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**MAUI PLANNING COMMISSION
REGULAR MINUTES
JUNE 25, 2019**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Lawrence Carnicelli at approximately 9:05 a.m., Tuesday, June 25, 2019, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

Mr. Carnicelli: The June 25, 2019 Maui Planning Commission meeting will now come to order at 9:05. My name is Lawrence Carnicelli, I'm the Chair. Also with us today is P. D. La Costa.

Ms. La Costa: Aloha Chair.

Mr. Carnicelli: Good morning. Stephen Castro.

Mr. Castro: Good morning Chair.

Mr. Carnicelli: Good morning. Christian Tackett.

Mr. Tackett: Good morning Chair.

Mr. Carnicelli: Good morning. Keaka Robinson.

Mr. Robinson: Aloha Chair.

Mr. Carnicelli: Aloha. Kellie Pali.

Ms. Pali: Good morning.

Mr. Carnicelli: Good morning. And our brand new member, Dale Thompson.

Mr. Thompson: Good morning Chair.

Mr. Carnicelli: Welcome to the Commission. Welcome to the hardest volunteer job you'll probably have. So if you would just why don't you just introduce yourself, tell us a little bit about you?

Mr. Thompson: Good morning, my name's Dale Thompson. I'm a nearly 32-year resident here on Maui. I live on the west side, Lahaina side in Kahana and I have a piece of property there with a half a dozen I call them affordable housing. They're old cane houses that I've had for that whole time. So and I grow taro, and mangoes, papayas, coconuts, breadfruit, grapefruit, star fruit, a variety of things. So it's kind of an old slice of Hawaii on the west side, the tourist side.

Mr. Carnicelli: Nice, nice.

Mr. Thompson: ...years ago a licensed realtor here and owned a couple different businesses and now I work two nights a week driving the trolley in Kaanapali. Get health insurance.

1
2 Mr. Carnicelli: Awesome. Well thank you, and welcome.

3
4 Ms. Thomson: Thank you.

5
6 Mr. Carnicelli: Great. So just to kinda go over logistically there are some new faces here what
7 we will do is...oh, by the way if you have noise making devices, please silence them. We
8 will...oh by the way, we do have quorum. So...but what we'll do is we'll go through the public
9 hearing items. We will hear from the Department and the applicant on the public hearing items
10 first. We will then take testimony after that. So you kinda get a little bit of a breakdown as to
11 what it is that you're testifying on. Those two items are B.1 and 2. The Unfinished Business of
12 D.1, we will not be taking public testimony on, so if you're here to do that we will not be taking
13 public testimony but you are still welcome to stay and be a part of it. Anyways with that being
14 said, Deputy Director.

15
16 Mr. Hart: Thank you Chair, the first item B, Public Hearing, Item No. 1, Michele Chouteau
17 McLean, Planning Director, transmitting a proposed bill relating to the digital zoning map
18 for the Island of Maui, respectively described as follows: A proposed bill titled "A BILL
19 FOR AN ORDINANCE AMENDING THE DIGITAL ZONING MAP FOR THE ISLAND
20 OF MAUI." The purpose of the proposed bill is to adopt an amended digital zoning map
21 for the Island of Maui. Jacky Takakura and Kathleen Aoki are here for the Department.

22
23 **B. PUBLIC HEARINGS**

24
25 **1. MICHELE CHOUTEAU MCLEAN, Planning Director, transmitting a proposed**
26 **bill relating to the digital zoning map for the Island of Maui, respectively**
27 **described as follows: A proposed bill titled "A BILL FOR AN ORDINANCE**
28 **AMENDING THE DIGITAL ZONING MAP FOR THE ISLAND OF MAUI." The**
29 **purpose of the proposed bill is to adopt an amended digital zoning map for**
30 **the Island of Maui. (J. Takakura and K. Aoki)**
31

32 Ms. Kathleen Aoki: Good morning Chair, Good morning Members. For those of you who don't
33 know me, my name is Kathleen Ross Aoki and I am the Division Chief of the Plan
34 Implementation Division for the Department. We are coming before you today to amend our
35 digital zoning map for the Island of Maui. Last year we had the privilege of having the County
36 Council adopt the first ever digital zoning map in our County and this was for the Island of Maui.

37
38 At the time, we did explain that we needed to get a map adopted after working on it for many,
39 many, many, many, many years and we knew and we continue to know that there are errors
40 that we are going to be coming forward with to you and to the County Council to amend. So we
41 are back before you today and on our team we have Peter Graves. Peter Graves is a GIS
42 Analyst V with my division. Sitting next to him is Ann Cua who is the Supervisor Planner for the
43 Current Division, and sitting over there who will also be doing part of the presentation is
44 Jacky Takakura who is the new APO for the Zoning Division. So with that, I'll turn it over to Ann.

45

1 Ms. Ann Cua: Good morning Chair, Members. So just to give you a little bit of history as
2 to...especially for those of you who were not part of the original public hearing that we
3 conducted to adopt the digital map this project initially began back in January of 2001 during
4 Mayor Apana's Administration and it started with the County's GIS Division with staff temporarily
5 loaned from the Planning Department to assist GIS staff with that project. And then in
6 December of 2005 it was transferred, the entire project was transferred to the Planning
7 Department and what we did at that time is we pooled staff from each division within Planning to
8 create a team and we were called the Dead Sea Scroll Replacement Team. And if you've seen
9 our, any of our zoning maps, our paper zoning maps you'll know why that was our title. And this
10 team basically was made up of members that had historical and present knowledge of the
11 County's land use process, land use changes, zoning, permit processing, et cetera, and also
12 GIS skill sets to be able to verify one parcel at a time and create the actual digital zoning layer.
13

14 So why did we do this? Well, again if any of you saw our maps that we use on a daily basis
15 they had aged over time. The quality was very bad. The detail was also very bad and so we
16 knew we needed to do something about that. We had in the County no single complete set of
17 maps for the island. Our zoning in Maui County is a patchwork of things like State Interim
18 Zoning, the original 1960's land zoning maps for urban areas, and then later the County
19 adopted County Agricultural and Rural Zoning Ordinances. And then as you know because you
20 see them every now and then, individual applicants come in with a change in zoning and you
21 make a recommendation to the County Council. So the zoning in Maui County is just mixture of
22 all of these different things. So in order for us to go through this project we had to take all of
23 these different layers including the community plans and the State Land Use Maps to be able to
24 verify just one parcel at a time.
25

26 Another reason why we created this digital map and a huge reason is to give the public greater
27 access to accurate zoning information and another big thing for us is within our Zoning Division
28 between 2014 and 2018, staff processed over 20,000 Zoning Verification Forms. And those are
29 the forms that people fill out when they need to know what they can do with their property.
30 That's one of the first things they do. They need to know what they're zoned, what's the
31 community plan, are they in a flood zone, what does the Maui Island Plan say, so there's this
32 form that's available online that people fill out and they bring into our Zoning Division and
33 Zoning fills it out and gives it back to them. So like I said in that period of time we processed
34 over 20,000 forms. And so definitely having information available online would reduce the
35 amount of forms coming into the Department.
36

37 And then I think most of you know about our Maui Automated Planning and Permit System, our
38 MAPPS project which is going to replace our KIVA Permit System. Well this digital zoning is a
39 key component to this MAPPS system.
40

41 So where are we today? As Kathleen mentioned back in October of 2018, the County Council
42 and the Mayor adopted the digital zoning map for the Island of Maui. We held public meetings
43 in March and April of 2017, and then we came before this Commission as well as the Molokai
44 and Lanai Planning Commissions for the zoning map as well as related amendments to Title 19.
45 As we mentioned then and we'll mention again, we took Maui Island first because we needed to
46 do one island at a time. So Maui is done and we will get to Molokai and Lanai.
47

1 As best as possible what we did as part of this project was to make corrections addressing
2 mapping alignments. We updated parcel zoning with zoning districts that have standards. We
3 had zoning districts on the map like Open Zone that had no standards in Title 19. We
4 eliminated non-existing zoning districts and we corrected oversights.

5
6 When we came before you and as Kathleen mentioned we anticipated having to make
7 adjustments, finding different challenges, different errors that would come up as people come in
8 to verify their zoning we uncover things and so that's basically why we're here today. Do we
9 think this is the end of coming before you? Absolutely not, but what we do anticipate is that the
10 amount of things that we will find over time will be less and less. That's our anticipation, that's
11 our hope and we're sticking to it.

12
13 So as Kathleen mentioned again we're here today to ask for a recommendation to approve the
14 next update of the digital zoning map and with that this update that's coming before you has
15 11 corrections and I'm gonna turn the floor over the Peter and he's going to take you through
16 those examples.

17
18 Mr. Peter Graves: Okay, we're just gonna show you three of them because it still ends up being
19 a lot of slides. If there's any questions about the other eight, we can look that, but these were
20 three of the more involved errors.

21
22 This is a parcel on South Kihei Road by Kukui Mall. It's a residential parcel. Now this is a...this
23 isn't the actual paper map, but there's a digital version of what the raw paper map looked like
24 and I mean this map was from the mid-60s. A lot of the zoning...things drawn on there, they
25 maybe weren't actually zonings but they were in the legends so we considered them as
26 zonings. So one thing you'd have would be these drainage zonings so-called that were in areas
27 where I think there was either proposed drainage or thought to be a drainage. We looked at the
28 current ...(inaudible)...map there was no drainage there, it had been turned into a very narrow
29 culvert and we wanted to get rid of things like that to make them the same as the surrounding
30 zoning which is all R-3 in here. So our proposal was to do this, just to get rid of that drainage
31 zoning so the entire parcel would be R-3. Most likely the owner at no point thought there was
32 drainage zoning on there but we wanted to put it, put it to, put it back to what they probably
33 thought it was which was an R-3 parcel but what I noticed afterwards is that made both...I made
34 both the correction and an error so we ended up with this. We changed or I changed this piece
35 to R-3 this zoning piece somehow though this was changed to be B-2. Took me a bit to figure
36 out how that happened...(cow ringtone in the audience)...It was a cow, a cow did it. Thank you.
37 What happened was there was this change in zoning for this adjacent parcel up here and
38 somehow it ended up in my notes that this change in zoning applied to this parcel as well. I'm
39 not sure how that ended up in the notes, but it was a you know a huge undertaking dealing with
40 every parcel on the island so things like this happened. This is what the correction we want to
41 make is to put it back to the intended R-3 and remove the Business, B-2 zoning that was
42 accidently applied to this parcel. So that's number one.

43
44 This is over in Lahaina by Lahainaluna Road, West Maui Senior Center, Pioneer Mill site
45 involves this area right in here. This is Amfac property. This again would be not the actual
46 paper map but what was taken directly from the paper map. With all this purple being Heavy
47 Industrial zoning, Agricultural, R-2, R-1 sorry. And that map again was from the mid-60s. What

1 happened with the 1996 West Maui Community Plan is that same area was designated Ag, you
2 can see it the label is off here, but it was designated Ag and because of the 1999
3 Comprehensive Ag Bill that means that that little piece of Industrial that was left over here
4 should have been changed to Ag and it was just something at the time it didn't come to our
5 attention. Here's the zoomed out version with the Ag label shown which applies all up into here.
6 The area of error with the arrows pointing at it. So that should no longer have because of the
7 Ag Bill it should no longer have just that piece should not have Industrial zoning and that is our
8 recommended correction is just to remove the Industrial zoning from the portion which is
9 community planned Ag.

10
11 This one's a little more fun. The Plantation Estates, Lower Honoapiilani Road area. Basically
12 applies just to this little piece of undeveloped roadside land here. You can't really see the colors
13 at all, but all of that is shown as being in a Project District which came from Change in Zoning
14 Map 967 this what looks white but should be purple. It's all Project District, this is Interim, Golf
15 Course up in here. What's going on concurrently with us working on this is the parcel's layer
16 which is kinda of a legacy layer going back 20 years they've been doing more and more to
17 make it accurate. So the parcels we're working with don't necessarily line up well with the old
18 change in zoning maps we're looking at. There you see this little, this is CIZ 967 everything
19 within here the change was to Project District we believed at the time that the parcels we had
20 that this edge of the Project District actually went all the way to the top of this little island here.
21 What's been happening in the meantime is there...I should say that the DSSRT project is still
22 referenced to the 2014 parcels. There are 2018 parcels out but...I've been working on updating
23 it to the 2018 that hasn't been released yet. RPT, Real Property is still working on their new
24 release of that. They've been trying to clean up a lot more errors in the past point being that
25 when I compared this as I was changing all this over 2018 I saw that they came out with a layer
26 it was much more representative of what was on the ground, what was on the Change in Zoning
27 Map lined up very well. You can see that the Change in Zoning Map actually ends right there
28 not up here as I had believed. So it shouldn't apply beyond this point. This piece up here
29 should have remained Interim because it's not covered by any zoning map and that is our
30 proposed fix is just to change this little section right here back to Interim as was the intention of
31 Map 967.

32
33 And that looks like nothing because the colors aren't showing up, but that is the digital corrected
34 map for the whole island. And those are the three examples. We could go into if there's any
35 interest in the others later we can take a look at them.

36
37 Ms. Cua: So now we'll have Jacky Takakura come up from our Staff and take you through the
38 ordinances that need to occur.

39
40 Ms. Jacky Takakura: Good morning everyone. I'm Jacky Takakura. I'm the Administrative
41 Planning Officer in the Zoning Division.

42
43 Mr. Carnicelli: Good morning.

44
45 Ms. Takakura: So we have a variety of people here, you know from the different divisions that's
46 how big this project is because it affects all of us in the Department. But what I'm gonna go

1 through with you is the process to implement the updated digital zoning map and the steps it
2 takes to change the Maui County Code.

3
4 So in order for this updated map to become the official zoning map for Maui a bill must
5 accompany the map. And like any bill for ordinance it must be reviewed by the Planning
6 Commission and then it can be routed to Corporation Counsel and then to the Mayor's Office for
7 transmittal to the County Council.

8
9 So the County Charter give us, the Planning Department the responsibility for preparing zoning
10 maps and Maui County Code, Chapter 19 refers to the actual maps for each island. And as
11 mentioned, Maui Island has a digital zoning map as of October 2018 and these maps determine
12 the boundaries of the zoning districts and eventually as mentioned we will have digital zoning
13 maps for all three islands, but we're doing just one step at a time. It is a big project.

14
15 Okay, so our proposed bill for ordinance before you today is consistent with the Charter which
16 authorizes the Department to maintain zoning maps. Maui County Code, Chapter 19 which
17 recognizes the digital map as the zoning map for Maui and with the General Plan. There's a lot
18 of text here but the key words are that the digital map is the official zoning map for Maui Island
19 and our responsibility is to update the standards for determining the boundaries of zoning
20 districts and by doing this we're in line with the General Plan and that is to be transparent,
21 effective, efficient and relevant documentation because of course knowing what the zoning is for
22 these parcels on this island it's one of the most relevant documents we can have. And then
23 technology as we mentioned the new permitting processing system that's coming up needs this
24 for that and to expand our online services.

25
26 So as we mentioned, the current map, Map No. 1 contains a few errors and oversights and right
27 now it's just 11 that we seek to correct. And keep in mind out of...this is out of over 40,000
28 parcels on Maui, you know right now we've found 11 and over time we probably will come
29 across more that we will need to fix and so we'll bring those to you again. You know so this is
30 gonna be kinda work in progress kind of like painting the Golden Gate Bridge. So...and then
31 also as mentioned we will eventually work on Molokai and Lanai.

32
33 This is the actual language of the bill for ordinance. The key parts are the underlined parts that
34 we want changed to reflect the references to the Digital Zoning Map 2 which is gonna be the
35 most recently adopted digital map on file and with reference to Number 2, and I think you have
36 that in your handouts. You can read it.

37
38 So in summary, we're requesting that the Maui Planning Commission recommend to the County
39 Council approval of the proposed corrections and adopt the Digital Zoning Map Number 2. You
40 do have three options. We hope that you pick number one there in bold, but you do have the
41 option to recommend that the Council pass the bill with the amendments or you could vote to
42 defer in order to gather additional information and we are here today. We can answer any
43 questions that you may have, but we would like to have this Number 2 be the official map. Did
44 you have any questions?

45
46 Mr. Carnicelli: Thank you.
47

1 Ms. Takakura: Thank you very much.

2

3 Mr. Carnicelli: I'll let Ann turn on the lights. Thank you Ann. So Commissioners at this point do
4 you have enough information to make a recommendation or would you like...do you have any
5 questions at this point? Commissioner La Costa.

6

7 Ms. La Costa: Thank you Chair. My question is for whomever is able to answer it. When
8 zoning is changed and things such as drainage easements or electrical easements are
9 realigned because they no longer are within a parcel how does that affect the title insurance on
10 the properties that have those title easement on them?

11

12 Ms. Aoki: So first to clear up that we do not touch easements. The easements are not part of
13 zoning. Zoning is the allowed use of that property. So it's an underlying map if you will. If there
14 is an easement that's on a piece of property that's documented that stays. We don't touch
15 anything to do with easements. The drainage example that we have for you today was
16 considered a zoning category not an easement but a category, but it had no standards. There
17 was nothing in the Code that talked about how to use a drainage zoning type. So what we did
18 with that was which if you bring up that slide Peter on the corrected version you will see that that
19 zoning of the drainage went all the way down to...well, you won't see it all, but it went all the
20 way down to the ocean and it got taken out and corrected on the other parcels. So everybody
21 else got it corrected too, and like Peter mentioned in some cases there were actual, you can
22 look there were actual tiny little culverts that we put in. It doesn't affect the use of the property
23 though. In some cases there's absolutely no drainage whatsoever. In these situations here all
24 these parcels are developed with homes. Their entire properties are built out with homes and
25 we had the public meetings it was interesting because some people came in going what are you
26 doing to my property? Did you know you had drainage zoning on your property? They had no
27 idea because there's no standard, there's no category, we let everybody...you know there were
28 approvals that allow houses to be built. There was no impact of that drainage zoning. So
29 easements stay on your titles, stay everywhere else, it doesn't affect the use of your property.

30

31 Ms. La Costa: Thank you. I appreciate the clarification.

32

33 Ms. Aoki: You're welcome.

34

35 Mr. Carnicelli: Commissioner Castro any need for clarification?

36

37 Mr. Castro: No.

38

39 Mr. Carnicelli: Commissioner Tackett.

40

41 Mr. Tackett: No.

42

43 Mr. Carnicelli: Commissioner Robinson.

44

45 Mr. Robinson: Chair I do have a question and I don't know who have to address it. I
46 understand the bill that we want to do for the ordinance, but we're here to agree on three
47 changes?

1
2 Ms. Aoki: No, there were 11. We showed three. We do have the other ones here. I can tell
3 you that some of them have to do with as Ann explained zoning that didn't have standards. So
4 for example there's Public. It's called Public zoning which in our Code there's no standards. So
5 on DSSRT Map Number 1, we went in and changed whatever was Public to Public/Quasi-Public
6 1 or 2. So that happened. However, there were oversights and we found a couple of churches
7 that still, there were three, three churches that still had Public zoning on them, but again, no
8 standards so we're applying a category to those properties.

9
10 Mr. Robinson: I guess my question is, is in front of me I have, I have a bill that you guys want
11 us to vote on but I don't understand about me not having information on the 11. Is the 11
12 not...it's all relative, it's not individual, are we agreeing on something? Because it's hard to vote
13 on something that I have never seen. So is it, am I to forget about that...(inaudible)...

14
15 Ms. Aoki: No, not at all. You know, like I say, we can show you the other eight. It's not a
16 secret. It's similar to when we came with you with the first map. We had over 900 to a
17 thousand changes so we didn't go over them all. We explained what we were doing, how we
18 were doing it, what was being applied and same thing with the County Council and it's, it's that
19 faith if you will that the Department is making these corrections to the map based on all these
20 things compiled together and it's...you adopted as is, but we can...we're happy to show you the
21 other—

22
23 Mr. Robinson: No, no, no, and I remember that so it's...we're not actually voting on the
24 changes itself, we're voting on what...on why we're changing things and if these 11 to 900 fall in
25 those categories then therefore that's what we're voting for, not I approve that change, I
26 approve that change, I approve that change.

27
28 Ms. Aoki: Well, you are. You are. You are approving each of those changes but again it's we
29 will continue to come back to you with the same type of errors where, okay, we happen to come
30 across a church somewhere where it still has Public zoning so we're coming in to change it to
31 P-1 or P-2.

32
33 Mr. Robinson: Thank you Chair.

34
35 Mr. Carnicelli: Thank you. Commissioner Pali.

36
37 Ms. Pali: These are new huh?

38
39 Mr. Carnicelli: Those are new.

40
41 Ms. Pali: Nice.

42
43 Mr. Carnicelli: You can whisper again.

44
45 Ms. Pali: Yes, thank you Chair. So I'm just...I don't want to beat a dead horse, but I think that
46 was also my question. There's one thing when we're fixing errors, like I think the first example
47 with the Kukui Mall. I can see that he meant to do something but it in effect did something

1 different that is to me an error. But in your case, when we're approving the 11 changes it
2 sounds like you are taking the power that the Code has already given you to make the
3 determination to clean up our maps when there's categories that now no longer exist. So it
4 sounds like and just want to make sure I understand the answer to my own question is we're not
5 just fixing errors like the Kukui Mall error, you're actually under this Code, Chapter 19.06 you
6 also have the authority to actually change, not fix, but change current zoning to zonings now
7 that are defined. So we're doing both, right? You're fixing errors to the digital maps and you're
8 assigning categories that now have definitions per the new Maui County plans.

9
10 Ms. Cua: Just to clarify some of the words...

11
12 Ms. Pali: Yes.

13
14 Ms. Cua: The Department and the Commission does not have the authority to change zoning.

15
16 Ms. Pali: Okay.

17
18 Ms. Cua: The Council does.

19
20 Ms. Pali: Okay.

21
22 Ms. Cua: So this process is...this is the process. In order for the Council to be able to change
23 the zonings of these parcels because that's what's happening whether it's an error...and when I
24 did my presentation I kinda let you know the categories of what we found.

25
26 Ms. Pali: Okay.

27
28 Ms. Cua: We found errors, we found zoning classifications that there were no standards for,
29 you know these were general categories—

30
31 Ms. Pali: Like open.

32
33 Ms. Cua: Yeah, right or like Open zone, like the one I –

34
35 Ms. Pali: So we're recommending to them to adopt these?

36
37 Ms. Cua: Right.

38
39 Ms. Pali: But we're identifying it for them?

40
41 Ms. Cua: Exactly.

42
43 Ms. Pali: Okay, got it.

44
45 Ms. Cua: That's what it is, but they—

46

1 Ms. Pali: So it's both then. We're fixing some digital issues underneath, but also
2 recommending the new categories to be presented.

3
4 Ms. Cua: And at the end of the day it's pretty much all the same thing. The zoning is going to
5 be changed for those parcels for all the reasons outlined. We've identified them, we're bringing
6 it to you who have to hold the public hearing on this and then your other responsibility is to
7 make a recommendation to the County Council. County Council gets the information and then
8 they act.

9
10 Ms. Pali: Okay, and one follow up question Chair?

11
12 Mr. Carnicelli: Go ahead.

13
14 Ms. Pali: Are the parcel owners being notified of the recommendations?

15
16 Ms. Cua: Yes.

17
18 Ms. Aoki: Yes. They all got letters this time around. And in the previous adoption of Map 1 we
19 sent out over 900 postcards to every owner and we had the public meetings. We had four
20 public meetings in addition to the public hearing. We had very little turnout. So –

21
22 Ms. Pali: Do you have a way to track if they actually received them or not or are you just doing
23 regular mail or are you doing send receipt or anything like that like how you expect the short-
24 term rental people do send receipts and things?

25
26 Ms. Aoki: We're actually not required by law to notify the owners interestingly enough. But we
27 have obviously taken that step to notify them and in this situation we did get one person
28 respond and ask a question. It was for the Lahaina parcel. So he got the letter and he
29 questions on why, what was happening.

30
31 Ms. Pali: Okay, that's it. Thank you.

32
33 Mr. Carnicelli: Thank you. Commissioner Thompson, do you have any questions?

34
35 Mr. Thompson: No questions or comments.

36
37 Mr. Carnicelli: Okay, great. So I just again, clarification in order to make these changes it's a
38 change to Title 19. It's a change to the ordinance with which County Council is the only people
39 that can change the ordinance. Any time there's a change to Title 19 it has to go to the
40 appropriate planning commission and that's why it's here and we're only just recommending to
41 the Council. If we want to get into the minutia of all 11 of them, you're prepared to do that, but
42 we're kinda saying like okay, we then have to make a decision do we really want to get into
43 this...every time they find a new parcel do we really want to get into the minutia? So that's I
44 think kinda just where we are right now. So...

45
46 Ms. Cua: Well if I could just real quickly?

47

1 Mr. Carnicelli: Sure.

2

3 Ms. Cua: You know what we try and do as a staff is we try and give you the best examples of
4 the overall project.

5

6 Mr. Carnicelli: Right.

7

8 Ms. Cua: Trying to be respectful...respectful of what's on your agenda. You know not trying to
9 take the whole time, but again also recognizing that you have to vote and so you know we're
10 prepared to go either way, but like we did before as was mentioned you know when there's so
11 many to go through every single one could take a whole meeting depending on how many there
12 are so we just try and give categories of okay, this is a type of example, this is another type of
13 example and this is another type. So that's what we did again like last time.

14

15 Mr. Carnicelli: Commissioner Pali.

16

17 Ms. Pali: Just for future 'cause I, I feel...my counterpart here I feel his responsibility as well I'm
18 carrying that with him, for future moving forward could you just do like bullet point list where you
19 have an address and just what it was and what you're doing, what it was, what you're doing, to
20 me that's a simple list that we could breeze through while you're doing a presentation and we
21 can just be held responsible that we were aware of what properties were impacted so we're not
22 just doing the rubber stamp that sometimes that we may be accused of doing.

23

24 Ms. Cua: Sure.

25

26 Ms. Aoki: Sure.

27

28 Mr. Robinson: Chair?

29

30 Mr. Carnicelli: Commissioner Robinson.

31

32 Mr. Robinson: Just you know like how you do an SMA, as long as I have the 11 I supposed to
33 look at it, I can pull it up online to go deeper into it. I'm sure the Council is gonna have that,
34 they're not gonna just say whatever is on the 11. I think that will just help us to know that we're
35 voting on something and our name's on the recommendation at least we know we looked at it.

36

37 Ms. Aoki: Sure.

38

39 Mr. Robinson: Thank you so much.

40

41 Mr. Carnicelli: Yeah, I kinda whispered the same thing to the Deputy Director about that. We're
42 just like okay, we didn't know ahead of time. But I also understand that the first time we did this
43 was 900 of them, that it's just like okay, like how am I gonna go through 900, but now that we're
44 down to a dozen or so it would be helpful next time so thank you for that. So I think at this point
45 in time can I get a motion for a recommendation?

46

1 Mr. Robinson: So move.

2

3 Mr. Carnicelli: Okay, so Commissioner Robinson has moved that we recommend approval of
4 the proposed bill as drafted to the Maui County Council.

5

6 Ms. La Costa: Second.

7

8 Mr. Carnicelli: Seconded by Commissioner La Costa. Any discussion on the motion? Seeing
9 none, all in favor of the motion please raise your hand. That is unanimous, six ayes.

10

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

12

13 **VOTED: To Recommend Approval of the Proposed Bill to the County Council**
14 **as Recommended by the Department.**

15

16 **(Assenting – K. Robinson, P. D. La Costa, D. Thompson, K. Pali,**
17 **C. Tackett, S. Castro)**

18

19 **(Excused – T. Gomes)**

20

21 Mr. Carnicelli: Thank you very much.

22

23 Ms. Cua: Thank you.

24

25 Ms. Aoki: Thank you all.

26

27 Mr. Carnicelli: Tara do you need time to set up or do you want to take a brief recess? Okay,
28 brief recess we'll be back in five minutes.

29

30 A recess was called at 9:45 a.m., and the meeting was called at 9:50 a.m.

31

32 Mr. Carnicelli: The June 25, 2019 Maui Planning Commission is back in order. Deputy Director.

33

34 Mr. Hart: Thank you Chair. Public Hearing Item B.2, Janine Holstein requesting a State Land
35 Use Commission Special Permit and Short-Term Rental Home Permit to operate a six bedroom
36 STRH in the main and accessory dwellings in the State and County Agricultural Zoning Districts
37 at 2460 Omaopio Road, Kula, Island of Maui, TMK (2) 2-3-003:030 and Short-Term Home
38 Rental Permit T2019/0001, SUP2 2019/0004. Tara Furukawa is Staff Planner.

39

40 **2. JANINE HOLSTEIN requesting a State Land Use Commission Special**
41 **Permit and Short-Term Rental Home Permit to operate a six bedroom STRH**
42 **in the main and accessory dwellings in the State and County Agricultural**
43 **Zoning Districts at 2460 Omaopio Road, Kula, Island of Maui, TMK (2) 2-3-**
44 **003:030 (STMP T2019/0001)(SUP2 2019/0004)(T. Furukawa)**

45

46 Ms. Tara Furukawa: Good morning Commissioners. This item has come to you review
47 because the Department has received two protests from adjacent neighbors. In addition,
30 percent or more of the owners and lessees within a 500-foot radius have submitted protests

1 and also it's a short-term rental home on Ag land. The applicant is proposing a six-bedroom
2 STRH in two farm dwellings in Omaopio, Kula. The applicant plans to reside in the main farm
3 dwelling and rent the second farm dwelling. And when she's away she plans on renting the two
4 dwellings. The consultant for the project is Debbie Mitchell and she'll be presenting you the
5 project and responding to any questions that you might have regarding the application.

6
7 Mr. Carnicelli: Thank you Tara.

8
9 Ms. Debbie Mitchell: Good morning Commissioners. My name is Debbie Mitchell and I am
10 here presenting Janine Holstein in her application for a Short-Term Rental Home Permit and a
11 SUP2 Permit at 2460 Omaopio Road.

12
13 The subject property is located in Kula in the Agricultural zoned district. It is a large, almost
14 25 acre parcel and as you can see outlined by the green area there you can see the entire area
15 of the parcel. The parcel has two dwellings upon it. One is the main dwelling which is the
16 furthest left dwelling and the driveway is quite lengthy it comes off of Omaopio Road and the
17 second is the ohana also three bedrooms which is in reach by a long driveway as well so they're
18 much removed from the roadway.

19
20 The main residence, the guest is greeted by this picturesque entry. It...again, it is a very long
21 driveway, ample parking for the required amount. There's additional parking above and beyond
22 the requirements. The home itself, the main home has three bedrooms and this is a picture of
23 that, exterior of the house, and these are the views from the house. Unfortunately the view on
24 the top left is a little bit washed out but it looks out towards West Maui. The interior of the
25 house, the foyer and bar, the kitchen and dining area, the living room, and each of the three
26 bedrooms.

27
28 This is moving you over to the ohana which is the secondary building on the property. This is
29 again reached by a very long driveway and again with more than ample parking for the
30 requirements. This is the exterior of the home. The homeowner has put a tremendous amount
31 of work into rehabilitating a much dilapidated home and has done amazing...in the next picture
32 you'll see a little bit of what it did look like. We do not have current pictures of the outside, but
33 this is what she's restored it from and then the views surrounding the property. Interiorly the
34 kitchen and dining room, the living room and the three bedrooms again.

35
36 It is a working farm. It has...she has six horses that range throughout the property. She's also
37 raising adult chickens and has at this point 60 chicks and counting, and she has a wide variety
38 of plants that well...matured plants and orchard which produces a wide variety of fruit. She's
39 also indicated that she has done research on the products that can be done with kiawe in
40 making flour and making other things from the kiawe tree. She's very heavily involved in this
41 farm. These are some of the pictures of the horses and the chicks, there's a newborn chick
42 there, and again of the orchards. It is a very large property so this is ranging throughout the
43 property, but most of the orchard and plants of that nature are grown around the homes.

44

1 As to public notice, all neighbors were notified within 500 feet, twice, once about the permit
2 application and then once about the public hearing and the Department did put an ad in the
3 Maui News about this hearing today.

4
5 Nine protest letters were received from the neighbors within 500-foot radius of the property.
6 Three of them of are from two adjacent neighbors, one of the parties owns two parcels. The
7 owner has reached out personally to every one of these folks. I've come before you many,
8 many times here and this is the most involved owner I've ever been with in terms of reaching
9 out to her neighbors. She invited them all to a barbeque at her house to hear their concerns
10 and to try to answer them. She's written letters, she's called, so she's been very heavily
11 involved in trying to answer the concerns that protesting neighbors may have.

12
13 This is a little bit of an overview of the 500-foot circle. You can see the large parcel in the
14 middle, the red bars are the protest letters that were received and they're all bordering on the...I
15 think there is actually there was one just on the outside of it but most of them are to the north
16 and east of the property. The x's show the letters of support from adjacent neighbors so all of
17 the neighbors across the street from her have supported as well as the two to the south. There
18 are no other short-term rental homes were be anywhere...within the 500 feet of this home.

19
20 There's been a massive amount of support received for this particular operation. Seven...there
21 are a total of seven support letters received from owners within the 500-foot radius and as I
22 mentioned before showing you the adjacent numbers, owners are in support of this application
23 as well. There is a tremendous amount of support for this particular property within the Jewish
24 community both in the community and their leadership. The owner has built or constructed a
25 property that actually provides a practicing Jew with kosher is not the big enough word but with
26 accommodations which have been modified to their needs. They are, as listed there, there are
27 kosher kitchen with separate accommodations for meat and the very specific things and Janine,
28 the owner will get into this more, prohibition of using electricity on the Sabbath. So she's
29 created an environment when practicing Jewish people can come and vacation without concern.
30 So as in researching this project the amount of support for it, you should have been given a list
31 of all of the support letters that were received. So it is a very great need on this island for
32 something like this. It's providing a service that no one else is doing. So we'd just like to have
33 that.

34
35 And always, we do understand the protests and we have tried to reach out to the neighbors,
36 Janine especially to answer those accommodations. So we are well aware that those are there
37 as well. But we do say this is also the community speaking in support of Janine and this
38 operation.

39
40 These are some of the items there are...that are specific to a practicing Jew, and Janine, again
41 Janine will explain these a little more. These are very special mezuzah which are required to be
42 posted. They're very difficult to get genuine articles. She had to go back to New York to
43 actually find these. So she's really constructed a unique place here. So that is our
44 presentation. We thank you for your consideration. Janine is here and would like the chance to
45 address you folks as well.

1 Ms. Janine Holstein: Hi, I'm Janine Holstein. Thank you for taking the time to review my
2 application. Aloha, good morning. So as Debbie shared, you know I applied for the short-term
3 rental and I'm on the Board of Directors for the Jewish Congregation of Maui so I'm very much
4 involved in the Jewish community here on Maui. I'm also in my garage actually a Hebrew
5 School takes place one day a week for an hour and a half and the woman who runs that class
6 she is the Rebbetzin or the Rabbi's wife of the Maui Kosher Farm and so I am very involved in
7 the Jewish community here and very supportive of things happening here. So you know,
8 having...I moved here in 2013, I'm from New York. I was brought up Modern Orthodox which
9 Jewish which is a fairly religious or practicing type...(inaudible)...of Judaism and I keep hearing
10 from people how difficult it is and I know for myself how difficult it is for someone who observes
11 the laws within the Jewish religion to come here.

12
13 So I've really, you know I was brought up on a religious or Jewish value called hachnasat
14 orchim which is a Hebrew words which means welcoming guests and like I don't mean to get all
15 biblical but like Abraham or Abraham you know he owned a hotel that was his biblical thing, he
16 had guests, guests, guests, guests. That was something I was raised on. When I in my 20's
17 and living in New York I would have 15 people over at my house, my two...you know, tiny
18 apartment in New York City to feed them for a Savat, Sabbath lunch dinner, these were the
19 values I was raised on. So to me it's like I'm just trying to express and provide a place for
20 Jewish people or any visitors but I mean really targeting Jewish people to come and feel
21 welcome and feel comfortable and not have to go scrounge for food and you know, I mean if
22 you look at the hotels now they all have the electric key card. If they're there on a Savat,
23 Sabbath or a Yontiff, a Jewish holiday they literally cannot get in and out of their room because
24 it's electric and you're prohibited, we are prohibited from using electricity or touching anything
25 electric actually on those days. So there's so many laws and rules like couple, married couples
26 that keep marital purity laws, they are required to sleep on separate mattresses during their time
27 of niddah. I don't want to get all technical and gross maybe, but just you know, so I'm able to
28 provide separate mattresses, I'm able to provide...I know what the needs are and I'm able to
29 that to people who come here with those needs and I mean, I have my friends, my family who
30 have come to Hawaii to visit and bring literally an entire suitcase filled with frozen kosher food
31 that's wrapped in a way that they can you know maybe possibly stick it in an oven or not. It's a
32 big burden, difficulty for people who come here to get their needs met and often don't end up
33 coming.

34
35 I'm also a social worker, have been a social worker for 20 years. I also have a PhD in Clinical
36 Psychology. I'm someone who's very in tune with community needs and this short-term rental
37 would fill a huge gap in services, it would serve not only an underserved population but an
38 unserved population and in doing that it would also...it's providing a service to a population that
39 is not also draining resources from our island, but hopefully actually could contribute to those
40 resources.

41
42 So I hope that you can see, you know, the bigger picture and I'm aware of the obviously the
43 neighbors that have protested and I have reached out and I feel you know, it...I so much want to
44 have a good relationship and happy to know you connect and talk about and reassure any
45 concerns that anyone has. The houses are so far away from the neighbors. There's so much
46 land around. There's so many trees and barriers, you know, it's...it seemed when I was first

1 applying like it would be a perfect place to do this because it's so remote and far and quiet and
2 you know, and again these are visitors who are typically God fearing people and upstanding
3 moral citizens, they follow an ethic code and you know they're not gonna be partying and loud
4 and you know all of that, so you know, I just ask for you to again look at the bigger picture. I
5 hope I have said everything, I don't know. I'm very nervous, I'm sorry if I missed stuff. Okay,
6 thank you so much for hearing me.

7

8 Mr. Carnicelli: Thank you. You did great.

9

10 Ms. Holstein: Thank you.

11

12 Mr. Carnicelli: At this point, Tara do you have anything else to add?

13

14 Ms. Furukawa: No.

15

16 Mr. Carnicelli: Okay, so what we'll do at this point in time is we're gonna open up for public
17 testimony. Actually if someone could get the lights. What I'll do is right now we have six people
18 signed up to testify. I will call you up one at a time, come forward, I'll ask you to state your
19 name, I will ask you if you will be truthful, you'll get three minutes. After that, the applicant
20 actually has the opportunity to ask you questions if she so chooses. If not, that's fine too. And
21 yeah, so that's...just you guys know that's how the ball will bounce. Once public testimony is
22 closed then we'll have questions and answers and come to a decision. So our first public
23 testimony is from Susan Clements. Please state your name.

24

25 Ms. Susan Clements: Susan Clements.

26

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

28

29 Ms. Clements: I do.

30

31 Mr. Carnicelli: You have three minutes.

32

33 Ms. Clements: Thank you. Good morning Chair Carnicelli, Vice-Chair Tackett, Deputy Director
34 Hart, Members of the Planning Commission, Corporation Counsel and Staff. My name is
35 Susan Clements and I am one of the neighboring homeowners of the proposed Maui Majesty
36 Short-Term Rental. I am also speaking on behalf of my sister Marci Sato whose property is
37 adjacent to the applicant.

38

39 We are opposed to the request of a short-term rental home permit. This is a farming community
40 and we feel that short-term rental use is not an appropriate use for this area. My grandfather
41 purchased his farm over 70 years ago and our family has neighbored this property for over
42 50 years. The property sold last May and four months later an application for short-term rental
43 use was submitted. I have not received an invitation for a barbeque and I still have not met my
44 neighbor.

45

1 This property contains two dwellings with a total of six rooms allowing a group of 12 people to
2 be on property. There are nine letters of protest from surrounding neighbors with various
3 concerns.

4
5 Omaopio Road is home to long-time farmers, Uradomos, Evonuks, Otanis, Shishidos, the
6 Takashitas of Howard's Nursery, and the Sakugawas to name a few and to newer farms such
7 as Okoa Farms. An adjacent property to our lot, formerly the Yamamuras was sold last May to
8 a sweet potato farmer. Another property adjacent to our lot sold last October and is being used
9 for various crops. We don't want to see short-term rentals encroaching in our farming
10 community.

11
12 I understand there are letters of support for this proposed rental because it will serve the Jewish
13 community. I do not see the number of letters that was mentioned and one of the letters of
14 support which was written by a neighbor across the street listed several homeowners and as a
15 letter of support but one of those homeowners was Howard Takashita of Howard's Nursery and
16 they did support a letter of opposition.

17
18 One letter of support states that this would allow folks to experience the beauty of Upcountry
19 Maui but that there are options in Wailea. Maui County is anticipating three million visitors this
20 year. Residents have to deal with overrun roads, trespassing, lack of respect and damage to
21 our natural resources and infrastructure. I think Lee Cataluna said it best in her recent piece,
22 stating that residents want their peace and privacy back, they want actual neighbors to be their
23 neighbors, Hawaii residents want tourist to go back to all the vast prime beachfront that our
24 kupuna saw taken away and parcel over, built up and maximized for tourism. That was the
25 unspoken deal that we would give up Waikiki, Poipu, and Lahaina, and Wailea to the tourist
26 machine but keep country, country and the neighborhoods, neighborhoods and the deal has
27 now been broken.

28
29 One of the main highlights in the Maui Island Plan is to preserve our agricultural lands and open
30 space a refrain repeated by—

31
32 Mr. Carnicelli: Susan that was three minutes.

33
34 Ms. Clements: Okay, thank you.

35
36 Mr. Carnicelli: Thank you for your testimony.

37
38 Ms. Clements: Thank you for time.

39
40 Mr. Carnicelli: Does anybody have any...need to clarify Susan's testimony, no? Does the
41 applicant have any questions for Susan? Seeing none, thank you very much Susan, appreciate
42 it. Our next testifier is Seth Weaver. Please state your name.

43
44 Ms. Seth Weaver: Seth Weaver.

45
46 Mr. Carnicelli: Seth do you promise to tell the truth?

1
2 Mr. Weaver: I do.

3
4 Mr. Carnicelli: You have up to three minutes.

5
6 Mr. Weaver: Thank you Mr. Chairman, Members of the Commission. My name is Seth Weaver
7 and I reside at 26 Kapiki, I'm right adjacent to within the 500-foot radius of the applicant's
8 dwelling. I did have more of a script that I was going to read from but I'll speak more from the
9 heart I think because I don't want to sound so redundant.

10
11 I recently moved there with my family within the last year and I couldn't be happier residing in a
12 community that resonates around farming and agriculture practices and I really want to stress
13 that the Code is strict in the sense that this area is zoned totally within agriculture use and the
14 intent of that was to preserve that nature of the community and especially with our impending
15 food crisis that we have around here, in the nation and the community I think we should stress
16 that farming is very important to the community and should be well understood and supported
17 and by approving applications like this it does quite the opposite.

18
19 And to that point by approving something like this it would set a precedent for other applications
20 to come through and have more short-term housing rentals in the area that go against what the
21 code was set up for. And I think that's very important that we don't set that precedent. I would
22 like to stress that the Department has recommended denial of the application and the majority of
23 the affected community members of the...the affected constituents of the application's 500-foot
24 radius did recommend a denial as well and strongly opposed it.

25
26 Farming comes with many different applications, some of them revolve around tractors, loud
27 noises, use of chemicals, pesticides, spraying and I think all of these things are very important
28 to preserve agriculture and its practices and could contrarily affect the applicant's nature of her
29 business. I would like to stress one thing that the applicant is suggesting that the buildings are
30 far removed or don't really propose that much of a harm to the community, well they're right on
31 the border of the property owners who directly oppose this. They're literally...you could feed the
32 horses on the other side of the fence and the houses are right there. So that's quite frankly not
33 true. They would directly affect the neighborhood and alter the integrity of the community.

34
35 I would like to also stress that the people who objected to the application are in the majority and
36 I think that should be taken into consideration. I know there are many other letters of support
37 but those people quite frankly don't live in the area, they're not going to be affected whatsoever
38 by the applicant's intention here. While whole and true are good but they will not be affected so
39 I know that's my time and I thank you for the opportunity to speak to you today.

40
41 Mr. Carnicelli: Thank you Seth. Any need for clarification? Does the applicant have any
42 questions for Seth? Okay, thank you Seth. Paul Sakugawa. Please state your name.

43
44 Mr. Paul Sakugawa: I'm Paul Sakugawa.

45
46 Mr. Carnicelli: Paul do you promise to tell the truth?

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Mr. Sakugawa: Yes I do.

Mr. Carnicelli: You have up to three minutes.

Mr. Sakugawa: Okay, I live right on Kapiki Street and I farm on my son's property which is about ten feet away from one of the houses. Now you can imagine if I plowing the field, raise animal, spray any insecticide, I gonna worry about whoevas in there, you know. And all this time for the past well, my father and I farmed about 70 years already on the property and we had no problems, none. Because the people living there know it's Ag District, they live with all the dust because when it get windy and we start plowing the field there's a lot of dust. So this people come in, they rent, who knows who'll be there and might maybe somebody from the city then they will be sensitive to the dust, to the chemical, and how are we gonna farm? Like the owner, Jennie she send me an email saying they sensitive to insecticide so what I can I do? You know, she want me to notify her when I'm gonna spray so she can protect herself, but this isn't to me is for Ag. So you know, when we spray insecticide we follow the label, you know, why should I go notify everybody who comes to the property? That's my main concern. I want to keep this place Ag and that's it. Thank you.

Mr. Carnicelli: Thank you Paul. Any questions for Paul? Does the applicant have any questions for Paul? Thank you very much. Sheri McNerthney. Did I get it right?

Ms. Sheri McNerthney: You did. It's actually Sheri Leven McNethney and I'm speaking. I want to note that I'm speaking—

Mr. Carnicelli: Wait, you promise to tell the truth?

Ms. McNerthney: Yes, I do.

Mr. Carnicelli: Okay, you have up to three minutes.

Ms. McNerthney: Thank you. And I just want to note that I'm the President-Elect of the Jewish Community of Maui and I'm speaking on behalf of the whole community. So Janine's proposed short-term vacation rental here would be an amazing tremendous service to our community because there's nothing like this that exists. You know we often have, we struggle, we often have visiting Rabbis, visiting Clergy, visiting Scholars and we're always struggling to find a place for them to stay because there's no...you've heard about she's making this a kosher vacation rental meeting the needs of the Jewish dietary laws. It's super important for us. We're always struggling with this issue. It's like a dream come true to have, to have...be able to have a kosher vacation...kosher short-term rental on Maui. I mean right now I have two visiting Rabbis who are going to be visiting us in the current...in the next few months, you know, I've been struggling to find a place for them to stay. You know if this is approved I would totally, this would be where they would stay. The alternative is that these two Rabbis need to bring suitcases of their own food and their own cooking utensils and it's a real problem, you know always. So I urge you approach...to approve this. It's a unique, a totally unique service for Maui and it's not just for our visiting Rabbis, Clergy, and Scholars, it's any observant Jew of

1 Maui of which there are thousands that visit this island each year and you know, it's a service
2 for the island to have this. I urge you to approve it. Thank you.

3
4 Mr. Carnicelli: Thank you Sheri. Any questions for Sheri? Does the applicant have any
5 questions? No. No questions. Thank you very much. Ellyn Mortimer. Please state your
6 name.

7
8 Ms. Ellyn Mortimer: Ellyn Mortimer.

9
10 Mr. Carnicelli: Do you promise to tell the truth?

11
12 Ms. Mortimer: I do.

13
14 Mr. Carnicelli: You have up to three minutes.

15
16 Ms. Mortimer: Thank you very much. Good morning. I'm the current President of the Board of
17 the Jewish Congregation of Maui. It's the only Synagogue on Maui. We've been in existence
18 for as a formal organization for about 20 years and I'm here to submit testimony on behalf of
19 Janine Holstein short-term rental. I work in the office at the synagogue. I get phone calls and
20 emails every week from potential visitors who are looking for a place to meet their needs to
21 come to Maui and to be an observant Jewish person.

22
23 The needs of some of the members of the Jewish community as listed in the presentation
24 kosher kitchens, lights on a time, a mezuzah on the door post, those are not things that are
25 easily accommodated in a short turnover in between rentals or in my home for example where I
26 don't observe, I can't just simply turn it into that kind of an environment for somebody who is
27 coming to visit.

28
29 This rental will serve the needs of the Jewish community who visit or who live on Maui and need
30 a temporary place to stay. As Sheri mentioned we often would like to have visiting Scholars and
31 Rabbis to come to our community. We actually as Sheri mentioned have our most important
32 holidays of the year Rosh Hashanah and Yom Kippur coming up and we do have a visiting
33 Rabbi and at the moment we don't have anywhere suitable for this family to stay.

34
35 Janine personally she sits on our Board of Directors at the Jewish Congregation of Maui. She
36 sits on the Board of the PTO at her son's school Upcountry. She's a contributing member of our
37 community. She is creating a home that will make a difference to members of our community
38 who live here and who have been visiting. For every holiday or event that I've been to at her
39 house she's taken great care to make sure we know exactly where to park, where the music
40 located, where we will all congregate so as to not affect any of the neighbors. I'm sure she will
41 be taking the same care when she...if she's allowed to have this rental. So I want to thank you
42 for considering this important addition to our Jewish community and I urge you to say yes to the
43 short-term rental. Thank you.

44
45 Mr. Carnicelli: Thank you Ellyn. Any questions for Ellyn?

46

1 Ms. La Costa: I have a question please.

2

3 Mr. Carnicelli: Commissioner La Costa.

4

5 Ms. La Costa: Thank you Chair. Ellyn is there no other place in Maui either through the
6 Temples that there are or the Synagogue that could provide housing and the accommodations
7 for people to practice?

8

9 Ms. Mortimer: At the moment we're the only Synagogue on Maui. And we don't have housing.
10 I mean we're a very small, you know 1,100 square foot building. So no, we do not have any
11 housing.

12

13 Ms. La Costa: Thank you.

14

15 Ms. Mortimer: Thank you.

16

17 Mr. Carnicelli: Thank you very much. Vanessa Pearl Kwon. Jessica. That's your writing not
18 my fault.

19

20 Ms. Jessica Pearl Kwon: Oh sorry, yeah. I have terrible handwriting, I do.

21

22 Mr. Carnicelli: Please state your name for the record.

23

24 Ms. Kwon: Jessica Pearl Kwon.

25

26 Mr. Carnicelli: Jessica do you promise to tell the truth?

27

28 Ms. Kwon: Absolutely.

29

30 Mr. Carnicelli: You have up to three minutes.

31

32 Ms. Kwon: Thank you. I wanted to thank you all for sitting here. I want to actually really thank
33 the neighbors for coming and speaking. Myself personally I am not a big advocate of having
34 vacation rentals all over the island and a lot of...I think Susan really addressed a lot of those
35 things, but I am an advocate for having this one here because it follows the Jewish rules of
36 keeping kosher.

37

38 Just to get into the specifics, if you want to keep kosher in somebody's home you keep your
39 meat and your dairy separate and then you don't eat within...like if you meat dish, if you're
40 kosher you don't eat a dairy dish for another four to six hours after that because you don't mix
41 them. If you were...when I grew up my mom said, Jess go set the table. And I would say, meat
42 or dairy? And she would say, meat. And so I would get the plates, they were white plates with
43 brown flowers on them and I would put those on the table. And then I would put the meat
44 silverware on the table and we would wash that in the meat sink. And then if it was the dairy
45 plate, it was the 80's so it was like a gray plate with kind of like weird funky things all around it
46 and so we had a set of dairy plates. And so a visitor can't just go into a regular kitchen and then

1 make it all meat and dairy. There are rules you have to do like if you want to kosher a pot, you
2 have to put it in the oven for a certain amount of time. If you want to use the knives that have
3 been in like wooden, you know if you take it out of the wooden...thank you, the knife block, you
4 know you can't use that. So it's a lot of paper plates, you can't just use the different things.
5 There's two different ovens. So that's why I very respectfully and I'm hoping that maybe the
6 community can come together on it, so I'm very respectfully asking that we give this one
7 permission.

8
9 Mr. Carnicelli: Thank you very much. Any questions? Does the applicant have any questions
10 for Jessica? Okay, thank you. So at this point, that's all the people that have signed up. Is
11 there anybody else left in the...okay, please step forward.

12
13 Mr. George Shishido: My name is George Shishido. I live right across Janai.

14
15 Mr. Carnicelli: Do you promise to tell the truth?

16
17 Mr. Shishido: Yes.

18
19 Mr. Carnicelli: You have up to three minutes.

20
21 Mr. Shishido: Well, you know we as the country people we don't like to tell our neighbors what
22 to do with their land. I own land, nobody's gonna tell me what to do on my property. I
23 understand where Paul Sakugawa is coming from and I back him up on that. You know we had
24 always been agriculture and I hate to say that we lost lot of agricultural land in the years to
25 come. I'm 63 years old. I live on the property since 63, I mean for 63 years. I know Paul from
26 when I was baby. You know we've all been lotta neighbors but I also want...I'm not gonna stop
27 Jen or Janai and I talk to a lot of my neighbors. The only thing we wanna do is also protect
28 agriculture and I see where Paul coming from because he's upwind. We're all downwind. You
29 know, I don't see no problem with her as long as there's no complaints about chemicals, dust,
30 we all within the laws, you know, as long as there's no complaint we have nothing against it, you
31 know, because I do want to have agriculture survive. Just to give you an idea look at Kula Glen,
32 when Kula Glen came out Nakamura who was the closest farmers stopped. The biggest lettuce
33 producer in the State of Hawaii stopped and I asked him why. He said, the complaints. Every
34 time he would start the tractor the State over there harassing him. You know, there goes our
35 agriculture. So I mean, I don't have nothing against Janai as long as there's no complaints with
36 the farming activities. Thank you.

37
38 Mr. Carnicelli: Thank you.

39
40 Mr. Shishido: Any questions?

41
42 Mr. Carnicelli: Hang on a second, Commissioner Pali has a question for you.

43
44 Ms. Pali: So just for the record, are you in support or in opposition?

45
46 Mr. Shishido: Yeah, I'm in support as long there's no complaints with the agriculture activities.

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Ms. Pali: Meaning complaints for your noise making farming machines?

Mr. Shishido: Yeah, and dust you know, that all comes along with agriculture.

Mr. Carnicelli: Great. Any other questions? Does the applicant have any questions? Great. Thank you very much. Is there anybody else that would like come forward and testify on this particular item? Seeing none, then if there are no objections we'll go ahead and close public testimony. So public testimony is now closed. I guess what we'll do now is start with questions from the Commissioners. Oh, does the applicant...go ahead and...yeah, come forward.

Ms. Holstein: Thank you. I just wanted to clarify that actually Susan Clements was correct there was an error in the presentation and that I did not invite them for a barbeque. I invited my neighbors, I sent out letters to everyone who protested and I invited them to come over to my house and speak to me and I invited them over for refreshments. I do have the signed return receipts from all of these neighbors to prove and I mean, I don't know if you have the copy of the letter that I sent everyone. It's fairly lengthy, but it addressed pretty much everything everyone brought up here today.

I, myself am I...I just finished the Maui Master Garden Program through UH ctahr. I also did the Master Garden Program in Los Angeles when I lived there. I also did the Go Farm Program through University of Hawaii. Why would I buy a property like this if I was not interested in agriculture?

In no way is the short-term rental intended or will...I will not let it happen to interfere with agricultural use on this property. This is my passion. I am so committed. I have such a respect for the aina. I a hundred percent and I will go to lengths beyond measure to make sure that my neighbors don't get complaints and are comfortable and with a short-term rental there are rules that address all their concerns, noise hours I have to respond any complaint within one hour or the manager if I designate someone. That I plan to put it in every rental agreement that they understand that they're coming to the country, they're coming to a place where agriculture and there's gonna be issues, there's gonna be sprays, there's gonna be dust, there's gonna be you know machines and animals and I have animals and I have things.

And yes, I did email Paul that email he spoke about regarding asking about chemical sprays because I am sensitive, my son and I are sensitive to chemical sprays I asked him to tell me his spray schedule so I that I could prepare. And the thing is is that I actually...with this whole process I've been so...it's been such a rollercoaster I've asked people if they were interested in long term renting and the people that I know I guess were...asked me well...in between the window of my...of the accessory dwelling, the ohana house, right outside that window is it's a corn field and then a pasture for the neighbor's goats and he saw the corn field and he said oh, do they use pesticides? And I said, I don't know let me check.

So in truth, I believe and maybe I'm wrong, but that short-term rental...people come for visit they're not even home most of the day, they're out touring and then they come home at night and they sleep and they bathe and whatever they do. They're not gonna care if someone's

1 spraying next to them. In a hotel there's pesticides all over for pest control. I think that if
2 someone lives there long term that's where there's gonna be more issues in my opinion.
3 There's so many more rules in place for a short-term rental and they can if things come up and
4 there are problems they can come talk to me. If there are complaints they can shut me down.
5 I'm asking for a chance. Give me a chance to show that there will not be an issue, I'm a good
6 neighbor, I will make sure that my guests are good neighbors and that we can fill a need in the
7 community. Thank you very much.

8
9 Mr. Carnicelli: Thank you Janine. So I guess we'll start with you Commissioner La Costa since
10 I know you got a question.

11
12 Ms. La Costa: I'm the inquiry girl. I have a question for the applicant please. Aloha Janine.
13 Thank you for being here today. Have you used your property for short-term rental activity
14 previously?

15
16 Ms. Holstein: No.

17
18 Ms. La Costa: Okay.

19
20 Ms. Holstein: Can I talk about that? I've had...I've used it as a guest house. I've used my
21 ohana house as a guest house. I do not charge. I have had people, my friends and my family
22 stay there but there has not been any money exchanged.

23
24 Ms. La Costa: Thank you. Appreciate that.

25
26 Mr. Carnicelli: Commissioner Castro.

27
28 Mr. Castro: Chair I'd like to go into executive session. I have a –

29
30 Mr. Carnicelli: Is that a motion?

31
32 Mr. Castro: Yes, I'd like to make—

33
34 Mr. Carnicelli: We have a motion to go into executive session. Is there a second?

35
36 Ms. La Costa: Second.

37
38 Mr. Carnicelli: Second by Commissioner La Costa. Discussion to the motion? Seeing none—

39
40 Unidentified Speaker: There's got to be a reason.

41
42 Mr. Carnicelli: Okay, you gotta give me a reason I guess.

43
44 Mr. Castro: Well, I have a question on the recommendation that I think is more properly
45 addressed if we go into executive session.

46

1 Mr. Carnicelli: Okay, concerns that you need to address with counsel?
2

3 Mr. Castro: Yes.
4

5 Mr. Carnicelli: Okay. So at this point I guess we'll go ahead and is there any other discussion
6 on the motion? All those in favor of going into executive session please raise your hand. That
7 is four, five. Opposed? One. So motion passes, so we are going to go into executive session.
8 At this point I'm gonna put this meeting into recess and we will have to clear out the room. We'll
9 let you know when we're back. Thanks.

10

11 **It was moved by Mr. Castro, seconded by Ms. La Costa, then**

12

13 **VOTED: To Go Into Executive Session.**

14

15 **(Assenting – S. Castro, P. D. La Costa, D. Thompson, K. Pali,**
16 **C. Tackett)**

17 **(Dissenting – K. Robinson)**

18 **(Excused – T. Gomes)**
19

20

21 *(The Planning Commission recessed the regular meeting at approximately 10:32 a.m. to enter into Executive Session*
22 *and adjourned at 10:39 a.m. The Planning Commission reconvened the regular meeting at approximately*
23 *10:42 a.m.)*
24

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26

27 Mr. Carnicelli: The Maui Planning Commission meeting of June 25, 2019 is now back in
28 session. I guess at this point we'll start up, Commissioner Castro do you have any questions at
29 this point?

30

31 Mr. Castro: None.

32

33 Mr. Carnicelli: Commissioner Tackett do you have any questions?
34

35

36 Mr. Tackett: No.
37

38

39 Mr. Carnicelli: Thank you. Commissioner Robinson? None. Commissioner Pali? None.
40 Commissioner Thompson do you have any questions?
41

42

43 Mr. Thompson: Sure. Was there any letters of rescission received back? I saw the letter that
44 you sent.
45

46

47 Ms. Furukawa: No.

48

49 Mr. Thompson: Nobody rescinded their decline. And second, if there's any issues would it be
50 dealt with on Saturdays if there was an emergency. Is there anybody to call or deal with?
51

52

53 Ms. Furukawa: Yeah, the applicant is the manager.
54

55

1 Mr. Thompson: And do you live...I thought I read somewhere that you have also...you have
2 property in Kauai is that it?

3
4 Ms. Holstein: I do own a home on Kauai.

5
6 Mr. Carnicelli: You got to come forward and speak into the mic please.

7
8 Ms. Holstein: Yes, so first of all, I am not as religious as I was when I was going up so I do
9 respond to anything that happens on the Sabbath. I just know the laws and grew up with them
10 so anything that comes up on a Saturday absolutely I'm right there. And then if I do have a
11 designated at some point I will make sure that they're on top of it and be able to respond within
12 the prescribed hour and then yes, I do own a home on Kauai and I actually rent it long term to
13 the Chabad Rabbi on Kauai.

14
15 Mr. Thompson: Thank you.

16
17 Mr. Carnicelli: Commissioner La Costa.

18
19 Ms. La Costa: Thank you Chair. In here I read that and I believe you said that when you
20 weren't here you would also rent the other home? So do you intend for the entire property to be
21 a short-term rental if you're not on property?

22
23 Ms. Holstein: Yes, so my intention is I live with my son in the main house and I would like to just
24 rent the second dwelling, the accessory dwelling as the short-term rental and then as I said, I'm
25 from New York, my father still lives there, he's older. He's in good health right now, but if we go
26 for a summer or if we go if he has failing health or something like that that was my thinking in
27 applying for a short-term rental over a bed and breakfast if something happens that I need to go
28 somewhere then I would like to have the opportunity to also rent the main home and so yes, and
29 I would have a designee. I would definitely make sure there was a manager and I understand
30 the rules.

31
32 Ms. La Costa: Okay, thank you.

33
34 Mr. Carnicelli: Thank you. Any other questions? Okay, I guess at this point, Tara if you would
35 give us the recommendation?

36
37 Ms. Furukawa: Okay, so the application does not meet all of the criteria for Short-Term Rental
38 Home Permit or a Special Use Permit therefore the Department is recommending denial of the
39 both permits. The application does not meet Hawaii Revised Statutes, Chapter 205-6(E) which
40 states that the land upon which the proposed use is sought is unsuited for the uses permitted
41 within the district. The property will not be taken out of agricultural use, so it's not the case that
42 the land is not suited for the uses permitted. Also, the application does not met Maui County
43 Code, Chapter 19.65.030(N)(4) and (7). (N)(4) states that short-term rental homes shall
44 conform to the character of the existing neighborhood in which they're situated. Prior to issuing
45 the permit the department or applicable planning commission shall consider community input
46 and the applicant provided opportunities for public comment via the STRH process. So an

1 application notification sign was posted along the main access road, a notice of public hearing
2 was published in the Maui News and the applicant mailed notice to the owners/lessees within
3 500 feet twice. There were numerous letters of support, but there were also nine letters of
4 protests. The Omaopio area is characterized by agricultural lots with active family operations
5 and residential agricultural lots so visitors seeking a peaceful vacation may be disturbed by
6 early morning farming activities and the protest letters state that surrounding farms have had to
7 address nuisance complaints when non-farming activities move into the area.

8
9 In addition, the Department and Commission must consider the number and substance of
10 protests related to the cumulative STRHs in the area. As mentioned, nine protest letters were
11 received and three were from adjacent neighbors. Three protestors who own four properties
12 are members of the same family. Considerations considered included that dwellings would be
13 taken out of the long-term affordable rental housing market and that there would be noise and
14 traffic impacts. We want to note that the need for farms and farmer working housing is critical
15 and people will be constantly be coming and going and complaining about farming operations.
16 Because of the aforementioned reasons, the Department is asking that the Commission deny
17 the permits and ask that the Maui Planning Commission authorize the Director of Planning to
18 transmit the written decision and order on behalf of the Planning Commission.

19
20 Mr. Carnicelli: Thank you Tara. At this point, I will entertain a motion from the Commission.
21 Commissioner Pali.

22
23 Ms. Pali: I think it's...may I speak or just go to the...can I speak to the motion first please?

24
25 Mr. Carnicelli: Let's go ahead and put a motion on the floor and then you can speak to it.

26
27 Ms. Pali: I'll make a motion to follow the recommendation of the Planning Department in denial
28 of this application.

29
30 Mr. Carnicelli: Okay, it's move to deny as recommended by Staff. Do I have a second?

31
32 Ms. La Costa: I will second.

33
34 Mr. Carnicelli: Seconded by Commissioner La Costa. As the movant, you can speak to the
35 motion.

36
37 Ms. Pali: Yes, please. I definitely think that the intention and the purpose of the application is a
38 great intent and I actually wholeheartedly agree with what you're trying to do but I have to honor
39 the people that have had roots to the land for generations and generations. And because you
40 have so much disparity between what the people of the land want and what you need for your
41 life and what you're doing I don't think that that should be overlooked, I don't think that that
42 should be precedent. And so we do want to keep these Ag areas in the intent of what they have
43 been all these years and we have very many few neighborhoods left that have been untouched
44 by vacation rentals and short-term rentals and so I would like to personally preserve as many as
45 I can and so with that action that's what causes me to believe that this should be denied.

1 Mr. Carnicelli: Thank you Commissioner Pali. Commissioner La Costa.

2
3 Ms. La Costa: Thank you Chair. In concurrence with Commissioner Pali I think it is wonderful
4 what your intent is because I have a lot of Jewish friends and they have the same issues, but I
5 also need to say that Ag land is incredibly valuable for our sustenance and us being able to live
6 because food shortages are becoming pretty apparent. So it...I think that the best use of this
7 property is to leave it in Ag and leave the surrounding neighborhood also in agriculture.

8
9 Mr. Carnicelli: Thank you. Anybody else would like to speak to the motion?

10
11 Mr. Robinson: I do.

12
13 Mr. Carnicelli: Commissioner Robinson.

14
15 Mr. Robinson: Shalom. It's...a lot of times in what I've seen a lot is you know we talk about
16 what's kosher, right, what's pono, all those things and it always seems that the people of Hawaii
17 have to accept other people's traditions and then we have to give up something so that we can
18 accept them so that they feel more comfortable and it's a tough balance. And our culture is
19 always accepting and like you said even have a neighbor who does agriculture, who's for
20 agriculture but you know he still feels that, you know we're an accepting community and I think, I
21 think that the Jewish community is going to be well accepted here. I'm amazed that your
22 association hasn't reached out to the tourism board yet and try to get some places to be more
23 kosher and more accepting. I mean we have tens of thousands of Jewish visitors you know all
24 the time in Hawaii 'cause I know a lot of my friends and I would think that some resort would be
25 able to accommodate and do that.

26
27 Having said that I see this as a bed and breakfast. I see agriculture and people renting things in
28 agriculture as bed and breakfast 'cause bed and breakfast helps support the agriculture so you
29 have enough money to keep the farm going even though you might have a bad farm year. You
30 know, and I think that's why you know bed and breakfast is such a strong thing in the rural areas
31 and I see that as something that you could look at. You know, I think your letting people stay at
32 the house you know just because of your generosity. I think that's a great thing and that's what,
33 that's what people in Hawaii do.

34
35 People in Hawaii don't have short-term rentals and bed and breakfasts, very, very, very few,
36 maybe a handful, majority is all people not from here because people in Hawaii let people stay
37 for free because they can and because they share and I feel that in you too. And think that
38 kosher and with the Rabbis I think that would be a great thing that I hope for you to continue
39 even though if you don't get this because I do feel that there's a need for sharing and growing
40 for all types of communities and people on this place, but I think bed and breakfast is an area
41 that you should consider. And I'm not even sure on the categories if you would even, if you
42 would be an automatic or it would have to come here I'm not sure 'cause there is a different
43 criteria for bed and breakfast compared to short-term rentals. Thank you Chair.

44
45 Mr. Carnicelli: Thank you. Anybody else like to speak to the motion? Seeing none, Deputy
46 Director.

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Mr. Hart: So the Department's recommendation is for denial.

Mr. Carnicelli: All those in favor of the motion to deny as recommended by Staff please raise your hand. That is six ayes, unanimous. I apologize Janine. As Commissioner Robinson said, maybe there's another way for you. At this point, the motion passes and we will move onto the next item.

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

VOTED: To Deny the State Land Use Special Permit and Short-Term Rental Home Permit as Recommended by the Department.

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

Mr. Hart: Communication Item C.1, Luana Development Partners, LP submitting the annual report regarding disbursement of funds in the Settlement Agreements for the Honua Kai Resort, North Beach Park, and Related Improvements at TMK: (2) 4-4-014: 006 and 008, and (2) 4-4-001: 010, Kaanapali, Island of Maui, SM1 2004/0017. Candace Thackerson is the Staff Planner.

C. COMMUNICATIONS

1. LUANA DEVELOPMENT PARTNERS, LP submitting the annual report regarding disbursement of funds in the Settlement Agreements for the Honua Kai Resort, North Beach Park, and Related Improvements at TMK: (2) 4-4-014: 006 and 008, and 4-4-001: 010, Kaanapali, Island of Maui. (SM1 2004/0017) (C. Thackerson)

Condition No. 32 of the SMA approval (SM1 2004/0017) states:

That an annual report shall be filed with the Maui Planning Commission on the disbursement of the funds in the Settlement Agreements for their information.

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

Ms. Candace Thackerson: Good after...oh I guess it's still morning, good morning Commission.

Mr. Carnicelli: Good morning Candace.

Ms. Thackerson: So this is the annual report that this body has seen several times before except I guess for the new Commissioner Thompson, hello. So this was originally a condition

1 that was placed upon a Special Management Area Use Major Permit back in 2004 and the
2 Commission had asked for an annual report to be filed with the Commission for your review.
3 Just to take a look at, to see the disbursement of funds and how they're being spent subject to
4 the conditions. There's no action required by the Commission. It's just an acknowledgement of
5 the document and this goes on every year. I believe upon speaking with the applicant we're
6 hoping to wrap it up in the next year or so and then no longer receive these reports. But if you
7 have any questions, the applicant is here.

8
9 Mr. Carnicelli: Any questions? Commissioner La Costa.

10
11 Ms. La Costa: This might be directed towards the applicant. So on the third page under
12 number D, the ongoing funding to the charitable nonprofit organization from resales of any
13 residential unit in the amount of .25 percent of the sales price at the close of escrow during the
14 transfer of title. Would you explain what that means and what the...who the nonprofit
15 organization is please?

16
17 Ms. Thackerson: I'll have the applicant come up here and answer that.

18
19 Mr. Paul Woodward: Aloha, I'm Paul Woodward with Luana Development Partners. The West
20 Maui Preservation Association is a charitable association that was I believe formed around
21 2005. They were an intervening party during the original development of the Honua Kai Resort
22 as one of the settlement commitments that the developer made at that time which was Maui
23 Beach Resort Limited Partnership, there were certain payments made to West Maui
24 Preservation Association on a charitable basis and there was this ongoing mechanism set up
25 that's registered on title to provide a .25 percent payment from the sale...of the resale of units
26 within the Honua Kai Resort to the West Maui Preservation Association which is actually now
27 the Honua Kai West Maui Community Fund and there's an ...(inaudible)...board that decides
28 how the money gets distributed.

29
30 Ms. La Costa: Okay, if I may Chair? Thank you. The following paragraph talks about the
31 funding requirements being compiled on-going basis it is noted however that the LDPLP does
32 not have the adequate means to monitor resale of units as these are handled by outside brokers
33 LDPLP has been requested to advise the West Maui Preservation Association has no direct
34 knowledge regarding the funding of Honua Kai Community Fund Inc., from resales of residential
35 units and WMPA does not receive any transfer fees for the resale of these units.

36
37 My question is that information is available on the MLS, so how is it that you are not...I know
38 you have realtors that work with Luana Kai and Honua Kai, so how is it that it is not able to get
39 that information?

40
41 Mr. Woodward: Well we're...we acquired the remaining development entitlements about two
42 years ago for the completion of the property. So LDPLP has no contractual relationship with the
43 WMPA or Honua Kai West Maui Community Fund. Yeah, we're simply fulfilling the remaining
44 obligations, the two that are noted on the previous page in terms of traffic obligations. So
45 any...you're right in some cases the MLS transactions are posted but anything that is not an
46 MLS, yeah we have no way of knowing about real estate transactions.

47

1 Ms. La Costa: So are you using that data to fulfill the .25?
2

3 Mr. Woodward: We don't ...(inaudible)... the .25 percent. That's a payment that's deducted on
4 closing from the sale of any unit. If it's ...(inaudible)...third party it goes straight to this fund.
5

6 Ms. La Costa: And you don't monitor that in any way?
7

8 Mr. Woodward: We don't, no.
9

10 Ms. La Costa: Thank you.
11

12 Mr. Carnicelli: Thank you. Any other questions? Okay, thank you very much. Thank you
13 Candace. I guess at this point there's nothing else to do, we just...thank you for your report. I
14 appreciate it very much. So moving on. Deputy Director.
15

16 **No action was taken by the Commission.**
17
18

19 Mr. Hart: Unfinished Business, Item D.1, Lew Abrams representing the Sacred Earth Assembly,
20 a non-profit interfaith church, requesting a State Land Use Commission Special Permit to utilize
21 approximately 14.8 acres of the Ahimsa Sanctuary Farm and a 7,693 square foot two-story
22 agricultural building for church-related activities at 4504 Hana Highway, TMK: (2) 2-8-003:075
23 (por.), Haiku, Island of Maui, SUP2 2017/0011. Tara Furukawa is our Staff Planning. The
24 public hearing for this item was held on May 28, 2019.
25
26

27 **D. UNFINISHED BUSINESS**
28

29 **1. LEW ABRAMS representing the SACRED EARTH ASSEMBLY, a non-profit**
30 **interfaith church, requesting a State Land Use Commission Special Permit**
31 **to utilize approximately 14.8 acres of the Ahimsa Sanctuary Farm and a**
32 **7,693 square foot two-story agricultural building for church-related**
33 **activities at 4504 Hana Highway, TMK: (2) 2-8-003:075 (por.), Haiku, Island**
34 **of Maui (SUP2 2017/0011) (T. Furukawa) (Public Hearing held on May 28,**
35 **2019)**
36

37 Mr. Carnicelli: Thank you Deputy Director. So as I said at the beginning of the meeting since
38 the public hearing was done on May 28th we will not be taking public testimony on this particular
39 item. However, if there are no objections from my fellow Commissioners I would like to open, I
40 would like to open the record to insert all of the written testimony that we have received between
41 May 28th and today. Are there any objections to that? Seeing no objections then we'll go ahead
42 and enter that into the record.
43

44 Mr. Leslie Ickovitz: The applicant –
45

46 Mr. Carnicelli: Please, please state your name for the record.
47

1 Mr. Ickovitz: I'm sorry. My name is Leslie Ickovitz. I'm an attorney from Oahu appearing on
2 behalf of Dr. Abrams and his wife on this application.

3
4 Mr. Carnicelli: Okay.

5
6 Mr. Ickovitz: And on the issue of accepting the...reopening to accept testimony, the applicant is
7 objecting strongly on the basis that the information that's been provided is data dump of
8 hundreds of pieces of paper that we would want to cross examine the people who have
9 submitted this information so that the Commission actually understands what information has
10 been provided. You've received hundreds of pages of duplicate information that's undated or
11 years old that talks about irrelevant information. So if they're gonna testify, we have a right to
12 cross examine them. If they're gonna put in evidence that you're gonna consider that's been
13 unsubstantiated, unauthenticated, unsworn to and you don't know what's there. There's
14 hundreds of pages that was given in electronic form. Has anybody actually printed out these
15 hundreds of pages and looked at them? Have they seen what they're trying to say?

16
17 What they've done is they provided lots of documents to this Commission saying look we've
18 proven all of it, they've done all these things illegal. But let's go over each of those applications.
19 The fact that they've submitted hundreds of pages and they talk about the same New Year's
20 party 50 times that...you should know that. They talk about the same belly dancing classes that
21 were held at Studio Maui. They have hundred references of belly dancing classes intimating
22 that those took place at the farm. They did not. They took place up at Studio Maui. So they
23 provided you a lot of information to confuse you, to inflame, you but the information, you know,
24 they had, you know they had plenty of notice.

25
26 They could have intervened. They could have provided this information at the time when the
27 hearing was open, they could of...you know, Ms. Drewyer was here last time instead of
28 testifying she waits till the Friday before the hearing to mail a letter and say all these
29 inflammatory things. I mean, what the record shows is that after the hearing, we saw the letters
30 that Dr. Abram sent about he met with both neighbors, he sent them letters saying this is how
31 we're gonna address signage and traffic and safety and do they respond to this letter? No.
32 They just...they wrote things to this Commission saying it's not fair, it's not fair and look at these
33 terrible things they've done, but the record shows that they have been clean and there's no
34 reason I submit to this Commission to reopen to provide testimony that's just irrelevant and is
35 meaningless as far as what whether the church permit should be allowed, you know, the record
36 is there. The community is strongly in favor of it. They neighbors that are...one's 1,100 feet
37 away, the other one's more than a quarter mile away, I mean the fact is that they, you know, if
38 you reopen testimony, you're setting a horrible precedent that would be, you know, you'd have
39 to do it again in the future if anybody went to the very last minute, it's just not, it's not fair to the
40 applicant.

41
42 Mr. Carnicelli: Thank you very much. Corporation Counsel.

43
44 Mr. Galazin: Thank you. Counselor I had a quick question for you. So the applicant in
45 contacting the neighbors post hearing and asking for more information and providing more

1 information to them what was the intent of that? Was that information going to be kept private
2 or shared with the Commission at some point?

3
4 Mr. Ickovitz: No what happened was is that after the meeting, after the last meeting the three of
5 them go, the four of them got together, Dr. and Mrs. Abrams met with Michelle Drewyer, the one
6 neighbor who was here but didn't testify, and then Jerome Labat. So they met, they raised their
7 concerns, and they wrote...Dr. Abrams wrote letters to Mr. Labat and to Ms. Drewyer even
8 though she hadn't complained officially and laid out this is what we plan to do for...we heard all
9 your concerns, we heard about barking so we're moving the dogs. We're gonna do signage—

10
11 Mr. Galazin: Okay, I don't want to hear the substance of the testimony. I just want to hear what
12 you wanted to do with it.

13
14 Mr. Ickovitz: Oh with regard to the...oh yeah, no we wrote letters to them and those were
15 submitted by Tara to the Commissioners. You received...you saw the...what we did...so we
16 just...we present those just so you see—

17
18 Mr. Galazin: So are you objecting to those? Because what we're talking about right now is
19 what Tara sent to the Commission?

20
21 Mr. Ickovitz: Right.

22
23 Mr. Galazin: You object to the inclusion of that.

24
25 Mr. Ickovitz: No, we're not objecting to the inclusion of that because those are just...that shows
26 what we're, we're doing. What the efforts we're making to resolve the issues with our
27 neighbors, but—

28
29 Mr. Galazin: Chair if I can?

30
31 Mr. Carnicelli: Yes.

32
33 Mr. Galazin: Thank you. So Tara about how many pages of documents were submitted to the
34 Commissioners post hearing and prior to today? Was it hundreds of pages or less, can you...

35
36 Ms. Furukawa: Less.

37
38 Mr. Galazin: Okay, so—

39
40 Mr. Ickovitz: ...(inaudible)...

41
42 Mr. Galazin: Excuse me sir, hang tight. So did you provide the applicant with copies of
43 everything that you provided to the Commission as well?

44
45 Ms. Furukawa: Yes, I did.

46

1 Mr. Galazin: Okay, thank you. So Chair at this point you know the motion has been made to go
2 ahead and accept this. What I would suggest you know we give the applicant an opportunity to
3 describe whether they've had enough time to look at those. They certainly...the applicant is
4 free to lodge objections to that if the applicant needs more time to review those documents that
5 can be requested but the ball's in the applicant's court for that.

6
7 Mr. Carnicelli: Would like to come forward and address that?

8
9 Dr. Lew Abrams: I did have these corrected maps that were requested can I pass that—

10
11 Mr. Carnicelli: Please state your name for the record please.

12
13 Dr. Abrams: Dr. Lew Abrams.

14
15 Mr. Carnicelli: Okay, and then did you understand the question that Corporation Counsel
16 asked?

17
18 Dr. Abrams: I did. Yes. I'm not invested in having the letters that I sent to the neighbors
19 admitted into the record, but I am open to just proceeding without going over that, but I am
20 willing to address and explain my reactions to the concerns they raised and my efforts to meet
21 those concerns.

22
23 Mr. Carnicelli: So have you received everything that Tara sent to you?

24
25 Dr. Abrams: I saw what was posted on the Commission website, yes.

26
27 Mr. Carnicelli: Okay. And do you feel like you've had enough time to review all of that?

28
29 Dr. Abrams: I did have a chance to look at it. I mean, not thoroughly but—

30
31 Mr. Carnicelli: Okay.

32
33 Dr. Abrams: Most of it was from quite some time ago from 2008, 2009 up to 2015.

34
35 Mr. Carnicelli: Okay. So thank you for that then. So my question now is I'm gonna go, I'm
36 gonna go back to Tara. Tara the reason why we recessed this particular item back on May 28th
37 was because of a jurisdictional issue.

38
39 Ms. Furukawa: Yes.

40
41 Mr. Carnicelli: So if you could please address the jurisdictional issue and whether or not it is
42 that this falls within the Maui Planning Commission or if this should go to the State Land Use
43 Commission.

44
45 Ms. Furukawa: Okay, so at the May 28, 2019 meeting the Planning Commission voted to defer
46 until a survey map could be provided that...for the acreage for the church use to total less than

1 15 acres. So on June 12, 2019 we transmitted to you a survey map dated February 2, 2016
2 when the applicant was thinking about pursuing Condominium Property Regime and if you look
3 at Common Element B and Common Element C both portions total 14.781 acres and that's for
4 the proposed church use.

5
6 Dr. Abrams: I have a bigger map with it highlighted. It might be—

7
8 Mr. Carnicelli: Yeah, that actually...that would be very helpful 'cause I can't figure out which
9 lines are delineated with which.

10
11 Dr. Abrams: And there's also the map that was in your original SUP application that reflects and
12 it's substantially the same parcel of land. The plot plan that I submitted in the first hearing was
13 incorrect and this is reflected...this is a page from the SUP application showing that it's basically
14 the same area of land as ...(inaudible)...

15
16 Mr. Galazin: Chair if I can?

17
18 Mr. Carnicelli: Corporation Counsel.

19
20 Mr. Galazin: So thank you, and Tara do you want to explain for the Commission how the
21 Department assesses the portion that will be used for any SUP application if we're talking about
22 Ag land and the 15 acres?

23
24 Ms. Furukawa: Typically actually we don't require a survey when somebody comes in for a
25 SUP2. They just delineate where the church...where the use will occur.

26
27 Mr. Galazin: And then any approved use would be limited only to that portion and—

28
29 Ms. Furukawa: Yes.

30
31 Mr. Galazin: --and anything beyond that would be a zoning violation. Is that correct or...

32
33 Ms. Furukawa: Yes.

34
35 Mr. Galazin: Okay, thank you Chair.

36
37 Mr. Carnicelli: Thank you Corporation Counsel so Tara is my quick question now is within this
38 the obvious one for me is I look at this highlighted Common Element B and Common Element C
39 it does not include the driveway. So how can we get to there without...you know because we're
40 gonna use the driveway.

41
42 Ms. Furukawa: Yes.

43
44 Mr. Carnicelli: So that's not included in this, so that...I'm not understanding or what am I
45 misunderstanding if we're saying like this is only what's gonna be used is this 14.8 acres, but it
46 doesn't include ingress and egress.

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Ms. Furukawa: Jordan.

Mr. Hart: Chair if I might?

Mr. Carnicelli: Thank you.

Mr. Hart: You know the Department doesn't necessarily see it that way. Basically you know the traffic is arriving is not the actual use. I recognize that they are driving to the property for the use, but you know we feel that the traffic is not the use itself. The special use in the Ag District is the religious observance. You know, if that is an issue of concern potentially it could be adjusted, the boundaries could be adjusted. As an example, there's a gulch portion you know if there needs to be a portion deleted in order to allow for that, that could be done, but that's generally not the interpretation of the Department at this time.

Mr. Carnicelli: Okay, thank you. Commissioner Robinson.

Mr. Robinson: Well, I'm just...when you...when the County taxes a property do they not count the driveways and parking lots or they just count the place, the areas that are used. Is a driveway a use?

Mr. Hart: A driveway is a use. My understanding is a portion of this driveway is a shared access. There is a portion that's on the property itself.

Mr. Robinson: So it's flag lot and they're using...and then the ingress is shared among common owners?

Mr. Hart: There's a portion that is. You can see that delineated in the survey map here, and what I...if the, you know, the Commission feels that this...the ...(inaudible)...of traffic through the upper portion of the parcel down to the lower portion of the parcel which is the area intended for religious use you know feels that there should be a flag established within this TMK in order to more thoroughly accommodate the special use I think that that's something that could be done. That wasn't something that we were directing the applicant to prepare for prior to this meeting, but you it's reasonable and we can respond to that.

Mr. Carnicelli: So I guess at this point in time Commission the Department feels as though the applicant does fall within our jurisdiction. Does Corporation Counsel also concur?

Mr. Galazin: That's a position of the Department to take. I advise you guys not the Department.

Mr. Carnicelli: Okay, so then I'm going to ask for your opinion.

Mr. Galazin: I defer to the Department.

Mr. Hart: So why don't I just try and read this, excuse me, Chair.

1 Mr. Carnicelli: Go ahead.

2

3 Mr. Hart: HRS 205A-6 is special permits as it permit to the Agricultural District, and Item D says
4 that special permits for land area which is greater than 15 acres or for lands designated as
5 important agricultural lands shall be subject to approval by the Land Use Commission. So
6 basically just to repeat what I think is the critical section, special permits for land area of which is
7 greater than 15 acres. So it doesn't say parcel or anything like that, CPR, it's says land area.
8 So the applicant has used an existing CPR map that was surveyed in order to clearly delineate.
9 There is a relevant question of whether or not the driveway could be included in that special use
10 area. You know I believe that the applicant has the ability to adjust for that considering you
11 know some of the portion of the area is in gulch. But as far as whether or not the acreage is tied
12 directly to a TMK or something like that, that's not the way that we're reading the State Hawaii
13 Revised Statute.

14

15 Mr. Carnicelli: Thank you Deputy Director. You know what I think at this point let's just go
16 ahead and defer to us, right. This is, this is our decision as then...I mean, the Department has a
17 recommendation, do we feel as though this does fall within our jurisdiction. Do you feel like this
18 map is suffice?

19

20 Mr. Robinson: Chair?

21

22 Mr. Carnicelli: Commissioner Robinson.

23

24 Mr. Robinson: Does the applicant feel that that it should be here or should be in the LUC or do
25 they want two shots at it.

26

27 Mr. Carnicelli: Go ahead and ask the question.

28

29 Mr. Robinson: Can you ask them that?

30

31 Mr. Carnicelli: Sure Lew do you feel as though you meet the 15 acres and you belong here in
32 front of the Maui Planning Commission.

33

34 Dr. Abrams: Yes.

35

36 Mr. Carnicelli: Or should you go and see the Land Use Commission.

37

38 Dr. Abrams: No, it feels appropriate that you all would make this determination and yeah if it's
39 necessary to include the use of that driveway we could trim some of the gulch area off and have
40 it all be in that be within that 14.8 acres. I understand with many condominium situations the
41 driveway is a sort of a common element that isn't necessarily included in.

42

43 Mr. Carnicelli: Great. Thank you Lew. Corporation Counsel.

44

45 Mr. Galazin: Thank you Chair and I would just say it's my understanding that it's not uncommon
46 for the Planning Department to administer something in this fashion where they deal with a use

1 that's on an Ag parcel that the parcel itself may be larger than 15 acres but the use is confined
2 to a definable area that's less than 15 acres the Department has in the past administered that
3 and feels comfortable doing that in the future. I would just ask for confirmation.

4
5 Mr. Hart: Chair if I could? That's correct and I also want to address something that
6 Ms. Furukawa said, you know normally it's not a survey. This applicant happens to have had a
7 survey on hand already. There's other methods of delineating the area accurately. You know
8 sometimes projects have engineers on the team, they're scaling from a CAD file that's not a
9 actual survey or there's a Real Property Tax area calculation tool. So there's various ways of
10 establishing it and the Planning Department does a second look to verify but this is an
11 acceptable method.

12
13 Mr. Carnicelli: Okay.

14
15 Mr. Robinson: I'm comfortable Chair. Thank you.

16
17 Mr. Carnicelli: Okay. So I guess unless there's any objection at this point we'll go ahead and
18 proceed forward and say that we are the governing body over this particular special use permit.
19 Any objections? Seeing none, okay. There we go, so here we are. I do believe that when we
20 left off we were at the Q&A portion of that. However, Tara is there something that you would
21 like to add before we go back into question and answers from the Commission?

22
23 Ms. Furukawa: No, not at this time.

24
25 Mr. Carnicelli: Not at this time. Okay. I guess...or the other part too then I do want...I believe
26 that Commissioner Castro and Commissioner Thompson you were not here for the May 28th
27 meeting have you guys read everything and do you feel as though you're caught up to speed
28 and you can make a decision on this particular item, yeah?

29
30 Mr. Thompson: Yes.

31
32 Mr. Castro: Yeah, I have.

33
34 Mr. Carnicelli: Okay, great. So I guess we'll go ahead and start with questions. We'll start with
35 Commissioner La Costa again. You're first and foremost all day.

36
37 Ms. La Costa: Thank you. Mahalo Chair. I have actually couple questions for you. This map
38 was done in...this is for the applicant please, thank you...this map was done in 2016 have there
39 been any additional structures permitted or unpermitted that are not shown on this map?

40
41 Dr. Abrams: No, everything is reflected up to date on that map.

42
43 Ms. La Costa: Okay, thank you. The second thing is I asked you last time about your ongoing
44 church activities and if indeed you had ongoing church activities and I was not satisfied with
45 your answer so please have you been doing church activities from 2008 till today.

46

1 Unidentified Speaker: No.

2

3 Dr. Abrams: No, we have not been doing church activities. Yeah, we're hoping to with the
4 approval of this body. We have had farm tours and various other kinds of commercial activities
5 associated with our farm where people come for CSA boxes and such and we have had some
6 informal gatherings of our friends, parties but they weren't church sponsored. We haven't
7 been...got to the approval place to be able to offer weekly service which is our main goal being
8 here.

9

10 Ms. La Costa: May I continue Chair please?

11

12 Mr. Carnicelli: Yes.

13

14 Ms. La Costa: Thank you. On Exhibit B you have written a letter to Jerome and you suggested
15 that perhaps he choose a different spot to build his retirement home and may I ask you why that
16 capricious comment?

17

18 Dr. Abrams: Well it came out of our discussion the day after the meeting where we addressed
19 the concerns that were raised and that's kind of taken out of context if you read the first part of
20 the sentence it's related to we're hoping to be able to get along smoothly and that he will accept
21 that we do use that building once approved for church related activities and the building site that
22 he's choosing as a...may choose or hopes to choose as a bird flies it's relatively close, I just let
23 him know that we, you know we will hopefully be using that spot so if it would become a
24 disturbance to him he might choose a different site on his land to build or to consider that if he
25 has a concern of our gathering there.

26

27 Ms. La Costa: Actually I did not take it out of context, but thank you for that information. What's
28 going on with the dogs are they still an issue? Are you still getting complaints from your
29 neighbors?

30

31 Dr. Abrams: We haven't gotten any active complaints. We have moved the dogs onto the part
32 of our house where we can fence them in where they're not right along the driveway where cars
33 come. That was kind of part of the problems that when cars would come the dogs would bark at
34 them. Now that we have them contained on the western side of our house they're kind of in an
35 area where their barking is less of a problem and they don't bark when cars come and go from
36 the property.

37

38 Mr. Carnicelli: Commissioner Castro do you have any questions at this time?

39

40 Mr. Castro: No, I don't.

41

42 Mr. Carnicelli: Commissioner Tackett do you have any questions at this time? Thank you.
43 Commissioner Robinson do you have any questions at this time? Commissioner Pali.

44

45 Ms. Pali: Hi.

46

1 Dr. Abrams: Hello.

2

3 Ms. Pali: Just a couple questions for clarifying. You had mentioned no activities for church
4 activities on the property now. But I think it was your...you had testifiers here last time and
5 there were two that I actually took notes on which were lovely people by the way. One lady
6 testified doing belly dancing classes up there and another one talked about karate, but then I
7 think your attorney may have just noted that those were statements in the opposition letters but I
8 actually heard them from your witnesses so where those just kind of friends and gatherings
9 getting together?

10

11 Dr. Abrams: Yeah, we never had any martial arts karate, that's not familiar with me.

12

13 Ms. Pali: Okay. So maybe it was just sort of her take on maybe what you guys did.

14

15 Dr. Abrams: I think so.

16

17 Ms. Pali: Okay, no worries. And then tell me a little bit because I really, really try to find the
18 good in everyone even when we make silly mistakes but I'm really stuck on all the fines and the
19 lack of responses up until you meeting with us and ...(inaudible)...and so when I look back at
20 the history it looks like you had some challenges with some structures and that they may have
21 been unpermitted or particularly some outstanding fines and Notices of Violations that it seems
22 like it took a while to clear up. Can you tell me a little bit about that?

23

24 Dr. Abrams: Yes, when we got that original RFS, immediately I responded to the Planning
25 Department and began the process of applying for an after-the-fact permit for that one area on
26 the lower level of the building that was already part of the original footprint and already had
27 electricity and so on. And it was very difficult to get through this after-the-fact permit process.
28 We resubmitted a number of times and went through every way we knew how to get a ruling on
29 that and the time was going by and the fines were accumulating and everything was stalled
30 related to this special use permit pending that one storage room. And so eventually we just, you
31 know, even though I had been in communication and I kept them, the Public Works Department,
32 I kept them apprised of our efforts and the letters that we were sending in to the other part of the
33 Planning Department to Rulan Waikiki and so on eventually we got to the point where we said
34 it's just stalling us too long it's been almost two years since we had originally applied for this
35 special use and so we withdrew the after-the-fact permit and contacted the Building Department
36 and asked them to let us know what if anything would have to be removed of that unpermitted
37 work and so we went that route instead and as soon as we could we got that taken care of.

38

39 Ms. Pali: So it looks like you agreed to dismantle the art storage structure.

40

41 Dr. Abrams: Storage room under the temple, yes.

42

43 Ms. Pali: Okay. I just...I'm trying to make sense of some of the statements. I'm really big on
44 just being able to validate people's statements and your attorney mentioned about you know,
45 you just really being a good person which I'm not doubting but it's just it's measured differently
46 depending on who you are.

1
2 Dr. Abrams: Sure.
3
4 Ms. Pali: And so for us, it's really important that people respect the rules that we put in place
5 because that's what we believe Maui County is, how we can generate a community a
6 community that respects others is through these rules.
7
8 Dr. Abrams: Yes, absolutely.
9
10 Ms. Pali: And they're here to support people. So when we have those that are in violation
11 especially up to about half a million dollars then that concerns me. So thank you.
12
13 Dr. Abrams: Yes, I intend to abide to all regulations and make this church a benefit to the
14 community.
15
16 Mr. Carnicelli: Thank you Commissioner Pali. Commissioner Thompson do you have any
17 questions at this time?
18
19 Mr. Thompson: Sure. So is there any issues with the sewer. I saw that one's a septic and
20 one's a cesspool is that correct?
21
22 Dr. Abrams: No it's a full septic system rated. It's for five bedrooms. We built it with the idea of
23 possibly having another ohana that would feed into it. So it's a very large well established
24 septic system. There's never been a cesspool on that property.
25
26 Mr. Thompson: Okay, so it's septic. And how many people, I'm reading different things here,
27 somewhere you were allowed 40 people, three times a week was it?
28
29 Dr. Abrams: We were estimating that during our weekly regular services we would expect 30 to
30 40 people and that on larger holiday gatherings that might be quarterly or for certain holidays
31 that we would go up to 100. The septic system was rated for 100 people with dinner that's at
32 ten gallons per person and so if dinner isn't served it could go, receive way...well over that as
33 well.
34
35 Mr. Thompson: So in one of these letters they said you got maybe 300 people come up at a
36 time?
37
38 Dr. Abrams: Yeah, that was an exaggeration by our friend Fredde who is a renter next door at
39 Jerome Labat's. I asked him if he had ever actually counted the cars or the people and he
40 admitted that he had not. We would love to someday grow to that number but mostly we have
41 like 50 or 75 people. I could count on one hand that the number of times we've had up to like
42 75 to 100 people.
43
44 Mr. Thompson: And is it three days a week still?
45

1 Dr. Abrams: We're planning on starting with two days a week at this time doing a Wednesday
2 garden party preceded by a prayer and meditation and then having people who want to get their
3 hands in the aina get to work on the farm that would be during the day from 8:00 to 1:00. And
4 then evening gathering that we're like...wanting to or proposing to start with is Friday evening
5 shava service with a potluck at 6:00 and ending by 9:00.

6
7 Mr. Thompson: So is this a church or a commercial activity?

8
9 Dr. Abrams: Definitely not a commercial activity. This has been a negative cash flow activity for
10 us.

11
12 Mr. Thompson: ...(inaudible)...you spend a lot of money here. Yeah it does sound like a
13 business—

14
15 Dr. Abrams: In the spirit of service.

16
17 Mr. Thompson: Sure. Okay. And so you're saying up to a hundred people and it's at couple
18 times a week...was there brochures for...is this handed out in activity companies too, they sell
19 this as a tour, a dinner and...

20
21 Dr. Abrams: We do have a rack card. We stopped doing the farm to table dinners because we
22 lost our connection with a commercial kitchen and although we...on larger events we do, we
23 can cater in food that's prepared in a commercial kitchen. So now we just offer when we do
24 tours tea tasting and permaculture design education, but we're not doing the meals.

25
26 Mr. Thompson: And then you sell products there?

27
28 Dr. Abrams: We do. We have a herbal tea blend that people often will buy when they come on
29 tour. We've had in the past CSA boxes where we had a weekly harvest and people signed up
30 and would come and pick up.

31
32 Mr. Thompson: Thank you very much.

33
34 Mr. Carnicelli: Thank you. Corporation Counsel.

35
36 Mr. Galazin: Thank you. Dr. Abrams could you just briefly describe for me the process you
37 undertook in looking for a property on which to have your church before you landed on this one?

38
39 Dr. Abrams: Yeah, we were living in Haiku. We've been on island since '97. We lived in Haiku
40 up Awalau Road for ten years. And we had the situation where the lot next to us sold and it was
41 subdivided and they built the ohana up on stilts right on the boundary or 15 feet from the
42 boundary so they were looking right into our backyard and our deck and my wife was very
43 concerned about the privacy at that point. So we began looking for other places where we
44 could develop our interest in permaculture and agriculture and also a place where there was a
45 lot of open space around so that we could have the potential of bringing community together for
46 worship without impacting others.

1
2 Mr. Galazin: So to clarify that it wasn't specifically just for a church it was for agricultural
3 activities with an open space?
4
5 Dr. Abrams: Yeah, we didn't have the church design or anything when we bought that property.
6
7 Mr. Galazin: So as far as the church itself goes you haven't looked at any other properties
8 besides this one is that?
9
10 Dr. Abrams: No, no.
11
12 Mr. Galazin: Okay, thank you just to clarify.
13
14 Mr. Carnicelli: Thanks Lew. So, I'm going...this is your farm plan?
15
16 Dr. Abrams: Yes.
17
18 Mr. Carnicelli: Right here. Is that I'm just sorta looking at this and as I come up into your
19 property the very first piece of it is the first farm dwelling is that your main residence?
20
21 Dr. Abrams: That's our home, yes.
22
23 Mr. Carnicelli: Oh okay. And do any of your activities happen in your main home at all?
24
25 Dr. Abrams: No, no.
26
27 Mr. Carnicelli: That's just, that's just your—
28
29 Dr. Abrams: Yeah, that's one of the reasons we moved actually 'cause we used to host our
30 activities in our living rooms at our home on Awalau and it became impactful to you know, get
31 clean house all the time so we are using only the lower portion of the property, the lower 14.8
32 acres.
33
34 Mr. Carnicelli: Okay, which...okay, lower—
35
36 Dr. Abrams: Or actually northern but it's downhill because of the slope of ...(inaudible)...
37
38 Mr. Carnicelli: It's not a topo, that's great. So two other questions that I have right now is the
39 concerns of the neighbors are is the fact that you share a water supply right? Health and safe,
40 right? Health and safety, health and safety. So we have fire protection and we got water. And
41 some of the I guess implications here are that here's concerns about siphoning off of water for
42 the fire protection system and/or do you have approvals I guess from the association? Do you
43 have all the proper I guess approvals, agreements in place for this activity I guess within this
44 community water system I guess...
45
46 Dr. Abrams: Right, it's a private water system.

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Mr. Carnicelli: Right.

Dr. Abrams: And we intend to meet with the other association members and discuss it but we don't really anticipate much of a additional use of water associated with this building 'cause we already put up a 10,000 gallon potable water tank that's plumbed into the building and we intend to use drinking water, imported drinking water when we have these events so I don't think it will really affect very much our use of water. And in the water agreement fire protection is what it's intended for the shared well and catchment fire protection and domestic activities and irrigation. It's actually the farming activities that use much more water for irrigation than would be used for when people come to worship.

Mr. Carnicelli: Do you guys have a dual system? Is it potable and nonpotable or just potable?

Dr. Abrams: There is a potable tank plumed into the building and we also are attached to the regular piping up to the well so that's nonpotable hasn't been...

Mr. Carnicelli: So your farming activities are done nonpotable?

Dr. Abrams: Yes.

Mr. Carnicelli: Okay. I got a question for Corporation Counsel again, I asked this last time and is...what is a church? And is this like...I guess the two questions that I kinda had at the beginning of this was one, do we have jurisdiction and two, is just like are they a church trying to get, you know, permission to be a church. So kinda like where do we draw that line?

Mr. Galazin: Thank you Chair and it's good you asked this for the benefit of all the Commissioners as well as you know anybody else who may be watching. When it comes to this you know a church if they define what their use is going to be as a church use that's really the end of the inquiry. You know, we don't get into whether somebody's beliefs are sufficient, whether they are rational, you know, if they say it's a church it's a church. If Planning determines at some later point that the activity being conducted there is you know, selling figurines and that's the only thing they do and they try and say well, we celebrate figurines, if it's really a store that sells figurines Planning is going to know that. But when they come in for the use and they say that we want to use the church the presumption is that it's a church and we go from there.

Dr. Abrams: And we are an outgrowth of the established Temple of Peace in Haiku.

Mr. Carnicelli: Thank you. Commissioner La Costa.

Ms. La Costa: I do have a couple more questions. Thank you. Thank you Dr. Abrams. I have some concern after reading the letters that were sent to us. This is from you and signed by you and wife digitally. Under the summary it says we invite you to join us for the services after the church has been approved and I think that's kind of a bold assumption when you have been questioned with a lot things and you have a lot of unanswered questions. So if your neighbors

1 who have protested continue to protest then I have a concern about that and I also have a
2 concern about Fedde when you directed this letter and said, since Fedde is your tenant we are
3 asking you to let Fedde know that you support our request for him to submit a more accurate
4 truthful version of his testimony. So...

5
6 Dr. Abrams: Yeah, I was asking Jerome the owner of the property to support having the truth
7 come out.

8
9 Ms. La Costa: But I see the letter in here was not signed by Fedde nor was any kind of
10 retraction done by the neighbor, so the neighbor in my estimation still has an issue with it. What
11 is your feeling on that?

12
13 Dr. Abrams: I did speak with Fedde and he acknowledged that it may have been an
14 exaggeration and that he wasn't set on opposing what we were doing...that he was just
15 concerned what might happen if the church grew. I think there are still some concerns from
16 several of our neighbors and we're motivated to work with them and address those concerns as
17 I laid out in that letter and I'm definitely open to speaking more with them.

18
19 Ms. La Costa: Okay, but there was not a retraction from either your neighbor or Fedde about
20 their support?

21
22 Dr. Abrams: Not that I know of.

23
24 Ms. La Costa: Okay, thank you.

25
26 Mr. Carnicelli: Commissioner Castro.

27
28 Mr. Castro: No questions.

29
30 Mr. Carnicelli: Commissioner Tackett.

31
32 Mr. Tackett: No questions.

33
34 Mr. Carnicelli: Commissioner Robinson. Commissioner Pali.

35
36 Ms. Pali: I have a question and I'd like you to help me with your answer. I feel like this case is
37 very similar to the one we heard earlier in a sense that you have really good people they come
38 in and they want to do what they want to do with it and so I'm struggling because there were
39 people there prior to you, neighbors and they in their minds have an idea of what that character
40 of the neighborhood is and I do appreciate you continuing to verbalize to us that you are
41 attempting to get everybody on board so you guys can continue to keep the culture good and
42 pono.

43
44 Dr. Abrams: Yes.

45

1 Ms. Pali: But if you still have strong opposition in the neighbors adjacent or in the 500-foot
2 radius that's still a concern and so that's where I'm struggling right now. I live in a neighborhood
3 where my dad was the original owner so there was nothing until his home was there and we still
4 have the home. It was built in 1985 and so I would just try to wear the shoes and I don't know
5 that I would be too happy if a neighbor came in tomorrow and wanted to bring their ideas of
6 what life should look like and it may be distort or change what I've had but yet I do believe in
7 growth and like Chair Keaka mentioned, Commissioner Keaka mentioned that we do embrace
8 other people and other cultures, but not at the expense of the original people. So we have to
9 have a sensitive line and so my question is have you had further talks with putting in or
10 promising sort of limitations on the types of activities to try to get your neighbors to do a
11 compromise so they would change their opposition? Has those kind of talks happened?
12

13 Dr. Abrams: We did have that one meeting the day after this last hearing on May 28th and we
14 talked about it. I don't think we arrived at a specific compromise but we did discuss our
15 concerns and I think it's important to note that this ministry is an earth-based spirituality coming
16 out of our permaculture and organic farming belief and the principle of around which our farm is
17 named which is Ahimsa meaning non-harming or honoring all life as sacred so intrinsic to the
18 worship is honoring the aina and giving people the opportunity to come and actually work the
19 land and get their hands into the earth. And since we've arrived there I've really developed the
20 farming. It was just an empty dry grassland and we planted hundreds of trees and built
21 fishponds.
22

23 Ms. Pali: I don't think we're...I'm not questioning your intent. I'm just questioning that that's
24 your desire for your life and your lifestyle and we just have to respect that other people's life and
25 lifestyle and choices are different and so where do have the balance.
26

27 Dr. Abrams: Right.
28

29 Ms. Pali: But thank you.
30

31 Mr. Carnicelli: Commissioner Thompson.
32

33 Mr. Robinson: Chair, I got one question.
34

35 Mr. Carnicelli: Sure Commissioner Robinson.
36

37 Mr. Robinson: Do we have...and I apologize I don't have the packet from the last time but do
38 we have a picture of the driveway and the dimensions of it?
39

40 Dr. Abrams: I have this...(inaudible)...change the location of the neighbor's properties relative
41 to the church building. It's over 1,500 feet mostly to the other houses and this is the flag lot and
42 there is a picture in that SUP application which I have here. I can get the one from the
43 application itself...it's a little hard to see but it does show where the flag lot of the driveway
44 comes in, but I have a picture in here of the actual mouth of the driveway.
45

46 Mr. Carnicelli: You gotta speak in the mic Lew.

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Mr. Robinson: So Tara do we have the dimension of the driveway, the width of it?

Dr. Abrams: We do have a map. I think it's in your report, but which I also...(inaudible)...

Mr. Robinson: So there's a 30-foot easement but the question is is it a clear 30 feet. So do we have a picture of the driveway is my question.

Dr. Abrams: Yes, I'm gonna give you a picture, oh she has it on...right here on the computer. I think I might have it too. It's a paved driveway that's about 30 feet wide and then our ownership includes ten feet on either side.

Mr. Robinson: Okay, so we have 30-foot of pavement?

Dr. Abrams: I believe so.

Mr. Robinson: Okay, that's fine. That's all I need Chair.

Mr. Carnicelli: Thanks. So Lew I wanna, I wanna sort of jump to some of the concerns. So we had May 28th you gave your presentation. We had testimony and then you know you heard a lot of concerns. You've addressed the concerns. You've talked to your neighbors, reached out so my question is you know this green piece this is the recommendation from staff that's how we know what the green piece is and it has recommendations and there are certain conditions on here.

Dr. Abrams: Yes.

Mr. Carnicelli: There's like okay eight to ten, blah, blah, you know these different things.

Dr. Abrams: Right, we reviewed those.

Mr. Carnicelli: So after going and saying okay I'm trying to work with my neighbors what is it that you're bringing to table between May 28th and today, you know like what is it that you're saying okay this is now what I'm going to do. I'm going to do X, Y and Z, you know so we can kinda you know find out exactly rather than being like conjecture?

Dr. Abrams: Yes, I'm gonna refer to my notes here. There was an expression of being concerned about car lights that was raised at one point by our neighbor, Michelle and we've already dealt with that by bringing in a bulldozer and actually creating a berm that blocks the lights as they leave our property so they don't reach her, her living room. We also have rerouted the actual drive that goes around the perimeter of our land so that the cars don't go across her view plain.

There was a concern about the dogs, right so we have worked on the fencing of a particular area on the western side of our house were we can contain the dogs away from the place where cars go which was triggering them. By the way, there's dogs in the neighborhood including

1 Ms. Drewyer's dog and often times the dogs will...two dogs that she has, dogs will bark back
2 and forth triggering each other.

3
4 Originally when we got there one of the concerns was the view of our neighbor, John Cahill who
5 Jerome Labat bought the property from of, he was...we built the temple that was visible from his
6 house and to accommodate to that we planted a hedge of bamboo that obstructs that so it
7 makes it private for him visually.

8
9 And we asked about...the issue, there was a concern expressed about the Hana Highway there
10 in order to take left turn into our driveway coming from the Paia side which there's a concern
11 about cars needing to slow down or stop to turn into that driveway and so we acknowledge that
12 as an issue and we're encourage...are promising to encourage people to carpool when they
13 come, to drive slowly and to turn on a turn signal well in advance of that driveway so it gives
14 people plenty of warning and for larger gatherings where we're expecting more than 30 cars,
15 we'll post a staff person out there at the mouth of the driveway to help with that that is what we
16 offered to mitigate the concerns.

17
18 Mr. Carnicelli: Thank you. Commissioner La Costa.

19
20 Ms. La Costa: Yes, thank you Chair.

21
22 Dr. Abrams: Oh there was a...say it again. Right, we're very conscientious and we have been
23 all these years if there is any kind of music or drumming to make sure that we stop that by
24 10:00 p.m. and we're open to lowering the volume and closing up the doors and stuff by
25 9:30 p.m. if that's an issue. But we've always except for New Year's Eve which is that one
26 annual gathering we host have ended everything by 10:00.

27
28 Mr. Carnicelli: Commissioner La Costa. Thank you Lew.

29
30 Ms. La Costa: Thank you Chair. So if this were not approved what would happen on your
31 property? What would you be doing if the church were not approved?

32
33 Dr. Abrams: Well, we're going to continue our agricultural operation and probably put...you'll
34 we'll continue to develop more of that land. I just opened up one new field this week and I
35 guess we would probably want to appeal, yeah, and come...this is an important right to...for us
36 to develop our ministry and coming out of the Temple of Peace and having a place for people to
37 gather, so yeah, it's very important to us to...I ask you humbly to approve us.

38
39 Mr. Carnicelli: Thank you. Commissioner Castro.

40
41 Mr. Castro: No questions.

42
43 Mr. Carnicelli: Commissioner Tackett. Commissioner Robinson. Commissioner Pali.
44 Commissioner Thompson. I guess at this point there's no more questions. So Lew what I think
45 we should do is give you and/or your attorney the last word. Say whatever it is you need to say,

1 rebut whatever you need to rebut, tie up, you know put it in a package, but I just want you to
2 make sure that you get you know—

3

4 Dr. Abrams: Okay, I appreciate that.

5

6 Mr. Carnicelli: --ample ability and time to rebut.

7

8 Dr. Abrams: Okay, thank you. Yeah, so this ministry has evolved out of a convergence of our
9 involvement with the Temple of Peace for the last 20 years which is an interfaith ministry that we
10 help Reverend Kedar St. John with on Sundays and our interest in permaculture and aloha aina
11 and growing healthy food in a way that doesn't impact the land in a negative way. And it's a
12 very natural union to be honoring of the earth as a sacred mother and to gather in celebration by
13 sharing locally grown food, honoring the holidays which is one of the ten commandments and
14 bringing people together for rites of passage in the community like we recently hosted a 92nd
15 birthday party for a member of community. We did his 88th, 89th, 90th, 91st, and 92nd birthday
16 parties all free of charge. And also things that we believe are important is to have a safe
17 gathering space that's not a bar where people can gather and bring their children and the elders
18 can come and share in fellowship in this very open minded interfaith way where all the different
19 religions are welcome, the common unifying denominator is the honoring of the earth and
20 recognizing that human beings needs to be stewards of the planet for the future generations
21 and key to be able to pass on a living, vibrant earth is finding a way to grow food without a lot of
22 pesticides and other petrochemicals and generating energy in a renewable way.

23

24 So we have a permaculture design that we've implemented and do educate people about when
25 they come onto the property either informally for a gathering or for a formal farm tour and it's the
26 church part of that grown out of this respect for the earth and honoring the life force and wanting
27 to make sure that we are an example and provide some alternatives to the large scale
28 petrochemical, monoculture agriculture so that's a vision that has naturally kind of organically
29 grown, people who have come really get it and want to participate and so especially with the
30 potlucks we invite people to bring locally grown food and celebrate that. And it's also somewhat
31 larger space than the Temple of Peace so it's possible to host more people there when...on a
32 holiday so we're working in concert with the Temple of Peace in that way.

33

34 I think part of what we are balancing is the concerns of three individual neighbors versus...and
35 one who presented a letter in support of what we're doing versus a spiritual community that will
36 come together periodically. We're not looking for everyday events. We enjoy our peace and
37 quiet as well. But we would like to have a regular service that we can offer people to come
38 together for fellowship, to be in reverence for the earth and to celebrate this gift of life together.
39 And it's been an honor and an act of service to get to this point to build this structure and to
40 develop our land so that we do have a vibrant, beautiful farm that can really inspire people to
41 take some of those permaculture ideas home with them and try it on their balcony of their condo
42 or in their home garden.

43

44 And the interfaith part of it is really important too. It's open to anyone, whatever your name of
45 God or whichever particular text you honor, the honoring of the earth is the common unifying
46 factor that allows us all to come together in celebration. So one of the things we've done for

1 many years is hosting a potluck for Thanksgiving and we...Ahimsa is the philosophy of non-
2 harming that often will give rise to a philosophy of vegetarianism or a choice not to eat animals
3 or to kill animals for food. And so, we provide an alternative for the community of people who
4 are not wanting to celebrate Thanksgiving by eating turkey. We end up with a sumptuous feast
5 of all these dishes that people bring and my wife, Mariah goes all out. We often will make many
6 dishes to help the people and it becomes a valuable gathering place at those kinda key
7 moments for the holidays, for some rites of passage like I mentioned with that recent memorial,
8 and yeah, it's a natural outgrowth of my life.

9
10 I've worked as a...I continue to work as a licensed Clinical Psychologist where I have value on
11 service and part of that means being attuned and open to people from all walks of life and all
12 backgrounds and so I feel like I am suited to be able to welcome people warmly into an
13 accepting, loving circle and it has been really beautiful to see the elders and kids and everyone
14 coming together and sharing food and then having an opportunity to share. Part of what we
15 often do is have a sharing circle where people can offer a song or a poem or just share
16 something that they're inspired by. So this model has really worked.

17
18 You know we've been hosting people in our home for the last 30 years informally not as a
19 church but typically on Thanksgiving and often on full moons, and by having this open,
20 welcoming attitude where whatever you believe is embraced as long as it's honoring of the earth
21 and one and other. It is filling a need for quite a few people who maybe not so identified with
22 going to a particular individual denomination church but who do want to honor the wisdom
23 traditions of many different paths of the mountain to the great mystery, that's the way I like to
24 refer to God, great mystery in the sense that no one has a ability to kinda pigeon hole that.

25
26 I just want to reiterate that we have made concessions and mitigating efforts to address the
27 concerns of our neighbor. We do have some communication. We don't text back and forth.
28 We are doing everything we can to keep our dogs in check and not disturb people when people
29 come and go. We're meticulous about stopping at a reasonable hour and I think it's just a valid
30 use. We know that church is a use allowed on agricultural land with a special use permit and
31 that's what we're here before you today to ask for your approval so that we really can step into
32 that ministry and start offering regular weekly services and inspire the community. I think that's
33 it.

34
35 Mr. Carnicelli: Thank you Dr. Abrams. I appreciate it. So Commission I think at this point Chair
36 will entertain a motion. Oh, I'm sorry, recommendation first.

37
38 Ms. Furukawa: So the application complies with the applicable standards for a State Land Use
39 Commission Special Permit as discussed in the Analysis section of the report and the
40 Maui County Planning Department is recommending approval subject to some conditions.
41 Should I just go condition by condition?

42
43 Mr. Carnicelli: I don't know, does everybody have it? You guys want, you want to hear it? Go
44 ahead and read it please.

45

1 Ms. Furukawa: Okay. That the Land Use Commission Special Permit shall be valid until
2 June 30, 2024 subject to extension by the Maui County Planning Director upon a timely request
3 for extension filed prior to its expiration. Any request for time extension should be submitted no
4 later than 90 days prior to its expiration and the Planning Director may forward the time
5 extension request to the Planning Commission for review and approval and may require a public
6 hearing on the time extension by the Planning Commission. That's the first one.

7
8 Mr. Carnicelli: Just do them all.

9
10 Ms. Furukawa: Okay. That the subject Land Use Commission Special Permit shall not be
11 transferred shall not be transferred without the prior written approval of the Planning Director.
12 However, in the event that a contested case hearing preceded issuance of said Land Use
13 Commission Special Permit, a public hearing shall be held by the appropriate Planning
14 Commission upon due published notice, including actual written notice to the last known
15 addresses of parties to said contested case and their counsel.

16
17 Okay, Number 3, That the applicant, its successors and permitted assigns shall exercise
18 reasonable due care as to third parties with respect to all areas affected by subject Land Use
19 Commission Special Permit and shall procure at its own cost and expense a \$1,000,000.00
20 liability policy naming the County of Maui as an additional insured.

21
22 Okay, so Number 4, That all church and religious activities shall only occur between the hours
23 of 8:00 a.m. and 10:00 p.m. Any amplification of sound or music at an event shall not be heard
24 beyond the subject property lines.

25
26 Number 5, That, as represented by the applicant, services shall occur no more than three times
27 per week plus holiday celebrations, and the applicant shall maintain an average of no more than
28 40 people for weekly services and no more than 100 people for holiday celebrations, including
29 employees and staff.

30
31 Number 6, That the church and farm shall be subject to periodic inspections by County
32 enforcement personnel at reasonable times upon presentation of appropriate credentials.

33
34 Number 7, That full compliance with all applicable governmental requirements shall be
35 rendered, including compliance with the requirements of the Ag District, pursuant to
36 Chapter 19.30A, Maui County Code for uses of the property that are not related to the church,
37 and State Department of Health requirements relating to the individual wastewater system and
38 the private water system.

39
40 Number 8, That the applicant shall submit to the Department a detailed report addressing its
41 compliance with these conditions. The Compliance Report shall be submitted to the
42 Department with the request for time extension.

43
44 Number 9, That the applicant shall develop the property in substantial compliance with the
45 representations made to the Planning Commission in obtaining the Special Permit. Failure to so
46 develop the property may result in the revocation of the permit.

47

1 And I think the applicant wanted to amend the times, Condition Number 4 so that it just covers
2 New Year's Eve activities to midnight. That's it.

3
4 Mr. Carnicelli: Deputy Director.

5
6 Mr. Hart: Chair, thank you. One item that I think the Department should add on the floor now,
7 the Department of Fire and Public Safety made a comment that basically any facilities proposed
8 to be used for church related uses should have a proper Certificate of Occupancy, you know in
9 the context of wanting to provide safe facility, I think that's appropriate and I'd like to request
10 that that be in place before inside the church or the large gatherings are occurring within any of
11 the buildings.

12
13 Mr. Carnicelli: Okay, so we'll put that as Condition No. 10.

14
15 Mr. Hart: Thank you.

16
17 Mr. Carnicelli: Okay, great. So recommendation by Staff. Motion from the floor.
18 Commissioner Robinson.

19
20 Mr. Robinson: I have a motion to approve with the conditions.

21
22 Mr. Carnicelli: With, okay you mean with additional conditions beyond staff?

23
24 Mr. Robinson: Yes.

25
26 Mr. Carnicelli: Okay. Let's just do this, let's go ahead and do approve as recommended by
27 Staff and then we'll just amend. I think it's gonna be easier to do it that way.

28
29 Mr. Robinson: But I disagree with some of the things they have inside the conditions so put it in
30 and then take it out?

31
32 Mr. Carnicelli: Yep.

33
34 Mr. Robinson: Okay. Recommend to approval.

35
36 Mr. Carnicelli: Second? Seconded by Commissioner Thompson, so...

37
38
39 **It was moved by Mr. Robinson and seconded by Mr. Thompson to Approve the State**
40 **Land Use Commission Special Permit**

41
42
43 Mr. Robinson: I'd like to speak to the motion.

44
45 Mr. Carnicelli: Yeah, the floor is yours.

46

1 Mr. Robinson: I'm a old-timer so I went through a couple of these back in the early years and
2 it's really hard you know, people have a property they should be able to use it, but we have to,
3 you know we also have to be cognizant of the neighbors, also the laws and safety. And one of
4 the things I was gonna bring up was when you have a organized activity or a place you have to
5 have a fire marshal come in and decide how many people are allowed to be in the room and
6 what time and what is safe. You know, your occupancy you have numbers on the walls on how
7 many people are allowed in the room and I'm glad that we added that in.

8
9 But I've noticed some inaccuracies with testimony today. We have written testimony from our
10 applicant and I'm just gonna go with information that we have, I'm not going to do any opinions
11 or what we have from them but the applicant state in Exhibit D, that in the last 12 years the
12 amount of times we have had over...exceeded by 75 guests can be counted on one hand and
13 then today he said we had a hundred people quarterly. So right there, that's four times in one
14 year. And it's not anybody being called dishonest or stuff it's just inaccuracies and not
15 consistent. The amount of cars, the amount of people on the property, the time, those are the
16 things that I think our commission because it is a special use permit, 'cause this is not made to
17 be used in this property, it's allowed but with a special use permit and with that I'd be
18 comfortable with some restrictions.

19
20 My first restrictions are events and events are would consist of more than 25 people. Okay, so
21 that's what I would consider a event. An event of 25 people or more 25 times a year. So that's
22 twice a month they could have a larger event. And as we've heard their events are birthdays,
23 you know, holidays, you know, worship days, full moons, you know so there could be
24 365 events but let's go 25 people or more, 25 times a year so that's twice a month plus
25 New Year's Eve which they want to do.

26
27 Also, time. I don't think there should any activities after 9:00 p.m., not 10:00 p.m. I think
28 9:00 p.m. is one thing I'd like to make a condition on. Also, pick a day either Saturday or
29 Sunday there will be no normal events on that day. So if you have your worship days or church
30 days or your activity days if it's always going to be on a Saturday or Sunday I think neighbors
31 should be able to count on day a week where they can plan to have that.

32
33 Another condition, I'd like them to set up a website that they would put on their calendar when
34 they knew so the neighbors will know when that event would happen, to where that event would
35 happen to where they will know that event would have the 25 people or more. And I'm sorry, it
36 is not to exceed whatever the Fire Department says is allowed in that building. So if the
37 Fire Department says it can handle a hundred people well then it can handle a hundred people
38 and then that's what the max is. If the Fire Department says it can only handle 75 then that's
39 75 because we are gonna keep the noise down so tents outside, activities outside is not going
40 to be permissible because they're saying that they're going to keep it under the noise level and
41 that's why they moved from their other property. So that's another condition.

42
43 Car safety is because you have a large driveway and it's 30 feet, I think that is very accessible.
44 I think, I think I'll let the Fire Marshal and the Maui Police Department deal with the amount of
45 vehicles of this property and do it that way. I'm not interested in limiting the amount of cars or
46 getting bigger buses or trying to do that way. I think we limit it with the people I think a neighbor

1 can easily count how many people are at a property compared to how many that is. So I think
2 and part of this condition we need to have how many residents live on your property 'cause
3 25 guests is not including yourself, okay. I think that's where I'm starting at guys. So if you
4 guys have anything to add or want to take out I'm open. Thank you.

5
6 Mr. Carnicelli: Thank you Commissioner Robinson. Comments to his comments. Here's I
7 guess what we'll probably have to do Keaka is an official friendly amendment to your motion to
8 include these things.

9
10 Mr. Robinson: Okay.

11
12 Mr. Carnicelli: And unfortunately I think Jordan's been diligently scribbling over here, but we
13 have the intent with which you know Commissioner Robinson's going. Any comments on where
14 he's headed with this? Corporation Counsel.

15
16 Mr. Galazin: Thank you Chair. If the design purpose is to have a church and the size and
17 scope as represented it may be difficult to put so strict a limitation on the number of people
18 especially when the request is specifically to have you know an average of 40 people for a
19 weekly service. My recommendation is if you want to permit this use and if you think it meets all
20 the criteria then you know setting an event cap would be permissible but I would caution again
21 setting a cap so that every service they have could be categorized as an event. You know
22 either allow it or don't allow it but I think that would probably have a practical effect of not
23 allowing the activity. So if the goal is to recommend it but restrict it in some way then I would
24 suggest a different number for that.

25
26 Mr. Carnicelli: Commissioner Robinson.

27
28 Mr. Robinson: Thank you. They requested up to 40. They didn't say that it was 40 guaranteed
29 so I'm just moving their request from 40 to 25. It says here in their testimony, that's written
30 testimony that it's common that it's less guests and it's less than you know six to eight cars, you
31 know four people to a car that's 24 people so, and that's an event over 25. So if they have
32 normally 20 people at worship they can come worship at different times. There's lot of churches
33 in Maui, a lot and all over the place and some people can use their facility, some people out
34 grow the facility and have to go to the beach or go to rent a certain area. This person is asking
35 for a special use permit to continue to use an area that their, that their practitioners have
36 outgrown. So they have an option to practice at other places, but we're not restricting what
37 they're gonna do what, but I'm looking at this as not what they're doing or how they're doing, I'm
38 looking at this as an event and as neighbor and as a special use permit. Thank you.

39
40 Mr. Carnicelli: Thank you Commissioner Robinson. So let's do this, let's just walk through the
41 conditions. Let's start with Recommendation No. 1 and you know this is kind of a standard
42 condition, June 30, 2024. So Commissioner La Costa.

43
44 Ms. La Costa: Thank you Chair. I have an objection to that because of what the neighbors had
45 said previously so if this were to be approved it should be a shorter period and then a renewal.

46

1 Mr. Carnicelli: Would you like to amend the motion?
2

3 Ms. La Costa: Yes, please. My amendment would be to have the special use permit be valid
4 for 365 days after approval if that occurs.
5

6 Mr. Carnicelli: Okay, so the change would be instead of valid until June 30, 2024, it would be
7 one year after approval.
8

9 Ms. La Costa: Correct.
10

11 Mr. Carnicelli: Okay. Second to that amendment.
12

13 Mr. Robinson: Second.
14

15 Mr. Carnicelli: Second. Any discussion?
16

17 Mr. Hart: Chair?
18

19 Mr. Carnicelli: Deputy Director.
20

21 Mr. Hart: Deputy Director if I could interfere I apologize, considering that the Department is
22 proposing a recommendation that they can't operate until they have C of O's, I would request a
23 consideration that the time clock of operation start after they have their C of O rather than
24 consume their time to operate trying to make sure their building is in compliance.
25

26 Ms. La Costa: I will amend my motion.
27

28 Mr. Carnicelli: Amend your amendment.
29

30 Ms. La Costa: Yes please. Thank you.
31

32 Mr. Robinson: Agreed.
33

34 Mr. Carnicelli: All in favor of the amendment say aye or raise your hand I guess. That's one,
35 two, three, four. Opposed, one, two. It comes to me, I will vote in favor of that amendment. So
36 it has been changed to one year after the Certificate of Occupancy.
37

38 **It was moved by Ms. La Costa, seconded by Mr. Robinson, then**
39

40 **VOTED: To Amend Condition No. 1 that the permit be valid for one year after**
41 **the Certificate of Occupancy is obtained.**
42

43 **(Assenting – P. D. La Costa, K. Robinson, D. Thompson, S. Castro,**
44 **L. Carnicelli)**

45 **(Dissenting – K. Pali, C Tackett)**

46 **(Excused – T. Gomes)**

1
2 Mr. Carnicelli: Any changes to Recommendation No. 2, Condition No. 2 in the recommendation.
3 Seeing none, moving on. Condition No. 3. Okay, Condition No. 4, states that all church and
4 religious activities shall occur between the hours of 8:00 a.m. and 10:00 p.m. Any amplification
5 of sound or music at an event shall not be heard beyond the subject property line.
6 Commissioner Robinson I will go ahead and defer to you to...Do you want to make an
7 amendment to change that then to...instead of 10:00 p.m.—

8
9 Mr. Robinson: 9:00 p.m.

10
11 Mr. Carnicelli: 9:00 p.m. Is that a friendly amendment?

12
13 Mr. Robinson: Yes.

14
15 Mr. Carnicelli: Friendly amendment. Commissioner Thompson you agree?

16
17 Mr. Thompson: Yes.

18
19 Mr. Carnicelli: Okay. So the amendment's made. Then the second sentence, any amplification
20 of sound or music at an event shall not be heard beyond the subject property line. Anyone want
21 to amend that. I guess is when we were talking about this before, my notes and the director's
22 notes were the word, amplification 'cause I know there's other special use permits where we've
23 not allowed amplification.

24
25 Mr. Robinson: So Deputy is an event classified as they have allowed allowable decibel level so
26 amplified is something that's plugged in electronically but people could be playing music
27 acoustically right, so...I mean sound is sound. So I mean, the word amplified is I'm as long it's
28 in the decibel level it doesn't matter if it's coming electronically or not.

29
30 Mr. Hart: If I could address the issue and maybe talk a little bit broader like as an example a
31 permitted use, you know agricultural machinery there's no, there's no restriction here. In the
32 context of a special use that we're talking about I think the Director's intent of making notes on
33 this was that the Department wouldn't want to be responsible for splitting hairs on whether or
34 not an event that was causing noise disturbance to the neighbors was including a P.A. system
35 or it was let's say instruments, drums, individuals doing whatever they might be doing to cause
36 noise that still causes the same effect but doesn't include equipment.

37
38 Ms. Pali: So it's no amplified equipment.

39
40 Mr. Hart: No, it wasn't...I think that basically is sound or music basically. The intent is to cause
41 this condition to result in no noise disturbance to the neighbors from the operation.

42
43 Mr. Carnicelli: Right. 'Cause if you read it, I mean it says shall not be heard beyond the subject
44 property line. I mean that noise has got to up and drop and at the property line. The neighbors
45 can't hear them.

46

1 Ms. Pali: Well, if they're there with a recording and they can hear it, then that's a violation.

2

3 Mr. Carnicelli: Correct. That's as I would interpret it.

4

5 Mr. Hart: And let me just say that...

6

7 Mr. Robinson: Yeah, which is realistic.

8

9 Mr. Hart: So in that context you know the commission is the body to make their own decision.
10 That was just a issue that was, that was noted as a concern.

11

12 Mr. Carnicelli: So my other question to you guys is, it says all church related activities shall
13 occur between 8:00 a.m. and 9:00 p.m. Is that going to include traffic in and traffic out?

14

15 Mr. Robinson: Is my amendment to the 9:00 p.m. was to include that services will be done at
16 9:00 because it usually takes half an hour to wrap up and some noises. So I thought 10 o'clock
17 was carry something over past 10 o'clock and I think...that's where I put the event would be
18 9:00 p.m.

19

20 Mr. Carnicelli: Okay.

21

22 Mr. Robinson: But if we wanted to clarify that and have half an hour to disburse or to clean up
23 I'd be happy to add that in.

24

25 Mr. Carnicelli: Okay, Deputy Director you need to clarify beyond the verbiage that's here.

26

27 Mr. Hart: Sure similar to our prior comment on access, you know the driving to and from it's a
28 result or it happens before the activity with the activity was intended to be the...(inaudible)...on
29 site.

30

31 Mr. Carnicelli: Okay, just trying to get clear. Okay, great. Condition 5 then, that as represented
32 by the applicant services shall occur no more than three times per week plus holiday
33 celebrations and the applicant shall maintain an average of no more than 40 people for weekly
34 services and no more than 100 people for holiday celebrations including employees and staff.

35

36 Mr. Robinson: My amendment was 25 events with 25 people or more. There's no limit on—

37

38 Mr. Carnicelli: So, so, so but to what Corporation Counsel was talking about is if you say 25
39 that's three...or instead of three times per week, two times per week.

40

41 Mr. Robinson: Twenty-five times a year. They could do it all in one month or they can...they
42 could do it periodically it's all up to them. We don't know when the guy's birthday is so I don't
43 want to...

44

45 Mr. Carnicelli: I guess it's the will of the Commission. So then your amendment to this is going
46 to be shall occur no more than 25 per year.

1
2 Mr. Robinson: Yes.
3
4 Mr. Carnicelli: More than 25 times—
5
6 Mr. Robinson: With a gathering of 25—
7
8 Mr. Carnicelli: --per year—hang on let's go per year plus holiday celebrations.
9
10 Mr. Robinson: No.
11
12 Mr. Carnicelli: Okay, just period.
13
14 Mr. Robinson: Yeah.
15
16 Mr. Carnicelli: Not plus the holiday celebrations.
17
18 Mr. Robinson: Yeah.
19
20 Mr. Carnicelli: How about this—
21
22 Mr. Robinson: Okay.
23
24 Mr. Carnicelli: Plus New Year's Eve, right, this is a big deal to them.
25
26 Mr. Robinson: That's why I did 25 not 24, seriously.
27
28 Mr. Carnicelli: Including New Year's
29
30 Mr. Robinson: Yes.
31
32 Mr. Carnicelli: Well, but New Year's is gonna go beyond 9:00 a.m., so it's like almost you got,
33 I'm sorry 9:00 p.m., so we're gonna have to accommodate that in some way, shape or form.
34 Maybe it's a separate condition.
35
36 Mr. Robinson: You gotta talk to the, you gotta talk to the neighbors.
37
38 Mr. Hart: In the context of you gotta talk to the neighbors I think that if there's a condition that
39 says a specific time and you know, New Year's is an event that's gonna go to the duration that it
40 goes to the Department...the Department can't enforce that the neighbors were talked to, and
41 you know not that we're looking to establish a situation to enforce on, we're looking to establish
42 a situation where it's easy to understand whether or not compliance is happening or not.
43
44 Mr. Robinson: So, so you're recommending that not including New Year's Eve.
45
46 Mr. Hart: You can do whatever you want but –

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Mr. Robinson: No, I mean...is that your suggestion?

Mr. Hart: No, my suggestion is that whatever you do please try to make it quantifiable so that when the Department—

Mr. Robinson: I'm open, I'm open guys, it's not a—

Mr. Carnicelli: Commissioner Pali.

Ms. Pali: Chair this is a...I'm so sorry, and I'm gonna still play the I'm new card from last September but this approach what we're doing now I know it's important to solidify so we can vote, but it's also on the assumption when you're getting us all to get input on the basis that we all agree that we even want to approve it—

Mr. Carnicelli: Oh, I –

Ms. Pali: So I'm a little confused right now what I'm voting. I thought me and Chris were voting for like...and then we realized or I realized...so I'm just a little confused right now.

Mr. Carnicelli: Okay. So this is the Chair's intent is there's a motion on the floor for approval. It's similar to when you know the last one on Omaopio, right we were going like well wait there's a recommendation for denial but then there's these conditions, right. It doesn't mean, is what's gonna happen is eventually this is going to come to a vote.

Ms. Pali: Right.

Mr. Carnicelli: And if there's not conditions that are at least acceptable then—

Ms. Pali: No, I get that part, but we're voting on something that potentially we could be ultimately voting no anyway.

Mr. Carnicelli: Oh, correct, right.

Ms. Pali: Is that good or not good.

Mr. Carnicelli: We could...(inaudible)...all this work—

Ms. Pali: --confused.

Mr. Carnicelli: --and then it could get denied.

Ms. Pali: Okay, so should we refrain from voting or participate in voting if we have a different opinion of some of the things that have been agreed upon. Counsel that's a question for you, Corp. Counsel if we're hearing conditions that we don't agree with or even the overall are we still participating in the language or are we not participating, so I'm a little confused.

1
2 Mr. Galazin: Chair if I can?
3
4 Mr. Carnicelli: Go ahead.
5
6 Mr. Galazin: So thank you. As I understand the Chair's intent here the motion was made and
7 Commissioner Robinson has been asked to provide a couple of friendly amendments to his
8 motion and there's been some discussion to refine those but you are not voting on what the
9 ultimate conditions will be yet. You're just providing input.
10
11 Ms. Pali: Provide input.
12
13 Mr. Galazin: You can provide input and still vote no on...
14
15 Ms. Pali: Okay, I just wanted to...
16
17 Mr. Galazin: Thank you.
18
19 Mr. Carnicelli: Oh, yeah. Again, and maybe I need to state it in a different way to be clear is,
20 yeah, this could still be voted down but in the event that it's voted in favorably then there's
21 gonna be okay... 'cause there's a lot of concerns from the neighborhood, right that's the whole
22 part of like no different than Omaopio, right. The community wants one thing, the neighbors
23 are—so if this were to pass our job is actually to try to mitigate concerns.
24
25 Ms. Pali: Okay.
26
27 Mr. Carnicelli: Like that's...so the biggest piece is how can we mitigate concerns in the event
28 that this permit is granted.
29
30 Ms. Pali: Okay, so are we on the 9 o'clock issue right now?
31
32 Mr. Carnicelli: We can readdress it.
33
34 Ms. Pali: Oh, no...yeah.
35
36 Mr. Carnicelli: Sure. All right what we're on right now is 25 times per year and then we're trying
37 to deal with you know, say instead of plus holiday celebrations, plus New Year's Eve.
38
39 Ms. Furukawa: Can I just clarify on the 25 events per year is that including the weekly services
40 that they're intending?
41
42 Mr. Robinson: Twenty five events with an amount over 25 people. So if their services are 25—
43
44 Mr. Carnicelli: But we didn't—
45

1 Mr. Robinson: --or less every day they can have an event every day, they can do whatever they
2 want under 25.

3
4 Ms. Furukawa: As stated.

5
6 Mr. Robinson: Yeah. As was stated in the testimony six to eight cars per day so that's
7 24 people. So their daily activity shouldn't be affected. It's the events and that's what the
8 neighbors complained about was the...they come with large amounts, large noise and that's
9 what we wanna...that's what I'm trying to limit for the neighbors.

10
11 Mr. Carnicelli: So in this, instead of saying holiday celebrations we'll just say period, 25 events
12 per year period. Is that what you're saying?

13
14 Mr. Robinson: Yes.

15
16 Mr. Carnicelli: Okay. And then new sentence, The applicant shall maintain an average of no
17 more than 40 people for weekly services and no more than 100 people for holiday celebrations
18 including employees and staff. So that goes away?

19
20 Unidentified Speaker: Yes.

21
22 Mr. Carnicelli: We're deleting that. Okay.

23
24 Mr. Hart: Chair if I might?

25
26 Mr. Carnicelli: Deputy Director.

27
28 Mr. Hart: You know in the context of New Years I think that everybody in Hawaii is familiar that
29 that's a loud late night event religious or not...I mean, some of it is religious, you know some of
30 it is related to people's ethnic beliefs, I really would prefer that there be some provision for that
31 to be a late night event just outright rather than giving them something that you know clearly
32 contradicts something that—

33
34 Mr. Robinson: ...(inaudible)...

35
36 Mr. Hart: Thank you.

37
38 Mr. Carnicelli: Yeah, agreed. So you still want to put 25 people...25 times per year?

39
40 Mr. Robinson: Yeah.

41
42 Mr. Carnicelli: As long...if it's over 25 people.

43
44 Mr. Robinson: Yes.

45
46 Mr. Carnicelli: Okay.

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Mr. Robinson: That's—

Mr. Galazin: Chair if I may?

Mr. Carnicelli: Corporation Counsel.

Mr. Galazin: Thank you Chair. I would consider perhaps asking the applicant about the weekly services because there's something that was in the application, there's something that was stated in writing but I think we have the applicant right here, it might be best to get that information directly as to what weekly services in his estimation would be and whether you agree with that number or not.

Mr. Robinson: I have written testimony here.

Mr. Galazin: Okay, but we also have him right here so it's up to you Chair.

Mr. Carnicelli: Lew.

Mr. Robinson: Chair, it's 12:15, I'm gonna go soon if--

Dr. Abrams: Yes, I appreciate the opportunity to weigh in on this. The weekly services are unlikely to be more than 30 or 40 people. To limit to 25 feels unnecessarily restrictive. I mean initially it probably –

Mr. Carnicelli: If I could just interject.

Dr. Abrams: Okay.

Mr. Carnicelli: It's not that you can't have more than 25 people is the trigger is 25 people. If it's...if your services are 22 people it doesn't count as one of these. If it's 26 people it's one of these events. And how we're gonna monitor that I don't know.

Dr. Abrams: Well, I kind of...I would like to maybe ask my attorney to address that, but just to speak to the weekly services that we have planned we're hoping that it will evolve and that we can invite people to come to our services.

Mr. Carnicelli: Okay, got you.

Dr. Abrams: I like the idea of the one day a week off that the neighbors can count on there not being anything going on 'cause Sundays we're involved at the Temple of Peace so Sunday on the land would be a natural day of rest for the neighbors the only exception might be if there's a holiday that happens to fall on a Sunday like Christmas or something like that.

Mr. Carnicelli: Thank you, okay. Thank you.

1 Dr. Abrams: Okay.

2

3 Mr. Carnicelli: We got you. Got it.

4

5 Dr. Abrams: But I did want to—

6

7 Mr. Carnicelli: Right, the other piece of this just so you is currently if this were to be approved
8 it's just one-year permit anyways, right so when you come back a year from now and your
9 congregation's bigger than some of these conditions can be readdressed. So I'm still just trying
10 to go back to Keaka how we're gonna word this. That as represented by the applicant services
11 shall occur no more than 25...so services of—

12

13 Mr. Robinson: Just event, I mean, it's a service, it's a birthday party...

14

15 Mr. Carnicelli: Okay, events. Events of more than 25 people shall not occur more than 25 times
16 per year period. And that's Condition 5. Okay, so then...and then maybe what we'll do is...and
17 then the next sentence being, New Year's celebration, one New Year's Eve celebration allowed
18 and it's gotta be a different time. We gotta put...like we gotta allow, allow a New Year's Eve
19 and give them a different timeline.

20

21 Dr. Abrams: Typically we...we would end the music by 2:00 a.m. It would be nice if we didn't
22 have run everybody off 'cause we have a tradition of sunrise prayer in the medicine
23 ...(inaudible)...but I'm glad to end amplified music by 2:00.

24

25 Ms. Pali: If it can't go past the borders...(inaudible)...

26

27 Dr. Abrams: Yeah, that issue about it going past the borders is something that I think it's
28 possible to revisit possibly. I understand a decibel level.

29

30 Mr. Carnicelli: Okay, Lew we're in...this is a time for this right now.

31

32 Dr. Abrams: Okay, it's not...

33

34 Mr. Carnicelli: This is time for us to try to see if we can come up with something that five people
35 will agree to.

36

37 Dr. Abrams: Okay.

38

39 Mr. Carnicelli: Deputy Director.

40

41 Mr. Hart: Chair if I might restate what I believe is the proposed condition is that that basically
42 functions of less than 25 people aren't proposed to be regulated by the permit but events
43 including more than 25 people shall not occur more than 24 times a year with the exception of—

44

45 Mr. Robinson: Yeah, 24.

46

1 Mr. Carnicelli: Let's say 24.
2
3 Mr. Robinson: 24.
4
5 Mr. Hart: --24 with the exception of New Year's Eve which shall not have a specific time
6 limitation.
7
8 Mr. Robinson: Which follows County Code.
9
10 Mr. Hart: Which follows County Code.
11
12 Mr. Robinson: I mean we can't give them permission to break the law. We can give them
13 permission to follow County Code.
14
15 Mr. Hart: Thank you.
16
17 Mr. Carnicelli: There we go.
18
19 Ms. Pali: Like that.
20
21 Mr. Carnicelli: Okay. So you got that?
22
23 Mr. Hart: I got it.
24
25 Mr. Carnicelli: To be able to—
26
27 Ms. Pali: And within that same number I think because we're talking about number of events I
28 think you should also piggyback the website for public transparency for the neighbors. Don't
29 you think they go hand in hand with the number of events, no?
30
31 Mr. Carnicelli: Well, I think the...well, the intent here—
32
33 Ms. Pali: Okay, okay.
34
35 Mr. Carnicelli: --is for the neighbors to know it's coming.
36
37 Ms. Pali: Okay.
38
39 Mr. Carnicelli: So just 'cause...you know you could post it on the website an hour and a half
40 before the event so what's the notice. I mean I think the intent is notice has to be given to the
41 neighbors prior to an event. So what's the notice that you want to give?
42
43 Ms. Pali: The time frame.
44
45 Mr. Carnicelli: What's the—
46

1 Mr. Robinson: 72 hours.

2

3 Mr. Carnicelli: 72 hours. Okay, so—

4

5 Ms. Pali: And how are they going to do that?

6

7 Mr. Carnicelli: So maybe in Paragraph 5 then, said events shall be notified to
8 neighbors...abutting neighbors, adjoining neighbors, neighbors within 500 feet.

9

10 Mr. Robinson: It's on a website, people can go on, people can look.

11

12 Mr. Carnicelli: Okay, shall be posted on a community website 72 hours prior to any event.

13

14 Mr. Robinson: Yeah.

15

16 Mr. Carnicelli: You got that Jordan? You need more paper.

17

18 Mr. Hart: So I got 72-hour notice to neighbors.

19

20 Mr. Robinson: Minimum 72 hours.

21

22 Ms. La Costa: Excuse me Chair, I need to take a break for just a minute.

23

24 Mr. Carnicelli: Okay, yeah, yeah go ahead.

25

26 Ms. Pali: Me too.

27

28 Mr. Carnicelli: We still have quorum.

29

30 Mr. Robinson: Five minute break, I gotta too.

31

32 Mr. Carnicelli: Okay, five minute recess.

33

34 A recess was called at 12:23 p.m., and the meeting was reconvened at 12:28 p.m.

35

36 Mr. Carnicelli: Commission meeting of June 25th is now back in session. Jordan do you know
37 where we are? I mean, are we done with 6, I mean 5?

38

39 Mr. Hart: Chair I don't have the number for it, but I was working on a condition which said a
40 minimum of 72-hour notice to neighbors for events greater than 25 people will be provided via
41 website available to the public maintained as current and readily accessible.

42

43 Mr. Carnicelli: Okay, everybody okay with that. Yep. All right.

44

45 Mr. Hart: And point of clarification on the numbering.

46

1 Mr. Carnicelli: Let's just make it Number 11.

2
3 Mr. Hart: 11.

4
5 Mr. Carnicelli: Let's make it 11 'cause the Certificate of Occupancy is 10, yeah. Moving onto 6,
6 That the church and farm shall be subject to periodic inspections by the County enforcement
7 personnel at reasonable times upon presentation of appropriate credentials. Everybody cool
8 with that? Yep. That full compliance with all applicable government requirements shall be
9 rendered including compliance with the requirements of the Agricultural District pursuant to
10 Chapter 19.30A, Maui County Code for uses of the property that are not related to the church
11 and the State Department of Health requirements related to the individual waste water systems
12 and private water system. Everybody okay with that? Okay. That applicant shall submit to the
13 Department a detailed report addressing its compliance with these conditions, two hard copies,
14 one digital copy by a compact disk or similar means shall be submitted. Compliance report shall
15 be submitted to the Department with the request for time extension.

16
17 Ms. La Costa: When is that due please? Is it due 30 days, 90 days, there is no time frame
18 here. I need to have a time frame.

19
20 Mr. Carnicelli: 90 days.

21
22 Ms. La Costa: Thank you. I'd like to add please to this condition.

23
24 Mr. Galazin: Commissioner La Costa that's in Condition Number 1. It's already covered.

25
26 Mr. Hart: Chair if I might? The timely request for extension is 90 days prior to expiration.

27
28 Ms. La Costa: This, this talks about compliance and letting them know that the compliance is
29 being done so is that due within 90 days of prior to expiration or is that due 90 days after—

30
31 Mr. Hart: It's, excuse me, sorry for...so it's due with the request for time extension and the
32 timing on that item is established in Condition Number 1 which is 90 days before expiration you
33 have to submit and that submittal by Condition Number 8 shall include the compliance report.
34 So you have to combine them both but they're—

35
36 Ms. La Costa: ...(inaudible)...thank you very much.

37
38 Mr. Carnicelli: Okay, everybody all right with that one? All right. That the applicant shall
39 develop the property in substantial compliance with the representations made to the planning
40 commission in obtaining the special permit. Failure to so develop the property may result in the
41 revocation of the permit. Everybody okay with that? Okay. The one thing we haven't
42 addressed in this here at all is traffic.

43
44 Mr. Robinson: Oh, there's one more thing Chair, there be no activities on Sundays except for
45 Easter, I guess except for Easter Sunday.

46

1 Mr. Carnicelli: Okay.
2
3 Mr. Robinson: Christmas and New Years it does not fall on a Sunday this year.
4
5 Dr. Abrams: ...checked the dates.
6
7 Mr. Robinson: Yes, I did.
8
9 Dr. Abrams: That's fine.
10
11 Mr. Robinson: And....(inaudible)....with that.
12
13 Ms. La Costa: And that that service will be within the time frames already established.
14
15 Mr. Robinson: All events have to be in that.
16
17 Ms. La Costa: There's some sunrise services on Sunday mornings so I want to be sure that
18 it's...
19
20 Mr. Robinson: 8:00 a.m.
21
22 Mr. Hart: Chair, point of clarification. There shall be no events on Sunday except for Easter or
23 New Years.
24
25 Mr. Robinson: Easter. New Year's next year is not, but yeah you could put that—
26
27 Mr. Hart: Thank you.
28
29 Mr. Carnicelli: Okay.
30
31 Mr. Robinson: Yeah.
32
33 Mr. Carnicelli: All right so is that all of...so just clarification for the record those are all friendly
34 amendments made by Commissioner Robinson to his main motion, does the second agree with
35 the friendly amendments?
36
37 Mr. Thompson: Agree.
38
39 Mr. Carnicelli: Okay, so those are all amended. Commissioner La Costa.
40
41 Ms. La Costa: Thank you. For clarification, so if Christmas, New Year, Easter always fall on
42 Sunday so Christmas, New Year, Yom Kippur, the other holidays if they fall on a Sunday is that
43 in addition to the 25 or is that including the 25 except for New Years?
44
45 Mr. Robinson: It's including, you got 24 a year.
46

1 Ms. La Costa: Okay.

2

3 Mr. Robinson: 24 a year no matter how you name it and what you use it for.

4

5 Ms. La Costa: Okay, then I think that the wording needs to reflect that 'cause it said except for
6 yeah, yeah, yeah.

7

8 Mr. Robinson: And a point of clarification Chair is on the maximum amount of people do we
9 have in that it's gonna be on what the Fire Department's Certificate of Occupancy is gonna say.

10

11 Mr. Hart: I do.

12

13 Mr. Robinson: Okay, thank you.

14

15 Mr. Carnicelli: Will you please state that?

16

17 Mr. Hart: So I have for clarification this is Condition Number 5, that events more than 25 people
18 will not be limited...sorry, events less...events less than 25 people will not be limited. Events
19 greater than 25 people shall not exceed 24 times per year to the maximum occupancy
20 established by the Fire Department with the exception of New Year's which shall comply with
21 County noise ordinance.

22

23 Ms. La Costa: Pass it to him.

24

25 Mr. Tackett: Mr. Hart.

26

27 Mr. Hart: Oh, thank you very much.

28

29 Ms. La Costa: You ran out of paper.

30

31 Mr. Hart: Oh no, I'm trying to keep it in the same document.

32

33 Ms. La Costa: Okay.

34

35 Mr. Hart: Thank you.

36

37 Mr. Carnicelli: Okay, so I guess at this point any further discussion on this motion? So now I'm
38 gonna give you the unenviable task as to restate what it is that we're voting on.

39

40 Mr. Hart: Okay.

41

42 Mr. Carnicelli: Oh, okay. Lew, would you like to make a comment...or is if this were to be
43 approved are you okay with it?

44

45 Dr. Abrams: I think most of this, almost all of it is very doable and I can, we can live with it. I
46 am a little concerned about the pragmatics of the sound issue being asked to not be heard at all

1 beyond the boundary. I mean, if I just stood on the deck of that building and sang just myself
2 with nothing amplified it could be heard, you know, through across the gulch. Isn't there some
3 kind of already existing standard about decibel levels so it's something empirical rather
4 than...otherwise a neighbor could just say, oh I heard your music, you know, and I would rather
5 if it's possible to have that sound issue be related to a decibel reading.

6
7 Mr. Carnicelli: You realize that that was actually in the original conditions that you were okay
8 with?

9
10 Dr. Abrams: It was in the Planning report, yes, but I'm just thinking about the practicalities of it
11 of how to empirically define...enforce that, yeah.

12
13 Mr. Carnicelli: Deputy Director.

14
15 Mr. Hart: Sure. I'm not gonna be able to quote numbers but there are decibel limitations...let
16 me think for a moment the way to word that.

17
18 Ms. Pali: And could I jump in?

19
20 Mr. Carnicelli: Commissioner Pali.

21
22 Ms. Pali: I thought that the activities were going to be in a building. Are we now talking about...I
23 mean, are we talking...I'm a little confused now, so...'cause if you're in a building that's gonna
24 sort of bounce a lot of the sound anyway. So now you're kinda more talking about the outdoor
25 activities, right which you could be concerned about. And so there's...we have to distinguish
26 between the two and I think for us to try to find a happy medium which by the looks of your
27 neighbors in the seats behind you this might not even appease them but just to try to find a
28 happy medium with both this is kind of a real big deal breaker or deal maker. So just, so you
29 know.

30
31 Mr. Carnicelli: Corporation Counsel.

32
33 Mr. Galazin: Thank you Chair. I do happen to...the State Department of Health does maintain
34 a decibel limitations for ag and they are pretty easy to look up. I know that this Commission's
35 considered them before so that is something that as a body you could put in.

36
37 Mr. Carnicelli: Is it for agricultural uses, decibel levels for agricultural uses or is it decibel levels
38 on Ag land?

39
40 Mr. Galazin: It's decibel levels on Ag land as far as I understand it.

41
42 Mr. Carnicelli: So, so Lew you're okay with everything except for that one sentence of any
43 sound or music at an event shall not be heard beyond the subject property lines.

44
45 Dr. Abrams: I'm concerned about that 'cause that's not even at a particular time. It could be
46 time during...(inaudible-not speaking into mic)...

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Mr. Carnicelli: Well, no it's tied to the events or your 8:00 a.m. to 9:00 p.m.

Mr. Robinson: ...(inaudible-not speaking into mic)...amplified sound that's...(inaudible-not speaking into the mic)...

Mr. Carnicelli: So like...

Mr. Robinson: 'Cause a regular noise disturbance won't pull his permit it just be a complaint. This is...

Mr. Carnicelli: Yes, so Lew is, is Commissioner Robinson brings up a good point. Is the original language was any amplified...amplification of sound or music at an event shall not be heard beyond the subject property line. So if you're on your deck singing your neighbors might be able to hear you. You got a good voice?

Dr. Abrams: I do like to sing.

Mr. Carnicelli: Okay, well liking to sing and having a good voice are two different are two different things. My daughter loves to sing, she got a horrible voice.

Ms. Pali: Strike that from the record.

Mr. Carnicelli: Strike...she's the cutest kid on the planet though. So Commissioners what if it was any amplified...amplification of sound or music at an event shall not be heard beyond the subject property lines.

Mr. Robinson: I'm comfortable with that if the applicant is.

Dr. Abrams: Yeah I think that is doable. Yeah, I'm glad to turn it down or turn off amplifications, we can still make our prayers.

Mr. Carnicelli: Got you.

Mr. Galazin: And just make sure you're into the microphones so we capture it all.

Dr. Abrams: So I'm just clarify again what I'm agreeing to about this. The amplified music will not be heard and so if we turn off the amplification and someone's singing and they can still hear that that wouldn't be a legitimate complaint. I know you were kinda moving away from distinguishing between amplification and...(inaudible)...

Mr. Hart: Chair if I might? I was trying to explain that that exact issue becomes complicating because let's say you have 200 people on New Year's Eve past an appropriate time to be out and you're all singing together without amplification I think that that your suggestion on the decibel level is relevant. I believe the State Department of Health has guidelines and so we

1 could add a condition or add language that says something to the effect of consistent with the
2 established standards by the State Department of Health.

3
4 Dr. Abrams: Yeah, that would be...I would prefer that. That would be...(inaudible)...

5
6 Mr. Robinson: I'm fine with that.

7
8 Mr. Carnicelli: Okay.

9
10 Dr. Abrams: Is there any discussion possible about that 25 number that was...

11
12 Mr. Carnicelli: I thought you just said that you were okay with it?

13
14 Dr. Abrams: I, I'm concerned with it but I'm willing to accept it, yes.

15
16 Mr. Robinson: Smart man.

17
18 Mr. Carnicelli: Okay. The other part too guys, is and maybe Deputy Director as your scribbling
19 and doing your thing right here, did we put in there that the maximum number is by whatever the
20 Certificate of Occupancy is?

21
22 Mr. Robinson: That's what I asked him. Number 5 is in there.

23
24 Mr. Carnicelli: Okay. So that's...maximum number is going to be determined by what the
25 Certificate of Occupancy allows, maximum number of people at an event.

26
27 Mr. Robinson: Thank you.

28
29 Mr. Carnicelli: Do you need time to write all this up to be able to put it on the record?

30
31 Mr. Hart: I do need a moment for the sound item.

32
33 Mr. Carnicelli: Okay, and then...all right, we're just gonna go to quick recess while he drafts up
34 everything and then we'll come back, it will be read into the record and we will vote.

35
36 Dr. Abrams: Thank you Commissioners.

37
38 A recess was called at 12:41 p.m., and the meeting was reconvened at 12:47 p.m.

39
40 Mr. Carnicelli: Maui Planning Commission of June 25, 2019 is back in session. So do we have
41 any more friendly amendments to the main motion? Seeing none, I think maybe at this point in
42 time we'll go ahead and have the Deputy Director, I don't think you need to read verbatim all of
43 that but just like maybe the changes and just sort of...so we get a...so we know what we're
44 voting on.

45

- 1 Mr. Hart: Thank you, Chair. So Item Number 1 is amended, Condition Number 1 is amended to
2 establish the day...the duration of the permit to be 365 days and that time period would begin
3 after the issuance of the Certificate of Occupancy for church buildings.
4
- 5 Mr. Carnicelli: Got it.
6
- 7 Mr. Hart: Condition—
8
- 9 Mr. Carnicelli: Conditions 2 and 3 stay—
10
- 11 Mr. Hart: Are unchanged.
12
- 13 Mr. Carnicelli: Okay.
14
- 15 Mr. Hart: Condition 4 is that all church and religious activities shall occur between the hours of
16 8:00 a.m. and 9:00 p.m. Any amplification of sound or music at an event shall not exceed
17 established standards by the State Department of Health for the Ag District with the exception
18 that...excuse me...
19
- 20 Mr. Carnicelli: Ag District period.
21
- 22 Mr. Hart: Well, I need to revisit the New Year's Eve item.
23
- 24 Mr. Robinson: Yeah.
25
- 26 Mr. Hart: With the exception that New Year's Eve shall comply with—
27
- 28 Mr. Robinson: County Code.
29
- 30 Mr. Hart: County Code. Okay, Number 5, events less than 25 people will not be regulated.
31 Events of more than 25 people shall not occur more than...more frequently than 24 times per
32 year in addition to a New Year's celebration. Events held shall not exceed the building
33 occupancy established by the Maui Fire Department.
34
- 35 Let's see, Number 6, was basically subject to periodic...unchanged. Number 7, is unchanged.
36 Number 8, is unchanged. Number 9, is unchanged.
37
- 38 Number 10 is the addition that a Certificate of Occupancy for church structures shall be
39 obtained before the initiation of operation.
40
- 41 Number 11 is that a minimum 72-hour notice to neighbors for events greater than 25 people will
42 provided via website available to the public and maintained as current and readily accessible.
43
- 44 And Item Number 12...oh, excuse me, no events on Sunday except for Easter or New Years.
45
- 46 Mr. Carnicelli: Lew you're okay with that?

1
2 Dr. Abrams: Yeah it's really...and it's something we can live that.

3
4 Mr. Carnicelli: Let the record reflect he said that's something we can live with. You didn't talk
5 into the mic.

6
7 Dr. Abrams: Oh, it's something we can live with and I just wanted to revisit the issue about
8 being able to have a small gift shop for our community of people when they come. Yeah, it's a
9 book store that was mentioned in our first presentation. I just...I think we did include that.

10
11 Mr. Hart: Chair if I may address the way permits are approved. Basically there's a condition
12 relates to the representations that were made so what that means is the materials that you
13 submitted and the statements that you made are your authorization and the conditions are your
14 limitations. So what is documented or discussed today is specifically what you're not going to
15 be permitted to do of the things that you requested permission for.

16
17 Dr. Abrams: I see.

18
19 Ms. Pali: So in other words we didn't address that in our conditions.

20
21 Mr. Hart: The point of clarification Chair, if there's a question about whether or not the
22 Commission limited the use of the gift shop, the Commission has not so far limited the use of a
23 gift shop.

24
25 Ms. Pali: Okay.

26
27 Ms. Furukawa: It was just brought up as an amendment to the scope of the permit at the last
28 meeting, but nothing was ever acted on.

29
30 Mr. Hart: Point of clarification it was...thank you very much, it was, it was presented to the
31 Commission and established as something that the applicant wanted to conduct on site.

32
33 Ms. Furukawa: Yes.

34
35 Mr. Hart: Thank you.

36
37 Mr. Carnicelli: Is there anybody that would like to address that? No. Okay so we have a
38 motion on the on the floor now. Who would like to speak to the motion? For or against, in
39 support? No, we're all good? So okay...Ms. La Costa.

40
41 Ms. La Costa: Thank you Chair. I am going to speak in opposition to this motion. I have seen
42 too many things that are contradictory. I have heard too many things that are contradictory. I
43 have had...many times I have read this three times and looked at the position of the neighbors
44 and as with the prior case it is not what you want, but it's what is best for the neighborhood and
45 people who have lived there for a long time and also spent a lot of money there. So I am...while
46 the amendment was made for a one-year review, on the whole I just cannot support this.

1
2 Mr. Carnicelli: Thank you. Would anybody else like to speak to the motion? Seeing none, all
3 those in favor of the motion as read into the record by the Deputy Director please raise your
4 hand. That is two ayes. Those opposed? That is four. Motion fails.

5
6 **It was moved by Mr. Robinson, seconded by Mr. Thompson, and**

7
8 **The Motion to Approve the State Land Use Special Permit, FAILED.**

9
10 **(Assenting – K. Robinson, D. Thompson)**
11 **(Dissenting - K. Pali, C. Tackett, S. Castro, P. D. La Costa)**
12 **(Excused – T. Gomes)**

13
14
15 Mr. Carnicelli: So we now need another motion on the floor please. We have two options, we
16 have denial or deferral I guess at this point.

17
18 Ms. La Costa: I would like to make a motion to deny the permit as presented to this
19 Commission.

20
21 Mr. Carnicelli: We have a motion to deny by Ms. La Costa. Seconded by
22 Commissioner Tackett.

23
24
25 **A Motion was made by Ms. La Costa and seconded by Mr. Tackett to Deny the State Land**
26 **Use Permit.**

27
28
29 Dr. Abrams: Is it possible to—

30
31 Mr. Ickovitz: Am I allowed to speak for two minutes.

32
33 Mr. Carnicelli: Sure if you would like two minutes I will give you two minutes.

34
35 Dr. Abrams: Thank you.

36
37 Mr. Ickovitz: Okay. I would like to remind this Commission...

38
39 Unidentified Speaker: Use the mic.

40
41 Mr. Ickovitz: I would like to remind...my name is Leslie Ickovitz, I'm an attorney representing
42 Ahimsa, I would like to remind the Commission that the First Amendment and the RLUIPA
43 requires the government not to impose a substantial burden on the practice of a religion and to
44 deny a permit in a situation where the record is clear that the Mr. ...Dr. Abrams and his wife
45 have complied, there have not been anything in the record since 2016, they have a right to have
46 a church on their property and we do not want to get into litigation with the Commission, but we

1 do know that the Hale O Kaula case cost the Maui County over \$600,000 in legal fees in a case
2 that was far less obvious as far as deserving a SUP than this one.

3
4 We have neighbors who ignored the right to intervene, they ignored the time limits, they
5 submit...I exaggerated, there weren't 200 pages, there were 125 pages of exhibits most of
6 which really haven't even looked at because you didn't print them out because they're
7 meaningless. So you're saying the two neighbors, one of which lives over a quarter mile away,
8 the other one lives 1,100 feet away have a right to deny these two people who treat the earth as
9 a sacred obligation. They have been ordained ministers for 20 years. They bought a 25-acre
10 farm to make sure they would not disrupt their neighbors. So tell me what could they possibly
11 do with regard...if you have neighbors don't want a church next door so does that mean they
12 have a right to deny people the right to practice their religion?

13
14 But the one thing you have not looked at is the substantial burden that you are placing on this
15 group of people to deny them their right to practice their religion. The 9:00 p.m. quite frankly is
16 the Sabbath services aren't even going to start to 7:30 or 8:00 until after dinner, 25 people they
17 already 30 people coming on a regular basis. And how do you make planning for...to build a
18 church on a one-year permit? No business can do that. But the bottom line is one thing you're
19 not looking at and you have not discussed is the substantial burden that you're placing on this
20 group of spiritual dedicated people to practice their religion and the First Amendment gives them
21 the right, RLUIPA gives them the right. So you can, you know, Dr. Abrams is agreeable to
22 restrictions which quite frankly I don't think he has to be, but he is, and one year gives you the
23 ability to give him that opportunity to...just give him the opportunity, but to deny him a chance
24 just because two neighbors make up stuff, they exaggerate and say stuff that to inflame this
25 Commission.

26
27 Give me a chance before you vote, let me cross-examine those neighbors about what they
28 submitted. They wrote you letters, they lied in those letters. They submitted things that
29 irrelevant, inappropriate. Give me an opportunity...if you're relying on those neighbors to deny
30 this permit, give me a chance to cross examine those neighbors, that's the least I...Dr. Abrams
31 should be entitled. We have spent millions of dollars on this project, years working on this,
32 we...you've seen him go to the neighbors and try to be accommodating. So just to say the
33 neighbors are the most important, actually the First Amendment is critical here and RLUIPA is
34 critical here and I think you're ignoring that and unless you address that and say how this is not
35 burdening this group of people from practicing religion you're just...you're violating the First
36 Amendment. That's all I have to say.

37
38 Mr. Carnicelli: Thank you Leslie. Corporation Counsel.

39
40 Mr. Galazin: Just so the members are aware that the applicant does not have a right to have a
41 church on his property. And so the applicant is aware, the government can pose a substantial
42 burden on the exercise of his religious observance. The government is not precluded from
43 doing that, have to have a compelling interest, but there's no right to go ahead and conduct this
44 activity. There's a Special Use Permit that needs to be obtained. Sir, no. So if you have
45 questions about your legal duties and responsibilities under that I'm more than happy to go into
46 executive session discuss it in more detail. But I'm the one advising you, not him. Thank you.

1 Mr. Ickovitz: Right and the only...and the restrictions that the government can apply has to
2 be...there has to be a compelling governmental interest to deny this permit. And what is that
3 compelling...and the restrictions that you impose on it have to be the least restrictive means to
4 achieve that compelling governmental interest.

5
6 Mr. Carnicelli: Thank you—

7
8 Mr. Ickovitz: So tell me what is the compelling governmental interest to deny this permit?

9
10 Mr. Carnicelli: Thank you. So I believe we have a motion to deny and a second. Discussion on
11 the motion? Go ahead Commissioner Tackett. Thank you.

12
13 Mr. Tackett: So I'll speak to my second. What I see here is I'm in favor of what you're doing. I
14 think a lot of people here are in favor of what you're doing, I think a lot of what the earth needs
15 is what you're talking about doing. But other people bought properties in that area not to be
16 next to a church and other people have already represented that the things that you have been
17 doing today that are similar to what you're talking about doing in the future have already
18 adversely affected their lives and that's why I'm not for it. It's not the theory, it's not the basis of
19 what you guys are doing that I'm against, it's the fact that other people have the right to enjoy
20 their properties the same why you have the right to enjoy the property and if they did a business
21 that impacted your property and you weren't doing a business that impacts their property I
22 would protect you the same way. So that's, that's why I'm not in favor of it.

23
24 Dr. Abrams: Can I respond?

25
26 Mr. Carnicelli: Thank you Commissioner Tackett.

27
28 Dr. Abrams: I wonder is it possible to adjust the conditions--

29
30 Mr. Carnicelli: Lew, no. Lew, no, Lew...

31
32 Dr. Abrams: --to make it more acceptable—

33
34 Mr. Carnicelli: No, Lew is that, that's already done. We have a different motion on the floor and
35 when there's a motion on the floor basically it's just for us commissioners to speak to that
36 motion. So right now we have Kellie Pali has the floor to speak to the motion to deny.

37
38 Ms. Pali: Yeah, I think there's a lot of different ways people can go about living out their dreams
39 the way they choose to. There's a lot of buyers that will go and say my life's work is this so
40 before they even put contract to a paper and pen and make offers on properties they say
41 sometimes do what they call buyer's due diligence and they go ahead and scope out. If this is
42 my five-year plan, ten-year plan let me make sure that I get a property where it might be a good
43 future plan to have church type commercial activities on the property and maybe you didn't get a
44 chance to do that, but you had the right just like any other buyer and there are other properties
45 that you could potentially look to continue your life's work.

46

1 I'm just not particularly comfortable like P. Denise, Commissioner P. Denise. There's been a lot
2 of different numbers thrown around with...first we were talking about you know less than
3 20 people and now we're talking about 30, 40 people and now we're talking about certain days
4 and now we're talking about almost daily and just the inconsistencies in the information has
5 been difficult for me. Like I mentioned earlier I want to find a happy medium but I think in the
6 end if there are neighbors that feel like there is safety concerns with the type...the driveway and
7 the turn, if there's traffic pollution, I do so appreciate that you tried to mitigate some of the areas
8 like I was very impressed with you saying you went and put like built up this bank for the lights
9 like that really does to me that speaks more than all these words that you had done those
10 things.

11
12 And so, but unfortunately when it comes down to the safety, the number of traffic and then the
13 noise is a big one for me because I'm just thinking like I'm at home I have a little Chihuahua and
14 my daughters and if I heard someone's drums and I just had to tolerate it that used to not be
15 there I could be bitter, I could be bitter about that. And so just respecting other people's wishes
16 and if they didn't buy into the property with the drums already there I don't know that that's fair
17 to impose that on them either. So we were just trying to create conditions that could give you
18 what you want and also compromise with the neighbors, but it seems like you still might have
19 restrictions and so after listening to everything I am comfortable with supporting the denial at
20 this time.

21
22 Mr. Carnicelli: Corporation Counsel.

23
24 Mr. Galazin: Thank you Chair. So for the movant and to anyone who would speak to the
25 motion I would point you to Pages 10 and 11 on your initial staff report and that contains the
26 conditions for granting a special use permit, State Special Use Permit under HRS 205-6 and
27 there are criteria that must be met. A is that the use shall not be contrary to the objectives
28 sought to be accomplished by Chapter 205 and 205A and the rules of the Land Use
29 Commission. B, the desired use will not adversely affect surrounding property. C, the use
30 would not unreasonably burden public agencies to provide roads and streets, sewers, water,
31 drainage, and school improvements. D, unusual conditions, trends and needs have arisen
32 since the district boundaries and rules were established. And E, the land upon which the
33 proposed use is sought is unsuited for the uses permitted within the district. So if you look at
34 those five things, if you think there are...if there's evidence that's been put into the record that
35 one more of these criteria are not met I would ask you please specify which one and provide
36 what evidence is backing that up. Thank you.

37
38 Mr. Carnicelli: Thank you Corporation Counsel. Commissioner Robinson.

39
40 Mr. Robinson: Chair, I make a...I'd like to make a motion to go into executive session before
41 we vote on this.

42
43 Mr. Carnicelli: We have a motion to go into executive session.

44
45 Mr. Castro: Second.

46

1 Mr. Carnicelli: Seconded by Commissioner Castro. Any discussion on the motion? By the way,
2 this is to discuss legal rights and responsibilities of the commission with Corporation Counsel.
3 All those in favor of the motion? Unanimous six. We're going to go into executive session.
4 This meeting is in recess.

5

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

7

8 **VOTED: To Go Into Executive Session.**

9

10 **(Assenting – K. Robinson, S. Castro, D. Thompson, K. Pali,**

11 **C. Tackett, P. D. La Costa)**

12 **(Excused – T. Gomes)**

13

14 *(The Planning Commission recessed the regular meeting at approximately 1:03 p.m. to enter into Executive Session*
15 *and adjourned at 1:49 p.m. The Planning Commission reconvened the regular meeting at approximately 1:57 p.m.)*

16

17

18 Mr. Carnicelli: The Maui Planning Commission meeting of June 25, 2019 is back in session.
19 Thank you everybody for being patient with us and allowing us to consult with our attorney. So
20 to go where we left off there is a motion on the floor to deny the permit. Ms. La Costa would you
21 like to speak to that motion.

22

23 Ms. La Costa: At this juncture I would like to rescind my motion to—

24

25 Ms. Pali: Deny.

26

27 Ms. La Costa: Thank you, deny. It's the blond you know.

28

29 Mr. Carnicelli: And Commissioner Tackett do you withdraw your second?

30

31 Mr. Tackett: I withdrawn my second.

32

33 Mr. Carnicelli: Okay, thank you. So where we are right now is Director McLean—

34

35 Ms. McLean: Yes?

36

37 Mr. Carnicelli: If you could speak to the Land Use Commission.

38

39 Ms. McLean: If the Commission is not going to take action today then Staff will follow up with
40 the State Land Use Commission on any questions relating to the acreage that is subject to this
41 application to determine whether it does fall within County authority or whether the State Land
42 Use Commission believe its within their authority.

43

44 Mr. Carnicelli: Okay, thank you. Leslie.

45

46 Mr. Ickovitz: Yes.

47

1 Mr. Carnicelli: If you would please come forward?
2
3 Mr. Ickovitz: Yes sir.
4
5 Mr. Carnicelli: So do you have exactly who you would like to cross examine?
6
7 Mr. Ickovitz: Sure Michelle Drewyer and Jerome Labat.
8
9 Mr. Carnicelli: Okay, those two people specifically?
10
11 Mr. Ickovitz: Yes.
12
13 Mr. Carnicelli: Okay.
14
15 Mr. Ickovitz: Those are the ones who submitted information to this...that we'd like to challenge
16 before you would accept it.
17
18 Mr. Carnicelli: Are either of those people present?
19
20 Mr. Ickovitz: Yeah, they both are.
21
22 Mr. Carnicelli: They both are.
23
24 Mr. Robinson: Chair could I?
25
26 Mr. Carnicelli: Commissioner Robinson.
27
28 Mr. Robinson: Chair, I think, I think if somebody was to come in and to do testimony and not be
29 in planning for it, I think that might be not fair to them. I suggest with what we hear from the
30 Director about LUC, if us not really being 100 percent clear that we should hear this case and
31 with the applicant's attorney asking for requests maybe he could request for those people to
32 come at a later date to be cross examined to give them time to prepare as well as giving us time
33 to hear from the LUC. Thank you Chair.
34
35 Mr. Carnicelli: Thank you. So, I guess, Carolyn do we have the schedule as far as if we were to
36 defer and/or recess this when we could next put it on the agenda?
37
38 Ms. McLean: Here's the memo in the packet.
39
40 Mr. Carnicelli: So I do have a question for the two people that have been named that are here
41 in attendance. Mr. Labat if you could come forward? This is kind of out of nowhere. He's
42 asking to cross examine you, you do not have to do that today if you're not prepared to, you
43 don't want to, you don't have to. If you...if you're okay with it, then you know we could
44 potentially allow that. But there's literally, you do not have to do this. This is just like you know,
45 coming out of nowhere toward you so...and I want to be fair to you to be able to be you know,
46 know that something like this is coming not just like being like oh hey, I got an attorney that

1 wants to cross examine you, you know out of nowhere. So, but if you're okay with it then we
2 could do that today, and if not, it's there's no pressure literally.

3
4 Mr. Jerome Labat: I would like to prepare.

5
6 Mr. Carnicelli: Okay, fair enough. Thank you. I appreciate your honesty. Then I don't even
7 need to ask you since we're already going to do that, but you can come forward and say what
8 you'd like to. You can speak to this if you care to.

9
10 Ms. Michelle Drewyer: Hello everyone. My name is Michelle Drewyer. I agree with Mr. Labat,
11 I'd like to prepare. I have prepared but I didn't prepare to testify.

12
13 Mr. Carnicelli: Agree. I totally understand so thank you.

14
15 Ms. Drewyer: Thank you.

16
17 Mr. Carnicelli: Yeah, I appreciate it.

18
19 Ms. Drewyer: And I also would appreciate, I also do appreciate that you're looking into the
20 issue of the LUC, what I've read(inaudible)...but thank you.

21
22 Mr. Carnicelli: Okay, thank you. So at this point I think without objection we can go ahead and
23 or Corporation Counsel we will let you speak.

24
25 Mr. Galazin: Thank you Chair. So Dr. Abrams, I would suggest that pending whatever action
26 the Commission decides to take if this...if any action is somehow continued or goes onto
27 another date you know, you have the people here whom your attorney has requested to cross
28 examine you can certainly request that they be here and submit to that. You know, if it's a
29 request they don't obligated to so I would, I would just urge you if you want to submit something
30 in writing that also speaks in rebuttal to it as you another course to just to make sure that that's
31 covered so you don't feel as though you've been denied any opportunities. Just want to make
32 sure you're...

33
34 Dr. Abrams:(inaudible-not speaking into a mic)...another course?

35
36 Mr. Galazin: If they don't come to be cross examined, but you still want to submit something
37 that says here's why I think they were wrong that would be the time to submit something. You
38 can't say once they don't show up, oh well I want to submit something else in writing. You've
39 only got one shot.

40
41 Dr. Abrams: Okay.

42
43 Mr. Galazin: Okay, thank you.

44
45 Mr. Carnicelli: So at this point in time I think we'll go ahead and entertain a motion to recess this
46 item, do we have a date that might work?

1
2 Ms. Takayama-Corden: July 9th ...(inaudible)...

3
4 Mr. Carnicelli: Right. You want to put it on July 9th?
5
6 Ms. Takayama-Corden: Or July 25th.
7
8 Mr. Carnicelli: Oh, it's already been publicly noticed, right? July 9th.
9
10 Mr. Robinson: That's too soon.
11
12 Mr. Carnicelli: Let's do the second meeting in July then. Is there room on that agenda? One
13 public hearing item.
14
15 Ms. McLean: Commissioners in your packet is the memo that lists the items that are currently
16 slated for July 9th, that's Old Business, the Lahaina Cannery, the PenaVega short-term rental
17 home and the New Business, a Public Hearing for a Special Use Permit for a bed and breakfast.
18 This shouldn't make a difference but I will not be here on July 23rd, I will be here on July 9th so
19 Jordan can see you through if you choose to do it. I think it could fit on either agenda. It's really
20 up to the commission if you want to see it at the next meeting or give more time.
21
22 Mr. Carnicelli: Are you gonna be gone?
23
24 Mr. Robinson: I don't know.
25
26 Mr. Carnicelli: You gotta see.
27
28 Mr. Robinson: Up to you.
29
30 Ms. La Costa: I'm here until September.
31
32 Mr. Carnicelli: Do either of those dates work for the two of you?
33
34 Ms. Drewyer: I am here...(inaudible-not speaking in a mic)...

35
36 Mr. Robinson: How about August? I'm open in August too Chair.
37
38 Mr. Carnicelli: Okay. Yeah, if—
39
40 Ms. Furukawa: I'm a little worried that the Land Use Commission may not be able to get back to
41 us within a week.
42
43 Mr. Carnicelli: Agreed.
44
45 Ms. McLean: No, I...I think we can.
46

1 Mr. Carnicelli: Maybe. You can do the 23rd, but she cannot.

2

3 Ms. Drewyer: ...(inaudible-not speaking into a mic)...

4

5 Mr. Carnicelli: Okay, actually would you guys step to the mic just so we can get this on the
6 record? Thank you.

7

8 Mr. Labat: I am going to be here on the 23rd.

9

10 Mr. Carnicelli: You will be here on July 23rd. July 21st I am here with my family.

11

12 Ms. Drewyer: And I arrive back into Maui the evening of the 23rd.

13

14 Mr. Carnicelli: So July 23rd isn't going to work. How about the second week in August, second
15 Tuesday in August, 13th.

16

17 Ms. Drewyer: I'm here. Make that work.

18

19 Mr. Labat: I'm okay. I'll make it work.

20

21 Mr. Carnicelli: Okay, Lew? August 13th work for you?

22

23 Dr. Abrams: I guess so.

24

25 Mr. Carnicelli: Okay, so I guess we'll entertain a motion to continue the hearing on
26 August 13, 2019.

27

28 Mr. Galazin: at 9:00 a.m.

29

30 Mr. Robinson: So move.

31

32 Mr. Carnicelli: At 9:00 a.m.

33

34 Mr. Robinson: So moved by Commissioner Robinson.

35

36 Ms. La Costa: Second.

37

38 Mr. Carnicelli: Seconded by Commissioner La Costa. Any discussion on the motion?

39

40 Mr. Robinson: I just encourage the applicant to not wait to the 13th to reach out and try to
41 kumbaya everything.

42

43 Dr. Abrams: I will.

44

45 Mr. Robinson: Thank you.

46

1 Mr. Carnicelli: Okay.
2

3 Mr. Galazin: And Chair, and again, thank you. I would just reiterate you know make sure that
4 everything that you want to bring to the table, you know this hearing is continued so we can't
5 accept more evidence from you and I guess that's it. Thanks
6

7 Mr. Carnicelli: Okay, all in favor of the motion please raise your hand. That is six ayes,
8 unanimous. So this is continued till August 13th. We will see you all then.
9

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

11
12 **VOTED: To Continue the Matter to the August 13, 2019 agenda at 9:00 a.m.**

13
14 **(Assenting – K. Robinson, P. D. La Costa, K. Pali, D. Thompson,**
15 **C. Tackett, S. Castro)**

16 **(Excused – T. Gomes)**
17

18 Mr. Carnicelli: Thank you for your patience and time in the planning process. I gotta find
19 my...so I guess we're off to E, Item E. Deputy Director. Let the record show that Director
20 McLean is now here.
21

22

23 **E. DIRECTOR'S REPORT**

24

25 **1. Reports from Commissioners who attended the June 7, 2019 Native**
26 **Hawaiian Law Training on Oahu.**
27

28 Ms. McLean: Thank you Chair we're under Director's Report. The first item is reports from
29 Commissioners who attended the June 7, 2019 Native Hawaiian Law Training on Oahu. Were
30 there any Commissioners here who attended that training and are able to give a report?
31

32

32 Mr. Carnicelli: Go, go ahead.
33

34

34 Ms. La Costa: The day was incredibly informative. Riparian water rights and all of the
35 Hawaiian, see I'm hungry, I'm sorry, all of the Hawaiian spiritual applications that go with that I
36 got a very in-depth education on. Also about the iwi kupuna and how that is handled in the
37 many places here on Maui where they have been desecrated and not handled properly and how
38 that actually should happen and the commission that overlooks that. So those were the two
39 biggest things that I took away. That and a six dollar ticket.
40

41

41 Mr. Carnicelli: I also attended the training class and I thought it to be extremely fascinating
42 because Hawaii is unique like no other place. Like we have certain protocols, laws, just things
43 that need to happen and don't happen that are just solely unique to Hawaii. All the way like you
44 say from water, title and iwi kupuna. So that's news, the part that was really interesting, it was a
45 lot of information, and I think as more people get educated on that it will be easier to process.
46 So that was my takeaway.
47

47

1 **2. SMA Minor Permit Report**

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

4
5 **3. SMA Exemptions Report**

6
7 **This is for notification and review purposes. No action is anticipated.**

8
9 Ms. McLean: The next items are the SMA Minor and Exemptions Report. Those are in your
10 packets. Are there any items the Commissioners have questions?

11
12 Mr. Robinson: Chair I have question on one.

13
14 Mr. Carnicelli: Commissioner Robinson.

15
16 Mr. Robinson: I have a question on the...is that escarpment at Maalaea? I see Wailuku on the
17 install a erosion blanket. It's in the middle.

18
19 Ms. McLean: I do not know the location of this. The project is Hono Kai. I'm not familiar with
20 that. I can follow up and get up to you.

21
22 Mr. Robinson: Some photos and if we have erosion down in Maalaea that's a concern.

23
24 Ms. McLean: Okay. I'll find out the location.

25
26 Mr. Robinson: Thank you Director.

27
28 Ms. La Costa: That's Maalaea, yeah.

29
30 Mr. Robinson: Yeah.

31
32 Ms. La Costa: And it just says Wailuku because that's the area that –

33
34 Mr. Carnicelli: Speak into the mic.

35
36 Ms. La Costa: --post office and their phone numbers...(inaudible)... Yeah, Hono Kai is
37 Maalaea.

38
39 Mr. Carnicelli: Okay.

40
41 Ms. McLean: Any other questions?

42 **4. Discussion of Future Maui Planning Commission Agendas**

43 **a. July 9, 2019 agenda items**

44
45
46

1 Ms. McLean: Next, again we have the memo with the items scheduled for July 9th. Two items
2 of Unfinished Business and one new Public Hearing. Any questions on those items or any
3 future agendas?

4
5 Mr. Carnicelli: Nope. I guess that's it. Oh, our next regular meeting will be July 9, 2019 and
6 unless anybody has anything else we will adjourn. Commissioner Pali.

7
8 Ms. Pali: Congratulations on your first day.

9
10 Mr. Carnicelli: Yes. Still breathing and you didn't even get lunch. Anyways, the Maui Planning
11 Commission meeting of June 25, 2019 is now adjourned.

12

13 **F. NEXT REGULAR MEETING DATE: JULY 9, 2019**

14

15 **G. ADJOURNMENT**

16

17 The meeting was adjourned at 2:12 P.M.

18

19 Respectfully Submitted by,

20

21 CAROLYN TAKAYAMA-CORDEN

22

23 Secretary to Boards and Commissions II

24

25

26 **RECORD OF ATTENDANCE**

27 **Present**

28 Lawrence Carnicelli, Chair

29 Stephen Castro

30 P Denise La Costa

31 Kellie Pali

32 Keaka Robinson

33 Christian Tackett, Vice Chair

34 Dale Thompson

35

36 **Excused**

37 Tina Gomes

38

39 **Others**

40 Michele McLean, Director, Department of Planning (in attendance at 1:15 p.m.)

41 Jordan Hart, Deputy Director, Department of Planning (in attendance 9:00 a.m. – 1:50 p.m.)

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