say it was a year from June to June or so.
40

41 Mr. Carnicelli: Of what year to year?
42

43 Mr. Longworth: 17 to 18.
44

45 Mr. Carnicelli: Okay. Thank you. Commissioner Pali.
46

1 Ms. Pali: Question for the applicant. Actually I would just want to thank you actually for just
2 your honesty. I just...I'm sorry that honesty at this point may have done opposite effect but for
3 the future moving forward I know I can count on you for honesty and I want you to know that
4 goes a long way so thank you.

5
6 Mr. Longworth: Thank you. And I, that's what I want be, I want to do what's right and I can't
7 live with myself if I'm telling a lie.

8
9 Unidentified Speaker: Can I say something?

10
11 Mr. Carnicelli: No. Anybody else have questions? Okay, at this point what we will do is I will
12 ask for a motion from the floor. Commissioner Robinson.

13
14 Mr. Robinson: I'd like to make a motion to go with the Department's suggestion.

15
16 Mr. Carnicelli: Okay, so it's been moved to adopt the Department's recommendation.

17
18 Ms. Pali: I second.

19
20 Mr. Carnicelli: Seconded by Commissioner Pali. Commissioner Robinson.

21
22 Mr. Robinson: I'd like to speak to the motion. I'd like to follow the recommendation of you know
23 the law is the law. It is good that they did speak up and tell the truth. I think as a Commission I
24 think once we start getting outside the lines it's gonna get a little harder and we're gonna get
25 contested in more and more areas. Hopefully they find something else adequate for revenue
26 maybe long-term rental. Thank you.

27
28 Mr. Carnicelli: Commissioner Pali.

29
30 Ms. Pali: Yeah I think my second is just because it's clear that the law is clear about the illegal
31 rental prior to applying and so it seems that has been broken due to the testimony and that's
32 because that is why I seconded the motion. Thank you. Kahu Hill would you like to speak to
33 the motion?

34
35 Kahu Hill: Yes, mahalo Chair. With what Keaka said and Kellie said as well we have to follow
36 the law and the law states about this two years and I really do appreciate as well the honesty
37 that Lawrence has given today and I, as well, stand with him.

38
39 Mr. Carnicelli: Thank you. Commissioner La Costa.

40
41 Ms. La Costa: I echo and I am in consensus with the other Commissioners.

42
43 Mr. Carnicelli: Thank you. Commissioner Castro.

44
45 Mr. Castro: I want to thank Mr. Longworth for his honesty but it's all about complying and I
46 think we have to follow the rules as the way they are.

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Mr. Carnicelli: Thank you. Commissioner Tackett.

Mr. Tackett: Yeah I would also like to express my appreciation for him telling the truth and I think that going forward that it's important that people know that when they come up whether they're for or against it that these are the criteria. So if they're against it and they have proof 'cause from what it sounds a lot of that neighborhood is doing illegal vacation rentals and here we got people trying to do the right thing. So what matters is is that there's some sort of proof for it. So I think if you're really...if it's really important to you to keep your neighborhood clean of that type of thing then you should make a record if you know people are doing that type of illegal activity. That way when they do come up that you can have something tangible that says hey, that this is illegal opportunity and what that will do is that will allow these people that try to come in and do the right thing, it will be easier for people to come in and do the right thing because I think the reason why a lot of people are having a hard thing doing the right thing because public opinion is already skewed because of the blatant abuse that goes on outside of the people that are doing the right thing. So I think the faster we get ahold of the ones that are doing it the wrong way the easier it will be for public opinion to accept in the neighborhoods people that do things the right way. So anyways thank you so much.

Mr. Carnicelli: Thank you Commissioner. And I just wanna add you know Larry and Jacky I think a lot of times we like to reward people that do it the right way, and you guys have tried to do it the right way from, you know, all accounts. This is a microcosm of kind of what's going on on our island in all of our communities right now. We have people that are in agreement disagreeing. You know, it's very apparent that the neighborhood doesn't really want B&Bs. They don't want vacation rentals. It's pretty apparent that that's what the neighborhood doesn't want, however they really kind of okay with yours and yet you know they couldn't help but want to speak against, you know, it in general. So you know we come to this thing. The other piece of this that I think is important that we note is the County Counsel passed it and you know or we I guess as a County changed the County Charter to be able to fine these things \$20,000 and \$10,000 a day. It's like this is a serious deal now. This is another piece of that puzzle with people doing illegal vacation rentals. You do an illegal one you're probably not going to get a permit. So this is just another piece of you know the puzzle of what we're trying to do to I guess solve the affordable housing crisis and everything else that we got going on. So as much as I really do respect and honor the way that you went about this, the Longsworths and the fact that you were 100 percent truthful that I say thank you. To that, I guess Director if you would restate the motion please?

Ms. McLean: The motion is to deny the permit and I would add that this is based on Maui County Code Section 19.64.065(E) because the applicant is ineligible to apply because they have been operating and are subject to the two-year ineligibility.

Mr. Carnicelli: Thank you for that clarity Director. All those in favor of the motion please raise your hand. That's six. Unanimous. The motion passes. Corporation Counsel I guess you'd be directed to write the Decision and Order? Okay, thank you.

It was moved by Mr. Robinson, seconded by Ms. Pali, then unanimously

1
2 **VOTED: To Deny the Bed and Breakfast Permit as Recommended by the**
3 **Department based on Maui County Code, Section 19.64.065(E).**

4
5 **(Assenting – K. Robinson, K. Pali, A. Hill, C. Tackett, S. Castro,**
6 **P D. La Costa)**
7 **(Excused - T. Gomes)**

8
9
10 Mr. Carnicelli: You guys wanna just go to the next one since we just kinda got out of a break?
11 Go ahead Livit?

12
13 Ms. Callentine: Mr. Chair may I have a few minutes to...I have to download the applicant's
14 power point from the email so I need a few minutes to set it up.

15
16 Mr. Carnicelli: Okay, we will take a recess for four minutes is that long enough?

17
18 Ms. Callentine: ...(inaudible)...

19
20 Mr. Carnicelli: Recess for four minutes.

21
22 A recess was called at 10:36 a.m., and the meeting was reconvened at 10:42 a.m.

23
24 Mr. Carnicelli: Planning Commission meeting April 23rd is now back in session. Director.

25
26 Ms. McLean: Thank you Chair, the next public hearing item is a request from Amy Jeananne
27 Polsky for a Bed a Breakfast Home Permit for Beauty on Northshore, a two bedroom B&B in the
28 County R-1 Residential District and the State Urban District on property at 54 Puukoa Place in
29 Haiku at TMK: 2-7-006:124. Livit Callentine is the project planner.

30
31 **2. MS. AMY JEANANNE POLSKY requesting a Bed and Breakfast Home**
32 **Permit for Beauty on Northshore, a two bedroom B&B in the County R-1**
33 **Residential District and the State Urban District on property located at 54**
34 **Puukoa Place, Haiku, Island of Maui, TMK: (2) 2-7-006:124. (BBPH**
35 **T2018/0004) (L. Callentine)**

36
37 **The Maui Planning Commission is the approving authority for the Bed and**
38 **Breakfast Home Permit because "an existing bed and breakfast home is**
39 **operating on a lot within a five hundred-foot distance from the lot on which**
40 **the bed and breakfast home is proposed." §19.64.050(A)3(c), Maui County**
41 **Code.**

42
43 Ms. Livit Callentine: Good morning Commissioners. This item has come to you for review
44 because there is one B&B operating within 500 feet of the proposed B&B. The applicant is
45 proposing a two-bedroom B&B in a single family dwelling along Puukoa Place in the Puanoa
46 Subdivision in Haiku. The applicant will reside upstairs in the same dwelling. The consultant for

1 the project Susan Netra Helperin and she will be presenting you the project and responding to
2 any questions you might have regarding the application as well as I will when you have
3 questions for staff. Thank you.

4
5 Mr. Carnicelli: Netra.

6
7 Ms. Susan Netra Helperin: Okay so again, the computer's having trouble showing—

8
9 Mr. Carnicelli: Please identify yourself just for the record.

10
11 Ms. Helperin: Okay, Netra Helperin. I am a consultant for Amy Polsky for Northshore, Beauty
12 in Northshore B&B. So, okay, so here is the subject property. This is in Haiku and then there's
13 the one property that has a B&B Permit that's why we're here at the planning commission.
14 Okay, and then here is the subject property and then here's the airport just to give you a
15 context. Let's see...I didn't realize it's hard for you to see that but anyway Hookipa Beach Park,
16 Mama's Fish House, Baldwin Beach Park, so anyway that's where it's located.

17
18 Okay, the slides are not showing. You have all those slides. I'm very sorry. Southside, yeah,
19 so it's not unfortunately showing. You have...I mean, I could show you on my small laptop here
20 if that would be...what would be better to show on my small laptop or have you look at your
21 slides, your packets?

22
23 Mr. Carnicelli: We have all the information in front of us so you can walk through it and we have
24 the slide presentation so why don't you go ahead and move forward and we can follow along.

25
26 Ms. Helperin: So basically this is beautiful home, very well decorated, everything's clean and
27 taken care of. This...there's been no as far as I'm aware of objection from the neighbors.
28 Nothing Livit?

29
30 Ms. Callentine: No.

31
32 Ms. Helperin: No, so no objections. Yeah, she's quiet, keeps to herself, keeps her yard clean.
33 This would not impact the neighborhood in a negative way and that's why I'm sure that nobody
34 objected. So I think would be a great example of a B&B in a rural area. And you know, all the
35 other reasons that you know tourists they can then support all of the establishments Haiku,
36 Paia, Makawao because there are no hotels there. So it's a good place to support that local
37 economy there. So that's it.

38
39 Ms. Callentine: Commissioners may I just interject that on this particular slide that you can see,
40 the picture on the left is labeled kitchen. When this application came to me—

41
42 Ms. Helperin: Sorry.

43
44 Ms. Callentine: --there was a full kitchen in the unit and I made them take out the full size
45 refrigerator and take out the full size sink. They complied immediately and dropped it down to a
46 small sink. So really she just mislabeled that.

1
2 Ms. Helperin: Yeah, I'm sorry.
3
4 Ms. Callentine: It's just a wet bar.
5
6 Ms. Helperin: My mistake that should say wet bar.
7
8 Mr. Carnicelli: Does that conclude your presentation?
9
10 Ms. Helperin: Yes.
11
12 Mr. Carnicelli: Okay, thank you. Do we have anybody signed up? Okay. Is there anybody...at
13 this point we're gonna go ahead and open up public testimony. Is there anybody who would like
14 to speak to this item? Seeing none, if the Commission is okay we will close public testimony.
15 Seeing no objections public testimony is now closed. We will go to questions from the
16 Commission. I'll start with you, Christian, Commissioner Tackett do you have any questions in
17 round one?
18
19 Mr. Tackett: No, I have no questions.
20
21 Mr. Carnicelli: Commissioner Castro any questions?
22
23 Mr. Castro: No.
24
25 Mr. Carnicelli: Commissioner La Costa.
26
27 Ms. La Costa: Thank you Chair. This is for the applicant please.
28
29 Ms. Amy Polsky: Aloha my name is Amy Polsky.
30
31 Ms. La Costa: Thank you. Have you previously rented your property short-term?
32
33 Ms. Polsky: No.
34
35 Ms. La Costa: Thank you very much. Appreciate it.
36
37 Mr. Carnicelli: Commissioner Pali. Kahu Hill.
38
39 Kahu Hill: For the applicant. I'm just wondering how long the advertising was up before it was
40 called to cease the internet.
41
42 Ms. Polsky: It was...the advertising came up immediately and I desisted.
43
44 Kahu Hill: Okay, mahalo.
45
46 Mr. Carnicelli: Commissioner Robinson.

1
2 Mr. Robinson: Aloha Ms. Polsky. I'm sorry, if you could...information so, is you got cited but
3 you never did rent out your property is that what I just heard?

4
5 Ms. Polsky: I did not get cited. I was, I was given a letter—

6
7 Mr. Robinson: I'm sorry, a Notice of Warning is that correct?

8
9 Ms. Polsky: Yes.

10
11 Mr. Robinson: But you didn't rent it out. You just started advertising before somebody came on
12 you did that.

13
14 Ms. Polsky: Yes.

15
16 Mr. Robinson: Thank you so much. Thank you. Chair I have a question.

17
18 Mr. Carnicelli: Sure.

19
20 Mr. Robinson: And Livit it's for you. Is this a adjoining area that we're having because I see
21 where it had its own little kitchen or is it just a room inside the home?

22
23 Ms. Callentine: Yes, thank you for the question. This is a room inside of the home. And the
24 B&B area occupies the entire, well not the entire, almost the entire lower floor of the home and
25 the owner lives upstairs on the second floor.

26
27 Mr. Robinson: Thank you Livit.

28
29 Mr. Carnicelli: Commissioner Tackett.

30
31 Mr. Tackett: I have nothing.

32
33 Mr. Carnicelli: Good. Commissioner Castro.

34
35 Mr. Castro: Nothing.

36
37 Mr. Carnicelli: Commissioner La Costa.

38
39 Ms. La Costa: No Chair.

40
41 Mr. Carnicelli: Commissioner Pali.

42
43 Ms. Pali: For the applicant please. If I could just hear a summary in your own words the reason
44 you would like to do this type of use in your property please.

45

1 Ms. Polsky: I work from home as an artist and I have a really...we have a tight knit community,
2 all of the neighbors are very close, most of us work from home. There are a lot of long-term
3 rentals in the neighborhood as well and it's always...there's a lot of parking issues so I feel that
4 having a B&B will keep that under control and it's kind of balancing out the layout of the
5 neighborhood.

6
7 Mr. Carnicelli: Kahu Hill. Commissioner Robinson.

8
9 Mr. Robinson: I'm good, Chair. Thank you.

10
11 Mr. Carnicelli: At this point in time I'm just going to go ahead and ask the Commission do you
12 have enough information at this point in time to make a decision or do you have other discovery
13 that you would need? Commissioner La Costa.

14
15 Ms. La Costa: Thank you Chair. So would you clarify your statement you just made about the
16 parking?

17
18 Ms. Polsky: Yes, there's a lot of long-term rentals on my street, it's a cul de sac and so there
19 tends to be always issues with people parking on the street where they shouldn't and so I feel
20 that this will...in order to keep the traffic off having a B&B is more beneficial than having a long-
21 term rental in my area

22
23 Ms. La Costa: And your driveway does support the one car that will be there?

24
25 Ms. Polsky: Yes.

26
27 Ms. La Costa: And would it support two if there were to be two cars with guests?

28
29 Ms. Polsky: It supports four. I had to widen the driveway two times.

30
31 Ms. La Costa: Thank you very much. Appreciate that.

32
33 Mr. Carnicelli: Commissioner Pali.

34
35 Ms. Pali: Yes, one more question. To go back to the Notice of Warning and request to correct
36 apparent violations. When you got this warning was it then brought to your attention that oh, I
37 may need a permit? I want to know if this was helpful in communicating to you that you needed
38 a permit or did you already have an idea prior needing a permit. What...how did that go down?

39
40 Ms. Polsky: No, it immediately alerted me that I needed to start a permit process.

41
42 Ms. Pali: Okay, you were unaware.

43
44 Ms. Polsky: Yes.

45
46 Ms. Pali: Okay, thank you.

1
2 Mr. Carnicelli: Great. Any other questions from the Commission. Okay, at this point, Livit I
3 would like to have the recommendation from Staff please.

4
5 Ms. Callentine: There is one permitted bed and breakfast operation located within 500 feet of
6 the property. There are no permitted short-term rentals. As of December 31, 2018 there were
7 45 permitted B&Bs in the Paia-Haiku Community Plan area with a cap of 88. There were also
8 45 short-term rental permits approved in the region and the cap for short-term rentals is 88 as
9 well. There is one open RFS for service filed in...that's request for service filed in 2014 and that
10 was for advertising for short-term rental. The applicant ceased all advertising and the RFS
11 while still open for monitoring purposes is inactive. There have been no protest letters received
12 by the Department, there've also been no letters from neighbors in support of the proposed
13 request. Because the application meets the criteria for a B&B Permit the Department is
14 recommending approval. The Department's also asking that the Maui Planning Commission
15 authorize the Director of Planning to transmit said written decision and order on behalf of the
16 Planning Commission.

17
18 Mr. Carnicelli: Thank you Livit. Commissioners do I have a motion?

19
20 Mr. Robinson: So move.

21
22 Mr. Castro: Second.

23
24 Mr. Carnicelli: Moved by Commissioner Robinson, seconded by Commissioner Castro.
25 Commissioner Robinson.

26
27 Mr. Robinson: I'm all good Chair.

28
29 Mr. Carnicelli: Commissioner Castro.

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

32
33 Mr. Carnicelli: Okay. Would anybody else like to speak to the motion? Seeing none, Director.

34
35 Ms. McLean: Thank you Chair, the motion is to approve the B&B Permit subject to the
36 conditions provided in your staff report.

37
38 Mr. Carnicelli: All in favor of the motion please raise your hand. That is six ayes, unanimous.
39 Motion carries. Congratulations.

40
41

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

43

44 **VOTED: To Approve the Bed and Breakfast Permit as Recommended by the**
45 **Department with the Conditions in the Staff Report.**

46

1 (Assenting – K. Robinson, S. Castro, K. Pali, A. Hill, C. Tackett,
2 P D. La Costa)
3 (Excused - T. Gomes)
4

5 Mr. Carnicelli: Onto the next public hearing item, Director.
6

7 Ms. McLean: Thank you Chair. Next we have a request for a Bed and Breakfast Home Permit
8 submitted by Robert A. Swift for a one-bedroom B&B in the County R-1 Residential District and
9 State Urban District on Approximately 18,123 square feet of land located at TMK: 2-6-013:007,
10 Unit 0002 at 23 Meha Place in Paia. Ryan Quigless is the project planner.
11

- 12 **3. ROBERT A. SWIFT requesting a Bed and Breakfast Home Permit to operate**
13 **a one bedroom B&B in the County R-1 Residential Zoning District and State**
14 **Urban District on Approximately 18,123 square feet of Land Located at**
15 **Maui Tax Map Key (2) 2-6-013:007/0002, 23 Meha Place, Paia, Island of Maui,**
16 **Hawaii. (BBPH T2018/0006) (R. Quigless)**
17

18 **The Maui Planning Commission is the approving authority for the Bed and**
19 **Breakfast Home Permit because "an existing bed and breakfast home is**
20 **operating on a lot within a five hundred-foot distance from the lot on which**
21 **the bed and breakfast home is proposed." §19.64.050(A)3(c), Maui County**
22 **Code.**
23

24 Mr. Ryan Quigless: Aloha and good morning.
25

26 Mr. Carnicelli: Ryan, I forgot to ask if you needed time to set up.
27

28 Mr. Quigless: Two minutes.
29

30 Mr. Carnicelli: Okay. Recess for two minutes.
31

32 A recess was called at 10:55 a.m., and the meeting s reconvened at 10:57 a.m.
33

34 Mr. Carnicelli: ...April 23, 2019 is back in session...Ryan.
35

36 Mr. Quigless: Good morning, Director, Chair, Commissioners. My name is Ryan Quigless,
37 Planner with the Maui County Planning Department. We meet here today to review and request
38 to review the request for a Bed and Breakfast Home Permit by applicant Robert Swift mentioned
39 earlier and now confirmed to operate a one-bedroom bed and breakfast in the County R-1,
40 Residential zoning, State Urban District on approximately 18,123 square feet of land located at
41 TMK: (2)-2-6:013/0007, 0002, 23, Meha Place, Paia, Maui, Hawaii.
42

43 On this item the Maui Planning Commission is the approving authority for the Bed and Breakfast
44 Home Permit because an existing bed and breakfast home is operating within a lot within
45 500 foot distance from the lot on which this bed and breakfast home is proposed. Pursuant to
46 Maui County Code, Chapter 19.64.050(A)(3)(C).

1
2 There is one, I'll go into a brief description of the property. There is one main dwelling on the
3 property. It's proposed for a B&B built in 2014. In addition to four bedrooms, the dwelling has
4 three bathrooms, one half bathroom, one kitchen, living room, family room and deck. The site
5 plan, parking plan, and floor plan are attached in your reports as Exhibit 4 – 6. The applicant
6 will reside and manage the main dwelling and also manage the B&B.

7
8 As of April 2, 2019 there is one other permitted B&B operation within 500 feet of the subject
9 property as mentioned earlier and one other pending B&B operation shown in Exhibit 7 of your
10 report. There are two permitted short-term rental homes within 500 feet of the property also
11 shown in Exhibit 7. And as of December 31, 2018, there are 45 permitted bed and breakfast
12 homes in the Paia-Haiku Community Plan region. The bed and breakfast cap for the Paia-
13 Haiku Community Plan region is 88 and as of December 31, 2018 there are 45 permitted short-
14 term rental homes in the Paia-Haiku Community Plan region. The short term rental cap for the
15 Paia-Haiku Community Plan region is 88 also.

16
17 The Planning Department records some historical background. I know that RFS is a hot topic,
18 I'd like to make that clear now that the Planning Department records have one filed Request for
19 Service on the property. The RFS is No. 180000867 regarding a suspected illegal rental
20 operation. The RFS was assigned to the Zoning and Enforcement Division of the Planning
21 Department who sent inspectors to visit the property twice and found no evidence of violation
22 and the RFS was closed. It's also provided for you as Exhibit 8.

23
24 The owner is also here with us today. So do you have any questions for either myself or the
25 owners at this time?

26
27 Mr. Carnicelli: Right. Was the owner going to do a presentation or representative thereof?

28
29 Mr. Quigless: No. There's a supplemental packet that I just handed around to all of you which
30 has some information about the applicant. Most of the information is provided in reports.

31
32 Mr. Carnicelli: Okay, great. At this point what we'll do is we'll have you sit down and we'll go to
33 public testimony and then we'll come back to you guys for Q and A.

34
35 Mr. Quigless: Thank you.

36
37 Mr. Carnicelli: So at this point in time is anybody...I don't believe anybody signed up for this
38 one. Is there anybody that would like to testify on this particular item? Seeing none, then with
39 no objections we'll close public testimony. Okay, public testimony is now closed. Now you can
40 get back up Ryan. Questions, we'll start with you Commissioner La Costa.

41
42 Ms. La Costa: Thank you Chair. This is for the applicant please.

43
44 Mr. Carnicelli: Okay, go ahead and identify yourself for the record please.

45
46 Mr. Robert Swift: I am Robbie Swift, Robert Swift.

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Ms. La Costa: Thank you and you are one heck of a windsurfer. I've seen you.

Mr. Swift: Thank you.

Ms. La Costa: So let me ask you, the RFS was filed because someone suspected you were renting.

Mr. Swift: That wasn't me.

Ms. La Costa: Okay, so you've never rented your home short-term.

Mr. Swift: No, I mean I have lots of friends that come and go but I've never rented my home. I rented it once long term for nine months with some friend.

Ms. La Costa: Okay, thank you so much.

Mr. Carnicelli: Commissioner Castro.

Mr. Castro: No questions.

Mr. Carnicelli: Commissioner Tackett.

Mr. Tackett: No questions.

Mr. Carnicelli: Commissioner Robinson.

Mr. Robinson: Hi, nice home, good job.

Mr. Swift: Thank you.

Mr. Robinson: The question I have is with your traveling does your family travel with you and if they do or when they do do you plan on not renting it out during that time?

Mr. Swift: My family do come with me sometimes and yeah, when we're not here we probably might won't rent it out just 'cause it be too much hassle. Actually what we do with the downstairs normally is my wife's mom and dad come every year for three months and they normally stay down there that's why we can't do long-term either because we don't want to have it unavailable for them.

Mr. Carnicelli: Kahu Hill.

Kahu Hill: Mahalo Chair. Yes, Robbie it's a nice house and you are a great windsurfer.

Mr. Swift: Thank you.

1 Kahu Hill: I had a couple questions. I wanted to know the minimum stay that someone could
2 have at the B&B.

3
4 Mr. Swift: I haven't really thought about that yet. I'm probably not gonna make it too short
5 because it would just be a hassle to have people changing over a lot. I can imagine mainly it
6 will be just my windsurfing friends probably coming. They normally stay for a month or so, but I
7 don't know what the minimum will be.

8
9 Kahu Hill: Okay, and the other that I have is about Meha Place about the left turns. It's a very
10 busy highway, Hana Highway and I'm just seeing coming from Hookipa and then turning into
11 your street and then also the traffic as well, but I'm also wanting coming out of Meha Place the
12 left turns onto Hana Highway. So could you talk about the traffic?

13
14 Mr. Swift: Yeah, it's a street that like busy times of day it's kind of difficult to get in and out, but I
15 mean it's not problem. There's a lot of people that live on the street and come and go. There is
16 a bus stop right there and there's ...(inaudible)... crossing and people should be going slow but
17 unfortunately sometimes people don't go that slowly 'cause they don't see the
18 ...(inaudible)...crossing, but it's not really an issue, there's a lot of people that live there and
19 we'll make it work.

20
21 Kahu Hill: So it's wonderful people that live in the area for your guests so they won't be
22 permanent residents here. Will you be educating them and just could you educate them
23 about—

24
25 Mr. Swift: Well, we will. We have two small kids too and I don't really want people driving fast
26 on Meha Place because everybody around us has small kids so I think we'll definitely educate
27 them in their driving procedures.

28
29 Kahu Hill: Mahalo Robbie.

30
31 Mr. Carnicelli: Commissioner Pali.

32
33 Ms. Pali: Just a quick observation, my co-chairs have already answered or asked my question
34 so you've answered them. And I would just like to see if you'd be willing to commit in the house
35 policies that you'll have available for your guests that you would include the high traffic times
36 coming in and out of Meha Place.

37
38 Mr. Swift: Yes.

39
40 Ms. Pali: And also educate them about the marine life in the area. They are gonna use the
41 bays. I think that we've all agreed as a Commission that that's important to us with the proper
42 type of chemicals and sunscreens and things that they're—

43
44 Mr. Swift: Yeah, I use sunscreen that's reef safe as well. I'm sponsored by a sunscreen
45 company so they...that's important to me too.

46

1 Mr. Carnicelli: Surprised you didn't say the name, give them a plug. Commissioner La Costa
2 any questions?

3
4 Ms. La Costa: I'm finished. Thank you.

5
6 Mr. Carnicelli: Commissioner Castro.

7
8 Mr. Castro: None.

9
10 Mr. Carnicelli: Commissioner Tackett.

11
12 Mr. Castro: Nothing.

13
14 Mr. Carnicelli: Commissioner Robinson. Kahu Hill. Commissioner Pali. Oh, okay. Thank you.
15 At this point in time, Ryan if you would give us the recommendation. Before we do that, is there
16 something specifically that you want to add Commissioner Pali or you would like to add.

17
18 Ms. Pali: Yes, just that he include, a condition would be to include high traffic volume coming
19 out the Meha Place so it be probably the morning traffic and the afternoon traffic, like identify
20 those times for the guests specifically in his house rules or policies.

21
22 Mr. Carnicelli: Kahu Hill.

23
24 Kahu Hill: I would like to add to that condition to educate them about the left turns coming in
25 and out of Meha Place.

26
27 Mr. Carnicelli: Okay, Director's fervently scribbling. I actually just is also ask you Robbie, if
28 actually just for the record you gotta come up and are you okay with this, condition?

29
30 Mr. Swift: Yeah, I'm okay with that, yeah.

31
32 Mr. Carnicelli: Okay, thank you. Director.

33
34 Ms. McLean: Not my best work but something to the effect of the applicant shall inform guests
35 about traffic conditions and safety on Hana Highway including left turns and peak travel hours
36 and speeds.

37
38 Mr. Carnicelli: I see a lot of nodding going on. So okay, so then now we'll go to you Ryan and
39 the Department's recommendation.

40
41 Mr. Quigless: The Maui County Planning Department recommends approval submit to the
42 following 17 standard conditions and the addition of the two new conditions, cultural condition
43 and traffic, correct.

44
45 Ms. McLean: Just the one addition.

46

1 Ms. La Costa: Cultural is 17.

2

3 Mr. Quigless: Just the one, just the one additional condition. Did you want me to go over the 17
4 conditions?

5

6 Mr. Carnicelli: No, that's okay. That was part of our packet. So at this point I guess I'll request
7 a motion from the Commission. Commissioner La Costa.

8

9 Ms. La Costa: I make a motion to approve the permit as put forth by the Planning Department.

10

11 Mr. Carnicelli: So moved by Commissioner La Costa. Is there a second. Second by
12 Commissioner Tackett. Commissioner La Costa would you like to speak to the motion please?

13

14 Ms. La Costa: No need.

15

16 Mr. Carnicelli: No need. Commissioner Tackett.

17

18 Mr. Tackett: Just looks like a low impact bed and breakfast so I'll be supportive of it.

19

20 Mr. Carnicelli: Great. Commissioner Castro would you like to speak to the motion?

21

22 Mr. Castro: Ditto on Commissioner Tackett.

23

24 Mr. Carnicelli: Let the record reflect that there was a ditto. Commissioner Robinson.

25

26 Mr. Robinson: I would like to say something. Mr. Swift, Paia has a...unless you've been under
27 a rock lately has had a lot of...you can sit, you don't need to answer...has had a lot of angst
28 regarding short-term rentals, B&Bs and housing and things like that. There's not much more
29 local than building your own house on a piece of land and that is weighing my decision. Also,
30 I'm hoping that your name you can get a nice share of rent for your B&B on top your property
31 with your fellow windsurfers instead of them staying for free all these years, you can tell them to
32 visit the website and they can stay there and we can get some tax dollars off of that.

33

34 Mr. Swift: Absolutely.

35

36 Mr. Robinson: So I wish you luck and I know since your resident there you will try to take care
37 of this area. Thank you.

38

39 Mr. Carnicelli: Kahu Hill.

40

41 Kahu Hill: I think it sounds great that your friends are coming and that you're all over the world
42 and I look forward to you seeing the proclamation that which has gone through that we did
43 educating about the shorelines and the ocean and how to be conscious of the reefs as well
44 windsurfing. Mahalo.

45

46 Mr. Carnicelli: Commissioner Pali. Great. I guess at this point, Director.

1
2 Ms. McLean: The motion is to approve the B&B Permit subject to the 17 conditions in the staff
3 report and then adding an 18th condition, the applicant shall inform guests about traffic
4 conditions and safety on Hana Highway including left turns and peak travel hours and speeds.

5
6 Mr. Carnicelli: All those in favor of the motion please raise your hand. That is six ayes, passes
7 unanimously. Congratulations.

8
9 Mr. Quigless: Thank you Commission.

10
11 **It was moved by Ms. La Costa, seconded by Mr. Tackett, then unanimously**

12
13 **VOTED: To Approve the Bed and Breakfast Permit as Recommended by the**
14 **Department subject to the 17 conditions in the Staff Report and the**
15 **Addition of Condition 18 - The applicant shall inform guests**
16 **regarding traffic conditions and safety on Hana Highway including**
17 **left turns, peak travel hours, and speeds.**

18
19 **(Assenting – P D, La Costa, C. Tackett, K. Pali, A. Hill, K. Robinson,**
20 **S. Castro)**

21 **(Excused - T. Gomes)**

22
23 Mr. Carnicelli: Director next public hearing item.

24
25 Ms. McLean: Thank you Chair. Before you is a Petition for Reconsideration submitted by
26 Gregory Kugle and Joanna Zeigler of Damon Key Leong Kupchak Hastert, attorneys for
27 Mr. Rodell Notbohm regarding the Commission's final Decision and Order denying the
28 STRH Permit application submitted by Mr. Notbohm to operate Imi Ola STRH, a six-bedroom
29 STRH in the R-3, Residential District on property adjacent to Keawakapu Beach and located at
30 3066 S. Kihei Road in Kihei at TMK: 2-1-010:025.

31
32 **4. GREGORY W. KUGLE and JOANNA C. ZEIGLER of DAMON KEY LEONG**
33 **KUPCHAK HASTERT, attorneys for MR. RODELL NOTBOHM, submitting a**
34 **Petition for Reconsideration regarding the Commission's final Decision**
35 **and Order, denying the the Short-Term Rental Home Permit application**
36 **submitted by RODELL NOTBOHM, to operate Imi Ola STRH, a six (6)**
37 **bedroom STRH in the R-3 Residential District, on property adjacent to**
38 **Keawakapu Beach and located at 3066 S. Kihei Rd., Kihei, HI 96753, TMK (2)**
39 **2-1-010:025. (STKM T2018/0005) (J. Burkett)**

40
41 **The Maui Planning Commission held a public hearing regarding the subject**
42 **application on November 27, 2018, at the conclusion of which the**
43 **Commission voted to deny the subject application. The Commission**
44 **adopted its written Findings of Fact, Conclusions of Law and Decision and**
45 **Order denying the application at its regular meeting on March 12, 2019.**
46

1 ***An Executive Session may be called on this item in order for the**
2 **Commission to consult with its attorney on questions and issues**
3 **pertaining to the Commission's powers, duties, privileges, immunities, and**
4 **liabilities.**
5

6 Ms. McLean: I will read into the record that the Commission held a public hearing regarding the
7 subject application on November 27, 2018, at the conclusion of which the Commission voted to
8 deny the subject application. The Commission adopted its written Findings of Fact, Conclusions
9 of Law and Decision and Order denying the application at its regular meeting on
10 March 12, 2019. And Mr. Kugle is here today representing the petitioner.
11

12 Mr. Carnicelli: Mr. Kugle—
13

14 Mr. Robinson: Chair, I'd like to request an executive session at this time.
15

16 Mr. Carnicelli: Is that a motion?
17

18 Mr. Robinson: I have a motion to request an executive session at this time.
19

20 Mr. Castro: Second.
21

22 Mr. Carnicelli: Okay, moved by Commissioner Robinson, seconded by Commissioner Castro.
23 Would anybody like to speak to the motion?
24

25 Mr. Robinson: I would like to speak with Corporation Counsel on why we're here on this item
26 before we hear this item please.
27

28 Mr. Carnicelli: Got it. Anybody else? All those in favor of going into executive session. That is
29 six ayes so at this point in time we will go ahead and recess this meeting. So this meeting is
30 now recessed.
31

32 **It was moved by Mr. Robinson, seconded by Mr. Castro, then unanimously**
33

34 **VOTED: To Go Into Executive Session.**
35

36 **(Assenting – K. Robinson, S. Castro, A. Hill, K. Pali, C. Tackett,**
37 **P D. La Costa)**

38 **(Excused – T. Gomes)**
39

40 *(The Planning Commission recessed the regular meeting at approximately 11:11 a.m. to enter into Executive Session*
41 *and adjourned at 11:37 a.m. The Planning Commission reconvened the regular meeting at approximately*
42 *11:39 a.m.)*
43

44 Mr. Carnicelli: Maui Planning Commission meeting of April 23rd is back in session. I am going
45 to defer to Mr. Galazin, Corporation Counsel.
46

1 Mr. Galazin: Thank you Chair. So members you have before you a Motion for Reconsideration.
2 This is something that you look at in your rules pursuant to Section 12-201-84. So any written
3 decision and order, any final order from the body, written final order can be reconsidered and
4 there the standards by which you need to weigh a Motion to Reconsider. The petition itself
5 must demonstrate some reason why the Commission should reconsider its prior decision and
6 must set forth facts or law the strongly convincing nature.

7
8 It's either three categories. The first is if there has been an intervening change in the controlling
9 law. So the Maui County Code was amended substantially sometime between when you made
10 your decision and now. The third is if there need to correct clear error that's based on the
11 evidence that you had before you in the record, the conclusions of law that you made based on
12 the findings of fact. Second one is if new evidence is available and for that category that one's
13 only allowable if the availability of new evidence was previously undiscovered even though due
14 diligence was exercised it would be admissible and creditable and it must be of such a material
15 and controlling nature as will probably change the outcome and is not merely cumulative or
16 tending only to impeach or contradict prior evidence. So it wouldn't be sufficient to say three
17 people testified, and this is hypothetically, three people testified against, but I have one person
18 now who wants to testify in support that would be new evidence. That would just be something
19 that would tend to contradict prior evidence. So that's the standard.

20
21 This is a hearing before this body, but it's...because this is part of a contested case, this
22 isn't...it's a continuation of contested case. This isn't something where you're taking new
23 evidence so you won't have public testimony on this item. It will be the applicant or the
24 applicant's representative to present the arguments and then if reconsideration is granted that
25 only means that you will look at the decision again, not that you necessarily grant it but at a later
26 date you'll basically do a redo of what was done before and it would be based as I said on one
27 of those criteria. So thank you Chair.

28
29 Mr. Carnicelli: So just one little clarification. So if the reconsideration is made and we do the
30 redo is it a brand new presentation kinda like we do each and every single one of them?

31
32 Mr. Galazin: Chair, that's more of a logistical question. If the reconsideration is granted
33 because there is new substantial evidence then you'd want to make sure that this is allowed
34 where you have a new hearing, you can take people who testified before be able to testify
35 again, you would have the new evidence included. There'd probably be an updated staff report
36 I'm going to surmise. Director's nodding yes, so...

37
38 Mr. Carnicelli: Okay, thank you. Director do you want to speak to this?

39
40 Ms. McLean: Thank you Chair. It would be scheduled for consideration just like a new
41 application would be. We would have to determine if it's a new public hearing so if notice would
42 have to be given to neighbors and published in the newspaper if it's another public hearing and
43 as Corporation Counsel said, we would see if the staff report and recommendation would need
44 to be revised if there's new evidence provided by the applicant.

45

1 Mr. Carnicelli: Great. Thank you. So I think at this point in time, Mr. Kugle we'll go ahead and
2 allow you to make your presentation at this time.

3
4 Mr. Gregory Kugle: Thank you. Should I stand or sitting okay with you?

5
6 Mr. Carnicelli: Whatever's more comfortable, however you want to do is fine with us.

7
8 Mr. Kugle: Thank you.

9
10 Mr. Carnicelli: As long as you're on the record.

11
12 Mr. Kugle: Thank you, I am. And for the record, my name is Greg Kugle, I'm with the Damon
13 Key Law Firm in Honolulu and I represent the applicant in this case, Rodell Notbohm for the
14 property to the application is called the Imi Ola property on South Kihei Road. And we did come
15 in and file the reconsideration motion which I know you all do a good job and you read what's
16 submitted to you so I'm not going to belabor that, I'll summarize it for you. I would also tell you
17 that Mr. Notbohm is here today with me as well as is his consultant Tom Croly to the extent
18 there are any questions we can answer them. There are also a number of community
19 supporters here with us today. I understand that it's the position of the Commission that you
20 won't take public testimony. They would be here to offer it today if you would.

21
22 But with that said, I think that and without getting into the nuances of the standard that you need
23 to apply the reconsideration I think motion points out primarily that I think the Commission may
24 have not given...either gave too much weight to or didn't give enough weight to really certain
25 factors and issues when it denied the application and the application is for an STRH permit on
26 South Kihei Road and as we've tried to lay out in a brief and I will just summarize for you today
27 some of the concerns voiced by both the public testifiers as well as some of the Commission
28 Members in their questions and comments really relate to things that the Zoning Code specific
29 to the STRH permits already deals with and I think that's what we want to emphasize for you
30 today.

31
32 For instance, there were questions and comments about noise or the potential for noise it wasn't
33 even actual noise because there has never been complaint. Obviously this property has never
34 been used as a short-term rental before, but the staff report recommended granting the permit
35 and found it consistent and they did their review. The Zoning Code points out that you have the
36 house rules and the quiet hour obligations and for guests and there are consequences if those
37 are violated. There's the potential for revocation of a permit and the permit itself and the house
38 rules put into effect quiet hours that are far, how can I say more onerous or more restrictive than
39 what you or I might experience in our own homes that we live in. And there are also the
40 standard conditions and prohibitions against amplified music and against noise being heard off
41 of the property boundaries that would be something different than you would find in a residential
42 neighborhood. So the Code and the conditions really deal with that issue.

43
44 There was a question about the sufficiency of parking. This property has sufficient off street
45 parking. The Code requires three off street parking places this property has that. In fact, it
46 probably technically has more but it has sufficient and so the concern that a neighbor voiced

1 about the potential for spill over parking either onto the public streets or into perhaps the public
2 parking lot across the street which is used for the beach access is simply not a valid concern or
3 a legitimate criteria because the Code requires three parking stalls and there are three parking
4 stalls off street. And of course, in house rules and in the vetting process for guests were you to
5 grant a permit they would certainly be advised of the requirement that they cannot park vehicles
6 on street. It must be off street, on premises parking.

7
8 I think the third concern really that we want to express is what is in some sense is a subjective
9 category of the character of the neighborhood but for those of you that are familiar with this area
10 of South Kihei Road there are a strip of about 30 single-family homes and as was pointed out in
11 the original presentation 24 or I'm sorry, 26 of those are owned by non-residents and don't have
12 the homeowners exemption. Only four of them are. And so these are second homes and
13 vacation homes for people. And more over that stretch of single-family homes is bounded on
14 both sides by condominium, and resort and hotel. So this is an area that's probably ideally
15 suited for the proposed use given everything that goes on around it. One of the reasons why it
16 got to the Planning Commission in the first instance was because there are two STRH permits
17 within the 500-foot radius of the property again there's a reason why they're there and this
18 region Kihei-Makena has nowhere near the cap that the City...the County Council has imposed
19 in its ordinance of a hundred. I believe at this time there's 44. And so again, it is appropriately
20 suited to that location.

21
22 The other thing we point out in the brief was there was concern about traffic and pedestrians. It
23 was primarily it was pedestrians of people crossing South Kihei Road in the vicinity of the
24 property to access the beach and that type of activity that goes on and that could present a
25 danger but frankly that's not a legitimate reason to deny this permit. Any individual property
26 owner can't be responsible for safe pedestrian access for people that are access, excuse me,
27 for people that are off premises. However, certainly as we point out the Commission's got the
28 authority to impose conditions on a permit over and above the standard conditions that were
29 recommended by the Department to mitigate adverse impacts if there...you know if you
30 perceived them to be. And one I think it would be you know perfectly logical in this case if
31 there's a concern about the crosswalk, pedestrian safety and just the amount of both tourist and
32 locals that are accessing the beach down there is to have again as the Commission heard in
33 some of the prior proceedings today additional conditions put on a permit such as educating
34 people about peak traffic hours, educating people about the presence of pedestrian crosswalks
35 on South Kihei Road and even differing from even anything you heard today imposing a
36 requirement that the property owner for instance have a sign that requires all persons exiting the
37 property to turn right onto South Kihei Road. In other words not to cross traffic if that is deemed
38 to be safer and while that would be inconvenient certainly for anybody who would prefer to turn
39 left, I think it's a reasonable condition and one which would funnel the traffic in a direction where
40 drivers are not crossing two lanes and dealing with pedestrians but would be you know exiting
41 the property in an appropriate and in a safe way. Couple that with house rules that have further
42 conditions such as peak traffic hours, traffic conditions in the area and just educating the guests
43 would be you know a reasonable condition to mitigate the condition if that's the Commission's
44 concern.

45

1 And so, we do feel, we would ask the Commission grant the reconsideration motion. I think
2 that, I appreciated the Commissioner's questions. Those are ones I have as well about what
3 the procedure would be like following that, but I think that this was an application and we heard
4 from I believe it was Commissioner Tackett earlier commenting that this Commission likes
5 people that do the right thing in the right way and this is certainly that application. It is in an
6 appropriate place, it meets as the Planning Department found in its report and recommendation,
7 satisfies all the criteria, it's consistent with the plans and with the zoning and with the
8 neighborhood and with conditions that this Commission can impose it can certainly ameliorate
9 any impacts that the Commission believes exist and so we would encourage the Commission to
10 grant reconsideration and I will be happy to answer questions. I know that we are approaching
11 the 12 o'clock hour and so I did not want to be, be too long but I want to make sure that I
12 answer your questions.
13

14 Mr. Carnicelli: Thank you Mr. Kugle. Appreciate that. So I think at this time what we'll go
15 ahead and do then is we'll give the Commission opportunities to ask you those questions. So
16 let's see where did we...we'll start with you Commissioner La Costa, you're the least bashful of
17 all of us I think.
18

19 Ms. La Costa: Thank you Chair. So you did state that were no previous short-term rental
20 activities on that property.
21

22 Mr. Kugle: That's, that's correct.
23

24 Ms. La Costa: Okay, so that's on the record. Mahalo.
25

26 Mr. Carnicelli: Commissioner Castro.
27

28 Mr. Castro: No questions at this time.
29

30 Mr. Carnicelli: Thank you. Commissioner Tackett. Commissioner Robinson.
31

32 Mr. Robinson: No questions Chair.
33

34 Mr. Carnicelli: Kahu Hill.
35

36 Kahu Hill: No questions.
37

38 Mr. Carnicelli: Commissioner Pali. Do we need to go around again? Does everybody have
39 enough information to be able to make a decision? Okay. So I guess at this point in time we'll
40 go ahead and entertain a motion from the Commission. Anyone. Okay, at this point do we
41 have questions for Corporation Counsel? So Mr. Galazin, I'll go ahead since we've got people
42 whispering, is at this point in time I guess I'll ask it should we go to executive session for further
43 legal question?
44

45 Mr. Galazin: Mr. Chair, I would prefer to answer as many questions in open session as
46 possible. If you ask something and I feel as though it's getting into an area where I would prefer

1 to go into executive session to discuss more the ramifications or liabilities or responsibilities we
2 can do that, but I think many of the questions might be able to be answered in open session.
3
4 Mr. Carnicelli: Thank you.
5
6 Mr. Robinson: Chair?
7
8 Mr. Carnicelli: Commissioner Robinson.
9
10 Mr. Robinson: Corporation Counsel what is our three options of motions in front of us right
11 now?
12
13 Mr. Galazin: So you can grant the Petition to Reconsider, you can deny the Petition or you can
14 defer action.
15
16 Mr. Robinson: Chair.
17
18 Mr. Carnicelli: Go ahead.
19
20 Mr. Robinson: I'd like to make a motion to deny.
21
22 Mr. Carnicelli: Motion to deny by Commissioner Robinson. Is there a second.
23
24 Ms. La Costa: Second.
25
26 Mr. Carnicelli: Second by Commissioner La Costa. As the movant I will let you speak first to
27 the motion.
28
29 Mr. Robinson: Chair, Commissioners after reading the packet, after going through the minutes I
30 haven't heard anything today that seems to be different that would sway me. What we have
31 before us is, yes we are glad they're coming for reconsideration but they do also have other
32 different other avenues in front of them if they so choose so at this time I will go with our
33 Commission and deny reconsideration. Thank you.
34
35 Mr. Carnicelli: Thank you. Commissioner La Costa would you like to speak to the motion?
36
37 Ms. La Costa: I concur with Commissioner Robinson that there was no strong and compelling
38 changes that there were no strong compelling changes or anything that was new brought
39 forward for me to change my mind on the consideration.
40
41 Mr. Carnicelli: Thank you Commissioner La Costa. Commissioner Castro would you like to
42 speak to the motion?
43
44 Mr. Castro: No, I'm good.
45
46 Mr. Carnicelli: Okay, thank you. Commissioner Tackett.

1
2 Mr. Tackett: No thanks.

3
4 Mr. Carnicelli: Commissioner Pali.

5
6 Ms. Pali: I was present at the initial decision and this is a really...this is a tough one. It's tough
7 because like you said in your statement today that it already is sort of a high saturated area with
8 non-residents and although that does sound appropriate, I think it's a double-edge sword
9 because that's what we're trying to avoid is certain areas being highly saturated. And when it's
10 highly saturated with guests then you might have more traffic than not so. So it's a tough, it's a
11 tough call. I think because I was there that day, I did hear their presentation, I also struggled
12 that day too, but I think for me it still is rough with the pedestrian safety because that particular
13 property is specifically located where when you park your cars across the street and you walk
14 across you actually have to walk across your driveway to continue to the beach access. And so
15 that property is unique unlike maybe the ones down the street and so it's a tough decision but I
16 think my weight is still heavily on the pedestrian safety in that specific area and so no questions
17 but just the comment of that's just a rough area.

18
19 Mr. Carnicelli: Great. Thank you Commissioner. Corporation Counsel.

20
21 Mr. Galazin: Thank you Chair. And just to remind all the members about the decision, the prior
22 decision you made, when you're looking at 19.65.060, Subsection N, which is that short-term
23 rentals shall conform to the character of the existing neighborhood and that prior to issuing a
24 permit ...(inaudible)...before the Commission you shall consider the following and these are the
25 nine listed criteria you must look at and consider. One of them, Number 4 is community input,
26 Number 6 is the number of permitted short-term rental homes surrounding the proposed short-
27 term rental home property and their distance, Number 7 is the number and substance of
28 protests and protests related to the cumulative short-term rental homes, and Number 5 is the
29 potential adverse impacts including excessive noise, traffic, and garbage and a lot of times, I
30 know we've had discussions in the past but just to make sure that all the members are clear if
31 an operation for a proposed land use that's different than what is currently existing there is
32 proposed you are not going to know for certain what the actual impacts will be with 100 percent
33 certainty. There is some estimation that goes on. If there were not, you'd never grant any
34 permits or we'd grant every permit and this body would be meaningless. So you've got
35 discretion and you need to look at this and say if there's a potential for adverse impacts the
36 applicant bears the burden to show that they have enough things in place to mitigate it so that
37 more likely than not there won't be adverse impacts, but the potential for adverse impacts is
38 something you need to consider and so that sort of necessarily hypothetical in some fashion.

39
40 Mr. Carnicelli: Thank you Corporation Counsel. Commissioner Pali.

41
42 Ms. Pali: Corp. Counsel then I have a follow up question to you because he did offer something
43 today that was not offered initially, but I don't know that it was, what was the word you used,
44 dramatically or compelling...what was the extreme case, and so he offered something today
45 that wasn't offered back in November which was forcing the clients to either go I think right out
46 to make it inconvenient for the clients but convenient and safer for the pedestrians.

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Mr. Galazin: Chair.

Mr. Carnicelli: Yes.

Mr. Galazin: So two things that I think you might be alluding to Commissioner Pali, the first is that in the Petition to Reconsider the applicant must demonstrate some reason why the Commission should reconsider and set forth facts or law of a strongly convincing nature and then if it's pertaining to new evidence that evidence must be of such a material and controlling nature as will probably change the outcome and does not merely cumulative or tending to impeach or contradict prior evidence. So evidence showing that somebody brought up an issue with traffic, something that would contradict that or tend to rebut that if it's not so substantial that it wouldn't automatically make you reverse a prior decision or make it more likely that you would then that's where that strongly convincing nature of what's offered comes in if that answers your question.

Mr. Carnicelli: Kahu Hill would you like to speak to the motion?

Kahu Hill: Mahalo.

Mr. Carnicelli: Okay, would anybody else like to speak to the motion? Are we good? Okay, so at this point in time, Director the motion before us.

Ms. McLean: Chair the motion before you is to deny the Petition for Reconsideration.

Mr. Carnicelli: All those in favor of the motion please raise your hand. That is six. Passes unanimously.

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

VOTED: To Deny the Petition for Reconsideration.

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

Mr. Carnicelli: All right. Okay, at this point in time we're gonna take a brief recess at the call of the Chair.

A recess was called at 12:02 p.m., and the meeting was reconvened at 12:05 p.m.

Mr. Carnicelli: ... Commission of April 23, 2019 is back in session. Director.

E. DIRECTOR'S REPORT

1 **1. SMA Minor Permit Report**

2
3 **This is for notification and review purposes. No action is anticipated.**

4
5 **2. SMA Exemptions Report**

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7 **This is for notification and review purposes. No action is anticipated.**

8
9 Ms. McLean: Thank you Chair, next we have the Director's Report. You have in your packet
10 the SMA Minor Permit Report and SMA Exemptions Report. Do you have any questions on any
11 of those items?

12
13 **3. Discussion of Future Maui Planning Commission Agendas**

14
15 a. **May 14, 2019 agenda items**

16
17 Ms. McLean: Then lastly discussion of future agenda items. For May 14th we actually do not
18 have any action items, we were going to schedule training but since we won't have new
19 members on board by then, no purpose in doing the trainings so it looks like our next meeting
20 will be May 28th. We do already have a couple of public hearing items for May 28th.

21
22 Mr. Carnicelli: All right so no meeting on May 14th. So Kahu before we adjourn is there any last
23 thing that you would like to say on your last day.

24
25 Kahu Hill: I just want to again tell you guys mahalo. It's really been an honor with all of you and
26 also the shifts that have happened on this Commission and ...(inaudible)...the Chair, and you
27 being Chair, and Higashi, and remembering those that started in 2017. It's been an honor to be
28 able to have this seat as the Hawaiian Cultural Advisor till 2023 and I just leave my prayers here
29 on the floor for all of you and for everyone that walks in and out of this door that we also listen to
30 the people, listen to the land, listen to the culture, listen to the water, ola i ka wai, and that we're
31 all connected, we're all one, so mahalo and God bless Maui County and this entire island.

32
33 Mr. Carnicelli: Meeting is adjourned.

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35 **F. NEXT REGULAR MEETING DATE: MAY 28, 2019**

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37 **G. ADJOURNMENT**

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39 The meeting was adjourned at 12:07 p.m.

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41 Respectfully Submitted by,

42
43
44 CAROLYN TAKAYAMA-CORDEN
45 Secretary to Boards and Commissions II
46
47

1 **RECORD OF ATTENDANCE**

2 **Present**

3 Lawrence Carnicelli, Chair
4 Stephen Castro
5 Kahu Alalani Hill
6 P Denise La Costa
7 Kellie Pali
8 Keaka Robinson
9 Christian Tackett, Vice Chair

10

11 **Excused**

12 Tina Gomes

13

14 **Others**

15 Michele McLean, Director, Department of Planning

16 David Galazin, Deputy Corporation Counsel, Department of the Corporation Counsel