

1
2
3 **MAUI PLANNING COMMISSION**
4 **REGULAR MINUTES**
5 **APRIL 10, 2018**

6 **A. CALL TO ORDER**
7

8 The regular meeting of the Maui Planning Commission was called to order by Commissioner
9 Richard Higashi at approximately 9:02 a.m., Tuesday, April 10, 2018, Planning Conference
10 Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.
11

12 A quorum of the Commission was present. (See Record of Attendance.)
13

14 Mr. Richard Higashi: . . . is in order. First item of business we have...we have a new member
15 of the Commission. And at this time I would like to introduce Denise La Costa.
16
17

18 **B. INTRODUCTION OF NEW MEMBER – P. Denise La Costa**
19

20 Ms. P. Denise La Costa: Thank you.
21

22 Mr. Lawrence Carnicelli: You have to speak into the mic.
23

24 Ms. La Costa: Oh sorry. Aloha. Mahalo nui for having me here. It's a great honor to serve on
25 this Commission. My name is P. Denise La Costa. P. Denise is my first name, and the P,
26 doesn't stand for a darn thing so I will save you the question of asking me what the P stands for.
27 I'm a real estate broker and I own my company. I have been in real estate since 1992. I
28 opened La Costa Realty Hawaii 2004. I've been on many, many committees on the board at
29 RAM and was past president in 2013. Also, I'm also the current president of the Commercial
30 Roundtable here in Maui so I have a background courtesy of GETT Financial of Commercial
31 Lending and Financing and Construction, and citizen of the world. So born and raised in
32 Washington, lived in Hawaii 28 years.
33

34 Mr. Higashi: Welcome Denise.
35
36

37 **C. ELECTION OF OFFICERS FOR THE 2018-2019 BOARD YEAR – Chair and**
38 **Vice-Chair**
39

40 Mr. Higashi: Okay, at this time we have a certain protocol that we always start with and that is
41 we welcome everyone here. There's more staff members because of our workshop. But
42 anyway I'm just going through what we normally do and that is first thing is that if you have a cell
43 phone, please either put it on silence or turn it off.
44

45 Second is that we have public testimony that we take for those who cannot attend or give
46 testimony during the time that the application comes up on our agenda. You have exactly three
47 minutes to do the testimony and at this time we will curtail the presentation. I'd like to at this
48 time turn it over to the Director of Planning, Will Spence, who will go over our agenda for today.
49

50 Mr. William Spence: Thank you Commissioner Higashi. So Commissioners, the first --. Okay,
51 we called to order. We've introduced P. Denise La Costa. And the next item on your agenda is

1 election of officers for the 2018-2019 board year. So, Commissioners, do we have any
2 nominations for Chair?

3

4 Mr. Larry Hudson: I nominate Richard Higashi for Chair.

5

6 Mr. Spence: Okay, is there a second?

7

8 Mr. Keaka Robinson: Second.

9

10 Mr. Spence: Second, okay. Commissioners, are there any other nominations for Chair?

11

12 Ms. Tina Gomes: I nominate Keaka Robinson.

13

14 Mr. Spence: Okay, Commissioners, do we have a second? Okay, no second. Are there any
15 other nominations for Chair? Okay, hearing none, call for the question. Commissioners, all in
16 favor of Richard Higashi being chair of the Planning Commission, please raise your hand.
17 Three. That's six, seven ayes; motion carries. Thank you. Welcome Mr. Chairman.

18

19 Mr. Higashi: Thank you very much. I hope I'll be able to conduct my meetings. I want the public
20 to say that I have a disability and that is with my hearing. And so I've been working on it for the
21 past, I'd say, maybe two years in trying to get my hearing corrected so that I'll be able to
22 function properly as a commissioner. And fortunately I ran across a new audiologist who has a
23 hearing problem. That's why he has a disadvantage. So what he did was he told me that if you
24 don't have a proper sound system you might want to use this instrument. So I have a little
25 instrument here. It magnifies the sound and for me it's a blessing because not only for the
26 Commission, but for my significant other because she has a hard time. She's always asking me
27 three times before I answer and so it gets very frustrating to a point where she says, you know
28 what, no sense even talk to you because you're not responding. And so I tried it with her and
29 it's amazing. She says the sound and your reply seem to be working very well. But I said,
30 okay, I'll try. If it doesn't work out then I'm going do something else. I might have to resign from
31 the Commission because it doesn't work out well.

32

33 Consequently I also asked our secretary Carolyn Takayama-Corden about our sound system
34 presently. I've been on this Commission for four years. The sound system needs some help.
35 And so what I basically did was I asked my cardiologist to come to the next meeting and check
36 out the system here to see how it affects my disability. And so he's going to be here at the next
37 Commission meeting to just evaluate the effectiveness of the sound system. And so that's kind
38 of where it is at.

39

40 Mr. Spence: And the Commission may be interested to know that proposed in our budget before
41 Council is \$20,000 to replace the sound system. So we recognize -- I know - it crackles and,
42 and some mics works, some mics don't. So, anyway, we're looking forward to replacing the
43 system.

44

45 Mr. Carnicelli: Director, you can turn his thing. He's now chair. Turn that around.

46

47 Mr. Spence: So we need to select a Vice-Chair.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

Mr. Carnicelli: If you could turn his name plate thingy.

Mr. Higashi: We will now elect a Vice Chair. So nominations are now open for Vice Chair. Commissioner Hill.

Kahu Alalani Hill: Aloha Chair. I'd like to nominate Keaka Robinson for Vice Chair.

Mr. Hudson: I second.

Mr. Higashi: There is a motion for Keaka Robinson to be Vice Chair. Are there any other nominations for Vice Chair? If not, all those in favor of having Keaka Robinson be Vice Chair please raise your hands. That's unanimous.

Mr. Spence: That's seven ayes.

Mr. Higashi: Thank you very much. Congratulations Keaka. Alright, the next item on the agenda.

1. **Chairperson – Richard Higashi was nominated and voted as Chairperson**
2. **Vice-Chairperson – Keaka Robinson was nominated and voted as Vice-Chairperson**

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

E. ORIENTATION WORKSHOP NO. 1

1. **Opening Remarks by the Planning Director – William Spence**
2. **The Planning Framework**
3. **Zoning**
4. **Chapter 343, HRS, Environmental Assessments and Environmental Impact Statements**
5. **Bed and Breakfast Homes and Short-Term Rental Homes**
6. **Sunshine Law**
7. **Ethics**
8. **Contested Cases**
9. **Property Rights**
10. **Rational Nexus and Rough Proportionality**

Mr. Spence: Commissioners, we're going to go ahead into the orientation workshop. I will start. Well, we'll let Candace start and I'll have a few things to say as well.

Ms. Candace Thackerson: Good morning Commissioners. First off, congratulations to the new Chair and Vice Chair, and a warm welcome to our new Commissioner La Costa. So the Maui Planning Department every year when we have new Commissioners, we do a planning orientation workshop. It's a fresher for the previous Commissioners that have been before, and

1 it's also, for the new Commissioner to get an overview of planning and what your role is as a
2 Commission and some of the permits that you'll see before you.

3
4 So this is the agenda for today. We're going to have some opening comments by the Director
5 of the Planning Department, Will Spence. Then we'll go through the planning framework, the
6 County zoning, Hawaii Revised Statutes 343, our B&B and Short-Term Rentals, and associated
7 State SUP2's, as well as the sunshine law, ethics and contested cases, the fun part, which will
8 be done by our Corporation Counsel. All the nitty-gritty parts. Without any further ado if Will is
9 ready and I'll go ahead and switch over presentations for some opening remarks.

10
11 Mr. Spence: Good morning Commissioners. I think this morning is probably going to be a long
12 series of power points, and we do this training every year. It's just to orient you, get you familiar
13 with the law, and like Candace said for the Commissioners who have been here, you know, it's
14 a good refresher.

15
16 So I wanted to start with was what is a planning commission? What are your duties? Where
17 does the planning commissions come from? And then just a little frame work of our land use
18 laws here in Hawaii.

19
20 So where do planning commissions originally come from? There was a commission formed by
21 Herbert Hoover back in actually the early 20's for the Standard Zoning Enabling Act. And then
22 after they did the zoning they went, okay we need a planning commission. We need planning
23 commission and we need plans in order to help that zoning along. And so they came up with
24 the Standard City Enabling Act of 1928. So the history of planning commissions goes back a
25 long way. We're up to 90 years now. So and in that act basically what it does is enable states
26 and municipalities to adopt, be able to adopt plans as well as form a frame work for their
27 formations of the planning commissions. So Hawaii's Revised Statutes also enables us to
28 establish planning commissions, and then our Charter.

29
30 So the Charter being our Hawaii County, or excuse me, Maui County's Constitution establishes
31 the planning commissions. There should be planning. There should be a Department of
32 Planning consisting of the Maui Planning Commission, the Molokai Planning Commission, and
33 the Lanai Planning Commission, a Director, Board of Variances, staff, and necessary staff. So
34 we're technically, the Planning Department is technically a part of the Planning Commissions, or
35 you are technically a part of the Planning Department and we staff you.

36
37 The makeup of the Commissions also by Charter. Nine members. All of you have been
38 appointed by the Mayor and have gone through Council approval. And there's a requirement
39 that you be a resident of this island, as our Lanai members have to be on Lanai, and Molokai be
40 on Molokai.

41
42 Your area that you have authority over is kind of interesting. It's not just Maui, but also
43 Kahoolawe and all other islands lying within three nautical miles. Now I'm not sure why the --. I
44 mean since this part of the Charter was enabled the Kahoolawe has its own Commission, the
45 Kahoolawe Island Reserve Commission. They are really the ones that put the authority over
46 that island even though the Charter tells us this and they are, they have their own Special
47 Management Area which we'll get to in just a bit.

1
2 So you have areas of authority also by the Charter. One of your, one of your areas of authority
3 or duties, one is to advise the Mayor, the Council, and the Planning Director in planning matters.
4 You review the General Plan and revisions. You review other proposed land use ordinances.
5 So a lot of times you'll see department staff bringing to you revisions to Title 19, or perhaps a
6 set of administrative rules, your administrative rules, all these things will come before you. The -
7 -. This is also where number four is a big one. This is also where State Law 205A which is
8 Special Management or Coastal Zone Management Act, it sets up the special management
9 areas. This Act delegates the authority to the County for the special management area.

10
11 Our Charter designates this body or each one of the planning commissions as the authority over
12 the Special Management Area (SMA). Then it also --. So you see a lot of SMA permits and, you
13 know, minor permits and exemptions. That's because you are, you are the deciding body on
14 this. You also will adopt administrative rules. I'm sure in the packet that everybody has
15 received you have a package of our SMA Rules, your Rules of Practice and Procedure.

16
17 So, really the two primary areas of your authority, one, you have decision making authority and
18 you have advisory authority. Your first part in your decision making authority, as said, is in the
19 SMA Permit. Most, not all, but most of the urban areas within Maui County are situated
20 somewhat close to the shoreline where you have, you know, people want to do subdivisions,
21 they want to build hotels or commercial centers, those of kind of things. And under the SMA,
22 that authority falls to you. Later on we're going to have, I think, Jim Buika is probably going
23 orient -- or Keith will orient us, explain more about the details of the SMA. You also have
24 authority over Land Use Commission Special Permits that are less than 15 acres. This stems
25 from State law that says 205, it says all the permitted uses within the different districts, but
26 particularly when it comes to Special Permits mostly within the Ag District everything with an
27 area of less than 15 acres comes to you.

28
29 So you have bed and breakfast permits. You have short-term rental home permits. You'll see
30 schools, churches, landfills, all kind of uses that are not out rightly permitted within, say, the
31 State Ag District. If the area encompasses less than 15 acres it comes to you for decision
32 making.

33
34 County Special Permits, you are the authority over those. Special Permits are uses that fall
35 under Special Permits are considered generally...generally...compatible with the other uses
36 within that area. Say a school is a certain size or a church is a certain size within residential
37 districts will require a Special Permit. They're considered compatible with the residential uses
38 around it, but it still needs that extra area, that extra layer of review by this Commission.

39
40 And of course what has reached the news everywhere is Bed and Breakfast and Short-Term
41 Rental Homes. You do not see -- we'll go over that in more detail -- you won't see all of these
42 permits, but in certain cases you definitely will, and it does take --. This Commission see quite a
43 few of these applications.

44
45 The other thing that you do a lot of is you give advice. This Commission reviews and makes
46 recommendations mostly to the County Council. You will review requests for Changes in
47 Zoning, Community Plan Amendments, District Boundary Amendments that are also under 15

1 acres, Conditional Permits, and, and the review of the General Plan. Although the Community
2 Plans are supposed to come to this Commission, all the Maui Island Community Plan comes to
3 this Commission for your review. All of these are legislative matters, ultimately adopted by the
4 Council through ordinance and --. But they figured this level of review because you're a little bit,
5 one you're not elected officials, but also you are members of the community, you give your input
6 on these things. So it's advisory and you'll see a number of these things as well.
7

8 So this is something that I have found, at least when I started as a planner in Maui County I'm
9 like what the heck are all these different rules and how do they all inter-relate and, you know,
10 how does this thing work. So it took me a whole lot of time, and I'm hoping I can just kind of
11 scale it down a little bit. So I like to think of our regulatory scheme, Hawaii's regulatory scheme
12 as a bunch of different layers that sometimes they stand alone, sometimes they interact.
13

14 I think everybody is aware, like, the State lands are divided into four different districts.
15 Conservation which this body has no authority over. Agriculture, Rural, and Urban. And that's
16 where this body is going to be involved. You're also involved with the General and Community
17 Plans. So that's another whole regulatory scheme. The --. And they are, they do integrate.
18 You're going to hear the thought that they have force and effect of law. In some cases they do.
19 They're supposed to guide government actions, but in some specific cases they most definitely
20 have some words of law.
21

22 County Zoning, Special Management Area and Flood Zones. So I want to take an example of
23 how all these different things line up for UH, UH Maui University Campus. So here, I think,
24 everybody -- I don't have a pointer -- but you know where the campus is. Kaahumanu Center is
25 right on the bottom of the screen. You can see Harbor Lights and the campus center really
26 composes of three different properties. Okay, this is a map of how Maui Island is divided up into
27 four different, four different state districts. The green is the conservation district. The area with
28 no color or white, that's the State Ag District. It's a little bit hard see the Rural District, but it's
29 brown, and you can see it mostly up-country, like, Pukalani and Makawao. But then the red is
30 our State Urban District. But definitely UH campus falls within the Urban District. And this is
31 just -- I pulled this right straight out of the, off of that map. So definitely within the Urban District.
32

33 And then we have the Community Plan and the General Plan. The General Plan is made up of
34 a number of different documents, 11 different documents. One of them is the Maui Island Plan
35 which does show this within an Urban Growth Boundary, but then more specific than the Maui
36 Island Plan and the Community Plan. You can see the college campus is designated for
37 public/quasi-public meaning it's like universities, schools, churches, those kinds of things fall
38 into this public/quasi-public category. You can see Harbor Lights designated for multi-family.
39 Kaahumanu, again, at the bottom of the screen, designated for business. And we have all of
40 these different designations within our other designations within the Community Plans. This is
41 not zoning. It is not zoning at all. This does definitely affect what people can do with their
42 property. And we look at our Community Plans on a fairly constant basis, and you're going to
43 hear a lot about this. They're very important in the whole scheme of things, but these are not
44 zoning. These, these will dictate part of what you can do with your property, but details of, of
45 the permitted uses and the height and all of those things, those go with the zoning.
46

1 And here we have the County Zoning. Notice the UH campus has light-industrial, and it has
2 single-family. So you might want to ask how the heck do we have the university campus zoned
3 light-industrial and single-family? The light-industrial allows for the government facilities, and
4 you're going to, you know, in your course of your tenure as planning commissioners you'll
5 probably going to hear something about stacking. But light-industrial zoning is allowed for
6 government facilities which the campus would be. And the single-family also allowed for schools
7 and universities. So, that campus is, it seem contradictory but the zoning still allows it. And
8 ironically the, the Kaahumanu Center, at the very bottom, you can see is zoned heavy-industrial.
9 So we have some -- go ahead -- we some mismatches and it's sometimes it's a little bit of a
10 chore to sort those things out. We also have --. The campus also falls within the Special
11 Management Area. This is not zoning, but it is also related to the whole other chapter in Hawaii
12 Revised Statutes that this Commission is responsible for.

13
14 And also this Commission is, is not responsible for the flood zone, but there are times that you
15 definitely need to be aware that there's this whole other requirement from, stemming from
16 Federal law that we deal in flood zones.

17
18 All together, they kind of all stack up and you need to, often times for uses, we need to find
19 consistency between these different layers. We need to find that the use is permitted within that
20 State district, or at least the County has authority to deal with it. The Community Plan has to
21 allow use. The zoning, of course, has to provide, has to allow a certain use. The Special
22 Management Area then requires consistency with zoning and General Plan. And then the flood
23 zone, again, there's a whole other set of criteria for that but it's still there will be times when the
24 things come before this body where you need to be aware something is or it's not in the flood
25 zone.

26
27 As said there's conflicts. You're going to find this quite a bit. Ultimately our desire is to go
28 ahead and zone the UH campus to public/quasi-public like the Community Plan says. But until
29 this time, until that time, we have some inconsistencies and we try to make things work. It's not
30 ideal, but as said, the zoning allows for schools and universities and public facilities. So the
31 school is permitted to go ahead and operate, and can construct and improve. And we always
32 work with the land owners to find that kind of consistency.

33
34 So we're going to have more in-depth discussion with staff regarding zoning, the SMA, flood,
35 and processing, and Candace and crew can fill you in other power points. This is admittedly a
36 lot. I mean, they're going to buzz through this stuff. These people, the staff planners have a lot
37 of experience in this. They're highly educated in the areas of planning and on the state laws,
38 and it's a lot for --. You know, we went to school for this, and had years of doing this within the
39 department and so I would ask, you know, that you lean on staff because they are your experts.
40 We also defer to you as the Planning Commission because you have the authority in certain
41 areas. Please feel free to ask staff questions. Please feel free to, you know, ask me things.
42 We're here to help you, advise you, sometimes to guide, sometimes to keep from going off of
43 the edge of the cliff, but we're, we're here as the staff to prepare report. Well, with that --.

44
45 Mr. Kurt Wollenhaupt: Good morning members of the Maui Planning Commission. It's a
46 pleasure to be here this year with you. I've taken a hiatus from this first part. Gina Flammer

1 used to do it, and she has now moved on to other things. But I'm just going to set the stage
2 here for all of the information that you'll be hearing from the other planners.

3
4 So our first slide will be land use in Hawaii is complicated. In fact an excellent book that I
5 recommend that you all buy is by David Callies. He's the University of Hawaii Benjamin Kudo
6 professor of law at the Richardson School. This is an outstanding book regulating paradise that
7 tells you kind of you at the primer what regulations, how it's come to be where it is, where it is
8 going, kind of gives you an excellent overview. In fact, and I hesitate sometimes just looking at
9 the beginning here but, and I don't like to read things directly, but he goes on to say that land
10 use in Hawaii continues to be the most regulated of all the 50 states. According to many
11 sources it takes seven to ten years to go from raw land to ground breaking. And if fact you'll be
12 seeing Waikapu Town, Mr. Atherton's project, he spent almost 10 years with the community just
13 to get to the stage of getting his Environmental Impact Statement approved by the State Land
14 Use Commission. So 10 years is conservative. We're probably looking at more like 15 years in
15 that case.

16
17 It's almost certainly part of this is because as our Director said most of the land that is open for
18 development can be agricultural and that then requires a complex process usually through the
19 State Land Use Commission of determining whether or not that land is appropriate for
20 urbanization. There are extraordinary costs associated with holding and developing that land.
21 And in fact, if you're a young entrepreneur and wanting to go out and buy say 10 acres, try to go
22 through this process with a land loan and then a construction loan, you may very well be
23 bankrupt by the time the process is over.

24
25 That then why is it important today? Because you'll be asked, well, why is housing so
26 expensive here? Well, land is limited, we all know that. Appropriately developable land is even
27 more limited, but it's also a highly complex process. This is why it's very complex. Director
28 Spence has gone into an overview of these levels of review, but it's multilayered, it affects
29 quality and timing of the land use decisions. Today you'll be learning about the hierarchy of
30 zoning. But all of these have to be considered when we're looking at a project.

31
32 And here we go. This is all you need to know. This is everything you need to know right there.
33 We can pretty much just stop it. You keep this slide that you have in your pocket book and
34 that's kind of the guide way to getting a project approved. This is what you'll be dealing with in
35 the next year. Not so much at the top, the State Constitution, but you'll be looking at most
36 everything else on that chart. So perhaps today if there's a question mark, but a year from now
37 you'll have all the keys to the answers for zoning and planning in Maui.

38
39 So as people have asked well why do we have a planner, what's their role, why does it takes so
40 long? It's really to get the project ready so that there's been professional review of it, and then
41 so that you have the entire document for the project and can review it along with the Planning
42 Department's review and recommendation. And these are all some of the things that a project
43 can takes months to years to arrive at the Commission. An applicant doesn't just come in and
44 everything is fine. An applicant comes in and over a period of months or sometimes even years
45 there's a back and forth about how can we make this a better project before it ever comes to the
46 Planning Commission, and certainly before it ever gets to the Council. Often times there will be
47 triggers which you'll learn about today that such as the need for a Community Plan Amendment

1 that will trigger the need for an Environmental Assessment or even in greater depth than an
2 Environmental Impact Statement, a volume that can range from a couple of hundred pages to
3 thousands or more. This is the guiding document you'll be learning all about later on today, but
4 it's a guiding document of environmental impacts that a project may have. Applications are sent
5 out, sometimes multiple times for agency review, the Federal, State and local agencies. The
6 applicant continues to refine the application. We as the Department are highly encouraging
7 applicants to go out to the community more and more. There is a level of community
8 involvement that is increasing. You'll see that on many, many projects, and it works very well
9 for the applicant to find out what does the community wants, how can a project be better. If
10 there are going to be a lot of controversies it's best to know it up front. So this has become a
11 more and more important part of the process is getting the community involved in the pre-
12 commission hearing process. And then there's the staff report and finally it's ready for the
13 review by this Commission.

14
15 These are some of things that you'll be looking at in the staff report. They'll cover, of course,
16 what the project looks like, and importantly why is this project is even in front you. That's
17 always a good thing to know. Why are you looking at it or is it because it requires a Change in
18 Zoning? Is it because it's a Special Management coastal issue for development? Just what
19 exactly are the regulations? There will be comments from different agencies such as Water,
20 State Historic Preservation Division. There will be a land use analysis on the actual impact of
21 the project, infrastructure issues, roads, sewer, wastewater, water, impacts to our social
22 economic basis, environmental impacts, and then, of course, multiple exhibits and then finally
23 the Department will make a recommendation on the project.

24
25 So at the very top of the hierarchy, State planning law has evolved since Statehood in '59, but it
26 needs some more frequent updating. There is, of course, the Constitution which is the
27 overarching document. And then the State Planning Act in '78 and revised in '86 establishing a
28 statewide planning system. However, it would be nice if state funding would be available for
29 some of these laws to be updated. And there was a quote again from Mr. Callies' book that he
30 says the zoning reached its adolescence about the same time as the . . . (inaudible) . . . speak
31 easy . . . (inaudible) . . . These were some of the products of the 1920's which our Director
32 alluded to as the beginning of zoning. Of all of these phenomenon of the 1920's zoning has still
33 remained a generation later. Well the good thing is that our zoning is being reviewed by our
34 Planning Department and our Plan Implementation group to see how the zoning code could
35 really be brought up to date. So that's a great initiative that's underway and we're hoping that
36 that can go forward.

37
38 You're going to be hearing a lot about some of the layers. In fact, Director Spence already
39 spoke to this. There's the General Plan, the Community Plan, the Zoning, the coastal zones,
40 and the Environmental Impact Statements, all of which you'll be seeing in much greater depths
41 today.

42
43 Again, this is kind of an --. It's an overlap, but the lands are unique in Hawaii. They're classified
44 into four categories: Conservation and Agriculture, Rural and Urban. The Land Use
45 Commission is responsible for these designations. There is a requirement for tenure updates.
46 However funding has been limited and that HRS 205 will designate what's allowed in the
47 different land use categories.

1
2 So sometimes people think, well everything is being urbanized, and there has been an increase.
3 But while this graph is a little bit dated and we'll see an updated one, the line share of lands still,
4 over all of the islands now, is agriculture and conservation, really looking at about 95% of the
5 lands. The next slide is specific and this is from the Land Use Commission from the 2016 data.
6 It shows that again Ag and Conservation are the line share of land here. This is for Maui Island.
7 It does not include Molokai or Lanai. The shares are not changing dramatically. I'm not making
8 any value judgment on this, but those are just the data from the Land Use Commission that
9 shows Ag and Conservation are still the primary uses. So that's the key to really to takeaway,
10 94 percent of the land is either Ag or Conservation, only six percent is really classified as Urban.

11
12 So you keep hearing all this about what is the State Land Use Commission. Well, the State
13 Land Use Commission is a member, a nine member group. There is a member, one for each
14 island that makes four, plus five others are appointed at large. They are have been entrusted
15 since the early 60's with looking at land management on an island wide basis and especially
16 with how agricultural lands are used. They do make decisions directly affecting Maui.
17 Commissioners from Oahu, Kauai, Hawaii island, and of course, Maui, makes directions, make
18 decisions directly applicable to the life of this island. They often times in the case of a number
19 of projects, they will look in-depth at a project if it is required to go from the district of Ag to
20 Urban. For instance they have a quasi-judicial process that is complex, expensive, detailed in
21 review. Depending upon their decision then, a project will come to this Commission and the
22 review will begin again.

23
24 So there are two areas primarily that the State Land Use Commission is reviewing. One would
25 be your District Boundary Amendment. You have a 100 acres of Ag land or a 1,000 acres of Ag
26 land and you want to urbanize that, then you have get a District Boundary Amendment. It's a
27 complicated process. If it's over 15 acres, the State Land Use Commission will process that. If
28 it's under 15 acres then this group becomes in fact the Land Use Commission for those
29 decisions. So if you have a 15 acre or a 14.5 acre piece of land and the owner wishes to take it
30 from Ag to urban, for instance, this body will review it and they'll make a recommendation to the
31 Council.

32
33 The other primary permit is a Special Use Permit, and what you're going to see more than
34 anything is State Land Use Commission Special Permits for short-term rentals and for B&B's on
35 Ag land. It's not an outright permitted use, but it does require state special funding. The area
36 from which the bed and breakfast or the short-term rental is is on certainly less than 15 acres in
37 most cases and so this group will make a decision, hold a public hearing, and make a decision if
38 the applicant should be granted that State Special Permit.

39
40 If it's a larger project such as to say the landfill, then that's clearly, well, often times would be
41 larger than 15 acres. That will require State Land Use Commission (LUC) approval. This
42 Commission will hold a public hearing and make a recommendation to the LUC, and then they'll
43 hold the hearing or they'll hold the meeting.

44
45 So just to give you a little example is a case study all of you are quite familiar I'm sure with the
46 Puunene Industrial Subdivision. It just lives four miles south of Kahului. This was a piece of
47 land that was in State Ag. It was in County Ag zoning and Community Plan Ag, and they

1 wished to develop an industrial subdivision. But they first had to get the District Boundary
2 Amendment to Urban after submitting an Environmental Assessment. And it's within the Urban
3 Growth Boundaries set forth in the Maui Island Plan. So the table was set for relatively
4 noncontroversial project. And the next map just shows where it is. It's outlined in red, a little
5 hard to see there, but it's near the Maui Raceway Park. And then the next one. So, again, a
6 couple of the main things, Planning is complex, it takes a long time. The application was filed in
7 2012. The Land Use Commission granted the District Boundary Amendment in 2013. The
8 Council after the Planning Commission looked at it, they granted approval of the Community
9 Plan Amendment and Change in Zoning in 2015. And now the project as you drive pass you
10 see that it's currently construction in 2018. This is a relatively noncontroversial project. People
11 felt that this was important to have some place for heavy industrial uses. In fact, they required
12 an entirely new zoning category called R3 which is restricted to heavy industrial use. And so
13 these are for the necessary, but sometimes not the activities that just occur in the matter of
14 living, and so this then was approved in 2018.

15
16 So the Commission have lots of resources. You're going to hearing recommendations and
17 reviews from people at the Urban Design Review Board, Arborist Committee on trees, Hana
18 Advisory Committee, the Cultural Resources Commission, other State and Federal agencies.
19 So, you gather a lot of information in to make your decision, and all of these other boards and
20 groups are here to assist in that decision making process.

21
22 So this is from the core principles of the Countywide Policy Plan. What is your, your direction
23 and role is to use your wisdom and balance in making decisions with thoughtful island
24 appropriate innovation. So there's a mission statement. That's, that's your mission for the next
25 year so thank you. And I think Candace is going to talk about the details of zoning.

26
27 Ms. Thackerson: Thank you Kurt. I guess I might have to pick up a copy of that book myself. So
28 I'm going to go into Title 19, Zoning, which is what we use to administer zoning principles. So
29 what is zoning? So, zoning in all counties is accomplished with the framework of a long range
30 comprehensive general plan. And zoning is one of the many tools available to the County to put
31 the General Plan into effect in an orderly manner. So zoning is found in Title 19 of the Maui
32 County Code which I probably should have put the link on here. It's available online so that's
33 really helpful. You just go municode which is short for municipal code, right. So municode dot
34 com and search for Hawaii, and Maui County is the only one that uses that so it's available
35 there and you can search for zoning.

36
37 So zoning encourages the most appropriate use of land, the goals, you know, and wants to
38 conserve and stabilize the value of property. Prevent certain uses that would be detrimental to
39 existing uses and promote the health, safety and general welfare of the respective districts. So
40 the purpose and intent of the comprehensive zoning is to regulate the utilization of land in the
41 manner that encourages orderly, smart and sustainable development.

42
43 So here's an example. So this is zoning. This is development standards. And when you go to a
44 zoning on a parcel, let's say it's zoned on commercial or single family, in the zoning code it will
45 go over things such as height restrictions, density, lot coverage, how much of the lot you can
46 cover with building, how much you have to leave open, parking, setbacks you know from
47 property line. So all of that as you can see in the picture, that's all dictated in our zoning code.

1
2 And here we have land uses. So this is just an example of some of the different zoning districts
3 that it includes but it's not limited to. So you can see we have open space, residential,
4 agriculture, business, hotel, industrial. And you can see in this map how they kind of work
5 together. Right, you've got the single-family near the open space, and then it kind of goes into
6 the multi-family as it is getting denser. And then you can see it's got some commercial.

7
8 Okay, so now these are going to be some of the permits that will come before this body which
9 are all covered in Title 19. So first we have the County Special Use Permits (CUP). And the
10 County Special Use Permit allows for certain special uses in a particular zoning district. And the
11 use must, the use proposed must comply with specific criteria established by the permit. So this
12 slide shows here I've got -- you can kind of see it. Sorry, it comes up a lot brighter on our screen
13 and we seem to lose quality through the projector. I don't think it's the light. It's the projector.
14 But you can see we've got King's Cathedral and that's a church and it's in the residential district.
15 So churches are not listed as permitted uses in the residential district. But they are listed as a
16 Special Use, so they are --. They can come in, you know, go through the process that Kurt
17 described earlier where we review the application, we send it out to the agencies, we gather all
18 of the information, and then we bring it before you. And you are the final authority. You will
19 hold a public hearing and you are the deciding body on Special Use Permits.

20
21 Okay and then we have Conditional Permits (CP). And the intent of the Conditional Permit is to
22 provide the opportunity to consider other uses that are not specifically permitted within a zone,
23 but the use is similar, related, or compatible to permitted uses. Okay, so this is, and that
24 example I have up there is actually Lanai, but it's the Manele Golf Course did special events on
25 their golf course. And at the time you had to get a Special Use Permit to do this. Another one --
26 . And you guys are not the final authority on that. You will hold a public hearing and you will
27 provide a recommendation onto Council. So we have zoning, you know, say you're single-
28 family zoned and you want to build a house permitted, you don't need a use permit. We don't
29 see those. You want to do a church, and they come in and they get a Special Use Permit. You
30 want to do weddings or special events in single-family, it's not listed in our Code, but it could be
31 considered a similar, compatible or related use depending upon the scope of the project. So
32 then we bring it before you as a Conditional Permit, but your recommendation goes on to
33 Council, and Council will have the final authority.

34
35 Then we have Planned Developments (PD), and Planned Developments encourage desirable
36 designs and land use patterns within existing natural environments. And an example of a
37 Planned Development would be, like, Wailea. Wailea is a Planned Development. And so that is
38 a three step process. They come before you for the first step, and the first step is usually the
39 larger map where they're kind of designating all of the land uses and where things are going to
40 go, and this body looks at that and approves it. The Step II, the PD2 before you will be then
41 more like elevations of the buildings and now we're getting, now they know they have a land use
42 established and now it's what they want to build. And it's kind more of the elevations and the
43 vertical drawings. And then lastly the Step III, the PD3 is Director will --. Well, we'll look at it,
44 the Department will look at it. The Director will say, if he feels comfortable moving forward with
45 it or not, and we'll bring it before you. And you can waive your review and think that, you know,
46 we did a good job, and you can go ahead and let us approve it. Or, you can say, you know, I
47 have some other issues, maybe I want some more information, and then you can review the

1 application as well and be the final authority on it. And that is more of the nitty-gritty kind of with
2 the building plans. So we've got the land use map, PD1, we've got the elevations, PD2, and
3 PD3 is just now kind of getting into the curb, gutters, all the fine details you guys can finally just
4 say, okay, that looks good. Okay, and no public hearing is required. Okay go ahead. And here
5 Puamana is also an example of a Planned Development, so we've got Wailea and Puamana,
6 you kind of think of that.

7
8 You guys sometimes see -- I'm just going to touch on, for Wailea we come in sometimes for
9 PD1 when they're doing swaps, and you see that a lot, swaps on parcels. They've got a little bit
10 of hotel here but they've got a little of single-family here, they want to swap it. And that's a PD1,
11 it comes before you again because as we've said before the first step was that big land use
12 map, right. So now they're going to --. And they're allowed because it's an overlay district.
13 They're allowed in a Planned Development to propose swapping the zoning uses as they see fit
14 and they want to make it more compatible for their grand scheme of development. So they'll
15 come in before you and that will be PD1 because they're amending that original map that they
16 got approved. Okay, so they're swapping it around without having to do a full Change in Zoning
17 kind of use because these were all allowed. They have to be like for like the amount of size that
18 they're swapping around. And so I know you guys have seen those sometimes when they come
19 in especially in Wailea. They've been doing that quite a bit. Okay, next slide.

20
21 Okay, and then we have Project Districts (PH), and they're very similar to Planned
22 Developments. However, Project Districts have their own category of zoning. So Project
23 Districts are established through the Community Plan, and now you go before Council. And so
24 this is an overlay district. Well, it's not really an overlay district. They're their own zoning so
25 they have their own specific details. So when you go to Title 19 the Project Districts are in
26 there. So they're listed. Okay, so the zoning and the things that they can do inside there have
27 been created through ordinance in Title 19. So that's the difference between the Overlay
28 District of the Planned Development and then Project District.

29
30 Okay. And so again, it's in three phases. So the first phase is a public hearing and it has to
31 occur in that community plan's region. Okay, so it doesn't happen necessarily in this building. It
32 has to be in the Community Plan region that the project is taking place. Okay, and that you
33 guys do a recommendation on to Council.

34
35 When they come in for the second part, again, the public hearing is in the affected community
36 plan region, and you guys look at the preliminary site plan. And you guys, you have the final
37 authority on that.

38
39 Okay, so the first one establishing it at Council level, the general. The second part then is the
40 preliminary site plan which you have the final say on. And then finally the last part is when they,
41 again, have all the nitty-gritty, all the details worked out, that's the Phase Three and the
42 Department approve that. Because hopefully we know where you guys are headed after you've
43 done Phase I and given us the overview, looked at Phase II, and then we, the Department,
44 approves Phase III for Project Districts.

45
46 Okay, and then Maui Lani is an example of a Project District. So you can go to the Title 19 Code
47 and look that up and see what they allow according to their zoning. And that's all been

1 established through Council. Preliminary site plans approved by you. And now when they come
2 in for the final one, the Department approves it.

3
4 And finally we have Change in Zonings (CIZ) and so this Change in Zoning is in Title 19. And
5 this is to change from one zoning to another. So for example, if an individual purchases a
6 property that is zoned residential and they want operate a business, they have to legally
7 establish that use before they can operate. So they have to do a Change in Zoning, right, from
8 residential then to business. So the Planning Commission conducts the public hearing on the
9 application and makes a recommendation to County Council so you're not the final authority, but
10 we need your recommendation to move on to Council. And the Council is the final authority on
11 Change in Zoning. So this is a typical land zoning map for a property that is being rezoned.
12 And it will just have information, like, the tax map key number, location, and acreage and the
13 proposed zoning of the parcel.

14
15 So those are just a few of the permits that you guys will see that are all under Title 19, right. So
16 we have, don't forget, we've got permitted uses, right, single-family. You want to build a house
17 totally fine. We've got Special Use Permits, and that will be the church, right, and that's listed in
18 the Code, but it comes before you. And then we have Conditional Permits and that might be
19 weddings or events in that single-family in that same parcel. And then you guys provide a
20 recommendation, it goes onto Council. And if they're finally are like, you know what we want to
21 do something really, you know, interesting with our parcel and we just can't do it in single-family,
22 they can always attempt a Change in Zoning and try and do that.

23
24 Okay, is there any --? I know that was a lot of information, but --. And it's kind of a trial and
25 error. I mean, I know that you guys get a better grasp the more and more you see those types
26 of permits. So are there any questions at the moment? Yes?

27
28 Ms. La Costa: How long are Conditional Permits are issued? Or how long are they good?

29
30 Ms. Thackerson: Okay, so it varies. Usually we won't give them a really long length of time in
31 the beginning. It's depending upon the use. If it's a Conditional Permit, if it's something like a
32 landfill, it's probably not going to go anywhere any time soon. Or, you know, a mortuary or a
33 grave cemetery, right, we're not going to be moving that any time soon. So they might give
34 them a long amount of time, maybe 10 years or something like that. But usually in the
35 beginning we don't like to give the use too long just to make sure the community is okay with it.
36 So they'll give them a shorter amount of time, and when they come for a renewal or time
37 extension, then we can look and make sure there are no complaints from the community, that
38 it's in harmony with what's going on, and then we can extend it as appropriate.

39
40 Mr. Spence: Just a comment on that. What Candace is saying is true. Some of the initial
41 approvals are usually a little bit shorter than, than subsequent approvals. For Special Permits
42 it's this Commission that sets the time frame.

43
44 Ms. Thackerson: For Special, yes.

45
46 Mr. Spence: For Conditional Permits because they require Council action, they set the time
47 frame for the Conditional Permits. We make a recommendation to you, you make a

1 recommendation to the Council, and ultimately they decide. And usually they go along with
2 what the Commission recommends, but sometimes not. Sometimes you have uses that require
3 both, and so when those things come up we'll, you know, we'll show you how they work
4 together. And usually the time frames will --. This Commission will approve something
5 contingent on what the, the County Council ultimately says. So the two will coincide and they
6 don't mismatch.

7
8 Ms. Thackerson: Thank you. Yes, Commissioner Hill.

9
10 Kahu Hill: Aloha.

11
12 Ms. Thackerson: Hi.

13
14 Kahu Hill: I wanted to know about if it's a Special Permit if that would be applied to cultural
15 places or even educational.

16
17 Ms. Thackerson: You mean as in are those allowed uses or --?

18
19 Kahu Hill: Yeah, how would that be -- let's say you're going to make a cultural center or a
20 cultural place, is that considered like a church as far as we know of a Special Use Permit?

21
22 Ms. Thackerson: Thank you. It would depend on the zoning of the parcel in question. If you're
23 looking at a parcel that is zoned public/quasi-public and you want to do a cultural community
24 center there that might be a permitted use outright. You wouldn't need a Special Use Permit.
25 But if you were zoned perhaps a single-family or something and you wanted to do cultural
26 center there you might need a Special Use Permit for that. So it's going to depend on what the
27 zoning is of the parcel that you are working with. And then from there the proposed use. Any
28 others?

29
30 Ms. Tina Gomes: Candace?

31
32 Ms. Thackerson: Yeah.

33
34 Ms. Gomes: Hi. How are you?

35
36 Ms. Thackerson: Hi, Commissioner Gomes. Good, thank you.

37
38 Ms. Gomes: I just have a question. When you're talking about the parcel, you're talking about
39 the parcel in question if it's in a residential community and you want to change it from, let's say
40 it's residential and you want to go to business and the entire, let's say it's a subdivision.
41 Hypothetically it's a subdivision, and within the subdivision you have a parcel, it's residential and
42 the zoning you want to change your parcel to a business. This is what we're talking about in
43 regards to changing this, as far as zoning.

44
45 Ms. Thackerson: Yeah, change in zoning if that's what you mean. Now if it's in a subdivision or
46 something like that, there's probably other factors of play as well as your community plan, what

1 your community plan underlay is. What I was only covering was things that Title 19 has
2 authority over.

3
4 Ms. Gomes: Okay.

5
6 Ms. Thackerson: Looks like Will wants to expand on that.

7
8 Mr. Spence: So if you remember the slides that I showed of all those different layers. I say all
9 those different layers have to line up. In order to do the Change in Zoning from, say, residential
10 to business, all those different layers line up. So it would have to --. You would look at State.
11 You would look at what the General Plan is, both the Maui Island Plan and the Community Plan.
12 The Community Plan has that land use map. If it doesn't say, it doesn't have a B on it and
13 colored red, it's, you're going to have to change the Community Plan too. So that's going to
14 trigger an EA. That's a whole other process to go through. And then ultimately Community
15 Plan has to be changed so would the County Zoning, so that's --. And those things are --. After
16 the EA is done and it comes to this Commission. Then it goes to the County Council, and the
17 County Council has to pass two ordinances. One for the Community Plan and one for the
18 zoning. If it's right smack in the middle of the subdivision, a residential subdivision, it may not
19 fly. Okay, if it's adjacent to other commercial or something, maybe. We have to look at those
20 things on an individual basis. And we look at those things, and I think Kurt commented that we,
21 we work with landowners before this Commission ever sees an application or a staff report so
22 we will sit down and talk with them and work with them long before anything ever reaches here.

23
24 Ms. Gomes: Right. Okay. I'm sorry. I think that's why I was wondering in regards to when
25 sometimes in zoning so is it that whenever any change in zoning it is going to County Council.

26
27 Ms. Thackerson: Yes.

28
29 Ms. Gomes: In its entirety if any change in zoning.

30
31 Ms. Thackerson: Yes. Yes, it will come to this body first for your recommendation and then we
32 will take to County Council.

33
34 Ms. Gomes: And then you folks will take it to County Council.

35
36 Ms. Thackerson: Yeah.

37
38 Ms. Gomes: So we, at times, will not know.

39
40 Ms. Thackerson: No, no. You will provide a recommendation.

41
42 Ms. Gomes: We will always know.

43
44 Ms. Thackerson: Always know. It will come here first for your recommendation and then we will
45 take it on to Council because they are the only ones who have the authority then to change the
46 zoning. But you guys give your recommendation. And they take your recommendations. You
47 now, they see it, they see staff's, and then they make the final decision.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

Ms. Gomes: Okay. Okay.

Ms. Thackerson: But I would just like to say --

Ms. Gomes: It was weird. I wasn't aware that they would see all. They see all the zoning.

Ms. Thackerson: Yeah. Now you might be thinking about when people are doing business out of their home, but it's a home occupation type of business.

Ms. Gomes: You know --

Ms. Thackerson: No, you're talking about just changing the parcel.

Ms. Gomes: Yeah, I was really thinking in its entirety overall in zoning.

Ms. Thackerson: You guys too, you will see all of them and you'll provide a recommendation, and then they go on to Council.

Ms. Gomes: Yeah, I just never knew it went to them, you know, as the last resort. Yeah.

Ms. Thackerson: Yeah.

Mr. Spence: Yeah, well, it's not --. The, the --. And I'll say this Commission also sees all Community Plan Amendments if that's going to change. The, the Community Plans and Zoning are adopted by legislation. The County Council is the legislative body so if, if, you know, like you said, you see it all, you make a recommendation, but it, but it --. Because it has to be passed by a law that's the kuleana of the County Council.

Ms. Thackerson: Alright, any other questions? Okay, thank you.

Ms. Gomes: Thank you Candace. Thank you Will.

Ms. Thackerson: Thank you. Alright, I think next up we have Keith Scott and he's going to go over some Hawaii Revised Statutes.

Mr. Keith Scott: Good morning Commissioners, and again welcome to the new Commissioner. Congratulations on electing the Chair and Vice-Chair.

The purpose of Chapter 343 of the Hawaii Revised Statutes is to establish a system of environmental review within the planning process to ensure that environmental concerns are given the appropriate consideration as you go forward in making your decisions. 343 was adopted in 1974, and it encourages the conservation of natural resources, enhancement of the quality of life, and assurance of public participation.

1 Under Chapter 343 all projects fall into one of four categories. Those that do not require
2 Chapter 343 review, those that trigger 343 but are exempt, those that trigger 343 and require an
3 Environmental Assessment, and then those that require an Environmental Impact Statement.

4
5 There are nine triggers for 343. The first one is the use of State or County lands or funds other
6 than feasibility or planning studies, or acquisition of unimproved real property; use of lands
7 classified as conservation district by the State Land Use Commission; any use within the
8 shoreline setback area; any use within a historic site on the Hawaii or National Register of
9 Historic Places; uses within the Waikiki area of Oahu; amendments to the County's General
10 Plan designating lands other than agriculture, conservation or preservation unless initiated by
11 the County; reclassification of State conservation district lands; new or expanded helicopter
12 facilities that may affect conservation district plans or shoreline area or historic sites; and
13 proposing the wastewater treatment unit serving more than 50 single-family dwellings or waste
14 to energy facility or landfill on oil refinery.

15
16 Those are the triggers, but there are some exemptions that are allowed under Chapter 343.
17 Operations, repairs or maintenance of existing structures, facilities, equipment or topographical
18 features involving negligible or no expansion or change of use beyond that which was
19 previously existing. Replacement or reconstruction of existing structures and facilities where the
20 new structure will be located, generally on the same site and will be substantially similar to the
21 structure being replaced. Construction and location of new and small facilities or structures and
22 their operation. Minor alterations and conditions of land, water, vegetation. Basic data collection
23 and research that does not result in a serious or major disturbance to the environmental
24 resource. Construction or placement of minor structures accessory to the existing facilities.
25 Interior alterations involving such things as partitions, plumbing and electrical conveyances.
26 Demolition of structures not located on a historic site. Zoning variances and continuing
27 administrative activities. So even though Chapter 343 may be triggered, if they fall into one of
28 these classes, then they are exempt from preparing an Environmental Assessment or an
29 Environmental Impact Statement.

30
31 So an Environmental Assessment or EA is undertaken when a Finding of No Significant Impact
32 (FONSI) is anticipated. Appropriate studies are conducted and analyzed, and mitigative
33 measures identified so that the impacts are reduced to level of insignificance. Alternatives are
34 also explored so that the least environmentally impactful one may be identified. Should the EA
35 find that there will be significant impacts or if it is initially determined that significant impacts will
36 likely occur, then an Environmental Impact Statement is prepared. The EA process includes a
37 30-day review period for both the draft and final EA. An EIS requires a 30-days public review of
38 an EIS notice of preparation, a 45-day public review of the draft EIS, and a 60-day challenge
39 period after the final EIS has been published. And as you might anticipate, an EIS is a more in-
40 depth document with significant attention to impacts, mitigations and alternatives.

41
42 So in completing and reviewing both environmental assessments and environmental impact
43 statements, significance of impact must be assessed. Those impacts include regional and site
44 specific, short and long-term, primary and secondary and cumulative impacts. Essentially with
45 any projects substantial detrimental effects must be avoided or mitigated. Natural or cultural
46 resources should not be irrevocable lost or destroyed, and a range of beneficial uses should not
47 be curtailed.

1
2 The most common triggers for the requirement of an EA or an EIS are the use of State or
3 County lands or funds, use within the shoreline area, and amendments to the County General
4 Plan. So the question is what is your role in the process?

5
6 The Commission may or may not be the accepting authority. For example, in considering an
7 SMA Major Permit or, let's say, a County highway bridge, the accepting authority will be the
8 Department of Public Works rather than the Department of Planning. And most of the
9 environmental documents that you will review will likely be EA's or Environmental Assessments.

10
11 You will have the opportunity to review and comment on the Draft EA, and your comments and
12 the applicant's response are incorporated into the Final EA. If a FONSI, or Finding of No
13 Significant Impact, can be made, a FONSI will be issued, and then the Commission can take
14 further action on the project itself. If not, the applicant will need to prepare an EIS.

15
16 Thank you for your attention. That concludes what I have to say. If you have any questions, I'd
17 be happy to answer them. Exciting stuff, huh?

18
19 Mr. Higashi: Thank you. At this time we'll take a 10 minute break, and then resume back again
20 at 10:25 a.m.

21
22 *(The Maui Planning Commission recessed at 10:15 a.m., and reconvened at 10:28 a.m.)*

23
24 Ms. Tara Furukawa: Good morning Commissioners. I'm here to talk to you about bed and
25 breakfast homes, which is Ordinance 19.64, and short-term rental homes, Ordinance 19.65. So
26 the Council passed the B&B bill in December of 2008, and as of the end of 2017 there were 171
27 permitted B&B's. The cap for the island is 400, and there's no caps on Molokai or Lanai.

28
29 The STRH bill was passed in May 2012, and it was amended in May of 2016. There are 223
30 permitted STRH's as the end of December 2017, and the cap is 382. There's no caps for
31 Molokai or Lanai.

32
33 So the purpose of the B&Bs and STRHs is to establish a permitting process standards and
34 restrictions, allow small businesses an opportunity to benefit from local tourism, provide a visitor
35 experience that's an alternative to hotels and resorts, and retain the character of
36 neighborhoods.

37
38 The distinctions of a B&B. The applicant must live on the property, but they're not required to
39 live in the same dwelling. They can live in an accessory dwelling onsite. With STRHs, you're
40 not required to live on property, but you must have a manager. And a manager must be a
41 licensed realtor, the applicant or family member, except for in Hana or Lanai community plan
42 areas, where it's allowed per State law. Any manager must live within 30 miles of the STRH
43 dwelling, and the manager is required to respond within one hour after receiving your call, and
44 they must be available 24 hours for a permit violation.

45

1 The caps are almost the same. In Hana, it's 30. Kihei-Makena is 100 provided that there are
2 not more five in Maui Meadows. Makawao-Pukalani-Kula Community Plan area it's 40. Paia-
3 Haiku it's 88. Wailuku-Kahului, it's 36. And West Maui it's 88.

4
5 Where are we with caps? So the cap for Hana is 30 STRHs and 48 B&Bs. In Hana, there are
6 17 permitted STRHs, and 11 permitted B&Bs.

7
8 The cap in Kihei-Makena Community Plan area is 100 with no more than five in Maui Meadows.
9 There are 38 permitted STRHs, four right now in Maui Meadow, and one now in process. And
10 41 B&Bs. And the Makawao-Pukalani-Kula Community Plan area there are 40. The cap is 40,
11 and there are nine permitted STRHs and 18 B&Bs. In the Paia-Haiku Community Plan area,
12 the cap is 88, and there are 43 STRHs, and 43 B&Bs. In the Wailuku-Kahului Community Plan
13 area the cap 36. There are six STRHs and eight B&Bs. And the West Maui Community Plan
14 area the cap is 88 and currently there are 77 STRHs and nine B&Bs. Lanai, there's no cap, and
15 there are 15 permitted STRHs, no B&Bs. The Molokai, there's no cap, and there are 18 STRHs
16 and one B&B.

17
18 So there are similar requirements for both the STRH and B&B. They're allowed in no more than
19 two dwellings; permitted for no more than six bedrooms onsite for both dwellings, and three on
20 Molokai; must have a GET and TAT license, and show proof of tax payments at renewal time;
21 and the permit must be held by a natural person. So it can't be an LT or LC within the LLC.

22
23 Safety requirements. You must have smoke detectors in all bedrooms, mounted fire
24 extinguishers. And the specific type is a 2A10BC. Fire escape plans in each bedroom. It must
25 be built to Code, and we check building permits, or there must be an architect certification.
26 Home inspection. A miscellaneous home inspection can be done by Public Works inspectors
27 and a private ASHI certified home inspector.

28
29 So the required health policies posted, these are the minimum required house policies. Quiet
30 hours from 9:00 p.m. to 8 a.m.; no amplified sound beyond the property boundaries; no street
31 parking. The cars must be parked in designated parking stalls on property; and no group
32 gatherings for STRHs.

33
34 For B&Bs, they must serve breakfast, but shall make nonhazardous food available, and cannot
35 operate as a food establishment unless allowed in the zoning district or by conditional permit.
36 So it's usually prepackaged food, you know, a box cereal or items from Costco or something like
37 that.

38
39 For B&Bs on CPR properties. B&Bs are not allowed on CPR lands designated agricultural. But
40 they are allowed on CPR properties with any other land use designation.

41
42 STRH requirements. The short-term rental home shall be limited to single-family structures
43 existing and constructed at least five years prior to the date of application for the short-term
44 rental home permit. There's no requirement for the B&B permit. And I wanted to note also that
45 Ordinance 4830 was just passed so from September 27, 2018 on, it's required that people own
46 their property for five years before they apply for a STRH permit.

1 So STRH requirement once approved. So a two square-foot sign shall be displayed identifying
2 the permit number, a 24-hour telephone number for the manager, and a telephone number for
3 the Department.

4
5 Specific language for permit revocation or non-renewal. So if the permit holder provides false or
6 misleading information during the application, we can choose not to renew the permit. Also, if
7 they're delinquent in payment of State or County taxes, fines or penalties, evidence of
8 nonresponsive management. If we get complaints of the Department or if Police complaints are
9 filed.

10
11 Neighbor complaints resulting in warnings or violations, usually that results in a ban of five
12 years. Noncompliance with permit conditions or government regulations. If the permit is
13 revoked or not renewed, the Department shall not accept any new applications for two years.

14
15 Okay, so an attempt to protect affordable housing. Any dwelling unit developed under 201H
16 shall not be used for short-term rental home purposes.

17
18 So taxes. Bed and breakfast properties are not entitled to receive homeowner's exemptions.
19 And typically every December, at the end of the year, we forward a list to real property, the real
20 property assessment office, and they change the property tax class. So B&Bs are taxed at
21 commercialized residential, and STRHs are taxed at commercial. So this is just an example of
22 the rates. So for residential property it would \$5.54 per land, \$5.54 for a building. For
23 commercial properties it would \$7.28 for land, \$7.28 for building. So that's for STRHs. And then
24 for (J), commercialized residential, that applies to bed and breakfast, it's \$4.56 for land, and
25 \$4.56 for building.

26
27 Okay, so the 2016 STRH amendment was an attempt to align with the B&B bill. CPR units are
28 now treated as separate lots with different permit numbers unless it's the same owner of all
29 CPR units. Now people must own the property at least 50 percent ownership. Hana and Lanai
30 may now use non realtor managers. And the initial permits maybe approved from one to three
31 years. Initially it was one year with a two-year time extension. But now we can grant up to
32 three years.

33
34 The application must be heard by the Planning Commission if two or more STRHs are operating
35 within 500 feet. Previously we had to forward applications for your review if there was only one
36 within 500 feet. For bed and breakfast, however, I just want to note that it is still one.
37 Certification is now required as part of the application. The property must not have been
38 previously used or advertised as an STRH or B&B. You must indicate when previously rented.
39 Provide proof of GET and TAT and all taxes. Pay the ATF fee which was established by
40 Council, and pay all NOV fines.

41
42 The owner certification, also you have to say that you had no financial interest with another
43 STRH permitted property. Or if you do, then you must state your permit number and interest.
44 And another interest is also an MPC trigger. You must acknowledge that false information leads
45 to revocation of the permit, and you cannot apply for two years.

1 Okay, so for the 2018 amendment as I was saying, this is actually old because it was just
2 approved, signed by the Mayor. But final reading was held by the Council on March 23rd, 2018,
3 and the applicant must own the property for at least five years before applying for an STRH.
4 This is an attempt to address speculation because we received a lot of phone calls from
5 mainland, you know, residents attempting to buy a property here. Also, continue to support
6 long-term rentals and slow the conversion of long-term rentals to STRH.

7
8 The initial lengths for permits for B&Bs is anywhere from one to three years depending on the
9 impacts. If there are lot of protests, we typically limit it to one year approval initially, and then
10 we review after that point. STRH permits it's anywhere from one to three years, and it maybe a
11 lesser amount of time to mitigate circumstances as I was saying.

12
13 And then there's a five year ban for all illegal operators establishing a 2012 bill. So it can be
14 based off advertising or operating. And the ban is now applied at the time of Notice of Warning
15 so it's a five year ban, and we do have a ban database where we typically check. It follows the
16 owner too so if they chose to purchase another property elsewhere, you know, they're banned
17 for five years. It's used as a deterrent. Otherwise people just wait to get caught before they
18 apply.

19
20 So the criteria for approval. Whether the STRH property is subject to CC&Rs, it's something we
21 consider, but it's not a reason for denial. Existing land use entitlements and uses, the
22 applicable community plan, community input, and potential adverse impacts such as noise,
23 traffic, garbage, etcetera.

24
25 The number of permitted STRHs in the area is also taken into account as well as the number of
26 substance of protests. Existing past complaints about rental operations on the property. We
27 always check for complaints previously filed on the property and make sure they are closed out
28 before we typically forward it to you for review. Existing past noncompliance with government
29 requirements and applicant cooperation towards a resolution. We like to see that they're being
30 proactive about noncompliance.

31
32 The Council's intent is that most permits are approved administratively. However, the Maui
33 Planning Commission is in charge of protecting the character of the neighborhood. So the B&B
34 Maui Planning Commissions' triggers are one permitted B&B within a 500 foot distance. And
35 that's the most typical reason it's forwarded to the Planning Commission. Written protest
36 comprise 30 percent or more of the owners within a 500 foot distance. If a variance was
37 obtained to meet the requirements for a bed and breakfast home permit, and this has happened
38 only once. In Hana when four or more bedrooms and no one has come in for this yet.

39
40 Okay, for STRH MPC triggers. When usually it's triggered to you when there are two or more
41 STRHs operating within a 500 foot distance. Written protest comprise 15 percent or 30 percent
42 of the owners within a 500 foot distance. So I believe if it's less than 40, then it's 30 percent. If
43 it's more than 40, it's 15. If a variance was obtained to meet the requirements for a bed and
44 breakfast home permit, and this has only happened once. And the 2016 amendment removed
45 the trigger for Hana of four or more bedrooms.

1 So the most common MPC trigger is that there are two or more within 500 feet. And Council felt
2 that some neighborhoods were more appropriate to have multiple STRHs so they didn't support
3 a density cap. The Maui Planning Commission is tasked with the responsibility of reviewing
4 each neighborhood individually. And as I previously mentioned, the 2016 amendment was for
5 two approved operations within 500 feet rather than one.

6
7 Okay so protecting the neighborhood character. The second most common MPC trigger is
8 neighborhood protests. So typically this happens, we trigger it to MPC when there are two or
9 more protests from adjacent neighbors, or one adjacent, one across the street or something.
10 500 foot -- I'm sorry. Neighborhood protest from 30 percent or more if when there are 40 plus
11 lots. I'm sorry, I explained opposite previously. And then 15 percent or more when there are
12 less 40.

13
14 Just as a reminder the Council's intent was for MPC's job to protect residential housing and the
15 character of the neighborhood. So when there are more than two within 500 feet and when the
16 neighbor protest triggers are met.

17
18 Okay so the Department writes a Decision and Order when a project is denied, and it's adopted
19 by the Commission, and this lists the reasons why the Maui Planning Commission denied the
20 permit. The planner only has the official record which lists all the reasons. So when you deny a
21 permit, we would appreciate that you, you know, tell us your specific reasons for denying it. And
22 only legitimate reasons may be listed. So if you refer back to the ordinance, you know, and one
23 of them is character or something, then we want to know that.

24
25 That Maui Planning Commission decisions are appealed to Court. The Court reviews the
26 procedure. They review the official record. Typically it's the minutes of the meeting and the
27 Decision of Order, the Finding of Facts, and Conclusions of Law. And Corp Counsel only has
28 the Decision and Order to defend the Maui Planning Commission.

29
30 Okay, what is a legitimate reasons for denial? Every staff report lists applicable regulations and
31 they're only reasons related to these regulations that become a conclusion of law in the decision
32 and order. So for example, in STRHs you can cite reasons related to the homeowner's letter if
33 the STRH use is not allowed. Existing land use entitlements and uses. The applicable
34 community plan. Community input or testimony from neighbors. Potential adverse impacts
35 including excessive noise, traffic or garbage. The number and distance from the subject parcel
36 to other permitted STRHs. And also you can say the number and substance of protests related
37 to the cumulative short-term rental homes in the large neighborhood or area. Existing or past
38 complaints about rental operations on the rental property. Existing or past noncompliance with
39 government requirements and the degree of cooperation to come into compliance.

40
41 So in summary if you can state your reasons on the record, have your reasons based upon the
42 permit regulations. The staff report regulations page can help you. If you --. It would help if you
43 don't say unofficial things during the meeting because the comments will be in the minutes. And
44 if you review all written materials before a meeting.

45
46 Okay, for agricultural districts, STRHs is an accessory use and the Council decided to put
47 STRHs in the title as an accessory use so it's not -- so an implemented farm plan is now

1 required. It's now just recommended. State law still has a special use, so a Special Permit is
2 still required. Most B&B and STRH permits are approved administratively. However, properties
3 located in the State Ag District you must approve.
4

5 Okay so there are three layers of land use regulations in Hawaii as previously mentioned:
6 County Zoning Title 19, Community Plan designation or Community Plans, and State Land Use
7 District which are Hawaii Revised Statutes. How does this apply to B&B and STRHs?
8

9 So B&Bs and STRHs are regulated under County law, Title 19 Zoning, and most zoning districts
10 allow B&Bs and STRHs within a permit or they can be nonconforming which is very rare. The
11 four State land use classifications are State Urban where it's allowed, State Rural where STRHs
12 and B&Bs are allowed, State Conservation where they are not allowed at all, and State Ag
13 where they are allowed with a Land Use Commission Special Permit.
14

15 For a Land Use Commission Special Permit, their use for any use not outright permitted under
16 HRS 205 State Ag District. So some examples are concrete batching plants, the Maui Veteran's
17 Cemetery, Boys and Girls Club, and special event locations like the Dragon Fruit Farm and
18 Haiku Mill, Bed and Breakfast and STRH Homes.
19

20 So the Land Use Commission Special Permit it may be obtained when certain unusual and
21 reasonable uses within the Ag and Rural Districts are mentioned and provided certain criteria
22 are met. So the approving agency for projects 15 acres or more is the State Land Use
23 Commission. And for projects less than 15 acres it's the Planning Commission.
24

25 The Special Permits associated with B&Bs and STRHs, they are usually approved by Maui
26 Planning Commission and associated with the B&B and STRH permits reviewed by the
27 Department. The important point is that you're not to use the Special Permit, or you're using the
28 Special Permit criteria and not to use the B&B or STRH criteria when the B&B or STRH is
29 administratively approved. So if it's forwarded to you for review because it's on State Ag land,
30 you have to use a Special Permit criteria when reviewing projects.
31

32 Okay, so the following guidelines are established in determining an unusual and reasonable
33 use. The use shall not be contrary to the objectives sought to be accomplished by Chapters
34 205 and 205 HRS, 205A HRS, and the rules of the Land Use Commission. There must be an
35 implemented Farm Plan as previously mentioned, and then the intent is to show compliance
36 with the goals and objectives of HRS 205 Ag District of which it's promoting agriculture by
37 requiring that over 50 percent of the land is in ag or agricultural conservation. However, you as
38 the Commission have to make the determination that the particular Farm Plan meets HRS 205.
39 So typically we do transmit to the State Office of Planning and Land Use Commission for
40 comments, and you might want to review the comments. So the plan is included in each staff
41 report along with the Farm Plan approval letter.
42

43 Other applicable regulations. The desire use will not adversely affect the surrounding property.
44 The use would not unreasonably burden public agencies to provide roads and streets, sewers,
45 water, drainage, and school improvements, and police and fire protection. Unusual conditions
46 trends and needs have arisen since the district boundaries and rules were established in the
47 land upon which the proposed use is sought is unsuited for the uses permitted within the district.

1
2 The best advice that we have is to read the staff report. As I previously mentioned, we did
3 overwhelm you with a lot of information today. And we typically, you know, have the criteria
4 included and then also address the criteria when we form our decision. We recognize that all of
5 the information is...really overwhelming. So the report has applicable regulations as we
6 mentioned and please analyze the project against those regulations. And, you know, ask
7 questions. We love to provide answers. That's it. Do you have any questions?

8
9 Mr. Higashi: Commissioner Hudson.

10
11 Mr. Hudson: Good morning.

12
13 Ms. Furukawa: Good morning.

14
15 Mr. Hudson: Can we go back to page 25 please, third slide on the bottom, protecting
16 neighborhood character.

17
18 Ms. Furukawa: Okay.

19
20 Mr. Hudson: Quick math problem.

21
22 Ms. Furukawa: Okay.

23
24 Mr. Hudson: So let's say the subdivision has 40 lots. 15 percent of 40 is six lots. Okay. So that
25 would constitute 15 percent. But what happens if there's only 15 lots built out and there's five
26 protests that's 33 percent. Which number do we take? Do we take the built out lots, or do we
27 just take the --. So it would be built out lots.

28
29 Ms. Furukawa: No, no, it would all of the owners.

30
31 Mr. Hudson: The total lots.

32
33 Ms. Furukawa: Yeah, yeah. Sorry.

34
35 Mr. Hudson: So let's say there's six lots built out, and the one applicant, and there's five people
36 against him. That wouldn't constitute 15 percent, right? That would still be acceptable even
37 though he's outnumbered five to one.

38
39 Ms. Furukawa: If it doesn't constitute 15 percent then we wouldn't trigger it to you for Planning
40 Commission review.

41
42 Mr. Hudson: So regardless of the built out of the subdivision?

43
44 Ms. Furukawa: Yeah.

45
46 Mr. Hudson: Okay, thank you.

1
2 Ms. Furukawa: So we would process it and typically like I was saying if, you know, it depends if
3 there are that few lots we would look and, you know, it could mean that even one protest letter
4 or two protest letters or something would mean that we would grant them one year approval, so,
5 initially. And then we would monitor them and then they have to come in reapply for renewal
6 after the first year. So we do take protest into consideration.

7
8 Mr. Higashi: Commissioner La Costa.

9
10 Ms. La Costa: Thank you. I noticed the numbers that are applicable for permits allowed. West
11 Maui is 88 and they are now at 88, and I happened to be a resident of West Maui. So what
12 happens if someone then applies for a short-term rental, if it's capped out, is there anything that
13 they know that they are going to get it regardless.

14
15 Ms. Furukawa: Right now actually it's at 77, 78 permits, so we're going to forward it to Council
16 and then they're going to have to review the caps. So we're no longer accepting in applications
17 for West Maui though.

18
19 Ms. La Costa: So the bed and breakfast number at nine, that does not apply to that 88?

20
21 Ms. Furukawa: No, it's a different permit type.

22
23 Ms. La Costa: Okay.

24
25 Ms. Furukawa: Yeah.

26
27 Mr. Higashi: Commissioner Hill.

28
29 Kahu Hill: Aloha. I wanted to know about on page 19 about the STRHs and the September 27th
30 coming. Do you have that documentation with you?

31
32 Ms. Furukawa: I didn't bring it with me. Sorry. But you can get it online too.

33
34 Kahu Hill: I was wanting to know about one part where it say that -- don't quote me because I
35 don't have it in front me -- but about if somebody wanted to apply for an additional permit that
36 the property had to be valued at \$3,200,000 or more. Are you aware of that one?

37
38 Ms. Furukawa: Maybe Director?

39
40 Mr. Spence: Well, the Council wanted to, or didn't want to do is they didn't want...when they
41 adopted this ordinance, they didn't want housing, or they wanted to provide one safeguard
42 against housing for local residence being taken up by short-term rental homes. So one of the
43 things they said was for these homes under a certain value you could only have one. A
44 particular land owner could only have one. But if you are so affluent that you can afford
45 numbers of larger homes or more expensive homes, you could potentially have other short-term
46 rental homes as well.

1
2 Kahu Hill: I was wondering about locals or Hawaiians being able to have land or larger
3 properties that would might want to apply for a permit but their, their property was not valued at
4 \$3 million or more.

5
6 Mr. Spence: Okay, are you citing a specific circumstance?

7
8 Kahu Hill: No, I was just wondering about this, this coming into play in and reading the material.
9 I was just curious.

10
11 Mr. Higashi: Counsel.

12
13 Mr. David Galazin: Yes, thank you Chair. So that section you're referring to is Subsection H, and
14 that actually only was put in to place for -- it's got two subsections -- where an applicant may
15 hold no more than one short-term rental except when -- two exceptions -- additional permits for
16 a short-term rental home if each have a county assessed market value of \$3.2 million or higher
17 at the time of each application, and this is number two, the kicker, the permit holder files
18 complete applications for the short-term rental home permits within one year or this Chapter's
19 original effective date, the May 23rd, 2012. So that no longer applies. That was an initial, it was
20 an initial concession that was put in. But that's -- it's still in the Code, but it may no longer apply
21 to anybody.

22
23 Kahu Hill: Mahalo for sharing that. Thank you.

24
25 Mr. Robinson: I had a question.

26
27 Mr. Higashi: Commissioner Robinson.

28
29 Mr. Robinson: Was the Planning Department used with the Council, or was Council on their own
30 in making these rules? Did you guys give suggestions or did the Council -- because I heard the
31 Council decided this, the Council decide that. Is that just off of their own research or did the
32 Planning Department give them recommendations?

33
34 Mr. Spence: No, the Council decided by passing a law so ultimately it's their decision. But we
35 were right there with the Council Members giving our input as well as members of the public.
36 They also weighed in on this. The Council made actually quite a bit of attention to both
37 advocates for these kinds of uses as well as those opposed. So ilt was, it was a really a long
38 process with a lot of input from a lot of different viewpoints. But ultimately we say the Council
39 decided because they're the ones that ultimately voted to adopt the law.

40
41 Mr. Robinson: Okay, Tara, can we look at the, at the tax map again that the rates that you
42 showed, please? So a residential home is being charged higher than a bed and breakfast. Is
43 that what I'm reading?

44
45 Ms. Furukawa: Yeah.

1
2 Mr. Robinson: So the Council decided to give bed and breakfasts a break on their taxes? Is
3 that what I'm reading?

4
5 Ms. Furukawa: No.

6
7 Mr. Robinson: No. Okay, what's happening?

8
9 Mr. Carnicelli: Homeowners is \$2.86.

10
11 Mr. Robinson: Wait, no Tara.

12
13 Ms. Furukawa: Well, the homeowner's rate if they apply for that it's \$2.86 for land and \$2.86 for
14 building, but residential is \$5.54.

15
16 Mr. Robinson: And if you own one or more homes.

17
18 Ms. Furukawa: Yeah.

19
20 Mr. Robinson: Because you can only have only one of your homes can be taxed as a residential
21 rate. Is that correct or you can have all of, you can have your second home as well and Maui
22 tax at a residential rate? And I guess what I'm getting to this is I saw your first dot is short-term
23 rentals and B&Bs are alternative accommodations for tourists, but yet we're taxing them as
24 commercial, not as an alternative accommodation which is a hotel or a resort. So, you know,
25 we're saying it's a, it's where it's a combination, but it's not. We're saying it's a commercial and I
26 think, you know, that's, that's little, you know, play on words, but that's where I think, you know, I
27 don't who is advising who or what our consistency is. But taxing is commercial, it's not hotel
28 resort, it's not even timeshare, which it's closer to a timeshare which is \$15.43. You know, and
29 the real estate, you know, I just don't see the consistency. And I know this already passed, I'm
30 just hoping the Planning Commission, the Planning Department looks for a little bit more
31 consistency because I don't see what I do and a short-term home as the same thing. I see what
32 I do as a business and being taxed as a commercial zone where I have different things and it
33 follow different rules compared to this. Feel free to comment.

34
35 Mr. Higashi: Director.

36
37 Mr. Spence: And I didn't really follow the whole discussion with the Council on taxes except to
38 say that, that taxing short-term rental homes at a commercial rate that's thought to be a
39 compromise with the hotel rate because it is a commercial use, but at the same time, they can't
40 do night clubs, they can't do, you know, retail sales, they can't do bars, they can't have all those
41 other uses that are allowed for hotel. So it's less than a hotel rate, but certainly more than a
42 regular residential rate. This is a discussion of the County Council.

43
44 Mr. Robinson: I know. But it's your opinion saying that and they lead towards the Planning
45 Department's recommendation. But people with short-term rentals can't get have catering.
46 They can't even sell food. They can't have a night club unless you get a liquor license, you
47 know, and dance license so there's different. And not all hotels have these things. I understand

1 what you're saying. I'm just saying but can timeshares do it? Look at timeshare. Timeshares is
2 \$15.43.

3
4 Mr. Higashi: Counsel.

5
6 Mr. Galazin: Yes, thank you, and you brought up a lot of interesting points, and these are all
7 decided by the Real Property Tax, you know, part of the Finance Division. And a lot of tax
8 decisions are, are policy driven as well as, you know, finance driven. There's a lot of
9 considerations that goes into establishing different rates for different uses. That's way beyond
10 the scope of where we are at as a body. It's interesting to note but I think it's kind of a little bit
11 off of the left of where we are in terms of discussing the planning commission's role in the
12 process.

13
14 Mr. Higashi: Commissioner Carnicelli.

15
16 Mr. Carnicelli: Thank you Chair. One of the things that's missing in this particular slide was last
17 year in 2017 the Council passed a new classification called short-term rentals. And STRHs
18 would fall into new rate because the conversation at the County Council as Corporation Counsel
19 just said this isn't under the purview of this body. Tax rates is not anything that we talked about
20 or decide, but for the sake that was just brought up is the conversation at County Council which
21 who makes ultimate decisions as far as what the rates will be and what the classifications are
22 created this, another classification called short-term rentals which are neither commercial nor
23 hotel resort because STRHs don't fall into either one of those categories so they created
24 another one. And the rate will be decided by the County Council during budget season which is
25 right now. So, I just wanted to be able to put clarification out there. Thank you Chair.

26
27 Mr. Higashi: Commissioner Robinson.

28
29 Mr. Robinson: Commissioners, I actually do think this is applicable. I think when people come in
30 front of us and regardless of other opinions on this board, they always try to use the benefit of
31 the tax. You know, it's better if we make tax off of this property, it's good for the County. Every
32 time somebody's up there, they're always saying we pay a higher tax rate. So when the benefit
33 isn't as strong, you know, then their case isn't going to be strong. You know that's another thing
34 that's been restricted.

35
36 Tara, I also noticed in the new law that a home manager has to be a manager and not a realtor
37 or a management company. Am I reading this correctly? It's -- let me find where I saw it. It
38 was D, D.2.

39
40 Ms. Furukawa: This is correct.

41
42 Mr. Robinson: So a homeowner becomes a manager now, not a realtor property manager like
43 how everybody has been able to use?

44
45 Ms. Furukawa: The applicant or a family member can also serve as the manager. So it doesn't
46 necessarily have to be a realtor.

47

1 Mr. Higashi: Would the Director be able to communicate this particular . . . (inaudible) . . . ?

2

3 Mr. Spence: . . . (Inaudible) . . .

4

5 Mr. Robinson: Is this the handout or it's something different?

6

7 Mr. Higashi: Any further questions?

8

9 Mr. Robinson: Thank you Tara. That's a big difference from before. Thanks.

10

11 Ms. Furukawa: But that part actually hasn't changed.

12

13 Mr. Robinson: Sorry?

14

15 Ms. Furukawa: That part actually hasn't changed.

16

17 Mr. Robinson: So, but you're able to hire a manager before, so people to call somebody, they
18 could call the property manager or a realtor instead of the homeowner. So now it's saying that
19 the homeowner is now the manager, so we'd be calling the homeowner every time, and the
20 homeowner now has to be, has to be available every time instead of a realtor. And when
21 they're not available it has to be a 45-day notice.

22

23 Mr. Spence: 45-day notice?

24

25 Ms. Furukawa: No.

26

27 Mr. Robinson: No, I mean, they're going to be gone for 45-days a year I think that's what I read.
28 So this is not different?

29

30 Mr. Spence: No, you've always had to have a manager that's available to take complaints on a
31 short notice.

32

33 Mr. Robinson: Okay, but does the manager have to be the part owner or family member, or can
34 a manager still be a realtor?

35

36 Mr. Spence: You can -- as far as I know --

37

38 Mr. Robinson: That's my question. When I'm reading this as.

39

40 Ms. Furukawa: No, but it can be either a realtor, the applicant or the family member.

41

42 Mr. Robinson: Where does it say -- see, I didn't see where it said realtor. It just says the
43 manager has to be a homeowner or one of its --. That's where I want to get the clarification
44 because that is a difference to me.

45

46 Ms. Furukawa: The B&B. The B&B.

47

1 Mr. Robinson: No, that's what that say, but not what this says right here. And again, you know,
2 it's, it's, we have six months to get the clarification.

3
4 Mr. Higashi: Counsel?

5
6 Mr. Galazin: Yeah, thank you. Are you talking STRH or B&B because they do have different
7 requirements? If you're talking about the short-term rental home, that's really, that's the same
8 criteria are in place, the same criteria has been in place and they didn't really change except
9 just to clean up a couple of items.

10
11 Mr. Robinson: Okay.

12
13 Mr. Galazin: So it can be individual or they can, you know, typically have somebody else
14 designated as a manager who has to be available all the time.

15
16 Ms. Gomes: I think, Commissioner Robinson, Keaka, I think, are you talking about --

17
18 Mr. Higashi: Commissioner Gomes.

19
20 Ms. Gomes: Yes, thank you. I'm sorry, Chair Higashi. Yeah, ordinance -- is this --? Are you
21 talking about ordinance 4830, Commissioner Robinson?

22
23 Mr. Robinson: I see where -- I didn't read the lower sentence.

24
25 Mr. Higashi: Commissioner?

26
27 Mr. Robinson: As Commissioner Hudson showed me that I needed to read more. It makes
28 sense now. Sorry, that's what I was kind of stuck on.

29
30 Mr. Higashi: Clarification made. Any further questions? Okay moving on. We are on sunshine
31 law. We'll take a five minute break and get them settled.

32
33 *(The Maui Planning Commission recessed at 11:10 a.m., and reconvened at 11:19 a.m.)*

34
35 Mr. Galazin: Hi. Thank you Commissioners. For the new Commissioner, my name is David
36 Galazin. I'm Deputy Corporation Counsel. I'm the primary advisor to the body. I sit here and
37 listen in, answer questions from you folks, pipe in from time to time if I think I need to and I'm
38 generally here as a resource for you all in your official capacities. I'll be covering a bunch of
39 different topics so I'm just going to kind of freewill through it and I may spend more time on
40 some things than other, but feel free to interject at any point if you want to stop at any particular
41 topic.

42
43 So I'll start with the sunshine law, the open meetings law, which is Chapter 92. And there is a
44 general policy and intent that all boards and commissions, all government functions basically
45 operate with as much transparency as possible. This is also reflected in the open records act,
46 open meeting act, and unless there's an exception that applies every meeting of every board
47 and commission is going to be open to the public. And there's very few exceptions that are

1 going to apply to you folks. So if you have a, if you have a meeting, you're going to have a,
2 allow the public to be there. And if you have something on the agenda then you're going to
3 have to allow people to testify. That's the general gist of it to start.

4
5 So again, you know, as it states in the statute, this is Chapter 92, and we're going to talk about
6 Chapter 92 and Chapter 91 because you deal with them both. And sometimes there some
7 internal conflict between the two. So if you've got a meeting, it's got to be noticed, it's got to be
8 open to the public, you got allow everybody who want to, to speak up or to submit their view
9 points on anything that's on the agenda. We are, I know, this has been done a little bit different
10 in the past but we are trying to get to the point where you take the testimony when the agenda
11 item comes up. That way it allows staff to probably orient both you and the public to the issue,
12 and it allows that to be fresh in everyone's mind when the public testifies. And you are
13 permitted to put a reasonable time limit on it, and it's usually three minutes is the general time
14 frame. If there happens to be only one person wants to testify, it's the discretion of the chair to
15 allow more time, then that's fine.

16
17 Alright, what is a meeting? It seems like it should be a straightforward question. But if you have
18 any group of members, more than two, and there's a discussion about subject matter over
19 which you have jurisdiction or if it's something that may come before you, then you've got a
20 meeting. So you don't want to have a meeting without a quorum, and you can get into trouble
21 with sunshine law into that. All actions whether to approve, deny, defer; any action commission
22 must be by majority of the vote of the number of members to which the board is entitled. So
23 you're a nine member board, no matter how many people show up at a given meeting, if you've
24 got five people you've got quorum. If you need to pass something, either to approve, deny or
25 defer, then all five have to vote in favor of one of those options. If you've got everybody here,
26 then of course, it's going to be majority. Hopefully we've got most of you here most of the time.
27 So it's would always be, if you want to do any kind of, any kind of action it's going to be a five
28 vote, a minimum of five vote for that. The only exception being if you do want to go into
29 executive session then it's a different requirement but I think there's a slide for that.

30
31 Okay, so like I said you can't get more than two of you together to discuss board business. But
32 you also can't use the two member rule to do what is called a serial communication, you know,
33 play the game of telephone. Okay, well, I'm going to talk to this commissioner and here's what I
34 think about this, and then you talk to so-and-so and then you kind of get a consensus before the
35 meeting happens. It used to be pretty rampant. I think everyone pretty much understand that
36 that's not okay these days, but still got to make sure that we put that out there. You can't
37 discuss either on the phone, through email. You know, do not email the entire planning
38 commission if you have a list of everyone's email, do not send out an email saying, hey, what do
39 you guys think about this application? One of the things on there if you're at a social gathering
40 that's fine. Just don't talk about business. If you're at a social gathering just socialize.

41
42 One of the things too that comes up a lot of questions people are getting a little skittish about
43 because of the prohibition against discussing things outside of the meetings is can you discuss
44 with non-board members. And this is an absolute yes to that. One of the reasons that you are
45 formed as a body and are chosen for a diverse background and viewpoints is you are members
46 of your community and you have people that you talk to. You all have different viewpoints, and
47 people are going to know that you're on this commission, and they're going to want to discuss

1 things, and that's totally fine. It gives you sometimes a good idea of questions you may want to
2 ask for an application that's coming up. The only caveat that I would give is that, you know, do
3 not prejudging anything, and do not tell anyone that you're prejudging anything. If somebody
4 comes and says, hey, can you guarantee me, I know there's an application coming up, can you
5 guarantee me you'll never vote for this thing right? You can say, okay, look, I'll take everything
6 into consideration. I can't make a decision until we actually get to the meeting and I'm
7 presented with all of the evidence. But if you say, hey, why are you concerned about this? You
8 can certainly write down everything that they, their lists as their concerns. If it's something you
9 haven't considered you can bring them up as questions to the applicant during the process as
10 long as it's in the meeting. So, you know, it is encouraged that you engage with members of the
11 public. I think it's always important to also, you know, to make sure you get a handle on what
12 everyone's thinking and, as well, making sure the people understand your role, and that they
13 understand that you cannot make a decision in advance. And you do have to remain impartial
14 to whatever your relationship is with the, the person you're talking to, whatever your relationship
15 is to the application or approximately.

16
17 Alright there are permitted investigative groups that can be formed. I know we did this once in
18 the past year. Two or more but less than a quorum, anywhere between two to four members,
19 can be designated a specific meeting to go out and it would be, for example, like a site
20 inspection. What have to happen is kind of three step process. So at a meeting you've got to
21 decide alright we need more information or we're not just understanding the topography of this
22 area, or the application, or members of the public are saying something different and we want to
23 get out there, but we don't want to have a full on meeting. You can designate, you know,
24 anywhere from two to four people at that meeting, and you'll define the scope of their powers to
25 say, okay, go out, investigate the site and see what it looks like and then report back. And then
26 they come back at the next meeting and one of the members of the group presents the results
27 of their investigation. No action could be taken on that until a subsequent meeting. So when
28 you do that investigative process you can form a subcommittee basically to go out and do one
29 specific function, but, (a), it has to be a one meeting where its formed, (2), when the meeting
30 when they report back, and then (3), at that third meeting then action can be finally taken on
31 what the underlining issue is. So it can be done, but it does lengthen the time for, for what you
32 folks are doing.

33
34 Again, you know, members can be assigned to discuss any position that the Commission has
35 adopted, but, you know, no Commissioner should represent the viewpoint of the Commission
36 unless they are specifically given the authority to do so. Even the Chair isn't, doesn't unilaterally
37 speak for, for everyone.

38
39 Permitted interactions. If there is a lack of quorum or there is technical difficulties for example
40 or recordation is not possible or something else is going on -- bless you -- you can go ahead
41 and conduct the meeting. You can open the meeting announce it that, for example, you don't
42 have a quorum, but if there are people who show up and they want to testify, they don't have
43 other option to testify, you can go ahead and permit them to testify. You can ask clarifying
44 questions. This is very important. You can't do anything that starts to get into deliberations.
45 You can't start to discuss amongst yourselves the merits of what somebody has said. So if
46 someone presents their testimony, you want to ask them to expand on something, you want
47 them to explain something that they weren't quite clear of, that's fine. But avoid any discussion

1 amongst yourselves or anything that would be considered deliberation or decision marking. And
2 then at the next meeting when you do have a full quorum, a record, a full record of that has to
3 be presented and everybody has to review that.

4
5 You can certainly go together or you could separately if you go together to Council meetings.
6 You know if you made a recommendation as a body to the County Council and then you're
7 curious to see what they're going to do with it. You know, you don't want to watch it on Akaku,
8 you can go to the Council Chambers and if three of you happen to be there, that's fine. You
9 know, again, the sunshine law is really here that making sure you don't make decisions outside
10 of the public eye. And you don't sort of engage in each other to decide votes in advance. It's
11 really to ensure transparency and ensure that there's impartiality within the system.

12
13 So the executive meetings as I mentioned, they're meetings that are closed to the public.
14 Normally the one exception that you would typically use is the executive meeting to discuss with
15 the board's attorneys, on the board attorney, on questions and issues pertaining to the board's
16 powers, duties, privileges, immunities and liabilities. Now if you need to do that that would
17 probably be at my suggestion or if there is another attorney present if I'm not here that day. If
18 that's the case then it has to be an affirmative vote of two-thirds of the members present which
19 is sometimes the math on that can be different depending on how many people are actually
20 here. It still would need to be a quorum obviously and needs to be at least five votes. So two-
21 thirds of what was here would need to vote to go into executive session. Then we go into
22 executive session, we discuss whatever the legal issue is. And there are other exceptions, I'm
23 not going to bother to go into them. They are in HRS 92-5 if you want to look through them. I'll
24 bore you with them because they don't really apply to what we do here. But if we do go into
25 executive session it's got to be announced what is for, there is some legal issue and we go in,
26 close the room. The only people allowed would be your attorney. And then if there is some
27 staff person who will be needed, the staff person can be present as well, but all members of the
28 public would not be allowed in. It wouldn't be recorded. Then you can discuss things. You can
29 talk about it. You can't vote. Voting has to be done only after you reconvene after executive
30 session. So you close executive session, reopen open session, then you can go ahead and
31 vote. And you can offer limited comments on, on how you're voting or why.

32
33 What happens if there is a sunshine law violation? There's a possibility that the decision that's
34 made could be voided, Court could grant an injunction, and in extreme cases Commissioners
35 could be found guilty of misdemeanors or the Commissioners could be removed. But, these are
36 kind of extreme examples. The sunshine law violations where it's very clear that, you know,
37 there's an e-mail string where three of you were all e-mailing around each other going, okay,
38 yeah this short-term rental guy, I know him, he's a scum. We're not going to vote for his permit.
39 Okay. If you got that, don't do that. Because you've got somebody who's got bigger problems.
40 But that would be --. If that were to happen in any board or commission, not you guys, but
41 anybody, yeah that could arise to a level of a misdemeanor. It would be rare, but it's possible.
42 A more likely scenario is that if that happens, you know, whatever decision the body made
43 based on that would be, would be void.

44
45 Okay Ethics. This, in the Charter --. So Ethics sometimes gets conflated a little bit with
46 appearances of propriety and fairness. What Ethics is really concerned with is it boils down to
47 where is the money? If you, as a Commissioner, you cannot accept gifts or money from

1 somebody who is willing to or has a pending application for a project. You know, basically a
2 bribe. You can certainly are free to receive, you know, gifts of aloha which are, you know, small
3 tokens. If somebody wants to bake cookies and bring them to the meeting, pass it out to
4 everybody, okay, that's alright. If somebody wants to give you five hundred dollars and says I
5 hope you vote favorable for me, that's not okay. It should be, it should be...obvious, but I have
6 to say it anyway. The tricky issues are when you possibly might have a financial interest in
7 something that's coming up. Now, you're all volunteer members so you all have jobs and you
8 all have jobs that relate, you know, in some manner or fashion to something that could involve a
9 land use application in some point or another. My question becomes to what extent is that
10 financial involvement tied up with the permit process.

11
12 If you, you know, own a roofing company and somebody is coming in for an SMA permit, and,
13 you know, you're hoping, okay if they get this, the project goes through, gee, I'd like to be hired
14 that, you know, I'd like my company do the roofing for it. If that's your, you know, if you just
15 think that would be a nice thing after the project is approved that's fine. You don't have to go
16 ahead and recuse yourself just because that's the business you're in.

17
18 If you have a contract that says in the event, you know, the permit is granted, you know, I'm
19 going to get to build this guy's roof, okay, you need to state that. You need to disclose that and
20 you need to recuse yourself from any voting on it. It doesn't mean the Commission still can't
21 vote and approve if it meets the criteria. It just means that you can't, yourself, vote on it.

22
23 Now there are going to be other times where just because again the general nature of your
24 business may be dependent on, you know, projects going through permits, you know,
25 development taking place, you know, permits being processed. If your line of work just involves
26 that as a facet of your business, you don't necessarily need to disclose that every time a permit
27 comes through unless it's specifically tied to a specific project. But, if you're not, if you're not
28 sure there is a way to go ahead and ask the Board of Ethics an advisory opinion. You can
29 explain to them, you know, the nature of your financial dealings and the nature of, you know, a
30 particular set of permits that might be coming for your approval or for your recommendation and
31 you can get an advisory opinion. And as long as you act in accordance with the advisory
32 opinion, then you're, then you're in the clear. Whether or not it's found out later that somebody,
33 the Court determines there was a violation, if the Board of Ethics issues you an opinion and you
34 act in accordance to that, that provides you cover. So if you're not, if you're not clear, if you're
35 unsure, it's always a good route to take because that gives you protection. And they know what
36 they're doing so they're not just blindly say, oh yeah go ahead. They're going to scrutinize it
37 pretty carefully.

38
39 But, you know, if you think that there's any...possibility that there could be an issue, you know,
40 my advice would be you can disclose it at the, at the beginning of the meeting. State, you know,
41 what the nature of it is, and if you think you need to recuse yourself, you can go ahead and do
42 so. You can always, you know, confer with me ahead of time if you're not clear on exactly how
43 it might be entangled I can give you my opinion on that. But again, you know, I will most likely
44 say go to the Board of Ethics and if you've got an ongoing business issue. If it's just one specific
45 thing then it should be pretty clear whether you have a financial interest in it or not. Whether you
46 are, you know, related to the applicant or a competitor of the applicant and something along
47 those line, anything that would involve your financial benefit.

1
2 Alright. And so it's actually codified within your rules so it just says that the affected member,
3 you must make a full disclosure of the circumstance, and if you've got a financial interest you've
4 got to disqualify yourself from all votes.

5
6 Employer-employee relationship is a financial interest that must be disclosed, but you know, you
7 do so prior to the Commission discussion. But it doesn't automatically disqualify you from voting
8 if you have an employer-employee relationship with an applicant. But, again, you know, this is
9 where you want to air on the side of caution. If you're in doubt, you know, you can abstain, or
10 like I said, you can go before the Board of Ethics and if you get that advisory opinion and you
11 act in accordance with the opinion of that, you won't be held liable. So, that's my advice.

12
13 So if somebody does believe that you had a financial interest and you didn't disclose it they can
14 always go ahead and file a complaint with the Ethics Commission and that can be investigated.
15 But, you know, if you do truly have a financial interest and you don't say anything about and
16 don't speak up at all, and Ethics Commission it's shown to them that you really do, and you did,
17 and you voted on it, then there are penalties, so proceed with caution.

18
19 Mr. Carnicelli: I have a question.

20
21 Mr. Higashi: Yes, question Commissioner Carnicelli.

22
23 Mr. Carnicelli: Is the threshold for, for that different if it's say something that we are the authority
24 on versus something that we're an advisory position on? Is the threshold different for either one
25 of them?

26
27 Mr. Galazin: I, I would say no. You know, there is -- I've gone through the case law in terms of,
28 you know, the fact that you are advisory on some issues to the County Council and they may be
29 the resulting, the ultimate decision maker, but to a lot of extent they are going to rely upon the
30 input and decisions and recommendations of this body. Depending on the permit, sometimes
31 Council will just sort of take it on their own. Sometimes Council will defer, gives a lot of the
32 effort to the body. So even if you're an advisory role, you know, if the Council decides to give a
33 lot of deference to the decision made by the body, then it could put you in hot water. So I would
34 say it's probably the same level.

35
36 Mr. Higashi: Commissioner Robinson.

37
38 Mr. Robinson: I've got a question on that note. When it comes to testimony, say we do a
39 testimony at the Council and later on we have that come up that we've already stated our
40 biased, how, how are we supposed to act in that case? You know, if we're representing a
41 certain association, a certain field of work and we go to Council and we testify that, you know,
42 we think this is the proper way to do this, so on and so forth, even budgeting, then it comes in
43 front of us. If we're already showing a bias, are we still have to be in a capacity or is it
44 something we have to recuse ourselves because we've publically, you know, went and testified.

45
46 Mr. Galazin: That's a very excellent question, and I think you, you caught part of the answer
47 when you stated that if you testified that you're at the County Council, for example, and you're

1 saying that you're doing it on behalf of, you know, your employees or part of an association, or
2 part of a trade, guild, or union or whatever, what have you, that's, that's your business and
3 you're certainly do so as long as you can maintain your neutrality when you're sitting as
4 Commissioners. You know, everybody have their own opinions and you're certainly are well-
5 entitled to them. We'll get to this a little bit later. You know some people might really like a, you
6 know, short-term rentals, they think they're great for the economy, another Commissioner might
7 think that they're terrible for the whole island. You've got to put your personal opinions aside
8 and view them through an objective criteria. If you don't think you can do that, then you have to
9 stand up and perhaps disclose that. Or, you know, in that situation, Commissioner, I would say
10 perhaps one of the better things to do would be to just make sure that you put on the record
11 announce to the members I just want to make sure it's clear to everybody that, you know, I
12 testified on behalf of the, you know, Realtors Association of Maui on this island a few months
13 back. However, that was in that capacity, today I'm reviewing this in my capacity just as a
14 Planning Commissioner, and you know, I'm, I'm not advocating for them in this role. Just put it
15 on record then that way it makes it clear for everybody. So that a good question.

16

17 Mr. Robinson: Thank you.

18

19 Mr. Higashi: Commissioner Carnicelli.

20

21 Mr. Carnicelli: Thanks. Along that same line, I guess, how -- is, I mean, it's one thing when
22 we're doing it in front of the Commission or say the Council but even here. Is it the same when
23 we state that we have like say an opinion or a preference regarding the actual law or statute
24 itself? Or say, you know, we just don't believe in this particular law or we don't agree with it or
25 something like that. Does that fall in the same category if it's something that maybe within the
26 purview of what it is that we have a financial interest in?

27

28 Mr. Galazin: When you get to that layer of it, you have to remember kind of the tiers of how the
29 government itself, how the County government functions. And we've got, you know, the State
30 law, and you've got the Charter, you've the County ordinances and then you have the
31 Commission's own rules, you've got the SMA Rules. There's a lot of ordinances and statutes
32 that you are charged with reviewing things through. You may or may not happen to like a
33 particular law. You may have issues with how it was passed or issues with, you know, how it
34 reads. However, you know, that's not something that, that you can really consider when you are
35 sitting in that chair. If you are asked to review a short-term rental home permit, you're asked to
36 do it through the criteria of the short-term rental home permit ordinance and those criteria alone
37 whether you think they should have included some other things or not. And that is something I
38 want to touch on a little bit later so I'll circle back to that, but that's the short answer to that.

39

40 Okay, now I'm moving on to contest cases which is kind of a tricky term.

41

42 Mr. Higashi: Before you go into contested cases.

43

44 Mr. Galazin: Sure.

45

46 Mr. Higashi: I have a question regarding representation by Counsel if a board or commissioner

1 gets cited or someone files a complaint against the board or commissioner. What is the support
2 that the board or commissioner can get from that particular commission or board that they sit in?
3

4 Mr. Galazin: Thank you Chair. So any Commissioner that you are subject of a suit in a capacity
5 as a Commissioner or something that you did as a Commissioner, if you were acting within the
6 course and scope of your assigned duties, you know, as volunteer and as designated, then
7 typically you would be defended by the County in that suit. If there's any question as to whether
8 you were perhaps working outside of the course and scope of those duties, then there might be
9 an issue of whether, you know, Corporation Counsel would need to look at the situation more
10 closely to decide if we may need to investigate a little bit further ourselves. I couldn't say in
11 every circumstance because every circumstance would be different. But typically if one
12 Commissioner says something during a meeting and a permit is denied and a suit is filed and
13 the basis of the denial, or the basis of the suit is that the permit was denied because of the
14 actions of one Commissioner or the statement of one Commissioner, it would be the body
15 because it's the body that made the decision. It wouldn't be the Commissioner individually so
16 once the body the Commission itself is the defendant then, or the appellant whatever the case
17 maybe, then the board will get representation.
18

19 Mr. Higashi: Thank you.
20

21 Mr. Galazin: Okay, so as I was saying contested case is a term that is somewhat misleading
22 because of how case law is developed and how your rules currently read. You know, my oldest
23 daughter is 21, your rules are older than that. They haven't been updating a very long time.
24 However case law updates every year, every six months. New decisions come out that
25 reinterpret existing law, and your rule is simply don't encapsulate everything that comes before
26 you right now.
27

28 Specifically speaking under State law contested case is a proceeding which the legal rights,
29 duties, or privileges of specific parties are required by law to determine after an opportunity for
30 an agency hearing. So the important thing there, it's, you know, somebody's right to get a
31 permit and there has to be, there has to be an opportunity for an agency hearing. An example
32 would be, you know, a public hearing for an SMA Major permit or the State Special Use Permit,
33 the procedures that, you know, Planning covered before.
34

35 Now it seems contested case traditionally brings to mind that, well, somebody is contesting it.
36 And you have procedures in your rules for if somebody wants to intervene and you decide,
37 okay, you grant somebody intervention status and typically goes before a hearing examiner and
38 you decide who presents their case. They build up a record as evidence, and then the hearing
39 examiner comes out with a Decision and Order and presents it back to you folks. Or that isn't
40 the only case a contested case is going to occur. A contested case if it's defined by
41 somebody's right, duties, and privileges they come after an agency's decision that's after a
42 public hearing, that means after a public hearing even if nobody else is technically contesting it.
43 So that's where the interaction between Chapter 92 and Chapter 91 becomes a lot more fun.
44 Chapter 92 as we talked about, the sunshine law, the openings meeting act, says if it's on your
45 agenda, people get to come, show up and talk about it.
46

1 If it's a contested case, it's got specific requirements. It says that by Statute you have to provide
2 notice, there's going to be evidence submitted, each party shall have the right to cross examine,
3 provide evidence, probably initiate a procedure has a burden of proof including the burden of
4 production, burden of persuasion, and it's only . . . (inaudible) . . . of evidence. Now what we're
5 finding out things are changing a little bit and we're hoping to change along with them. So to
6 give you kind of brief snapshot of where we're heading.

7
8 Contest cases are going to be anything that, anything that comes with a public hearing and if
9 somebody is applying for a permit to do some sort of activity. And I'll give you -- the prime
10 example would be, you know, a short-term rental home permit or, you know, State Special Use
11 Permit, the use permit what have you. If it's a, say the State Special Use Permit, and they come
12 in and a lot of the members of the public show up, they want to come and speak their peace
13 because you're the planning commission, your meetings are open, it's on the agenda, they're
14 here to testify. However, it's still a contested case because if they get their permit after an
15 agency hearing and they have the right to appeal that, that makes it a contested case. So the
16 State law doesn't really do a very good job of meshing those two things together. The question
17 then becomes, how do you as Commissioners do that? You're going to have people come up
18 and testify and give their opinions. You're here to listen them. You're here to question them.
19 But then the issue becomes to what extent does that become evidence, quote on quote, as part
20 of the record?

21
22 Now when you have a contested case and it's appealed, it's appealed to Circuit Court, there's a
23 record on appeal. And the record on appeal consists of minutes, staff report, memoranda, any,
24 you know, evidences, oral or written testimony that's offered and approved, and to date we've
25 sort of grappled with how do we allow people come in and speak to an agenda item because it's
26 an agenda item they can talk about, and how do they reconcile that with the fact that contested
27 case proceedings there is specific requirements that, that evidence be subject to, testimony be
28 subject to cross examination.

29
30 Now so far we've have there haven't been any case, precedent setting cases from the ICA or
31 the State Supreme Court but we've had a little of a Court ruling pretty recently which has
32 directed this body that public testimony, if it's going to be considered evidence in a contest case,
33 must be done under oath and must be subject to cross examination. So we're going to be
34 shortly in the final stages of implementing some changes and you folks are going to be first
35 iteration of this body that's going to see them how we combine Chapter 92 with Chapter 91. To
36 allow people in, if somebody is coming in for a permit, nobody's contesting it per se, but people
37 want to show up and talk about it, people want to voice their opinions about it. And people want
38 to say why they don't like it, or why they do like it. And you want to question them and you want
39 to understand their concerns and you want to make sure that you represent the concerns of the
40 committee which is very important. That's your job. However, the fact is if you consider the
41 comments of members of the public, and those members were never subject to cross
42 examination and there was never an opportunity for applicant to provide rebuttal evidence, the
43 Court has said, if that's all that you're leaning on, if that's all the decision rests on, that could be
44 invalid, meaning, it would be remanded back to you.

45
46 You have one such decision that has been remanded back to you. It hasn't come back to you
47 yet, but it will. And when it comes back we're going to have some new procedures. So this is,

1 this is a real shifty area right now and we're trying to pin it down. And by we, that's mostly to me
2 to try and figure it out. But I'm working with, you know, some of the deputy corporation
3 counsels. We all advise boards and commissions and some of us, you know, and the planning
4 commissions are the ones that mainly do contested cases. There are a few others, the BVA,
5 but those contested cases, they're not public hearings, those are BVA hearings, and so those
6 are rules for the outline.

7
8 What you're going to see and what you're going to end up with is something that looks a lot like
9 the State Land Use Commission. If you've ever been to one of the Land Use Commission
10 hearings where people can testify but they're -- we're just going ask them to make sure that they
11 swear under oath and that they be given an opportunity to be subject to cross examination. So
12 what you want to do is when these new changes come into play, it's going to come into effect
13 which hopefully is going to be pretty soon, we're going to prep you on it, make sure you
14 understand it, but it's really geared towards the idea that even if nobody is contesting it by the
15 virtue of the fact that if they get a bad decision, if they get a decision that they don't want,
16 there's been a public hearing and they get a written decision that they can appeal that makes
17 the contested case. And if it is a contested case, then there are certain criteria that apply. And
18 if we've tried to argue differently and the Court said no. So, so far we've going to go with what
19 the Court says. So until we hear differently we are going to be coming up, like I said, with a
20 slightly altered process for how we deal with this. It's going to be a lot of fun for everybody so
21 buckle up.

22
23 And one of the reasons that this is important is that, like I said, you're creating a record because
24 if it's appealed, what is appealed is the record on appeal. And the record consists of the
25 meeting minutes, everything that's been submitted, written and oral testimony so long as they
26 are subject to cross examination, and the staff memorandum. And you must look at the specific
27 criteria for whatever the permit is, and to the extent possible you've got to identify what you're
28 looking at.

29
30 Mr. Higashi: Commissioner Gomes.

31
32 Ms. Gomes: Did you turned it back down? In the contested case is it similar to arbitration? Is
33 there a cost to this?

34
35 Mr. Galazin: No. This is just, this would just be a little bit --. This would be tweaking how your
36 meetings typically run. This would just be a different way of allowing basically, it would mostly
37 function and how to . . . (inaudible) . . . public testimony. Because under Chapter 92, the public
38 has the right to testify on any agenda item subject only to a couple of exceptions. One of those
39 exceptions are contested cases, but they're so intertwined in the way that you folks run your
40 meetings and the way the planning commission is set up that we can't really separate the two.
41 We can't have some public hearing that's required under the County Code and say you've got a
42 public hearing, meaning the public got to show up and testify, and at the same time say, yeah,
43 you can't consider anything that they say. So it's going to be, it's going to be the same format.
44 You're going to be here, you're going to be listening to the same people coming and voicing
45 their same concerns, it's just going to be, the process may be a little different and it's going to
46 give the applicant a little more opportunity to, to provide, you know, more of a counter argument.

1 And it's also important...I'll say for example, if you're looking at the short-term rental section. So
2 you've got nine things that you consider, nine criteria that by ordinance you consider when
3 you're looking at a short-term rental home permit. What makes this difficult for you folks, makes
4 it difficult for us as well, and we're depending on you is that it just says prior to issuing the
5 permit, the applicable planning commission shall consider the following. It doesn't say
6 necessarily it must meet all these things. It says you've got to consider these things. But you've
7 got to consider if there's, you know, if there's any CCR's, if there's existing land use
8 entitlements, community plans, community input, potential adverse impacts, number of
9 substantive of protests to short-term rental home.

10
11 And again, you know, I'll focus on number four, community input. Before you grant an STRH
12 permit you must consider community input. Well, what does that mean? If the community, if
13 one person shows up and says, yeah, I really wouldn't like a short-term rental in my
14 neighborhood. Is that all the community input you've got? If you've got a bunch of people show
15 up and say, oh, you know, this guy is a real piece of work and you know, we just, we just don't
16 like the idea of him, you know, having a benefiting in our neighborhood, and profiting off the
17 home in our neighborhood because we don't like him. That's community input, but that's, that's
18 not really the kind of criteria that we're going to look at.

19
20 You've got to really drill down and focus. And in each staff report, planning does an excellent
21 job putting these things though and before an application even gets to you folks, it goes through
22 planning first. And there is going to be a lot of back and forth. The applicant is going to, you
23 know, asks the applicant's consultants. The consultants is going to know what questions to ask,
24 how to get their permit together, how to try and show that they're meeting all those criteria. In
25 the staff report is going to give each criterion, lay it out, and then give their recommendation as
26 to whether they think that criterion has been met or not. But you are separate and apart from the
27 Department. The Department makes a recommendation to you and then you make your
28 decision. And there is meant to be that bifurcation, that separation, as you are an independent
29 body even though you are supported the Planning Department you are here to judge things on
30 their own merits. But you've got to look at these criteria, just those criteria that are in the Code.

31
32 Ms. Gomes: So --. I'm sorry. Question, please. So just on that alone, are you stating that if we
33 were to just base on what you focused on giving the community the input and one person shows
34 up and we were to base that, is that enough, is that not enough, would it be sufficient if the staff
35 planners were to say, okay, we put up flyers to everyone, or we put it out in the newspaper, that
36 would be sufficient. Is that, is that what we're, is that what we're trying gauge?

37
38 Mr. Galazin: Yeah, I think that's, that's exactly the point. When these public hearings are held,
39 you know, the applicant has to send out notice to everybody within a certain radius, it's got to be
40 published in the newspapers. So the neighbor --

41
42 Ms. Gomes: It costs money.

43
44 Mr. Galazin: Which costs money. But people are going to know about and especially in the
45 social media, word of mouth, it's going to get around, and it's not like people are going to be
46 unaware that these are happening. So you have a public hearing, and if one person shows up,
47 voices their, you know, opinion that they're not in favor of it, you've got to consider the fact that,

1 while there's 299 people who also knew that this was happening and didn't come up to say that
2 they didn't like it or didn't send in an e-mail. So, yes, that where the community input, that's
3 where it comes in.

4
5 Mr. Gomes: Okay, thank you.

6
7 Mr. Higashi: Commissioner La Costa.

8
9 Ms. La Costa: When you noted that you had to, or people had to testify under oath and be
10 crossed examined, who is the person responsible for cross examining? Do you submit
11 questions to someone and then one person is responsible for all of it?

12
13 Mr. Galazin: So that is one of the things that we are working on. We haven't finalized it yet, so I
14 can't say with a 100 percent certainty. But it would, it would most likely be up to the applicant or
15 an applicant's representative to ask if they could cross examine a particular witness. And then
16 the scope of the cross examination would ultimately be sort of controlled by the Chair. And you
17 probably need to ask your Counsel, sadly me, to work through that. And honestly, I'm not sure
18 how it's going to work yet. So it's not formal thing that we've adopted. I'm not trying to give you
19 a heads up based on the recent cases that we've had, and we're trying to adapt to, to judicial
20 guidance. So it would be the applicant, you know, or the applicant's consultant being allowed to
21 cross examine a testifier about specifically just about either what they said or if they have an
22 kind of specific biased or motive for speaking the way that they are.

23
24 Ms. La Costa: Thank you. So if they're -- and I haven't been to any of these meetings so please
25 beg my ignorance. So if someone is testifying and you know absolutely certainly that what
26 they're saying is not correct, does that cross examination then go through the Chair, or how
27 does that work?

28
29 Mr. Galazin: Well, don't worry because this is process that has not been implemented yet so
30 that being we haven't been there, I think perhaps all the Commissioners may be able to sort of
31 think in their own mind of a particular testifier at one point or another who was testifying and
32 they thought in their own mind, yeah, I know that's not true. Whether they say that under oath
33 and they still say it and you still think in your head, no, that's not true, you are also, you know,
34 empowered to question testifiers. So are also in the sense are already cross examining them to
35 an extent. And there are sometimes where, you know, you folks have called out people. But
36 the thing is to make sure that you're just trying, you're just trying to elicit as much as you need
37 for the record. You know, if somebody is going to say what they say, you can't just call them a
38 liar. You can ask them questions to verify, and ask them questions if that's really true. If the
39 applicant wants to do that, and if we set up this process, you know if the applicant can, but you
40 certainly whether we set up a new process or not, or whatever format it takes, you're always in
41 your position as a Commissioner entitled to question a testifier about what they, what the
42 substance of what they're bringing up.

43
44 Ms. La Costa: Thank you.

45
46 Mr. Higashi: Commissioner Hill.

47

1 Kahu Hill: Mahalo. I understand what you're saying about, let's say there's one person that
2 testifies and there's 299 that don't in one area. I'm wondering when, how do, how would you
3 think that we will look at that if that one person possibly has a lineage there or bloodline there,
4 cultural history there of that land, or a kupuna who would be able to speak about the cultural or
5 the spirituality, the . . . (Inaudible. Spoke in Hawaiian) . . . , the flora and fauna, or whatever it is
6 of that area and they're a cultural expert or if there's something that could actually give
7 something that those other 299 might not know?
8

9 Mr. Galazin: That's definitely something that you can consider too because it's not just
10 community input. And what you're talking about is somebody who may be speaking to the
11 cultural significance of the site. There's, you know, a Native Hawaii Law Training specifically for
12 you folks that was to occur, I think, in December but it has been put off. Hopefully it will occur
13 sometime soon, given by the UH faculty. And in that scenario I think that would be something
14 considered beyond input. That would be bringing up something, you know, cultural concerns.
15 And, you know, you do have other things to consider just beside the criteria in the County Code.
16 But remember too there is the Hawaii Constitution. You have the Public Trust Doctrine to
17 consider. You have Native Hawaiian Rights to consider in any application. The question
18 becomes to what extent is there an impact to them, and to what extent could that impact be
19 mitigation through conditions. But, yeah, that would be an excellent scenario for where
20 somebody would come in and they're one person, but they are speaking perhaps to a greater
21 degree of knowledge than just a number of community.
22

23 Kahu Hill: Mahalo.

24
25 Mr. Higashi: Commissioner Carnicelli?
26

27 Mr. Carnicelli: So my question is -- thank you Chair -- is, is around our questions. Because
28 earlier you had stated, like, you know, if we don't have quorum, the line of questioning is really
29 sort of relegated to clarification of testimony and not necessarily digging beyond say the scope
30 of what the person testified on. And I know that, you know, depending upon certain boards and
31 commissions, different bodies, counsels, their rules are say different as far as what it is that the
32 board and/or commissioner or counsel can ask of a testifier. So within the context now of, you
33 know, this cross examination, quasi-judicial thing that we're now doing, are we --? Is, is the
34 scope of which we're able to ask questions going to say be in that say box or constrained of?
35 Okay, that's what you talked about and I can ask you questions or, for clarification of what you
36 talked about, but trying to then say use you as a resource to get to something else. Is that
37 allowed, not allowed? And then if you could, then, there's a second part, is if you could also talk
38 about the weight of, say, a testifier, say if someone is an expert in something versus, you know,
39 say weighting different testimony in our decision making as well. Thank you Chair.
40

41 Mr. Galazin: Well, the use of the word, you know, quasi-judicial there because you've always
42 been acting in that capacity, we just haven't always procedurally been treating it exactly as
43 such. So when there is somebody testifying, yes, you are permitted to ask clarifying questions.
44 And if you want to ask, you know, other questions that are sort tangential to what they brought
45 up, then, then that's fine too. If you are trying to ask them about something completely
46 unrelated, trying to get, you know, them to speak to something that they didn't bring up at all,
47 and that isn't even close to what they brought up, no, that would sort of be outside of the

1 bounds. But if it's an applicant, you can certainly bring up anything and anything related to the
2 application. You can push an applicant about that. That's always been your role and will
3 always be your role to -- because they bear the, they bear the burden and when you talk about
4 how to weigh something, this will help if people, you know, swear something under oath, and
5 then, you know, subject to cross examination, you can, you're the best judge of creditability,
6 reliability and, you know, your expertise. And to the extent that that record if you develop that . .
7 . (inaudible) . . . will show that, it makes it so much easier to defend decisions if they end up in
8 litigation. And having defending some of these decisions of this body in litigation, I can tell, you
9 know, for experience having an unclear record makes it very difficult from a litigator's
10 standpoint.

11
12 So my job, in advising you, is not only to help you, but it's also to help my department. Because
13 if you come out of here with a decision that's adverse to somebody, it's got to be crystal clear
14 what the basis for that decision were. So it's got put down, point by point, as much as possible.
15 And a lot of these permits, you know, you'll have to meet all of these criteria. And so if there's
16 one that they don't meet, you say, yeah, I think they meet pretty much everything, but there's
17 this one thing here. And this person said x. They were asked about. They still said x, and I
18 think that this goes to this, you know, this demonstrates that it doesn't meet that particular
19 criteria and I'm voting against it. So developing a record is super important and that's how that's
20 going to -- I think it's going to really benefit this. But just as a general wild stroke that's to back
21 up, yes, when you're talking about how you look at things, how you question people, how you
22 make your votes, it's going to be very important to, to be as specific as possible if you're going
23 to be objecting to something, or proving something, whether you think it meets that. If you just
24 want to say, yeah, you know, the staff nailed it, I agree with everything they said, everything in
25 the exhibits here agrees with that, the staff recommendation, that's fine. You say, you know,
26 what, the staff recommends that, but we heard these other things today, and based on what I've
27 heard, I don't think they meet this one criteria, criterion, so I'm going to vote no on this. And
28 everybody, who's going to vote, should be able to say that so we've got a record of, you know,
29 not just people raising hands. But we have people speaking about the decision making process
30 which is important.

31
32 Mr. Higashi: Commissioner Hill.

33
34 Kahu Hill: Mahalo Chair. I just wanted to understand if there's a thought in the future, and thank
35 you for sharing about the cultural archeological. If someone comes and take oath in the future,
36 they then are speaking not necessarily from something tangible or something from the physical,
37 but according to their beliefs or what they've been taught or what's been passed down culturally
38 here, or and halau or with their kupuna, or they might have spiritual or religious views and
39 beliefs, or maybe mythology and others it's historical. When it comes to something they're
40 coming to take oath and it's from those beliefs, is that still going to be acknowledged at that
41 same level if it's not something tangible of their dimension let's say now?

42
43 Mr. Galazin: Well, I think all you're just going to be asking is that they, you know, say everything
44 they're going to say is true. And if they believe it to be true, then that's sufficient.

45
46 Mr. Higashi: We're going, we're going to break for lunch. We have several Commissioners that

1 have commitments they have to make so we're going to reconvene at 1:15 p.m. if that's okay
2 with Counsel.

3
4 Mr. Galazin: Yeah. We can do that. Okay.

5
6 Mr. Higashi: Okay, so we're going to break for lunch. Reconvene at 1:15 p.m.

7
8 *(The Maui Planning Commission recessed at 12:15 p.m. and reconvened at 1:15 p.m.)*

9
10 Mr. Higashi: Back in session. We'll continue with our orientation workshop.

11
12 Mr. Galazin: Thank you Chair and Commissioners. Because we covered a lot, a lot of ground on
13 contested cases, I'm just sort of going to go a little more briefly through the rest of it. I mean,
14 you got some of the handouts, and if you have further questions, we can go over later as well.

15
16 So one of the reasons I was speaking so much about how we're building a record is with the
17 idea of judicial review. Any decision that this body makes, if it's adverse to any party, they have
18 the ability to seek judicial review of the decision. And the Court may either, you know, affirm the
19 decision, remand for further proceedings in accordance with certain instructions, or reverse, or
20 modify the decision. We've got one currently on remand which is, you know, with instructions to
21 kind of do it over but with different sort of different procedures. So that's why it's important to
22 have the record together.

23
24 These are the grounds in which your decision may be challenged. If it's violation of any
25 constitutional provisions, in excess of authority, wrong procedure, error in law, arbitrary
26 capricious. I mean, all of these things are legal standards. You don't necessary need to know
27 the ins and outs of it. It's just, what it boils down to, to make your decision based on the facts
28 produced in evidence, and weighing in on the criteria that you have for the particular permit or
29 whatever decision is in front of you. As long as you do that and stick to those two main
30 concepts, you should be fine. Whatever, whatever the decision you are to make it should hold
31 up to scrutiny.

32
33 Again, just whatever particular feelings you may have about a type of project or a particular
34 area, just, you've got to remain fair and impartial at all times when you're sitting in this chair.
35 And when you're not in the chair, you can certainly, you have your own opinions about things,
36 and that's fine as long as you can put them aside when you get here. Don't form any
37 conclusions until you've heard everything in evidence. Apply the law to the facts. And I'll harp
38 on that every time we come to a decision. You know, when a motion is made to, to have
39 everybody, to make sure we put that down during the discussion period before a vote actually
40 takes place. And, you know, this shouldn't have to be said, but I will say it. Avoid statements
41 that may be seen as an attack on someone's race, sex, gender or religion. So avoid any kind of
42 discriminatory intent or motive.

43
44 Again, I said this earlier, the planning staff does an excellent job putting things together, laying
45 things out for you. So they'll have all the criteria that you need. It will have the departmental
46 analysis of the information. What you do is you weigh that versus whatever else is presented
47 during the actually hearing itself.

1
2 Alright, takings is an issue that will come up from time to time. You know, the Fifth Amendment
3 basically says that the government cannot take property without just compensation. There are
4 what are called regulatory takings or sometimes you can -- a regulation would go so far as to
5 actually physically take property or you may impose conditions that are so onerous as to affect a
6 takings, quote on quote. It's not necessarily that the government cannot do it. It's just that they
7 cannot do it without just compensation. And it's -- what come up mostly are imposing conditions
8 that wouldn't necessarily be within the scope of what's proposed. It would be above and
9 beyond.

10
11 So in order to impose conditions designed to mitigate any kind of impact, if you're going to
12 approve something with conditions, and the idea is, well, we understand project is going to have
13 some kind impact, what can we do to mitigate those things. Make it . . . (inaudible) . . . as much
14 as possible. There must be a nexus between the anticipated effect and the exaction, the
15 condition that you're placing on it. You must show the anticipated effects and then show how
16 the condition that you're putting on is related to those effects. That's the nexus. And that's . . .
17 (inaudible) . . . coastal commission. Go ahead.

18
19 And then rough proportionality. These together are referred to called Nolan and Dolan
20 Standard. Nolan being the nexus, and Dolan being the rough proportionality. Whatever
21 condition you put on sort have to be roughly proportion to the impact. So if there's a minor
22 impact to a shoreline, you can't say, alright you've got to do this huge compensatory mitigation
23 part on a third of your property. But at the same token if they're impeding access to, you know,
24 some traditional, you know, pathway, then yeah, you've got to do something that would be
25 roughly proportional and say you've got to provide other access elsewhere if you're going to
26 take this away. That basically states what I just said.

27
28 So again, the conditions themselves can sometimes be unconstitutional. And it would probably
29 be more, I would imagine, in terms of SMA review. A lot of times those are bigger projects and
30 conditions that you're going to try and mitigate because those, that's the special management
31 area. And the whole idea is that if you're within that, and you need those kind of permit it's
32 because you're doing something that's going to have an effect. So to the extent possible
33 identify the effects and then identify whatever mitigating conditions would be necessary in order
34 to approve it just so long as they are related to it, roughly proportional, and it will stand up to
35 constitutional scrutiny. Question?

36
37 Mr. Higashi: Commissioner Carnicelli.

38
39 Mr. Carnicelli: Thank you Chair. So within this nexus and what you're talking about right now, I
40 think often times because like, you know, we'll look at say an environmental assessment or an
41 EIS and the SMA, and you know each one of those regulates different things and they sort of
42 kind of blend at times. And like at, at one example that I, I just go to is we'll start talking about
43 traffic in an SMA Permit hearing when traffic has nothing. You know that's not one of the things
44 we're supposed to talk about in SMA. So, but we do. And so my question is if we --? Is this
45 what you're talking about if we were to put a traffic condition on an SMA Permit, even though it
46 affects the property and it's something that this body feels as though it's necessary and it would

1 mitigate, you know, certain elements, is that the part where you're talking about, okay, you can't
2 put a traffic condition on an SMA Permit because SMA doesn't have to do with traffic?

3
4 Mr. Galazin: In that -- thank you for the question -- in that scenario, you are correct in as much is
5 if it really does not have to do with it. If it would pertain to some other kind of impact that the
6 project might have but not the impacts, but not the criteria that you're looking through as the
7 SMA lens. Then, yeah, talking about traffic and I know it's difficult for this body because you do
8 have so many different layers of responsibility. Just like there's the layers of zoning, community
9 plans, and General Plan. You have layers of, you know, Special Use Permit, SMA, you know,
10 EA review. And so it can be difficult to kind of separate them out, to parse them out. But you
11 are very correct to point out that you've got to be cautious and remember what kind of permit
12 you're talking about at any given time and keep that discussion limited to that permit, what it's
13 proposed to do, and what you can reasonably expect it to require as a condition.

14
15 So it will blend at times, and we'll try, and I'll try to keep it back on track as much as possible,
16 but it is a good reminder to everybody that just because we start talking about a project, if it's a
17 permit for a larger project that has several permits, you know, . . . (inaudible) . . . I'll echo it
18 many times, hey, you guys are going to see this again. It's going to come back. You're going to
19 have more time to talk about it and we don't need to necessarily to try and try out every possible
20 mitigating factor for the first go around.

21
22 Mr. Higashi: We have, we have a question that one of the Commissioners wanted to ask you
23 before we went to lunch so I'm going to have Commissioner Gomes to ask those questions.

24
25 Ms. Gomes: Thank you Dave. Thank you Chair. I'm sorry, David, I may be confused with
26 contested cases and hearings. Are they one and the same because I, I believe contested cases
27 are closed off.

28
29 Mr. Galazin: Yeah, and again, that's why I said we --

30
31 Ms. Gomes: So, yeah, I apologize, yeah, go on. I apologize.

32
33 Mr. Galazin: So that's why we've been struggling with is the idea of a contested case because it
34 is something that can only come after an agency hearing. So there has to be a hearing in order
35 for it to be a contested case to begin with. But just because there's a hearing doesn't mean it
36 necessarily has to be a public hearing. However, we often, by code, not by statute, by code
37 require something to have a public hearing. So it has a public hearing that's open to the public
38 but it's still a contested case because they depends on having a public hearing or an agency
39 hearing but we also make it a public hearing at the same. We blend the two. So that's where
40 the . . . (inaudible) . . . comes in of meshing 91 and 92 together, those two chapters in the HRS.
41 So if that's the case is by definition has to have a hearing. It doesn't necessarily have to be a
42 public hearing. Contested cases can be closed hearings. But often times if they're before you
43 they are open hearings. So we're trying to find a way to work those two things together in a way
44 that's going to continue to allow public involvement but continue to provide the safeguards that
45 are supposed to be in there for all contested case procedures.

1 Ms. Gomes: I see. So, who makes that decision? Is that something --? You know, I've been in
2 situations where, you know, the contested, you know, case or hearing it's, it's closed off to the
3 public. It is, you know, it is just with the person who had made or has the concern. You are,
4 you are stating that it is becoming now public or meshing or is that something that the law is
5 beginning to change? Is this something that is now being opened under OIP? Is that
6 something you can explain?
7

8 Mr. Galazin: The best way to explain it is that there are contested cases that are not open to the
9 public, but by County ordinance. Most of the permits that you are looking at require a public
10 hearing. And so that's been interpreted to mean a public hearing or anybody from the public
11 can show up. And that's --. And not every contested case does require that in our Code so it's
12 by -- or ordinance -- where we've done this.
13

14 Ms. Gomes: Okay, thank you. That makes sense. Thank you Chair.
15

16 Mr. Galazin: Again, and just to, just to touch on the Coastal Zone Management Act. Those are
17 the objectives and policies in that. And you'll, every time you get an SMA, you know, Permit,
18 this will be covered again so I'm not going to go through it.
19

20 There, you know, the Commission is required to determine if there is going to be --. I mean, if
21 there's an impact, and it's going to be substantial adverse impact, they are required to
22 determine if it can be practically minimized. But, you can impose reasonable conditions to
23 achieve minimization. But you have, you have to at least look at it and see if there is a possible
24 way even if there is an impact, say okay, is there some way we can figure how to do this? But if
25 there's, if there are no legitimate or, or if there is no practicable solutions, mitigate solutions that
26 we have found, then the SMA Permit is to be denied. And again, as everything else, we need a
27 clear record and so we make sure we, we are discussing this and talking about this, when you
28 make a motion, make sure you're clear what your motion is, second it, and then during
29 discussion, if somebody wants to amend it, it's got to clear that when somebody makes a
30 motion to amend. And those are parliamentary things that we'll probably get into probably in
31 another meeting I would imagine.
32

33 And then one of the things and Commissioner Kahu Hill thank you for bringing this up earlier
34 about the idea of the lone testifier about testifying to the cultural practices. So, yeah, you do
35 have an affirmative duty to protect coastal resources and the exercise, customarily and
36 traditionally exercise rights of Hawaiian to the extent you possibly can. That is something you
37 need to consider whether it's stated in the, in the conditions and the criteria of the permit itself or
38 not. That's an underlining obligation that you have.
39

40 And so that is, that is it for the orientation. Are there any questions? Otherwise, you know, we
41 will develop some more of this when we go along.
42

43 Mr. Higashi: Any questions from the Commission? Commissioner Hill.
44

45 Kahu Hill: Mahalo. I just want to know in the future when you're going to have people be taking
46 oath to testify, will they have to be taking oath in believing the United States Constitution? For

1 instance, to be able to take oath or is it an oath to the best of my knowledge and my ability that
2 I'm sharing the truth that I know today or what I've been told by my kupuna?

3

4 Mr. Galazin: We will make it as flexible and as open as possible.

5

6 Kahu Hill: Mahalo.

7

8 Mr. Higashi: Any further questions? Thank you.

9

10 Mr. Galazin: Thank you.

11

12 Ms. Gomes: Thank you Dave.

13

14 Ms. Thackerson: And thank you Commissioners. That concludes the part one, training
15 workshop, and we can get back to your regularly schedule agenda. Just as a reminder, I know
16 that last part was a little quick about the SMA and things like that, but at your next meeting,
17 don't forget, fun, fun, we're going to go over the SMA, the shoreline rules, flood hazard, we'll go
18 over discrimination, so you do have a part two. Sorry guys we'll have to do this again. But for
19 now we'll go ahead and move forward with the regularly scheduled program.

20

21 Mr. Higashi: Thank you very much Candace for your orientation.

22

23 Good afternoon ladies and gentlemen. I'd like to apologize for being a little late in starting the
24 agenda. We ran a little late with the orientation program which is very necessary for our
25 commissioners because we're basically a quasi-council taking care of a wide range of
26 applications and that come across our commission.

27

28 At this time I would first like to introduce to you the members of the commission. Starting on my
29 left Commissioner Carnicelli, Commissioner Hill, Commissioner Hudson, Corporation Counsel,
30 Director Spence, Commissioner Gomes, Commissioner Tackett, Commissioner Castro, and our
31 newest member of the commission is Commissioner La Costa. And I'd also like to recognize
32 our hard working recording secretary who has to take all the minutes to our commission meeting
33 and that's Ms. Carolyn Takayama-Corden in the back.

34

35 I'd like to at this time just give some house cleaning things that gotta be done. First of all, we
36 will have public testimony...public testimony will last three minutes. At the end of three minutes
37 I'm gonna ask you to stop because otherwise the meetings will go on and on and we have to
38 expedite things so I'm sorry if you're doing a testimony and I say to you the three minutes is up,
39 that's the end 'cause we're gonna move on to the next testifier. Also, I want you ask you if you
40 have any cellphone please either put them on silence or turn it off 'cause it interrupts the
41 proceeding of our meetings.

42

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

45

46 Mr. Galazin: Thank you Chair. And Commissioners just for clarification and for anybody who's
47 here perhaps wishing to testify as well, I want to make sure the discussion today, the agenda

1 item the topic is the appointment of a hearing officer. It pertains to an underlying permit, but the
2 discussion is not about that permit today. The discussion is about the appointment of a hearing
3 officer to handle that. If a hearing officer is appointed, if findings of fact, conclusions of law
4 come back it's going to come back before this body. There will be an opportunity for all of you
5 to review anything that comes out of it and to approve it or disapprove and there will be
6 opportunity for members of the public to also come and at that time talk about the same. I do
7 want to make sure that everybody who's testifying understands what the topic is. It's the
8 appointment of the hearings officer and to the extent you can confine your comments to such
9 and for the Commissioner to the extent if you have clarifying questions just to try and stay on
10 point to keep us all from being here the rest of the evening.

11
12 Mr. Carnicelli: Chair?

13
14 Mr. Higashi: Commissioner Carnicelli.

15
16 Mr. Carnicelli: So what happens if we fail to appoint a hearing officer today?

17
18 Mr. Galazin: We can go ahead and discuss the details of that but that's probably something that
19 would be better served in executive session if you want to get into the nitty gritty.

20
21 Mr. Carnicelli: Okay.

22
23 Mr. Galazin: If we need to get there, we'll get there, but let's see what we can do first.

24
25 Mr. Carnicelli: Okay, thank you Chair.

26
27 Mr. Higashi: I'd like to also introduce to you Commissioner Robinson who just came in and I
28 forgot to introduce myself, I'm Richard Higashi, the new Chairperson for the Commission.

29
30 At this time, I'm gonna have the Director start.

31
32 Mr. Spence: Commissioners we're on Communication Item for the selection of hearing officer
33 for the remanded County Special Use Permit application for the nine-bedroom transient
34 vacation rental Paia Inn at 93 Hana Highway. And Commissioners an executive session may
35 be called for this after discussion.

36
37 **F. COMMUNICATIONS** (To begin at 1:00 p.m. or soon thereafter.)

38
39 **1. Appointment of a Hearings Officer to consider the remanded contested**
40 **case hearing on the County Special Use Permit application from**
41 **SEASHORE PROPERTIES for the proposed nine (9) room transient**
42 **vacation rental on the property referenced as the Paia Inn located at 93**
43 **Hana Highway, TMK: (2) 2-6-002: 027, Paia, Island of Maui. (CUP 2015/0006)**
44 **(CTB 2015/0009) (SMX 2015/0522) (K. Wollenhaupt)**

45
46 **The Commission will consider only the appointment of a hearings officer,**
47 **and not the substance of the previously noticed application, although**

1 **public testimony will be permitted and notice of the meeting was given to**
2 **property owners within 500 feet of 93 Hana Highway, Paia, Island of Maui.**

3
4 **AN EXECUTIVE SESSION MAY BE CALLED IN ORDER FOR THE**
5 **COMMISSION TO CONSULT WITH THEIR ATTORNEY ON QUESTIONS AND**
6 **ISSUES PERTAINING TO THE COMMISSION'S POWERS, DUTIES,**
7 **PRIVILEGES, IMMUNITIES AND LIABILITIES PURSUANT TO SEC.**
8 **92-5(a)(4), HRS.**

9
10 **The Commission may act to appoint a Hearings Officer.**

11
12 Mr. Higashi: We're gonna start off with public testimony and so what I'm gonna do is I'm
13 gonna...there's 12 testifiers today so as I read your name will you step forward, identify yourself
14 and then you will have three minutes to do your presentation. So first on the list is
15 Lucienne de Naie.

16
17 Mr. Spence: Actually, it's Lucienne. I don't know if she's still here.

18
19 Mr. Higashi: Lucienne, Lucienne? No, okay we'll just move on for the next one.
20 Francine Aarona.

21
22 Ms. Francine Aarona: Aloha Chairman Higashi and Commissioners. My name is
23 Francine Aarona. Can you hear me now? Okay, I'm also known as Aunty Mopsy, Protect Paia.
24 Before I start my testimony I want to mahalo you for your dedication in upholding the law and
25 policies that govern Maui County through our General Plan and our community plan. The Paia-
26 Haiku Community Plan does not allow hotels or TVRs and vacation

27
28 And that is my testimony. Unfortunately, you have been remanded by the Circuit Court for
29 additional consideration of this SUP permit application or Paia Inn and this binder, the intent of
30 this binder as part of my testimony is to bring forth information that was discussed in 2016
31 'cause I know that they will not prepare this for you and I wanted to highlight different things and
32 I do have it written in the testimony what's included in this binder. The intentions of Seashore
33 Properties, owner Michael Baskin is in pursuant for your approval of this application. So the
34 intent of this binder again is to provide you and the hearing officer with the community concerns.
35 December 2016 seems like yesterday, you denied my Petition that I had that time and I mahalo
36 you for that because it would have been so expensive for me which the money I don't have. So
37 much mahalo to the community who provided me at that point in time with a lawyer.

38
39 Now I want to highlight the Paia-Haiku that you have in there. I have all the things highlighted
40 but the most important is the highlighted part in Part 3 that says, it prohibits hotels and resort
41 areas in the Paia-Haiku District. So that is a biggie and this operation has been going on
42 forever.

43
44 In there also you have an arbitration that went through for his three vacation rentals for Ae, 23
45 Nalu and 95 Hana Highway. They all operate under Paia Inn jurisdiction.

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

5
6 The other concern that I want to highlight for you in the back—

7
8 Ms. Takayama-Corden: Three minutes.

9
10 Ms. Aarona: --are photos, there are letters from Nalu—

11
12 Mr. Higashi: Thank you very much.

13
14 Ms. Aarona: --yes, that was prohibited—

15
16 Mr. Higashi: We got your document.

17
18 Ms. Aarona: --yes, that was the intent of this binder. So today I stand before you a proud
19 kupuna and a servant to the community. I ask that you hear your recommendations, after you
20 hear it and I want you to take a firm decision to deny this application as you did in 2016.

21
22 Mr. Higashi: Thank you very much.

23
24 Ms. Aarona: And bring an end to this development and use enforcement. Thank you.

25
26 Mr. Higashi: Corporation Counsel.

27
28 Mr. Mike Hopper: Nothing else to add other than again, questions should be limited to whether
29 a hearing officer will be appointed and any evidence or testimony received whether or not it's
30 actually going to be considered as either part of a hearing officer contested case hearing or a
31 contested case hearing that the commission has will have to be determined at that time. So at
32 this stage, at this agenda item right now your decision is whether to appoint a hearing officer
33 and so questions to the testifiers and the testimony should be dedicated to that otherwise
34 there's really...there's not action the commission can take today to grant or deny the permit.
35 The request is whether you want to appoint a hearing officer to hear the case and make your
36 recommendation or not. So that's, that's again what we're saying, you know the agenda may
37 provide because it was a Sunshine Law agenda some flexibility to testifiers but as far as
38 commissioners and what the commissioners can discuss that's gonna be limited to whether or
39 not to appoint a hearing officer today and the reasons for doing that.

40
41 Mr. Higashi: Thank you. Next testifier...oh Commissioner...

42
43 Ms. Gomes: I'm so sorry Chair Higashi I just, I just really wanted clear clarification that Aunty...

44
45 Mr. Higashi: Oh,...(inaudible)...

46
47 Ms. Gomes: Yeah.

1
2 Mr. Higashi: Have a question.
3
4 Ms. Gomes: Aunty, I apologize not that I want you know to extend you know and you get
5 scoldings from us for us...
6
7 Ms. Aarona: Oh no.
8
9 Ms. Gomes: Yeah. I just, I just want clarification you are in denial, not denial but you are
10 denying --
11
12 Ms. Aarona: I oppose.
13
14 Ms. Gomes: You're in opposition.
15
16 Ms. Aarona: -- the application, yes.
17
18 Ms. Gomes: Okay, in opposition.
19
20 Ms. Aarona: And whoever the hearing officer is a conflict of interest...(inaudible)...
21
22 Ms. Gomes: Okay, thank you..
23
24 Ms. Aarona: Thank you.
25
26 Mr. Higashi: Any other questions for Aunty Aarona? Oh, Commissioner Hill.
27
28 Kahu Hill: Aloha.
29
30 Ms. Aarona: Aloha.
31
32 Kahu Hill: There can't be a hearing officer that would be able to hear what you're saying and
33 what you all have to bring?
34
35 Ms. Aarona: Well, I have faith in this commission body and I believe that the denial at that time
36 in 2016 if you were here, if you go back and listen to everything that was discussed that day I
37 think that the Commissioners did their job, asked all the questions, and the due process of
38 Seashore Properties look at the binder it has been extended. Where is our due process, the
39 community? We are abiding by the fifth...the fourth amendment. We have liberty and rights as
40 well as Seashore Properties. So I think that the commission did a wonderful job and I think that
41 they should be firm and hold to that as well. A hearing officer is just to dictate to them what is
42 law and I feel that they...you have followed the law.
43
44 Kahu Hill: Mahalo.
45
46 Mr. Higashi: Any other questions? Thank you.
47

1 Ms. Aaron: Thank you.

2

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

4

5 Ms. Francine Aaron: Yes, Mr. Gima is in --

6

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

10

11 Ms. Aaron: You have it in the binder.

12

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

14

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

16

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

18

19 Ms. Aaron: Okay, thank you.

20

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

22

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

40

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

43

44 Mr. Kimo Kahakauwila: Hi name is Kimo Kahakauwila. Aloha. And basically I wanted for bring
45 up like public notices about this kind meeting. There be a lot more people in here at this kind
46 meeting if we got better notification about it. And I get three minutes. Kind of nervous right now
47 'cause you know, and yeah, Paia going through a lot of changes right now like Michele just said

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

9
10 Mr. Higashi: Any questions from the Commission? Thank you. Next person, Nicole Kealoha.

11
12 Ms. Nicole Kealoha: Aloha, Chair and Commission. Thank you for your time. I was raised in
13 Paia since birth. Paia is not the way I remember it was. I grew up at the time when there wasn't
14 a traffic light, but a stop sign. The time when there were Ice Cream and Dream, Nagatas,
15 ...(inaudible)..., Paia General Store, HFC Market and many other places that don't exist today.
16 This town once accommodated local families. Families from this community. That is why I am
17 here today to testify against this project. Please help me and the community to protect what is
18 left of Paia. This project will impact our way of life that we live here and we hope to continue
19 through our future generations. Thank you.

20
21 Mr. Higashi: Any questions from the Commission? Thank you. Next Moses Kane, Jr.

22
23 Mr. Moses Kane, Jr.: Aloha.

24
25 Mr. Higashi: Aloha.

26
27 Mr. Kane, Jr.: Good afternoon. My name is Moses Kane. I'm currently residing in Waiohuli but
28 I'm a born and raised in Paia. I, on the agenda item I oppose the hearing officer for a hearing
29 officer. The Planning Commission already had made a decision. I no understanding why it's
30 being brought back up. But after seeing the review you folks had, I understand that the
31 gentleman has his right for another hearing but I oppose for a hearing officer. Thank you.

32
33 Mr. Higashi: Any questions? No, thank you. Next Kealii Reichel.

34
35 Mr. Kealii Reichel: Aloha ka kou. My name is Kealii Reichel. Mahalo for making the time to
36 listen to us and our testimonies. It's kind of difficult to just stick to the subject sometimes
37 because have to have context that goes to that. I'm from Paia. I raised there by my
38 grandmother and I current live up in Piiholo which is part of the same ancient moku so the tie is
39 still there. So I'm not being mahaoui, I'm just, I'm there, yeah and this is part of where I come
40 from.

41
42 You know to echo Aunty Mopsy, to stay on topic as best as I can I would like to lend my voice
43 and say I oppose the appointment that kind officer. The decisions were already made and I
44 don't know why we're here again, yeah. It feels like when you know, you know when you have
45 a big family and you have a child that goes to mom and says, can I do this, can I do that? And
46 the maddah says, no. And then so, that child goes around in the back and talks to the dad,
47 yeah, and tries to get the dad to override the maddah, yeah. It might be a bad analogy. Maybe

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

15

16 Ms. Takayama-Corden: Three minutes.

17

18 Mr. Reichel: Mahalo.

19

20 Mr. Higashi: Any questions? Next Mark Sheehan.

21

22 Mr. Mark Sheehan: Aloha Commissioners my name is Mark Sheehan. I'm in favor of the
23 appointing of a hearing officer because I think the way this has been handled has been
24 mishandled and needs a second thorough review. Everybody speaks about hotels. This is not
25 a hotel. This is an inn. And just for a little bit of context, I've been involved in planning
26 discussions for over 30 years and I recall 20 to 25 years ago when we were discussing Country
27 Town Guidelines, one of the issues that was proposed is that rather than have all of our friends
28 stay on the other side of the island some place in a hotel in Kaanapali or Wailea that there
29 would be allowance for inns and the model was the Kula Lodge. And the idea was that country
30 towns such as Paia and Haiku and Makawao would be able to have small inns and the limit was
31 12 rooms. So what do we have right now at the Paia Inn is five rooms and four additional rooms
32 were allowed to be built by the Planning Department and the applicant complied with all those
33 requirements, but it was somehow denied, I don't know what in the previous discussions and I
34 think there needs to be a second consideration of these things to see if in fact the applicant was
35 treated fairly and so I do recommend that you go ahead and approve the appointment of a
36 hearing officer. That's it.

37

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

40

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

42

43 Mr. Higashi: You live in Haiku.

44

45 Mr. Sheehan: I live in Haiku and I had a business in Paia for many years, a real estate office
46 between Mana Foods and the bank and I specifically opened an office there because I could

1 see that Paia was changing rapidly and I was hoping to have some influence on the direction
2 that it was moving in.

3
4 Mr. Higashi: Thank you.

5
6 Mr. Sheehan: You're welcome.

7
8 Mr. Higashi: Thank you very much. Martin Brass.

9
10 Mr. Martin Brass: Aloha and good afternoon Chair Higashi and Council Members. My name is
11 Martin Brass. I'm here to testify on the remanding of contested case for the inn and for the
12 appointment of a hearing officer. I am currently one of the owners at Flat Bread Company
13 which is the immediate neighbor of the Paia Inn for the last 12 years through October of last
14 year I owned the property that abutted Paia Inn.

15
16 I've been Mr. Baskin's neighbor since 2005 and have witnessed firsthand the many steps he's
17 taken to turn in the Maui Home Grown Retail Store to a multi-story, multi-property hotel
18 operation. The sign he has for his business specifically states...(inaudible)...hotel. He is
19 running a hotel across many properties. There is approximately 40 rooms that he's been
20 advertising online and marketing through the different properties. This was all explored in detail
21 in December of 16. I sat here with people in this room for over six hours listening to the
22 commission review the facts. Mr. Baskin had over a year to prepare this special use permit
23 application to present to the commission on that day. Part of that presentation was part of the
24 settlement agreement that he agreed with the County, that was approved by the County Council
25 and signed by the Mayor which had the support the Planning Department for his application and
26 yet it was denied unanimously.

27
28 I wish...I'd like to agree or reiterate one of the previous comments, there needs to be better
29 communication to the public why this is happening. I don't know the circumstances in which this
30 was kicked back by Court, but the argument of due process is not the first time Mr. Baskin has
31 used in the process to pursue his agenda. The District Court had ruled against this TVR several
32 years ago and he went...he hires attorneys and they went to the Supreme Court and argued
33 due process needs to be served...(inaudible)...

34
35 The facts are due process affects everybody. Due process is not a matter of convenience.
36 There are ...(inaudible)...and pathways available to Mr. Baskin to obtain the appropriate permits
37 to amend the community plan to allow for hotels to exist in the Paia-Haiku area. Right now he's
38 not grandfathered, he has no hotel permit, and he does not conform to the Paia-Haiku
39 community plan. Until those change, I don't understand why we keep revisiting this. It's been a
40 decade of fines and penalties that have been paid and I'm embarrassed to see all the time and
41 effort from the County and its members and its officials repeatedly spending time on this and
42 poor people who have jobs to do who come in the middle of the day to speak their minds to
43 address as one person pointed out someone going around to another parent in trying to ask for
44 a different set of commissioners. This isn't a matter of denying as it was stated earlier it's living
45 in denial of the reality of his operation. So I'm --

46
47 Ms. Takayama-Corden: Three minutes.

1
2 Mr. Brass: So I'm...I don't fully understand the role of...or the hearing officer in this case, but
3 I'm against it.

4
5 Mr. Higashi: Thank you very much.

6
7 Mr. Brass: I think the Commission is capable of making their own decision.

8
9 Mr. Higashi: Any questions? Commissioner Robinson.

10
11 Mr. Robinson: Just want to thank you for taking your time every time this comes up. I know it's
12 hard but not many people are as close to it as you are and you're information even though it
13 does not sway our decision, it helps us make sure that we're thinking on the right path. Thank
14 you.

15
16 Mr. Brass: I appreciate it. Happy to...(inaudible)...

17
18 Mr. Higashi: Any other? Thank you. Next testifier Nicole Hokoana.

19
20 Ms. Nicole Hokoana: Good afternoon and thank you for allowing us to testify. My name is
21 Nicole Hokoana and I'm not adequately prepared for this because I, too, had to take off from
22 work kind of last minute, I didn't hear about this. And I'm just one of those people that I feel
23 compelled to be here. And yes, I'm from Paia. I have generations of kupuna that are from Paia.
24 I should be at work but I'm here and it's because I love the place. And we're just a, we're just at
25 a place where just the other day I was taking my daughter on a Sunday to soccer, her game
26 was at 3:00. I left home at 2:00. I couldn't get through Paia until, I was at Hookipa, Hookipa, we
27 were stopped in Hookipa, I live in Maliko. We were stopped at Hookipa for 20 minutes to get to
28 through the stop light. You know, we're just at a place where our roads and our infrastructure
29 cannot keep up with our popularity. I know Paia is a wonderful place. I know it. I love Paia as
30 well, but the push for the development of Paia will destroy the character of this town that we
31 love. Tourism has adverse effects. It does impact our natural resources. It impacts our
32 communities and it impacts our local people that are just trying to live and get to work and find
33 affordable food and eat out once in a while. Over tourism is the opposite of responsible tourism.
34 In this case of Paia responsible tourism would limit the reach, the sprawl and the destruction
35 that inevitably happens when millions of visitors visit our aina. I mean look at Haleakala since
36 when do we need to sign up to go there for sunrise. It's millions of people on our beaches, on
37 our roadways, it impacts our lifestyle. You know, there are adverse effects of it and we need to
38 take the time to make sound decisions about what should happen to our communities.
39 Currently I mean as it's been stated already Paia and Haiku do not allow for hotels or inns or
40 overnight accommodations, but it's happening and we all know it's happening. It's in our
41 neighborhoods, it's an inn but it's 40...40 spaces that are illegal and acting as a hotel online. So
42 you know, I think we need to act responsibly. Development needs to be in alignment with what
43 the community wants and what the community had planned. If a hotel or a inn or this type of
44 accommodation is wanted on the north shore then it should be reflected in the communities buy
45 in. If this was not 1 o'clock or 2 o'clock on a workday all of Paia would be here. No one who
46 lives in Paia approves --

47

1 Ms. Takayama-Corden: Three minutes.

2

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

5

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

8

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

18

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

21

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

39

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

1
2 Mr. Higashi: Any questions? No questions. Thank you very much. Back up to Lucienne de
3 Naie.

4
5 Mr. Wollenhaupt: She's not testifying on this item. She's testifying on the next item.

6
7 Mr. Higashi: Okay. Wilton Leauanae.

8
9 Mr. Wilton Leauanae: Aloha Commission, Commissioners, thank you for this time. My name is
10 Wilton Leauanae. I am from...I work for Michael Baskin in Paia Properties. Just a little bit
11 background about myself. I grew up, was one of eight, when to...first one in my family to go
12 college. My mom was widowed and so to see her...to see me go off and into the world was a
13 big this for our family. I went to law school. I ended up there. I court for Judge Cardoza for a
14 couple years, the Circuit Court here and I've seen many cases like this come up, emotions,
15 issues come up and me and the Judge are going through stuff and sorting through all these
16 things and I've had a chance to work with Michael Baskin for almost a year and I find myself in
17 the same situation where, you know, I'm sorting through all these issues like what is Aunt
18 Mopsy saying, what is this, you know what is Baskin saying. And I could say, just my personal
19 take on this is that Michael Baskin is trying to do everything he can to try to be legal. You know
20 I have a good relationship with Aunt Mopsy she has...she can text me whenever, we see each
21 other at all the hearings, I give a hug. I have respect for her as a person who's fighting for her
22 rights and I have respect for a kupuna, but at the same time you know there comes a point
23 where, you ...(inaudible)...all the issues and Kealii Reichel had referred to a perfect analogy
24 you know about kids 'cause I have three daughters, my youngest is a eight-year-old. She'll run
25 to mom ask one thing and then she'll run to me and ask another thing, but what happens after
26 that if there's a...is I go to mom, I go to mom and I say, hey what's going on, how can we sort
27 this out? And that's exactly what's happening in this case where we're just going to a hearing
28 officer. It's the right...he has a right to kinda question some the things that came up through the
29 commission hearing. And he's just going to another source which was provided by law to hey,
30 say hey can you look at this hearing officer and see what went wrong? ...(Inaudible)...see why
31 we're here. That's all we're asking at this hearing is to say let's get it to a hearing officer, let's
32 take another look. Just like I talked to my wife and my daughter wants a certain thing. I am
33 always open to hear Aunt Mopsy. She could always come to me. We text each other. I go to
34 her property and we talk and talk and she's always welcome to talk to me, and tell her I have
35 Michael Baskin's ear. I know, I know all the issues, you're always welcome to come to me
36 'cause I can talk to Michael and I can come talk to you about things too. And that's how it's
37 gonna be for the future. From this point on, I will listen to her or anyone else and that's my
38 position, public's relations with Michael and so that's what I wanted just to bring before the
39 commission is that we're not overriding your decision. We're saying hey, let's look at it again --

40
41 Ms. Takayama-Corden: Three minutes.

42
43 Mr. Laeauanae: --okay. Thank you.

44
45 Mr. Higashi: Thanks very much. Are there any other testifiers at this time who would like to
46 testify? Otherwise, public testimony is now closed. Director.

47

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

2

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

5

6 Mr. Tom Kolbe: I can make a few opening comments just to kind of provide you what the
7 Department of Planning's position is in this matter, and then if it does come to you guys needing
8 a little bit further information on terms of what our litigation strategy is I would want to go into
9 executive session to discuss that with you. And if you want I can explain the procedural
10 circumstances and how we arrived back here. But just generally wanted to start with this and
11 say, well good afternoon. Terry Revere who is Mr. Baskin's attorney is also here. And we had
12 participated in a mediation to try to see if we can resolve some of the issues that are
13 outstanding including the appeal of this Commission's decision up at the Circuit Court.

14

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

25

26 So what we have and I did note that there were several testifiers who indicated that there were
27 opposed to a hearing officer and I don't know whether or not they were understanding that
28 there's a joint request for a retired judge to be the hearing officer. But nevertheless I think the
29 main thrust of the argument was that you as the commission would be the person who could
30 handle this particular matter. I don't doubt that you could, but there's a number of rules and
31 procedures that are set out in HRS 91, which is the statute of Administrative Procedures Act as
32 well as specific Maui Planning Commission Rules. Keeping in mind what...(inaudible)...and the
33 fact that it has been contentious up to this point what the benefit of having a hearing officer
34 appointed is is they're gonna be the finder of fact. They're not the decider and they don't grant
35 the permit and that's an important thing to keep in mind. This Commission ultimately is going to,
36 if it appoints a hearing officer is going to come back and it's going to be presented with a
37 detailed findings of fact that were based on the record that we provided to him. And the good
38 thing about that is both sides have some modicum of trust in this particular arbitrator/mediator
39 and so we agree that he can be with you know minds differing on this kind of an objective
40 person and to provide the kind of record that you need to consider so that this thing doesn't
41 yoyo back and forth between the Circuit Court and the Planning Commission, the Circuit Court
42 and the Planning Commission and unfortunately several of the testifiers indicated that they
43 didn't realize it was another hearing necessary. It gets complicated. There was outside
44 information that was considered by the Commission. There were commentaries that were
45 outside of the various elements there, these are allegations not necessarily my opinions on it.
46 But it does get murky and difficult particularly in a complicated case with a lot of moving parts.
47 So I want to say that it's the Department of Planning as well as the applicant that is asking for

1 appointment of hearing officer and specifically that it be Judge E. John McConnell who I have
2 worked with on a number of occasions and I have trusted his objectiveness and his
3 thoroughness as a finder of fact. So those are my comments. I can explain more if you have
4 any questions and I'll give Mr. Revere an opportunity also to address it. I think that would be
5 appropriate. Thank you.

6
7 Mr. Terry Revere: Aloha folks. My name's Terry Revere and I'm the attorney for Seashore
8 Properties and I understand there's confusion. It's confusing to Tom and myself about why
9 certain things happened and your counsel will advise you folks during your executive session
10 but for our procedural hurdles including in a case that I don't think has anything to do with
11 anybody in the room called D&S it involved a Maui zipline case, but your counsel can explain to
12 you. He's more appropriate to advise than I am for certain about why certain procedural things
13 have to happen not because anybody necessarily even wants it to happen but because the
14 judges want it to happen, but they can talk to you folks more about that.

15
16 One of the things, just my very brief pitch about why hearing officers are important is because
17 we all make good decisions. There's no one really likes trials. No one really like lawyers that
18 much, maybe their own sometimes but there's a reason why we have what's called the
19 adversary process where you're allowed to cross examine people. For example today binders
20 were handed out about my client. I have no idea if everything in there is the Gods honest truth
21 or it's made up. We simply don't know because it's just being handed out to you and that
22 creates some of these procedural difficulties, where I can't say hey what they say on Page 43
23 isn't correct. We also in the adversarial process are allowed to ask questions and find out
24 certain things like Mr. Brass who might have made a favorable impression on some of you folks.
25 You might not have that favorable impression if I was allowed to have him up here and ask
26 some questions like did he ask to buy the Paia Inn from Mr. Baskin where Mr. Baskin said no.
27 Did that lead to a vendetta that keeps on going on and on against Mr. Baskin? So there's a lot
28 of things that can be pointed out in an adversarial process that this type of process I'm not
29 allowed to cross examine anybody and vice versa for their side. So that's just something I
30 wanted to point out to you folks and I don't have anything further. Thank you very much.

31
32 Mr. Higashi: Commissioner Carnicelli, question?

33
34 Mr. Hopper: You have any questions for Mr. Kolby?

35
36 Mr. Robinson: I have a question.

37
38 Mr. Higashi: Commissioner Robinson.

39
40 Mr. Robinson: Question for you. What if we don't choose a hearing officer?

41
42 Mr. Kolby: Well, that's the question that I think the commission or the Deputy that's assigned to
43 advise the Commission should provide. But generally there has to be some hearing officer even
44 if it's the Commission appointing itself as a hearing officer. But we're moving this, we're making
45 a motion to this body that it appoint Judge McConnell. So that is kind of where we stand.

46

1 Mr. Hopper: I think to answer that the Commission itself would hear the case but the...I think
2 Mr. Kolby is talking about some of the issues that happened in this case and another case that
3 on appeal the Department took a look at after a decision and believe that we may need to take a
4 close look at some of the procedural aspects of the hearing. It's not necessarily the ultimate
5 outcome but how to deal with the hearings procedurally. So if there's questions for Mr. Kolby on
6 that history of the case I think we can go into executive session on it. But the short answer to
7 your question is that if the hearing officer is not appointed the Commission's either going to
8 have to hear the contested case itself or appoint, it could appoint a member for example rather
9 than a judge as a hearing officer to hear the case and that hearing officer would have to follow
10 all the procedures under HRS 91 and either come up with a recommendation for the
11 Commission or the Commission itself if it's the hearing body itself would have to make a
12 conclusion based on the process done by the Commission. I'd note if a hearing officer
13 appointed either through this process or another process the Commission still has to look at
14 their recommendation and decide to adopt it or reject it. So the Commission still going to have
15 to ultimately make the decision. It's not you give it to Judge McConnell, Judge McConnell
16 decides one way or the other and then that's the Commission's decision. The Commission has
17 to review the report that the officer made and decide if it's adequate or not adequate or if there's
18 additional fact finding or not or it agrees or disagrees with the conclusion.

19
20 Mr. Higashi: Commissioner La Costa.

21
22 Ms. La Costa: I actually have a question for Corp. Counsel. Mr. Kolby I believe your name is
23 he said that a hearing officer had to be picked is that correct?

24
25 Mr. Hopper: Mr. Kolby could you enlighten us 'cause it is a vote selection here.

26
27 Mr. Kolby: Once again, and I understand that you guys had an orientation and there was some
28 suggestion that we're working through certain rules in contested case procedures but there is
29 under Subchapter of the Rules of Practice and Procedure with the Maui Planning Commission,
30 Rule 12-201-54 and it says, hearing officers powers. It says a) In all contested case
31 proceedings a hearing officer shall be appointed. If more than one person is appointed a
32 presiding officer shall be selected. This is under Subchapter 4 which has the title, Procedures
33 Where Intervention is Granted, but this particular language and these rules as Mr. Galazin told
34 you earlier are pretty old and they haven't been updated and certainly now that we have been
35 provided with certain Supreme Court decisions that say that this type of proceeding even if
36 there's no intervention is a contested case. These are the rules that seem to be most
37 applicable. So some person or persons is gonna be the hearings officer for purposes of taking
38 evidence and to make findings of fact. But I think in some capacity a hearings officer or
39 hearings officers is necessary, yes.

40
41 Mr. Hopper: I think the Commission though could act as the hearing officer with the Chair as
42 the presiding officer. I mean, I'm not...I don't know why we could not necessarily do that if the
43 Commission wanted to decide that.

44
45 Mr. Kolby: That's correct.

46

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

4
5 Mr. Higashi: Commissioner Hudson.

6
7 Mr. Hudson: Thank you Chair. In the past I've always voted no to executive session. However,
8 in this particular instance I'd like to make a motion that we move to executive session because I
9 don't want anything to jeopardize anything that comes up later on in Circuit Court.

10
11 Mr. Higashi: Is there a second?

12
13 Mr. Tackett: Second.

14
15 Mr. Higashi: It has been moved and seconded that we go into executive session. All those in
16 favor raise your hand?

17
18 **It was moved by Mr. Hudson, seconded by Mr. Tackett, then**

19
20 **VOTED: To Go Into Executive Session.**
21 **(Assenting – L. Hudson, C. Tackett, L. Carnicelli, A. Hill,**
22 **K. Robinson, T. Gomes, S. Castro, P D. La Costa)**

23
24 Mr. Higashi: We will not go into executive session. The audience will have to excuse
25 themselves.

26
27 Mr. Hopper: And then again the purpose of the executive session is for the Commission to
28 consult with its attorneys with respect to its rights, duties and liabilities under HRS 92.

29
30 *(The Planning Commission recessed the regular meeting at approximately 2:30 p.m. to enter*
31 *into Executive Session. The Planning Commission reconvened the regular meeting at*
32 *approximately 3:22 p.m.)*

33
34 Mr. Higashi: Will the Director...

35
36 Mr. Spence: No, we're still on the --

37
38 Mr. Hopper: You still have to decide on the hearing officer or not. You gotta vote on the issue.

39
40 Mr. Higashi: We'll now have to decide as to what we're going to do with the hearing officer. Is
41 there a motion? Commissioner La Costa.

42
43 Ms. La Costa: I move that a hearing officer be appointed to review all findings of fact and
44 conclusions of law in this matter.

45
46 Mr. Hopper: Do you have a specific? Is it going to be Judge McConnell or is there someone
47 else that you have in mind?

1
2 Mr. Robinson: You can't just in and lead the Commissioners like that.
3
4 Mr. Hopper: The Commission needs to --
5
6 Mr. Robinson: ...second...
7
8 Mr. Hopper: The Commission needs to designate a hearing officer specifically, so I'm assisting
9 in doing that if they want.
10
11 Ms. La Costa: I'm sorry for my incomplete motion. To appoint Judge McConnell as the
12 hearings officer.
13
14 Mr. Higashi: Is there a second?
15
16 Mr. Carnicelli: Second.
17
18 Mr. Higashi: It has been moved and seconded that Judge McConnell be our hearing officer for
19 this case. Any questions?
20
21 Mr. Robinson: Discussion?
22
23 Mr. Higashi: Discussion. Commission Hudson...Robinson.
24
25 Mr. Robinson: Thank you. I think...(inaudible)...first is one, we didn't even agree that there is
26 gonna be a hearings officer and then two, and then to choose who the hearings officer is gonna
27 be. So I see we combined it into one question. Having said that I know there was a lot of
28 confusion earlier including ourselves about why we're at this situation, but after understanding
29 that the denial that we gave was vacated and there actually it's back to, it's back to starting all
30 over again in so many words now we understand, you know, and what's happening with this
31 gravity. I, I'll lend my support to a hearing officer. I think that is the proper course even though I
32 think we could do this board, I think we want to do it right. I think we want to make sure that we
33 dot the I's and cross the t's but I'm not in support of the one offered. Thank you.
34
35 Mr. Higashi: Any other discussion? Commissioner Carnicelli.
36
37 Mr. Carnicelli: I think Commissioner Robinson stated it well in that finding out that the...our
38 ruling had been vacated and so then therefore the terms of the settlement agreement have not
39 been completed and we need to do that. I think that it's important that we set...that we find a
40 hearings officer outside of this particular commission that knows how to handle these types of
41 things, that has a history of handling these type of things and I believe in that the
42 recommendation by the Department for Judge McConnell, it's because I seconded the motion I
43 agree with Judge McConnell. However, I'm open if somebody, if another Commissioner has
44 somebody that they feel would be better than Judge McConnell I would be open to hearing who
45 that is. However, it's also someone in really trying to get this thing right, Judge McConnell has
46 already been agreed to by both sides and so I just think that to have fair impartial person that

1 both sides have already agreed to, to where we can get resolution to this as quickly as possible,
2 I think that that's important so I'll be supporting the motion.

3
4 Mr. Higashi: Any other comment? If not, are you ready for the question? All those in favor of
5 the motion to appoint Judge McConnell as a hearing officer please raise your right hand.

6
7 Mr. Spence: That's four --

8
9 Mr. Higashi: Opposed same sign.

10
11 Mr. Spence: That's four, four.

12
13 Mr. Higashi: Four opposed.

14
15 Mr. Carnicelli: It's up to you Richard.

16
17 Mr. Higashi: Motion not carried.

18
19 Mr. Carnicelli: No, it's up to you.

20
21 Ms. Gomes: It's up to you.

22
23 Mr. Higashi: What was the --

24
25 Unidentified Speaker: Got four to four.

26
27 Mr. Higashi: Four to four.

28
29 Mr. Robinson: So you could throw it back to us and we can discuss it more.

30
31 Mr. Hopper: The Chair would have to either vote yay or nay. He would have to vote yes or no
32 on the motion, so again --

33
34 Ms. Gomes: Vote maybe.

35
36 Mr. Higashi: Based upon the split vote decision, the Chair will now make the decision to go with
37 the recommendation to hire Judge McConnell as the hearing officer.

38
39 Mr. Spence: That's five to four. Motion carries.

40
41 Mr. Higashi: Motion carried.

42
43 **It was moved by Ms. La Costa, seconded by Mr. Carnicelli, then**

44
45 **VOTED: To Appoint Judge McConnell as the Hearings Officer.**
46 **(Assenting – P.D. La Costa, L. Carnicelli, L. Hudson, S. Castro,**
47 **R. Higashi)**

(Dissenting – A. Hill, K. Robinson, T. Gomes, C. Tackett)

Mr. Higashi: Next item on the agenda.

Mr. Spence: So Commissioners we are on Item G-1, Director's Report. This is a request by Chris Hart and Partners on behalf of Wailea Land Corporation to waive review of the Planned Development Phase 3 application. So with that, we have Tara Furukawa is our Staff Planner for this item.

G. DIRECTOR'S REPORT

1. **MR. WILLIAM SPENCE, Planning Director requesting pursuant to the provisions of Section 19.32.020.C of the Maui County Code, Planned Developments that the Maui Planning Commission waive its review on the Planned Development Step III application for the following:**

CHRIS HART & PARTNERS on behalf of WAILEA LAND CORPORATION requesting a Planned Development Step III approval for the proposed Makalii at Wailea (Wailea MF-15) Multi-Family Development at the corner of Wailea Alanui Drive and Kaukahi Street at TMK: (2) 2-1-008: 120, Wailea, Island of Maui. (PD3 2018/0002) (SM1 2013/0016) (PD1 2013/0004) (PD2 2013/0004) (T. Furukawa)

The Commission may act to waive or not waive its review

Ms. Tara Furukawa: Good afternoon Commissioners. In the packet that was mailed to you there was a Step III application for the proposed Makalii at Wailea Multi-Family Project which was granted Planned Development Step I and Step II Approval as well as SMA approval on October 14, 2014. It should be noted that there is also Step I Planned Development Approval for the transfer of zoning land uses in 2015. Because the construction plan submitted with the Step III application are in compliance with what was represented previously we respectfully request that the Maui Planning Commission waive their review and allow the Director to approve the project. Should the Commission decide not to waive its review, I'll return at a later date and have a report and recommendation for your review. I have Jordan Hart here. He's the consultant for the project and I believe he has some updated handouts for you.

Mr. Jordan Hart: Good afternoon Chair and Members. Point of clarification, they are not updated they are the same...we submitted the entire building permit plan set with the PD Step III application. Tara did ask that I include elevations of all buildings. We submitted a typical elevation and so I think that they're somewhat redundant to what you've already seen but I do have them if you would also like to review those. But suffice to say that all of these documents have been submitted to the Planning Department and versions sufficient for the Commission to determine that the construction level documents are the same as the conceptual level SMA were submitted to the Commission in my initial transmittal.

But beyond that, I'd just like to reiterate that the design is the same. We were asked to do a few things. The UDRB asked us to reduce the plant palette. The landscape architect took out 21

1 different plant types from the previously proposed plant palette. The colors were requested to
2 be toned down and they were. But beyond that, the design is the same conceptually as it is in
3 the construction level documents that are submitted to Public Works and then Planning is a
4 reviewing agency on that and then we also submit it to Planning for the request for PD Step III
5 Approval. But beyond that I'm available for questions.

6
7 Mr. Higashi: Any questions from the Commission? Commissioner La Costa.

8
9 Ms. La Costa: Thank you very much for being here. Can you please tell me which of your
10 Exhibits shows drainage and wastewater runoff? Thank you.

11
12 Mr. Hart: So, I believe it's C104 and 105 are the drainage sheets. Let me...I'll transmit this
13 package at this time. This is the plan here.

14
15 Ms. La Costa: Okay.

16
17 Mr. Hart: And this is the details here or the description . . . (inaudible) . . . There's two sheets,
18 but I'll circulate . . . (inaudible) . . .

19
20 Mr. Spence: Why don't you hand the pile to the Commissioners.

21
22 Ms. Gomes: Jordan, any of these affordable housing?

23
24 Mr. Hart: Armstrong Development is developing Kalama Kai which was developed concurrently
25 with this project and Keala O Wailea. So their affordable housing is in central Kihei but they did
26 develop an affordable housing project specifically to accommodate this and one other project
27 that they're doing at this time. And Kalama Kai is under construction and starting construction
28 now.

29
30 Mr. Higashi: Commissioner Hill.

31
32 Kahu Hill: Aloha. Since I wasn't a Commissioner involved in Step I and II on Makalii, I was not
33 purvey to the prior documentations and has the Environmental Assessment been completed?

34
35 Mr. Hart: There was a Special Management Area Major Permit that was prepared and approved
36 by this Commission.

37
38 Kahu Hill: Yes, is that something that I can get a copy of?

39
40 Mr. Hart: Certainly.

41
42 Kahu Hill: And also on the same note has there been an archaeological inventory survey done
43 and an archaeology monitoring plan has been implemented for this development?

44
45 Mr. Hart: Yes, there was an archaeological inventory survey completed in 2004 and then there
46 was --. Sorry, yeah, four. And then there was an archaeological monitoring plan that was

1 approved by SHPD at the, during the Land Use Planning process and then again in 2014 during
2 the grading permit review.

3
4 Kahu Hill: And is that in your documentation?

5
6 Mr. Hart: The -- I'm not sure. That would be in the overall record for the project, but not in this,
7 not in this transmittal. I did obtain a copy of the letter that was circulated, but we didn't obtain a
8 copy of this. I got this at 1:00 P.M., and so I went back through the documents but I wasn't --.
9 Normally I wouldn't include that kind of thing in a PD3, but I can make a transmittal to the, to the
10 Department and the Commission. But I think that I would emphasize that the State Historic
11 Preservation Division re-reviewed and approved all of the archaeological work that was done for
12 this project in 2014.

13
14 Kahu Hill: Okay, and last question is I just live in that area so I noticed that you guys have been,
15 I don't know if you're grading or just store your equipment there. It looks like things, it's all the
16 way up to that place even with a lot of iwi kupuna that are found in that area and historical sites.

17
18 Mr. Hart: So it's not anticipated that there would be anything that was going to be found there.
19 That's why the EIS as it was prepared was approved and there is monitoring going on onsite as
20 a precautionary measure. And I spoke to the individual that's managing the monitoring team
21 and they haven't discover anything to date based on the work that's occurred.

22
23 Kahu Hill: Last question. Is that monitoring daily when you're guys are using it?

24
25 Mr. Hart: Anytime --. Excuse me.

26
27 Kahu Hill: Go ahead.

28
29 Mr. Hart: Anytime there's equipment operating there's monitors.

30
31 Kahu Hill: Mahalo.

32
33 Mr. Higashi: Commissioner Robinson.

34
35 Mr. Robinson: Jordan, on that note, instead of having your hearsay on it. Can we get a, can they
36 write a letter to us stating that they haven't found anything as of this date today?

37
38 Mr. Hart: Sure. I do want to clarify, though, that they are obligated to contact SHPD immediately
39 when they do find something. So, but, I'll ask them to write that letter.

40
41 Mr. Robinson: Yeah, I think after the written testimony that we had today, I think it would help
42 that we get something on the same, you know, along that same date, you know, verifying the
43 people who we entrusted, they're doing their job and we don't have to worry about it.

44
45 Mr. Hart: I will do. I do want to note that, you know, the archaeologists that are permitted to do
46 this work are, are verified by the State Department Land and Natural Resources and they have
47 to remain in good standing and continue to perform ethically in order to remain archaeologists

1 that can do these studies that contribute to the reports that the Planning Commission reviews
2 and approves. But I will request that letter.

3
4 Mr. Robinson: Thank you Jordan.

5
6 Mr. Higashi: Are there any other questions?

7
8 Mr. Robinson: Commissioner La Costa, did you find your drainage?

9
10 Ms. La Costa: I did, yes.

11
12 Mr. Higashi: If not, recommendation from staff? We will now open public testimony. Are there
13 anyone who would like to testify? Please state your name. You have three minutes to give your
14 presentation.

15
16 Ms. Lucienne de Naie: Mahalo. My name is Lucienne de Naie. I came here at the request of
17 Hooponopono O Makena. I distributed a letter earlier that they had written last month. Ashford
18 Kalima apologizes. He had to be down at Makena today consulting with the State Park
19 archaeologist because he's a lineal descendant of this area. But Hooponopono O Makena is
20 concerned because Palauea where this located, it's a very culturally significant place and it's
21 just very unlikely that a nine acre parcel would have nothing in Palauea. There's burials and
22 sites that were found right across the street at the Kealani. There's numerous sites that were
23 found in the Wailea golf course in Palauea. Numerous, hundreds of sites that were found in
24 Wailea 670 just up the road. Hundreds of sites that were found in the Dowling Development just
25 down, down slope and to the left. So, this archaeologists can miss things. Cultural practitioners
26 have seen sites on this land. They didn't know who to report them to and some of them
27 eventually came to an organization like Hooponopono O Makena. I have to say that the same
28 archaeologist that did this study missed many sites in Makena. Sierra Club and Hooponopono
29 O Makena, and Maui Tomorrow had the opportunity to tour these Makena lands and find
30 additional sites as a result of legal settlement that were missed by these same archaeologists.
31 It can happen. They're not bad people. It can happen. I just suggest that more people could
32 be here talking about this place if we didn't have just a couple days notice. And if you do give
33 yourself a chance to have a Phase III review, it would be greatly appreciated. You know we do
34 have concerns that State Historic is very under staffed and so when they get these older studies
35 they generally don't ask for any update. They can't --. They don't have personnel to go out in
36 the field and look and send out the word in the community do we know anymore. So this word
37 is coming forward. Hooponopono O Makena did go on the site and found there were pieces of
38 equipment operating and only two monitors. So I think it's good that you requested a monitoring
39 update on what's being found.

40
41 But one of the people who sent photos to Hooponopono O Makena actually saw pieces of . . .
42 (inaudible) . . . and pieces of shell, and coral, and other things that have been displaced by the
43 recent bulldozing. So perhaps these archaeologists don't think that's significant. Everybody to
44 their own opinion. So what Hooponopono O Makena has asked for is a site visit simply before
45 construction starts. We're not saying shut down the project. We're saying allow us cultural
46 practitioners to walk there and show you what we think is there and possibly that could happen
47 if you folks give it a little more time. Thank you.

1
2 Mr. Higashi: Any questions from the Commission? None. Thank you. Any other testifiers at this
3 time? Please state your name. You have three minutes.

4
5 Mr. Jacob Adolpho: Aloha. My name is Jacob Makana Adolpho. I am the son of Kaeo Adolpho
6 and the son Alana Margaret Nory. I am the grandson of Victoria Kaipo Keawe. I'm the great
7 grandson of Victoria Kekahuna. That is who I am. Thank you for allowing me to introduce
8 myself today.

9
10 I am a residence of south Maui. I live in the south Kihei area. I have been walking these lands
11 because I am a practitioner. I deal with la 'au. When I walk these lands I drop GPS pins on my
12 phone where I find the endemic and indigenous plants that we have used for generations to
13 heal our families. Within this nine acres there are significant archaeological sites that to date
14 that have been destroyed completely. There are significant plant species that have been
15 destroyed completely. I am not here to ask the Counsel or you folks to shut it down. I'm humbly
16 asking from my . . . (inaudible – spoke in Hawaiian) . . . to you, your . . . (inaudible – spoke in
17 Hawaiian) . . . to your . . . (inaudible – spoke in Hawaiian) . . . to please, please do a Phase III.
18 It is very important for these areas. There are significant amount of folks who utilize these
19 areas. We don't go looking for publicity. We don't go talking about it to other people because
20 these are practices that we hold very close. But we utilize these areas. I urge you when you
21 think about this tonight, I urge you each one of you please consider what I have said here today.

22
23 I thank you for your time and thank you for taking on the kuleana and for malama this kuleana. I
24 appreciate this. Thank you very much. Aloha.

25
26 Mr. Higashi: Any questions for the testifier? Commissioner Robinson.

27
28 Mr. Robinson: Aloha. What type of time frame do you think it would take you to, to walk that
29 area and find out what you need to find?

30
31 Mr. Adolpho: E kala mai. I have walked that area. I have been walking that area for the last
32 couple of years. I have significant amount of maps, GIS maps that date back over three years
33 with GIS pins of where we found and what we found up there. My interest is in the la 'au, are in
34 the plants.

35
36 Mr. Robinson: Have you ever shared any of that information?

37
38 Mr. Adolpho: No.

39
40 Mr. Robinson: Are you willing to share that information?

41
42 Mr. Adolpho: Under the right circumstances, yes. There are several other folks who cannot
43 make it here today. The time frames are very strenuous and we have jobs, and luckily this my
44 day off. So instead of being at home with my nine month old daughter, I'm here all day. This
45 means something to us. It means something to the community. Please don't just let this slide.

46

1 Mr. Robinson: Chair? It's, it's, it's -- we're hearing you but, but if, but we need to know --. I
2 mean, we don't want to hold up a project unless we understand what you're willing to share. So
3 I understand that you have some things that you're concerned about and then you say there's
4 circumstances which is vague. So are you able to be any, any more clearer to what you're
5 asking of us?
6

7 Mr. Adolpho: Yes, if you approve the requirements to continue with the Phase III, require this
8 project to continue with due diligence, I feel that that will give us enough opportunity to prepare
9 what we need to in order to present that to you.

10
11 Mr. Higashi: Commissioner Hill.

12
13 Kahu Hill: Aloha Makana. I wanted to know if you walked the areas of where Mrs. Chang would
14 call . . . (inaudible – spoke in Hawaiian) . . . between . . . (inaudible – spoke in Hawaiian) . . .
15 between this area before . . . (inaudible – spoke in Hawaiian) . . . to gather and to make kala?
16

17 Mr. Adolpho: Yes I do, and yes I have.

18
19 Kahu Hill: And do feel this project will --? Will you be willing to come back and share information
20 if --?
21

22 Mr. Adolpho: Absolutely.

23
24 Kahu Hill: Okay.

25
26 Mr. Adolpho: That is the reason I stayed here all day today since this morning.
27

28 Kahu Hill: Mahalo.

29
30 Mr. Adolpho: Yes. Yes.

31
32 Kahu Hill: And do also feel the spirit of the kupuna there when you walk the lands?
33

34 Mr. Adolpho: Ai.

35
36 Kahu Hill: Mahalo for sharing that.

37
38 Mr. Higashi: Commissioner Gomes.

39
40 Ms. Gomes: I apologize. I apologize Commissioner Hill. I didn't hear your entire question to
41 him. Thank you. Mahalo for being here and sharing that special, you know, information. I'd like
42 to know, you know, if any of what you feel and what you have experienced and been around
43 indigenous to us that we may lose, you know, for our culture. Is that why this is so very valuable
44 and why you've been here all day?
45

46 Mr. Adolpho: To me this is so very valuable because of what we had found on the surface to
47 date. The surface is gone. If you guys don't know this, the surface is completely gone there.

1 The plants are gone. The surface is gone. The rocks are crushed. Please, please ask them to
2 look underneath. Please ask them to look and to have someone be there and to, to please go
3 through the Phase III. I humbly request this.

4
5 Ms. Gomes: Mahalo.

6
7 Mr. Higashi: Commissioner La Costa.

8
9 Ms. La Costa: Mahalo nui for taking the time to be here with us today. You are not part of
10 Hooponopono O Makena correct?

11
12 Mr. Adolpho: That is correct.

13
14 Ms. La Costa: Okay. My question is other than plants what's, have you found any iwi, have you
15 come across anything that determines that there, there were sacred burial grounds there other
16 than the destruction of the plants?

17
18 Mr. Adolpho: I have to apologize. I do not know all of the lingo and how to properly explain this
19 in the right technical terms. I believe they are called burial goods and we have found several.
20 No iwi. I have not seen any.

21
22 Mr. Higashi: Any other questions? Thank you.

23
24 Ms. La Costa: Mahalo.

25
26 Mr. Higashi: Recommendations Counsel? Staff?

27
28 Mr. Spence: Do you want close?

29
30 Mr. Higashi: Excuse me. Any other testimony, public testimony? If not, public testimony is
31 closed. Staff, your recommendation?

32
33 Ms. Furukawa: As I had mentioned previously, the construction plans submitted were in
34 compliance with what was represented and approved previously so we requested, we're
35 requesting that the Maui Planning Commission waive their review and allow the Director to
36 approve the project. And if you decide not to, I'll just come back later with a report and
37 recommendation for you to review.

38
39 Mr. Higashi: Any discussion from the Commission? Commissioner Hill.

40
41 Kahu Hill: I would like to make a motion and to recommend that for the Commission to waive the
42 review. I'd like to see it come back to us. I think this a rather culturally significant area. I know
43 very well. I have lived down there. And I see that it really needs to come back to us so I make
44 a motion.

45
46 Mr. Higashi: Do I have a second?

1
2 Mr. Robinson: Chair, I'd like to clarify. You're asking to not waive review and for it to come back
3 to us?

4
5 Kahu Hill: Yes. Ai. Mahalo.

6
7 Mr. Robinson: I second that.

8
9 Mr. Higashi: It has been moved and seconded that we waive the review.

10
11 Mr. Robinson: Will not.

12
13 Mr. Hudson: Will not.

14
15 Mr. Spence: Will not.

16
17 Mr. Higashi: Would not waive the review. Are there any discussion? Commissioner Hudson.

18
19 Mr. Hudson: The last time I voted not to waive a review it was just a delay on putting something
20 out. And I am going to support this motion but I want to be very clear with the Planning
21 Department, you guys do a very good job. But in this particular case we have new people on
22 the Commission and we have some allegations that may or may not be true. I would like to see
23 the review which is why I'll support this motion.

24
25 Mr. Higashi: Any other comments? Commissioner Carnicelli.

26
27 Mr. Carnicelli: Chair, if you'll allow me, this is out of bounds from parliamentary procedure
28 because there is a motion on the floor. However if you'll allow, I would like the applicant to at
29 least speak to, to this. Allow him the opportunity to speak to this even though there is a motion
30 on the floor and this is not a part of parliamentary procedure if you would allow that.

31
32 Mr. Higashi: Is this something that's allowed?

33
34 Mr. Spence: It's up to you.

35
36 Mr. Carnicelli: This up to you Chair. Will you allow it?

37
38 Mr. Higashi: I would.

39
40 Mr. Carnicelli: Okay. Jordan, would you like to speak to the testimony?

41
42 Mr. Hart: Yeah, well, those are some pretty serious statements so I'll just defer it to our
43 archaeological consultant as far as, you know, the work that they did, and what they have seen,
44 and what they found. You know I've done a lot of work with Scientific Consultant Services and I
45 think that they have a high ethical standard. I couldn't believe that they would see something
46 and allow it to be destroyed if they knew what it was. And I think they're skilled enough to know
47 what they're looking at.

1
2 But what I did come up here to bring up is that, you know, it's pretty obvious that there's a
3 misunderstanding of what we're here to talk about today by some of the testimony and I think
4 could be useful to the Commission if the Department or Corporation Counsel would just kind of
5 explain the background of what Planned Development Step III is. Because obviously, you
6 know, it would take more time for the Department to flip through the construction documents,
7 but they are consistent with the conceptual level plans. So I do want to kind of have just a
8 reconciling of what this really is as far as this approval phase in a project.

9
10 Mr. Spence: Tara, do you want to explain the --?

11
12 Ms. Furukawa: Okay so usually Step I reviews are as for things like land swaps which you just
13 reviewed a couple of agendas ago. And then Step II is a preliminary plan, so it's a site and . . .
14 (inaudible) . . . program which include among other things constructions plans in accordance
15 with Title 18. The site plan showing grading, landscaping, open space, location of each building
16 structure, the building plan of each building and structure, and the financing and the timing
17 program. And for Step III, it's construction level drawings.

18
19 Mr. Spence: So Commissioners we're at the construction level drawings phase of this. Also
20 note that this project has been through the SMA Major process in which there was an
21 archaeological inventory survey where they do trenching and they have the archaeologist. I
22 thought it was said it was completed.

23
24 Mr. Hart: There was an archaeological inventory survey, but it was a . . . (inaudible) . . . survey,
25 SHPD approved it and then they proposed monitoring as mitigation.

26
27 Mr. Spence: Okay, so --. And okay, so, but it's been through the process and --

28
29 Mr. Hart: Multiple iterations of SHPD review, public hearing and then ultimately Planning
30 Commission approval of the SMA Major and the PD Step II. And I guess what I wanted to point
31 out is what PD Step III does is confirms that the drawings that we're showing you now are
32 the still the same drawing that we are showing you at Step II. And so they are and I don't think
33 that --. We will have our archaeologist do a preliminary monitoring. At the end of any
34 monitoring process you do the official monitoring report to the SHPD but we'll ask them to do a
35 preliminary one now. But this -- what is being, what the applicant has before the Department or
36 the Commission is to determine whether or not they're still doing the same design of their
37 project. It doesn't go, it doesn't go back into the SMA process and all those kinds of things.

38
39 Mr. Spence: Right. This is just a determination by the Commission. Phase III is determination
40 by the Commission that they are following the plans that were previously presented and --

41
42 Mr. Higashi: Commissioner Robinson.

43
44 Mr. Robinson: I understand where we're at and I understand what we're asking. And I'm also --.
45 And I think Commissioner Hill asked for a copy of the SMA, you know, which is approved online.
46 And so I don't think we're trying to change anything. I think we're just trying just not waiving our
47 review. That's all. That's it. Not changing. Just not waiving.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

Mr. Higashi: Okay, Director, would you like to restate the --?

Mr. Spence: Okay. The Commission's motion is to not waive their review.

Mr. Higashi: All those in favor of the motion please raise your right hand?

Mr. Spence: Okay, that's unanimous; motion carries.

Mr. Higashi: Motion carried.

Mr. Spence: So I understand that the Commission when this comes back for your review you would like, probably would like a copy of the AIS and you would also like statements from the archaeologist of how their monitoring has gone up to this point.

Mr. Higashi: Thanks. Next, Director.

Mr. Hart: Thank you.

It was moved by Kahu Hill, seconded by Mr. Robinson, then

VOTED: To Not Waive Its Review of the Planned Development Step III Application.
(Assenting – A. Hill, K. Robinson, L. Carnicelli, L. Hudson, T. Gomes, C. Tackett, S. Castro, P.D. La Costa)

2. SMA Minor Permit Report

3. SMA Exemptions Report

Mr. Spence: Commissioners we're up to other Communication items where you have a copy of the SMA Minor, SMA Assessment reports that is provided to you if you have questions. Otherwise you're just acknowledging receipt of those. Okay, I don't hear any questions?

Mr. Higashi: No questions.

The Commission acknowledged receipt of the SMA Minor and SMA Exemption Reports.

4. Discussion of Future Maui Planning Commission Agendas

a. April 24, 2018 agenda items

Mr. Spence: Okay. Then we go onto I believe it's the next regular Planning Commission agenda on April 24th. We're going to have a workshop on there as well where we're going to go over SMA Rules and Shoreline Setback Rules. We're going to discuss flood hazards, the County's policy against discrimination. And we're going to also discuss the update of the General Plan and we'll have the Long Range planners come in and discuss it with us. We have

1 two public hearing items. One related to ohana dwellings. Remember we talked about
2 amending the Zoning Code. We will have two items for you in that regard. One is in regards to
3 ohana dwellings. The other one are proposed changes to the parking ordinance where parking
4 is required and how much on the particular, whatever particular land use. There's a
5 communication item where Mr. Gale Notestone is transmitting the Committees'
6 recommendations on a request for a State Land Use Commission Special Use Permit for a
7 short-term rental home. We will also have unfinished business with Peter and Lisa Lorde
8 requesting a Land Use Commission Special Permit -- remember earlier today we said you're
9 going to see a bunch of these -- to operate Aloha Spirit Maui Short-Term Rental Home in
10 Launiopoko. And then there will be an adoption of the written decision and order for Mr. Gal
11 Cohen short-term rental home permit in, on Halama Street in Kihei. Commissioners that's all
12 we have.

13
14 Mr. Higashi: Commissioner La Costa.

15
16 Ms. La Costa: Thank you. I noticed that we're going to be looking at short-term rental next time.
17 Is this one of the 88 that is allowed? Because there are several, I know several people
18 who have the applications in process. So I just want to be sure that we're not handing out
19 anymore.

20
21 Mr. Spence: No, we, we quit accepting applications when we had 88 applications or I think
22 maybe 89 applications. So this, this would be one of the ones that have been in line.

23
24 Ms. La Costa: Thank you.

25
26 **Mr. Spence went over the items scheduled for the April 24, 2018 meeting.**

27
28 **H. NEXT REGULAR MEETING DATE: APRIL 24, 2018**

29
30 **I. ADJOURNMENT**

31
32 Mr. Higashi: Any other business on hand? If not, the meeting is adjourned.

33
34 The meeting was adjourned at approximately 4:05 p.m.

35
36 Respectfully submitted by,

37
38
39
40 LEILANI A. RAMORAN-QUEMADO
41 Secretary to Boards & Commissions II
42

43
44 **RECORD OF ATTENDANCE**

45
46 **Present**

47 Lawrence Carnicelli

Maui Planning Commission
Regular Minutes - April 10, 2018
Page 78

- 1 Steven Castro
- 2 Tina Gomes
- 3 Kahu Alalani Hill
- 4 Richard Higashi, Vice Chairperson
- 5 Larry Hudson
- 6 P. Denise La Costa
- 7 Keaka Robinson
- 8 Christian Tackett
- 9
- 10 **Others**
- 11 William Spence, Director, Planning Department
- 12 David Galazin, Deputy Corporation Counsel, Department of the Corporation Counsel
- 13 Michael Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel
- 14 (1:15 p.m. - 3:30 p.m.)
- 15 Rowena Dagdag-Andaya, Deputy Director, Department of Public Works (on-call)