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**MAUI PLANNING COMMISSION
REGULAR MINUTES
JUNE 26, 2018**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Keaka Robinson at approximately 9:02 a.m., Tuesday, June 26, 2018, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

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

Mr. Robinson: Welcome to June 26th Maui Planning Commission. Our Commissioners here are Commissioner Larry Hudson, Commissioner Alalani Kahu Hill. Commissioner Lawrence Carnicelli.

Mr. Carnicelli: Good morning Chair.

Mr. Robinson: Commissioner P. Denise La Costa.

Ms. La Costa: Aloha Chair.

Mr. Robinson: Commissioner Stephen Castro.

Mr. Castro: Good morning Chair.

Mr. Robinson: Commissioner Christian Tackett.

Mr. Tackett: Good morning Chair.

Mr. Robinson: Good morning. We have the Planning Director as well as our Corporation Counsel, David.

Mr. Spence: Good morning Mr. Chairman.

Mr. Robinson: Seeing that there are a few of us here today I'd like to inform you guys that we do have signup sheet for public testimony. It's right here in the front by the white board. If you're gonna testify please write your name and maybe put initials of what agenda item you'd like to speak about.

Mr. Carnicelli: Each agenda item has a separate—

Mr. Robinson: I'm sorry Lawrence.

Mr. Carnicelli: Each agenda item has a separate signup sheet. Okay. Oh good, we have that now. So I encourage you to please if you're gonna testify to please do that ahead of time to help save us some time. It will be a full day. First on the agenda, Director.

Mr. Spence: Good morning Commissioners. First item on your agenda is the discussion of the powers and duties of the Maui Planning Commission. This was deferred from the June 12, 2018 meeting and I believe Corporation Counsel is going to lead the discussion.

1
2 **B. PUBLIC TESTIMONY** - Public testimony will be taken when each agenda item is
3 discussed. **Testimony will be limited to a maximum of three (3) minutes.**

4
5 **C. Discussion on the Powers and Duties of the Maui Planning Commission** (Deferred
6 from the June 12, 2018 meeting)

7
8 Mr. David Galazin: Yes, thank you Chair. So Members what I'm hoping to do today, I don't
9 have any slides, I don't have any power points, I don't have any handouts for you. What I want
10 to try to do is have more of a just a frank, open discussion and I'm gonna kind of start it out,
11 cover a few areas that I want to cover and then I'll let the Chair decide and direct the
12 conversation from there, but I really do want this to be a conversation to make sure that
13 everybody understands both for your sake, for the Planning Department's sake, for the
14 members of the public, for future applicants. I think there's been some confusion lately about
15 who exactly is doing what in what types of roles and what types of situation so that's how I'm
16 gonna kind of pitch this.

17
18 I wanted to start out just by pointing the fact that as far as board and commissions go, the
19 planning commissions themselves, and the Maui Planning Commission being one of them, are
20 very unique in that by Charter you are technically a part of the Planning Department. You're
21 housed with the Department. Most of the commissions are created by ordinance. They're sort
22 of separate independent bodies. You work in tandem with the Planning Department more often
23 than not and what that means is the Planning Staff, the Director or the Deputy Director will
24 almost always be here during your meetings to help and that the staffers, the Planning staffers
25 when they come and give their various reports they are doing so as a favor to you.

26
27 I know that there can be...there's a lot of work that goes into the various types of permits and
28 planning reports. By Code most everything you make a decision on and you know I'll leave
29 aside the advisory portion of what you do for the moment. I just want to talk about first about
30 the adjudicatory functions that you possess because the advisory positions, the advisory powers
31 you possess I think are less convoluted and easier for you to understand, but as far as the
32 adjudicatory functions that's really where I want to hone in because I think that's what's most
33 important.

34
35 So by ordinance most every permit or approval that's gonna come before you in which you have
36 to have a hearing and if somebody's rights, duties and privileges are to be given pursuant to a
37 public hearing that means it's a contested case whether or not anyone is actually contesting it
38 from a practical standpoint. So in that case you are all sitting in the function of judges basically
39 and like any judge you have an obligation to understand what the relevant law is before you,
40 understand that you are applying a certain set of facts to those laws and then you've got to be
41 able to apply those facts to the law in the correct way. Another thing too that you cannot do is
42 presume facts that aren't in evidence. That's one big thing. So like I said, we're housed within
43 the Department which makes it, which makes it somewhat unique. And the Planning
44 Department when they go through and they do their staff analysis they go through a lot of
45 technical stuff that you would never, ever, I would never ever want to go through. Some of the
46 things I will point out and I'll try and use some of the examples that you've gone through lately
47 just so we can get our heads around here what we're talking about.

1 Step Develop Approvals, I know that you have the ability, you have the authority to approve
2 them, you also have the ability to waive them and have the technical staff approve them.
3 Recently you guys wanted to look through them and just to make sure for your own piece of
4 mind that everything was put together and that's within your power to do so, but you saw what
5 kind of volume of documentation that involves. And so it is within your authority to do that, but
6 you also have to recognize that you have a bunch professional staff to support you who can do
7 that for you and make a recommendation and you can rely on their expertise or if you have
8 certain questions you have the authority and you have the absolute right to ask that you look at
9 all that stuff yourself. You just need to understand what it is that you're asking for.

10
11 When it comes to short-term rental homes that's something that you see a lot and it's something
12 that generates a lot of interest both I know from the Commissioners as well as members of the
13 public, as well as the County Council because I go up there and I staff you know the County
14 Council committees and the Council Members are interested in short-term rentals, illegals
15 versus legals and one thing I will say is that to the extent that the County Council has decided
16 there should be a set number, a set cap, a limit of short-term rental home permits that means to
17 some extent the County Council has decided, made a legislative decision, they're elected by the
18 voters that okay, we believe that short-term rental homes are a thing, it should be allowed, they
19 shouldn't be so concentrated in any one area so by area they've said, all right well, there's a
20 maximum number and when applications reach 90 percent of that number then the Planning
21 Department has to go tell the Council, hey look we're at 90 percent we're not accepting any
22 more applications for the moment. Some of them are going to be approved administratively
23 usually the ones that first come in...but by this point because the law's been around for long
24 enough almost all the applications are going to be close enough to one or more existing short-
25 term rentals that more than likely you're gonna see the majority of them that come through.

26
27 And you know, I will just go through and I'm just looking through 19.65 right now and when it
28 comes to what your role is it's really only in one subsection of 19.65.030, that's subsection N,
29 and you'll see this in every staff report, but it's really important that to just kind of...I want to
30 pursue it out a little bit if I can because it says that short-term rental homes shall conform to the
31 character of the existing neighborhood in which they are situated and that prior to issuing a
32 permit the Department or the applicable planning commission, and in most cases the applicable
33 planning commission means you, all of you together as a body not any one person's personal
34 opinion but jointly as a body you shall consider the following so that means you have to do
35 something and what you have to do is consider certain items but it doesn't mean that if you look
36 at one of these things it mandates you to make a decision one way or the other. It just means
37 you have to consider these things. So that's why in every staff report the Planning Staff is going
38 to extent practicable address all of those items. So the first is going to be you know whether it's
39 existing land use entitlements, applicable community plan, community input, potential adverse
40 impacts, number of short-term rental homes surrounding the property, number and substance of
41 protests, existing or past complaints about rental operations on the property, and existing or
42 past noncompliance with government requirements and that there be cooperation by the
43 applicant to become compliant.

44
45 Now there's a number of things in there that you can look at. If you look at Number 3, the
46 applicable community plan. You are supposed to consider the community plan. The community
47 plan is a guidance document. It tells you basically when the Planning Department is zoning,
48 when the Council is zoning, how should they zone properties. They should zone properties in

1 accordance with the community plan because that's developed by the community and then
2 when you drill down to the lowest level, zoning level, that's where zoning should follow to the
3 extent possible the community plan. If the community plan says you can do commercial here
4 but should be you know B-CT, should it be, you know Light Industrial, whatever those kinds of
5 permutations are, but if you are going to consider the community plan you consider what it says
6 and to out, you know outside of the SMA area it's clear that in the Leona case you know that the
7 community plan and the SMA context has the force and effect of law but it does not outside of
8 that context. You have to consider it, and if you're going to consider it I'll give you an example
9 you know in Paia, it says that you know, visitor accommodations should be limited to and I'm
10 gonna paraphrase here you know, bed and breakfast type establishments not situated near the
11 shoreline so as to avoid a proliferation of these uses. Okay, there's a lot of squishy language in
12 there so you need to consider that. If there's one street that has four in a row, it's not right on
13 the shoreline, there's three existing short-term rental homes there and there's a fourth one, it's a,
14 you know, the one-bedroom house basically it doesn't really have any interior walls, somebody
15 owns it, is there part of the year, and they want, you know a permit to rent it out the portions of
16 the time of the year that they aren't there. You look at these criteria and Planning Staff is going
17 to go ahead and they're gonna do that analysis. They're gonna provide you with a report, that
18 report is for your information to help you out.

19
20 Now by Code, Planning Staff also has to include a recommendation very rarely the Planning
21 Director will make a decision that for one reason or another they just can't land on a
22 recommendation one way or the other so occasion you will see a no recommendation, but for
23 the most part you'll see a recommendation and the majority of the time the recommendation is
24 going to be recommending approval because Planning Staff is not going to spend the time and
25 effort bringing something before you if it's clearly not meeting half the criteria. And the other
26 important thing too which sometimes gets a little bit lost is that, A, the applicant has the burden
27 of showing that all these criteria are met, and B, all these criteria must be met. So if you find
28 that any one of these, if you know the number and substance of protests if you think that that's
29 not met with the evidence that's presented before you then you know it's incumbent upon the
30 applicant to show that. If you don't find that as a body and you can point to that and there's
31 evidence in the record to support that then that's a basis for denial.

32
33 However, you gotta consider what it says, the number and substance of protest so to put that
34 into a little bit of perspective if you say you've got a small cul de sac neighborhood and there's
35 16 homes in there, five of them are already permitted rentals or either B&B or short-term rental
36 home permit and you get two letters from people who own homes there and the substance of
37 their complaint letters are well, we don't like short-term rental homes. You've gotta consider
38 what the substance of the complaint is. If the substance is, hey look, you know we've got
39 already six of these in this area and the volume of cars coming in and out is really not
40 conducive, we have a number of families with small children here and the more visitors coming
41 in and out at odd hours of the night which would be different than a regular family living there
42 that's the substance of a protest which is uniquely different from the substance of somebody
43 saying hey, I just don't like short-term rental homes. There's going to be a lot of people who
44 don't like short-term rental homes. The County Council has decided that this is a thing that
45 should exist.

46
47 Your function is to be a forum, is to be a sounding board for the community and to be the litmus
48 test for the applicant to go ahead and demonstrate that they have met all of these criteria. So if

1 you get two complaints and they are just general in nature you've got to consider, you got to
2 weigh that and you've got to reconsider what that means and your own personal feelings aside
3 as to what you think this is doing to the island, you're all here, you all work in various, you know
4 industries and in various capacities, you know when you're sitting down at this table, you got to
5 realize the County Council has said, okay, we're gonna allow short-term rental homes provided
6 they meet these criteria. Somebody is going to come to you and they're gonna have a packet of
7 information, they're going to say here is why I meet all nine of these things and if you...if they
8 meet that burden to your satisfaction then you grant that permit. If somebody comes in and they
9 want to do short-term rentals and it's you know somebody who they've held the property for
10 generations, it's a family thing, you know it goes back you know hundreds of years that they've
11 been in this spot and they want a permit to go ahead and help them hold onto that property or if
12 you got somebody who comes in, they want to do the exact same use and they're from
13 Nebraska and they bought the property a year ago, you view that through the exact same lens.
14

15 It's important to understand why somebody is coming up to ask for this permit, true because one
16 of things that you want to...one of the things you want to look at is, okay, well there is the
17 existing compliance degree of cooperation by the applicant and that means you know, have
18 they been running illegal operations before, have they been cited for something and have they
19 not been following the law. But if somebody comes in you look at them as a clean slate and in
20 fact, you don't look at them what you are looking at is an application. You are going to have
21 either a person come before you or you're going to have a consultant come before you and
22 they're representing what the land use impacts are and it's super important for the variety of
23 different permits that you look at.
24

25 And so right now I'm just talking about the short-term rental home, but then there's the B&B
26 ordinance and then you're going to look at SMA permits. They all have their different
27 requirements, they all have their different functions, they all have their different impacts and for
28 SMA, I'm gonna jump around a little bit but, you know SMA permits it's presumed that there's
29 going to be some impact to the shoreline area if somebody is coming in for an SMA permit.
30 What you want to do is figure out is okay can these impacts be mitigated by putting in control
31 measures, mitigative factors that are going to, that are going to help not make a situation worse
32 but it doesn't...you really need to divorce the idea of the applicant from the application.
33

34 And other things that you want to make sure too is that Planning Staff is not going to go out and
35 they're not going to drive through the neighborhood and knock on everybody's door and ask,
36 hey how do you feel about this application. They're going to send out notice. It's very clear in
37 the County Code what notice has to be sent out and if it comes to a hearing and the applicant
38 shows up, you receive one letter in the mail and nobody from the neighborhood shows up then
39 that's the number and substance of protests you have from the neighborhood that's what you
40 have to go on and you can't...it's not within your purview to say to the applicant well, I really
41 think...you know I want to hear from more neighbors, I don't know why I didn't hear from more
42 neighbors, but I want you to go out and start knocking on door, I want you to talk these people
43 and figure things out. Now if what you hear is the neighbors don't know what the neighbors
44 don't know what the impact is and they're coming in saying, hey we haven't been involved with
45 this process, we're not sure what impact this is going to have then maybe it's appropriate to say
46 you know what we're not gonna deny it, but maybe we'll defer it and ask the applicant to go out
47 and explain what's going to happen and then come back and see if that makes a difference.
48 But if proper notice has gone out and you know 20 home person shows up or one person sends

1 a letter, you've gotta presume that that's the number and substance, that's one of the criteria.
2 So that means 19 people didn't feel strongly enough to send in a letter that says that they feel
3 it's going to have an adverse impact.

4
5 When we...we you folks make a determination whether or not to grant a permit it's going to
6 come with findings of fact and conclusions of law and a decision and order. Whether you grant
7 it or whether you deny it it's always going to come with that. Now if you grant it the findings of
8 fact, conclusions of law, the Department always requests that what they've drafted up that you
9 folks adopt and 99 times out of 100 I think you folks agree with that. If you are going to deny it
10 what we need to so is the D&O, the Decision and Order which I just kind of wrapped the findings
11 of fact, conclusion of law, decision and order into one thing it is called the D&O. The D&O is
12 something that's prepared by Planning Staff you know with the assistance of my office. And
13 we've gotta go through and we've got to make sure that we understand what facts in evidence
14 you are relying on and how've applied it to the law. And you know whether I'm sitting in this
15 chair advising you as this happens or whether it's, you know somebody else if I'm on vacation, I
16 took one this year so I'll get another a few years down the road I'm sure, but when we go
17 through it's super critical to point to if you're going...especially if you're going to deny the point
18 to which criteria you're looking at, to which point of law and say okay, this is the point of law I'm
19 looking at, here are the facts and evidence and that we've received today and applying these
20 facts to this point of law I see that, you know, my feeling is that they have not met their burden
21 of proof and it's a preponderance of evidence, it's more likely than not. We're not here, you
22 know beyond a shadow of a reasonable doubt, it's just is it more likely than not that you know,
23 they're going to...the community input is not adverse. You know, is it more likely than not that
24 they're not looking to have much more of an impact on traffic than a normal single family home.
25 If you have...whether it's a B&B or whether it's an STRH if you're in a neighborhood and there's
26 no other...there's no other major operations around, let's say there's two within a 500 you know
27 radius, one on one side, you know, 499 feet away, one on the other side 499 feet away and this
28 one's smack dab in the middle. So it has to come before you. But the impact of a short-term
29 rental home or B&B for the most part is it's much more residential in character than other types
30 of accommodations that's why people want to seek them out which is why the County Council
31 decided okay, this is part of our visitor industry that we want to encourage to some extent. We
32 want to put caps on it, we don't want to see it all over the place, we don't...

33
34 Kahu Hill: Just a little spider, it was just a little spider.

35
36 Mr. Galazin: Tell me it was a lady bug.

37
38 Kahu Hill: It was a lady bug, cross dressing lady bug.

39
40 Mr. Galazin: Okay...

41
42 Mr. Robinson: If you see me push away and back up...

43
44 Kahu Hill: Conclusion of fact.

45
46 Mr. Galazin: Alright...thank you for indulging me there 'cause I really don't like spiders. So it's
47 going to be...

48

1 Unidentified Speaker: Snakes.

2

3 Mr. Galazin: Snakes, I'm fine with snakes. So what you're gonna do to help the Department
4 out and to help my office out and to help the applicant out if they choose to appeal the decision
5 that you make you've gotta say this is the evidence that's been put forth and based on the
6 evidence that we've heard today and based on these standards of law I find X and if people
7 agree with you that's fine. You don't all have to agree on the, on the same thing. It's just you all
8 have to be convinced or at least a majority of you have to be convinced that all the criteria are
9 met. So if one Commissioner thinks that one criteria isn't met, another Commissioner thinks
10 another criteria isn't met the whole body isn't convince or the majority isn't convince that the
11 applicant has met all the criteria, but you can put those on there and it's fine to say if you all
12 don't all agree and you probably not always going to all agree which why we have a diverse
13 makeup, which is why we have people who have different opinions and we want people from
14 different backgrounds with this knowledge of areas and that brings up another point I wanted to
15 bring up real briefly.

16

17 Your knowledge of situations, your knowledge of areas, your historical experience, you're
18 cultural expertise that's all...that all is useful. To what extent can you bring that in when you're
19 looking at an application? If you are looking at for example, a special use permit and it's mauka
20 of a beachfront area that you know has been frequented by locals and is traditionally been a site
21 where Native Hawaiians have gathered for years and years this is something that's mauka of
22 that and you happen to know that whatever happens mauka is going to have an impact on the
23 shoreline if it's close enough you can consider that and you can talk about those things. What
24 you cannot do is you cannot say well, I see that there's an application for short-term rental and
25 it's only a couple of miles from my house I'm gonna go drive by and take a look at it. There's
26 case law that says very clearly that is something that you cannot do and that will invalidate any
27 decision that you make. You cannot go out independently evaluate things on your own. If you
28 want to have a site visit that's fine, that's something that you decide during Commission meeting
29 if you want to raise it and say, hey I think you know, I know the area a little bit, it might be helpful
30 if we understood a little bit more about what we're, what we're looking at, maybe we should
31 have a site visit out there or you can form an investigative subcommittee to go out which this
32 body had done before and they can go out and report back.

33

34 When you, when you're listening to the planners give their presentations, the planners are trying
35 to cull through a lot of information for you. As I said, you are as much a part of the Planning
36 Department as the Planning Staff is themselves, but you are an independent body in the fact
37 that you don't have to follow their recommendations. But you should rely on their expertise if
38 they are analyzing something for you because they look through reams and reams of material.
39 So they go through and they will give you what they believe is their analysis to the extent that
40 they have looked at everything. You shouldn't be asking Planning Staff to prove or disprove any
41 fact that's in the report because again, the applicant is the one who is bearing the burden. So if
42 you have questions you can look at the staff report, if you have something you don't understand
43 in the staff report by all means ask the planner to clarify, so you know, I see here on Page 15
44 you said that you talked to you know...you got letters from six neighbors but you say there's
45 only you know five houses within 500 feet so what's the discrepancy? And they say, oh well
46 one's a duplex, I'm sorry we didn't, you know, clarify that. But anything else you really want to
47 be asking questions of the applicant or the applicant's representative if the applicant chooses to
48 have somebody represent him or herself.

1
2 And you also want to be listening to members of the public, all these have public hearings. As I
3 mentioned before, the way in which we conduct our hearings may be changing just a little bit in
4 the future. The tenor is going to be largely the same but the bottom line is that this body, one of
5 the main functions that you have, one of the main reasons for your existence here is to allow
6 people to come out and give their opinions and let you know, give you the community sentiment
7 because they...they are people who are living out there who are going to be feeling the impacts
8 of what's happening. They can drive by and look at something and do their own site visit and
9 come back and tell you how they feel about it. You can question them about that and that's fine,
10 and it's really, it's very important. All of these permits are coming after they have a public
11 hearing. It means notice to the public they're gonna come and it's up to you to listen to them, to
12 take that and you're gonna have to weigh that evidence. You have to weigh that you know
13 based on credibility, you're going to have to if they are making factual assertions and there's
14 nothing to back that up, it's pretty hard to rely on somebody's unsupported factual assertions. If
15 an applicant shows you a factual, you know, allegation that they have, they say look the sound
16 level is going to be below a certain decibel level and look we've got this study, we went out and
17 we had prepared and it shows this. Somebody comes up and says, I think the noise is too loud
18 and that's all that they say. You've got two people making factual assertions, one is backed up
19 by you know actual...an actual report, the other is somebody's opinion pouched as a fact.
20 You've got to be careful in how you weigh these things. So when you discuss it, you want to
21 talk about it and those are the times when you want to make sure that you, you enter into that
22 colloquy with members of the public to say okay, what do you mean by that, you know, can you
23 expand on that, tell us...tell us what you feel because a lot of times you know like I said,
24 community input is almost always a factor for you to consider in looking at a lot of these permits
25 that you're gonna see that are contested cases.

26
27 Again, you sit as...pretend you've got a black rope on if that helps, you know, just imagine
28 yourself sitting up here wearing a black rope because that's what you're doing. You are up here
29 to determine okay, here are the points of law. I know what the points of law are because the
30 Planning Department's telling me if I have a question, you know Corporation Counsel is going to
31 clarify for me what are the points of law that I'm looking at. Okay, what is the evidence being
32 presented before me and has the applicant proved beyond you know, more probably than not,
33 has the applicant proved that he has provided enough evidence to satisfy these points of law.

34
35 And the departmental staff they get the reports and oftentimes they will know the applicant
36 because they've tried to get the applicant to bring you a good application. The Planning
37 Department doesn't want staff...it doesn't want the applicant to bring you a hot nest, so they will
38 have worked with the applicant for a long period of time to try and get something that looks okay
39 and the Staff puts a lot of time and effort into making their staff reports. That is...you got to
40 recognize that there is some, some level of integrity that they have in their work and some level
41 of seriousness and dedication that they put into their work. So to the extent that they've worked
42 on this report and they prepared before you, again, like said you know asking clarifying
43 questions of them is fine, asking them or assuming that they're an advocate for the applicant is
44 erroneous and they never should be advocating for the applicant and if they do seem to be
45 advocating for the applicant I am assuming that the person sitting in that chair right there is
46 going to be have a chat and explain that that is not their role. We can call a brief recess we
47 need to if we think that that's where that's going, but you know the planners that I've met and
48 spoken to I have not seen one that I would see as an advocate for any particular application.

1 They will go and they will give you their analysis and they will make their recommendation. The
2 recommendation might be as far as we can tell and they look at it from the same dispassionate
3 role that you are supposed to also without the benefit of having all the public testimony.
4

5 So they make their report in the absence, they will have received some letters, they will have
6 made some contact with the public so they will have some knowledge of what's been going, but
7 they will prepare the report and then that is one part of what is a, again, you gotta look at
8 everything and I look at everything having been a litigator from what is going to be appealed if
9 your decision is appealed. The record on appeal consists of the staff report, the evidence that's
10 properly introduced during the public hearing, and you know, that's really about it. So you're
11 gonna look at the staff report, you're gonna look at the application and you're gonna look at the
12 evidence that comes in during the hearing. That's what you have to base your decision on
13 because that's when it's appealed, if and when it's appealed that is the record that a judge is
14 going to look and they're gonna look at your decision based on those factors.
15

16 If you're making your decision based on something that, you know, while somebody is testifying
17 you're pulling something up in the internet and looking oh, you know I just found this out, well
18 you're bringing in facts that aren't in evidence and a judge is going to look at that and say, well
19 Planning Commission you have a certain obligation and you didn't follow these set of
20 procedures and so we're gonna ask you to redo this one and you've got one that's coming back.
21 You made a decision and you know, I argue to the judge that you properly considered
22 everything, the judge decided that there were some procedures that weren't followed and it's
23 going to come back to you. What's going to be difficult about this is that some of you who were
24 members when that decision was made, some of you weren't, but whether you're a member or
25 not, you can't...you got to wipe the slate clean again.
26

27 You can't consider anything, any ideas that you had, any information that was brought before
28 you the first time around. It's a rehearing. It's on remand, it's a rehearing. You have to start all
29 over again. The applicant has to prove everything again, you have to ask your questions all
30 over again and you can't come in with any pre, you know preconceived notions of well, I voted
31 against it last time, I can't change my mind this time, you absolutely can, and you absolutely
32 should come in from a standpoint of I didn't make any decision last time because the judge
33 voided my decision. So legally I didn't do anything. So you feel free, and you should definitely
34 feel free to make your decision based on the new information that comes in.
35

36 So as far as the quasi-adjudicative functions that really the highlights of what I wanted to hit and
37 if we want to...I certainly encourage discussion at this point if we want to go. If you want me to
38 get into the advisory portions of what you do to the County Council all I say is this, you do have
39 advisory functions to, when it comes to you know rezonings, changes in the...to Title 19, and
40 your advisory opinion is just that, it's advisory to the County Council. Sometimes they look at it
41 and some Council Members give it a great deal of deference. Some Council Members say hey,
42 we're glad you held the public hearings that we didn't have to but we're gonna make our own
43 decision and that's how it works. It's usually not a good idea to defer items especially when
44 they're asking for advisory opinions to the County Council, to defer it if you've got a quorum and
45 you can make a decision, make a decision. If you can't, if you can't get a vote, a majority vote
46 one way or the other absolutely defer it but understand too that you also have timelines and
47 we've gone over this before, this will be the last part I'll end with before I kinda open it up is that,
48 you know in HRS 91-13.5 there is a time limit that within which you must act to approve or deny

1 a development related permit or else it is deemed approved. Now that's a statute. That says
2 that you have to do this. Statute doesn't give any timeline. You set your own timeline. You
3 have it in your rules, in your rules right now you say 120 days. You can change that timeline.
4 You could make it 90 days, I wouldn't recommend it. You could make it two years, I wouldn't
5 recommend that either because that would probably be beyond the scope of what you're able to
6 do, but if you think a 120 days isn't doing it, if it's 150 days, you can change those things. And
7 one of the things that I would also suggest that we put in there is talking about what conditions
8 are, if it's deemed approved, it should probably be deemed approved, you know subject to
9 standard conditions that the... that would apply to any permit and that's something that we're
10 gonna work on. So I know those are a couple of questions that have come up again and again.
11 So that's the end of my initial pitch and I will kind of...I'll let the Chair decide how he wants to
12 open it up and we'll kind of go from there.

13
14 Mr. Robinson: Thank you David. So Commissioners thank you for allowing me to have David
15 come and sort of speak to this. I know my first three years it's doing the training, you know it's
16 we usually kind of, just kind of numb through it and we don't really get involved. I think after us
17 having a little bit of experience each we might have a different question and I wanted to make
18 sure that we understand from Corp. Counsel's view of how this Planning Commission is and I
19 want us to be able to ask questions and the questions can be as wide range as for
20 commissioners during election years, it can be for commissioners what is not our role and what
21 should we not do, you know as far as stepping over bounds, you know, there's talk about
22 zoning, there's talk about different things that might have been our purview, but I wanted to, I
23 wanted to, I wanted you to expand on on my first question which is why is there a planning
24 commission, why after the Planning Department has all these vetted educated people going
25 through this process not just make a recommendation, why does it have to come to a board for
26 us to vote instead of it just being approved or disapproved from the Planning Department?

27
28 Mr. Galazin: Thank you and that's, that's excellent. Like I said there's a number of different
29 permits that will be approved administratively and that will be run through the Planning Director
30 and the Planning Staff will do their analysis and then the Planning Director has the discretion to
31 approve or deny a permit, but once you get to a certain trigger and usually that trigger is there's
32 several similar uses in the area or there's you know, you're in the SMA which of course, you
33 have the...you are the final arbiter where it comes to yes and nay, the Planning Department
34 beyond, you know, exemptions and stuff like that.

35
36 What you are supposed to do is be the receptacle for listening to members of the public,
37 allowing them the opportunity to come forward and providing your unique perspectives and you
38 all have you know varied backgrounds and you're all chosen, you all volunteered but you all
39 chosen for various reasons, for your willingness to be a part of this, to your commitment, your
40 dedication and you're other expertise. And you may ask a question of an applicant that
41 somebody else on the commission may not think to ask, that a planner might not think to ask.
42 Planners, you know, planners look at things through a planning lens, that's what they're trained
43 to do, that's what they're supposed to do. You are designed as a body to look at things a bit
44 more holistically and that is a good thing. That's a good thing, better than a bad thing because
45 what you're going to do is, well you still have to look at the law and apply the facts, sometimes
46 you have to elicit certain facts, you need to elicit certain information and when it comes to say
47 the character of the neighborhood, the Planning Department may analyze you know, okay well
48 what are the...what are the houses like in the neighbors, what are the setbacks, you know, what

1 are the median prices, what is the character of the neighborhood and that's going to be an
2 analysis that they make.

3
4 From a planning perspective they have one analysis of what the character of the neighborhood
5 is. However, by asking questions of people who show up, by asking questions to the applicant
6 themselves, you all can flesh that out in a way in which you know the planning context it's just,
7 it's very hard to do. So you know by talking to, by listening to people from the public who want
8 to come in and they want to tell what they experience, what they know and you want to listen
9 their mana`o, you want to be able to take that into consideration and just because somebody
10 has an opinion doesn't mean that it's not evidence. Opinion evidence is still evidence that you
11 can consider, it's just you want to make sure that you separate opinion from fact and the
12 character of the neighborhood isn't something that's really a factual thing. The character of the
13 neighborhood is really an opinion based criteria on, and so one of the reasons that you exist is
14 to elicit information like that, is to figure out okay, not sitting in a desk looking at the information I
15 have, talking to the applicant, hearing all these things and not that Planning does a bad job at
16 that but the Planning, they look at it from a very, sort of set of you know, baseline criteria and so
17 why you are here is to bring out different information, is to ask different questions, is to take
18 what you know, what you may know from your experience in the outside world and ask a
19 question that maybe relevant to an application but that a planner not having had the job that you
20 have or have had might not think to have asked.

21
22 And it also allows you know people members, of the community to come out because their
23 interaction with the Planning Department may be varied. They may not know to whom to point
24 their questions, they may not be able to talk with the specific planner they want to talk to, but
25 they will know that when something comes before public hearing before you folks this is their
26 time that they can come in and that they can go ahead and they can speak their piece, they can
27 you know send something in writing if they can't make it or they can show up and if they are in
28 support of something they can tell you why they support it and why they think it's a good idea, if
29 they don't support it they can tell you why and they may have a valid reason for not supporting a
30 particular application however it may not be one of these criteria that we need to consider. So
31 that is probably the hardest part of your job because you're gonna hear a lot of different people
32 come and give a lot of different opinions and give a lot of different testimony and not all of it is
33 going to be relevant and that's a hard thing to do because you're gonna hear people who are
34 very passionate, who are very invested both emotionally, physically, spiritually in the land and
35 they may provide their testimony.

36
37 The Code sets out something that's supposed to be mostly black and white but where there
38 are...to the extent there are gray areas, you're the ones who are gonna decide those shades.
39 So why you're here is to take those black and white lines and then decide okay, where does it
40 starts to shift from black to white, where does the gray start to fade, where does it start to
41 become dark. I think that's probably the best way I can think of putting it from an analogy
42 perspective is that the staff, the departmental staff is here to support you. You're not here to
43 support them. You're not here to support the Department it's really the other way around. If
44 you're in charge of denying or approving a permit then the Department is working for you and
45 you are working on behalf of the community. You have to realize you have a set of standards
46 you got to look at but that's what you're here to do is to make sure that that you get enough
47 information from your support staff that you feel that you need. You know, if you look at a staff
48 report and there's questions that the staff report doesn't answer and you think that that the

1 planner may have the information and just doesn't put it in the staff report you can go ahead and
2 ask that. Most of the time they're going to put all the information in that they have available.
3 They're very competent, very capable so again as I said most of the questions that you want to
4 pose are gonna be on the applicant or the applicant's representative because again, they are
5 the ones who are ultimately gonna have the burden to prove to you folks that's you're role.

6
7 Planning Staff when they make their reports they do it not entirely in a vacuum but they will do
8 their analysis in a...in a very sort of constrained set and you have much bigger pool to swim in
9 terms of what you're looking at, the questions you want to ask. And you can also when it comes
10 to somebody's testimony if it is opinion testimony and you are going to rely on it you are the
11 ones who are here and you can, you can opine on somebody's credibility as they're testifying,
12 you know. Just like a jury if they're hearing somebody testify they...it's their responsibility to
13 give testimony the weight that they think it deserves based on, because they're the ones first
14 hand. When a judge is looking at the record, the judge has no idea what the person looked like,
15 what this person sounded like, what this person said, they may have a transcript but they're not
16 going to, they're not going to have that firsthand experience, that firsthand interaction of whether
17 somebody you know, if they've not been compliant in the past and they have you know ten
18 excuses for why they haven't been compliant in the past and you think they all sound boloney
19 well okay, then you can say that. If they seem partially credible just reading it on a dry transcript
20 a judge may not know, but you're in this position to be the ones to decide and again, Chair
21 thank you for pointing this out because like I said, when you are sitting here making the
22 decisions, the Planning Department Staff is working for you at that point and you know, I am
23 working for you. I am here to advise you and you know, answer questions you may have and
24 help try and keep you on the straight and narrow to the extent that I think if you're going too far
25 field I may try and get you back in and I will probably always remind you can you please state
26 the basis for your decision and I'll probably say that every meeting, but I'll say that only because
27 we're gonna have to write it up at some point and we wanna make sure that we understand why
28 you are making the decisions that you make.

29
30 Mr. Robinson: Commissioners at this time, I'm going around to each one of us and give us an
31 opportunity to ask a question. It could anything but this is about the Commission, this is about
32 us being able to ask Corporation Counsel if there's a question you've ever had. I know I have a
33 couple. I can go first, I can go last. Vice-Chair Hudson do you have a question you ready for
34 and we can start with you?

35
36 Mr. Hudson: Yeah, I'll go first.

37
38 Mr. Robinson: All right, awesome. Thank you and then Kahu we'll go around the table. Thank
39 you.

40
41 Mr. Hudson: Just have a couple of questions. Not as many as I had before you started talking
42 though and you answered a lot of questions. Just for clarification you said no presumed facts
43 not in evidence and deals, deals kind of directly with certain opinions that are not based up by
44 facts except for opinions that are already called for like your mention of the neighborhoods, the
45 character of the neighborhoods is that correct?

46
47 Mr. Galazin: Yes, Vice-Chair. That is absolutely correct because a lot of...some of the criteria
48 are pretty hard and fast facts like will it have an impact on traffic or an adverse impact on you

1 know congestion, those things. It's either going to have an adverse impact on traffic or it's not
2 and if there's a study that shows it's not going to have an adverse impact on traffic that's facts
3 you have in evidence. Somebody's opinion that it is going to have an impact on traffic, well you
4 have to sort of save that opinion and weigh it first as what you have as a factual basis and to
5 that extent you know that's where a judge is going to look and say you have facts and you have
6 someone's opinion. You've got to rely on facts if you have facts, but like you said there are
7 places where opinion does matter and that's where that comes in and how you weigh that
8 opinion, how much weight you give to it, how value it, you know, how they can expand on it and
9 to what extent you believe it's reliable, yeah, those are certainly good things.

10
11 Mr. Hudson: I just got two more and then I'll be done. Does the Chair have to vote?
12

13 Mr. Galazin: The Chair does not have to vote unless it's necessary to break a tie.
14

15 Mr. Hudson: So I copy then unless it's necessary to break a tie. All right.
16

17 Mr. Galazin: Or I'm sorry, or to make a...you know, a majority vote.
18

19 Mr. Tackett: And that's have to?
20

21 Mr. Hudson: Should.
22

23 Mr. Galazin: Under the...under the Robert's Rules I think --
24

25 Mr. Carnicelli: No, it's our rules not Robert's Rules.
26

27 Mr. Galazin: Let me check the...tell you what I can come back to that one...(inaudible)...
28

29 Mr. Robinson: And that's a discussion that we've had so I'm glad that...it's a good question
30 'cause we want to get that clarified.
31

32 Mr. Galazin: Yeah, I can look through that and we can go around ...(inaudible)...
33

34 Mr. Hudson: Thank you much.
35

36 Mr. Galazin: Yes.
37

38 Mr. Robinson: Next question?
39

40 Mr. Hudson: No, I'm good. Thank you.
41

42 Mr. Robinson: Kahu Hill.
43

44 Kahu Hill: Mahalo Chair. I have three questions and mahalo for your patience 'cause I could
45 only go on what I've experienced since being on the commission since last year. There's been
46 a couple times where for instance where I've known that there's a heiau and I seen that in the
47 reports and it's within this ahupua`a there's cultural reasons, there's environmental reasons and
48 I had asked that for understanding let's say about the monitoring for heavy equipment for

1 development and they brought in then the archaeologist or asking that, I saw everything was
2 given to us but there wasn't updated photos so I did ask for updated photos to make a decision.
3 Do I have a right to ask for those kinds of things is that fair?
4

5 Mr. Galazin: Yeah, and that's really that's really good question because again, you know if you
6 want to base your decision on what is brought before you if what's brought before you is an old
7 study and you know that it's an old study then you can tell an applicant look you know, I'm not
8 gonna be able to vote yes on this unless you carry your burden of proof, and if you're showing
9 me a ten year old study I know that changes have been made, I know that, you know, that
10 activities have taken place there, if you want to carry burden and you want me to vote in favor of
11 this then I would need more evidence from your in order to do that and that is fair to do. You
12 can't ask them to provide evidence of something that is unrelated you know. But if that is
13 relevant to what you're looking at then yes, absolutely.
14

15 Kahu Hill: Yes, Chair.
16

17 Mr. Robinson: And counsel that make a point, you know, Kahu Hill, she fills, she fills a
18 necessary role in our commission you know that's mandated and when we get a report and
19 sometimes a report is on a Friday and we all feel the pressure of we want to give an applicant a
20 quick time and we don't want to always for a deferment would it be able and even the Director
21 could say to where we could make sure she has a criteria of what she might want to see prior
22 and we have to ask the question before it's on the agenda. I mean, so we get an agenda today
23 for the next meeting but we get the reports you know sometimes a week to ten days later. So is
24 it fair to assume that the reports are ready when it's on the agenda because that it's already
25 turned in? I mean, how do we help Kahu be able to and all of us to help ahead and ask
26 questions so we don't have to hold up a meeting and defer it?
27

28 Mr. Galazin: Yeah, I think I'll...I'll let probably the Chair speak to that one.
29

30 Mr. Robinson: Director.
31

32 Mr. Galazin: Director.
33

34 Mr. Spence: Thank you Commissioners. We try to...just because something is scheduled and
35 you see it on the piece of paper here that says this is what we're going to be hearing next time
36 that does not mean that the reports are ready. They are predominantly ready. They have not
37 been completed as yet. I know that when staff is aware of projects that say have cultural
38 resources they do pay special attention to that because that is always of interest to this
39 Commission and especially now with...I can't say especially, it's always been important to this
40 Commission and it's been especially important to staff. So we try to get those reports to you in
41 as timely of a manner as we can.
42

43 Mr. Robinson: Okay, sorry, please continue.
44

45 Kahu Hill: Mahalo Chair. I wanted to understand your mentioning about not bringing something
46 else from before into a present meeting. There's been a couple times like we had for a vacation
47 rental in looking at the maximum kind of what for vacation rentals in that area and the time
48 before many people from Paia were testifying about please look at this and the balance of this

1 area so I hadn't forgotten that. I don't know how we can forget things before if other things
2 come in the future. So I'm wondering about that as well as even today where testimonies
3 before and this is coming back something on the agenda today from other people testifying
4 before today do we not look or remember those testimonies whether written or orally presented
5 to us?
6

7 Mr. Galazin: Yes, thank you. That is a tough thing for you to grapple with as Commissioners
8 because you are gonna know that you will have heard community sentiment about particular
9 types of permits in a particular type of area. However, when an application comes before you
10 each application is viewed on its merits and again as I said it's...is the burden's on the applicant
11 to show that they have met these criteria. If they come in and an applicant comes in for a short-
12 term rental in the area where a previous applicant, you know a month before came in for say
13 two blocks away and a large portion of the community came out and was testifying in opposition
14 to it and then you know a month, two months later another one comes up and you don't receive
15 any letters of opposition and you don't have any members of the public showing up you know in
16 opposition to it, you've really got to make that break in your mind and realize that community
17 sentiment may be different for one from the other. And you...again, the applicant's gonna bear
18 the burden of proof but if there is no evidence to the contrary you cannot rely on something
19 that's not brought up during that hearing. So the record is based on the staff report and what's
20 elicited during that hearing and that's the evidence that you gotta consider. If it's not brought up
21 during that hearing you can't consider it and that would be a situation where you really wouldn't
22 have the ability to say to an applicant well, I don't know why there's nobody protesting this one
23 because somebody was protesting...there was so many people protesting the last one so I want
24 you to go out and talk to X, Y and Z people and see if they're really okay with it. You can't do
25 that. I mean, what happens is notice goes out, everybody who needs to be notified of the
26 application is notified and if they want to make their voice known this is the form to do it. And if
27 they choose not to, then that's all the information you have to base it on and it be can, it can be
28 difficult. I understand the consternation that you face with that but that is, that is the reality of
29 what a...what a record on appeal consists of. And if you deny it based on something that
30 occurred at a meeting you know two months prior a judge will toss that thing right back to you
31 without a second's hesitation.
32

33 Kahu Hill: Mahalo for sharing that and I just wanted to clarify 'cause I have a lot to learn
34 especially being in this cultural advisory seat. If something happens in an area or ahupua`a
35 where something happened a hundred or hundreds of years ago and there is heiau and there is
36 historical deposits, there is archaeology, there is...it's on the ocean it could infect the
37 environment or the oceans if other things environmentally or historically, cultural could be
38 affected and it's really something bigger that I have to be able to look at this area and not
39 forget...forget it where it is on the island is that something that I have to not look at so closely
40 and just look at it each time if I know that this area is the same ahupua`a as the other applicant
41 came prior for instance?
42

43 Mr. Galazin: Okay, that's...that's a little bit of a finer distinction and I think, you know, having
44 somebody with your expertise, having the position at this table, having a part of this
45 commission, I think that the Planning Department is going to make sure the applicants are
46 addressing those things more and more. But that is an area where I think your specific
47 mandated expertise comes into where you can say, there is, you know, there is a cultural
48 component here that I don't see that is addressed and you know, I have concerns about this.

1 And if it's...you know, I don't know that it would be appropriate say in the context of a short-term
2 rental home permit, but you know if you're talking about a you know, some other...whether it's
3 an SMA or whether it's a, you know, a district boundary amendment that's you know smaller
4 than 15 acres or what have you and there's certain things that you are aware of from a cultural
5 perspective that aren't addressed the Department's going to make sure it's going to take a little
6 bit of time for the Department to react and work with applicants to make sure that they
7 understand you're going to have these questions and they better be prepared to address them
8 and that's fine for you to go ahead and in those scenarios again, where it is...or is appropriate
9 for you to ask that information and not every permit's going to be you know entail that like I said
10 STRH, B&B that's not really...that wouldn't be germane to it, but in other situations yes, it very
11 much, it very much could be and you could go ahead and ask that it be addressed before you're
12 satisfied that they've carried their burden.

13
14 Kahu Hill: Mahalo.

15
16 Mr. Robinson: Thank you Kahu. Commissioner Carnicelli, do you have any questions?

17
18 Mr. Carnicelli: Thank you Chair. So yeah, thank you Corp. Counsel for saying what you said
19 because I have to agree with what you said the hardest part of what we have to do is weigh
20 testimony. You know that is is what's creditable, what's not, how much weight do you I give to
21 this versus that, are they even testifying to what we're making a decision on which is I think the
22 biggest piece that you know is hard to cull through. You somebody might be talking about traffic
23 when it has nothing to do with the decision we're trying to make. I've talked about traffic when
24 it's not something we supposed to use and so I get that that's biggest piece and the two
25 functions that we have quasi-judicial and advisory. You know opinion versus interpretation.
26 When we're quasi-judicial it's interpreting the law not whether I like the law, I agree with the law,
27 I like the person, the project, nothing, it's just an interpretation. When I'm advising Council
28 yeah, I can give my opinion so I appreciate you bringing that in. My only question is if you could
29 please address the role of the Chair.

30
31 Mr. Galazin: Sure. So within your own rules of practice and procedure the Chairperson is the
32 presiding officer of the Commission and has a certain set of enumerated duties. One is to open
33 all meetings, calling it to order, maintain order and a proper decorum, announce the business
34 before the Commission, review the matters properly brought before the Commission, call for
35 votes upon the same and announce the results, appoint hearing officers with the approval of
36 majority of the members, authenticate all acts of the Commission as may be required by law
37 unless delegated to the Planning Director, make known all rules of order when so requested
38 and to decide all questions of order subject to an appeal to the Commission. One other factor
39 that's going to be in there is when we get to contested cases as we move more towards a quasi-
40 judicial proceeding that really is more judicial than quasi-judicial, the Chair is going to have more
41 of a role in determining how questions of testifiers, the scope and the tenor of questions of
42 testifiers. That's going to be a bit more work for the Chair. There is the...the Chairperson also
43 states the question for the vote once it is ready, puts the question to a vote and announces the
44 results to the Commission unless a present member is disqualified from voting pursuant to the
45 conflict a silent or refusal to vote is considered as an affirmative vote. So if you don't vote at all
46 it's presumed to be a yes vote and there's nothing specific within your rules about whether or
47 not the Chair may or may not vote. As a matter of practice generally under Robert's Rules a
48 Chair will abstain from voting unless in situations where it's necessary to create a majority or to

1 break a tie and I think that's typically been the past practice of this Commission. In looking at
2 your question a little bit further Vice-Chair I don't see anything within your rules that speaks
3 directly to that question so I believe we'd look at Robert's Rules in that event and generally my
4 recollection is that for a board or commission such as this the Chair would not need to vote if
5 there's already a majority, but if you just look at your...the wording of the rules, if the Chair
6 doesn't vote it's considered to be technically an affirmative vote. And then the Chair also, sorry
7 Commissioner Carnicelli, you know the Chair also works with the Planning Staff to help set the
8 agenda but the, you know, the Clerk of the Commission is Planning Director or the Planning
9 Director's designated appointee and carries out a lot of those functions. So...

10
11 Mr. Carnicelli: Could you clarify that last part because that's just...is, is I love everything you're
12 doing like I get that you're trying to do this...this is a currently eight person commission soon to
13 be nine again and when it comes to driving the agenda and having meetings with staff and
14 things like that I just think that that there needs to be more transparency there. I just...so if you
15 could just speak to that please?
16

17 Mr. Galazin: So the Clerk...the Clerk's duties which are right after the officers, the Chairperson
18 or in the absence of the Chair, the Vice-Chair's duties, the Planning Director or the person
19 designated by the Director shall serve as Clerk of the Commission and shall be responsible
20 directly or through staff members to provide the following service, services. And the first one is
21 to receive, submit and coordinate all matters properly brought before the Commission in
22 consultation with the Chairperson. So what does that mean? That means that the Chair and
23 the Planning Director basically are supposed to work in tandem to coordinate agenda items and
24 get everything together. You know, if there is something that that the Chair would like to see on
25 a specific agenda then certainly the Chair has I think the right to request that it be put on there
26 and the Planning Director would have, you know, the duty to support that. Would the Planning
27 Director be able to put something on the agenda that and the Chair would want to block it from
28 ever being on the agenda well I don't think that's something that could necessarily happen
29 either because you do have a job to do, you do have applications that need to come through
30 and you do need to function and the fact that we do have eight full members now, hopefully
31 another nine, you know I recall the times when you know we had four, five...five or six people
32 here at a meeting and it was very difficult to get anything done for months at a time. So to the
33 extent possible the Chair and the Director are supposed to work in tandem in order to get things
34 on the agenda and in order to move things along and in that I think both the Chair and the
35 Director should have equal say but neither one should have veto power over the other.
36

37 Mr. Robinson: Commissioners is there anything else as far as maybe an example or something
38 that you're not comfortable with that you think that we might be doing? Is I kinda wanna change
39 this to be more of a body than of a Chair and a kind of thing and I definitely am open to anything
40 that you know, you've been on probably little bit more boards than I have that think that you
41 know roles should be defined or not defined or whatever inclusive in there at any time during
42 any meeting, you know please think, you know I'm learning as a I go. But at the same spot I do
43 want to empower everybody in the Commission to be, to be more equals and I want to make
44 sure that I follow all the rules, you know, okay. You have any other questions?
45 Commissioner La Costa.

46
47 Ms. La Costa: Mahalo Chair. Well, I am definitely the new kid on the block and I appreciate
48 very much the information and education that you have provided for us. I do have questions

1 that I would appreciate being answered thank you. What if someone is testifying or they have
2 written testimony and you know factually that is absolutely incorrect, misleading and false what
3 as a Commissioner can be done about that?
4

5 Mr. Galazin: I think in that scenario you can, you can cross examine them as much as any party
6 would be able to cross examine them in order to elicit any statements which you think would
7 show bias or motive or you know, something that would lead to the factual assertion. And to
8 that extent you know we are not...you're not prohibited from asking leading questions. You
9 know, anybody who's you know, seen any episode of Law and Order or taken any basic, you
10 know, legal courses know that direct examination normally you just ask questions and they
11 answer them but on cross-examination you can ask leading questions or you say wasn't it true
12 that you know you lied when this thing or this thing happened. So...in that scenario if you know
13 that somebody, that a testifier is providing testimony that to the best of your belief is not true
14 then you are certainly afforded to grill them on it, hold their feet to the fire as much as you can
15 and if they want to stick to it, you know you can certainly tell the Commissioners or ask through
16 questioning you know explain your source of information and explain them to answer how what
17 their saying differs from what your source of information has provided and I think that probably
18 be the best way to do it is to say you know, I know so and so and they did X, Y and Z, you're
19 telling me they did A, B and C, I need you to explain that because for right now that doesn't, I'm
20 not believing what you're saying.
21

22 Ms. La Costa: Thank you that clarifies that. If a member of the public asks you opinion on
23 something because they know that we sit on this commission to what extent can we give them
24 our opinion and at what point do we say, you need to talk with the Planning Commission or
25 Corp. Counsel or something like that?
26

27 Mr. Galazin: So being members of the public and you know in very diverse fields and being
28 you, you know, the faces of the commission it is...one of your crucial roles is to go out and
29 interact with members of the public, explain to them you know what's going on. As far as your
30 own opinions you know I think is as Commissioner Carnicelli put it best, you know when you are
31 making an advisory opinion vote to the County Council you're giving your opinion of what you
32 think of something. But when you are in a quasi-judicial function you must remain neutral
33 unless and until you have heard all of the relevant evidence. So you should have... if anything
34 that is related to a development that would have a permit or any kind of discretionary approval
35 from this body you should have no...you should come into it with no opinion. If you have a
36 personal opinion, you need to leave it at the door. If you feel that you can't do that in a
37 particular situation you can always recuse yourself. You can always say, you know what I'm
38 just too invested in this and you know, I respectfully I gotta, I gotta recuse myself from that and
39 that's and that's fine if there's something that you just feels so strongly about that you don't think
40 that you can make a, you know a neutral informed decision on that's okay, we're all human.
41

42 So when you're out talking to members of the public you can talk to them about you know what
43 you do, the kinds of things that you look at, you know, you can hear their concerns say, you
44 know well tell me what your concerns are and you can bring those concerns, you know, you can
45 write them down, you can bring them with you, when somebody...an applicant is coming up to
46 present their reasons for why they want an application you can ask those questions. You can
47 say, you know hey I've been talking to members of the community and they have questions
48 about these things so I'm gonna ask them. You know you can ask things that you know of and

1 that's why again, you come from varied backgrounds because you can all ask very different
2 questions, that's a very crucial role. So to the extent that you give your opinion I would say, no,
3 but to the extent that you listened to the opinions of others absolutely.

4
5 Ms. La Costa: Thank you. You were talking about planner's roles and I don't know if I
6 interpreted this correctly but you mentioned something about planners requiring owners to try to
7 get more letters or input or knock on doors from neighbors if they, if they don't have enough
8 information for SMA, short-term rental, B&B, buildings, et cetera, did I understand that correctly?
9

10 Mr. Galazin: Yeah, I think that was, that comment was made in the context of you know things
11 that you can and can't do. You know as the Chair said where are the lines of what authority do
12 you have and what authority do you not have. So if somebody comes in and they have an
13 application, the Planning Department will have gone out, provided a staff report and they will
14 have gotten some input from members of the public that will be in the staff report. If you only
15 get one letter of you know of protest and there's 16 people that live around the area but you
16 don't get any other letters from anybody else you can't really go ask the applicant to go back
17 and try, the applicant themselves to go back and try and knock on doors and get more input
18 from their neighbors. The neighbors have notice. If they want to provide their input they will. If
19 they don't want to provide their input then they don't and so what you consider...and example
20 the short-term rental as I was saying you know it's the number and content of protest letters. If
21 you receive one and it's pretty generic in terms of I don't like short-term rentals you have to
22 presume that the other 15 don't really have an opinion strong enough one way or the other, but
23 you can't say well I don't know what the other 15 say so applicant I want to ask you to go back
24 and go knock on doors and get the other...get those other 15 opinions that's taking your role too
25 far. They have criteria they have to meet and we have notice requirements and mailings and
26 postings in the newspaper. Trust me, it costs a lot of money and a lot of time and a lot of
27 advance notice to let everybody know that a permit is coming before this body and if that elicits
28 next to nothing then that's what you take into account.
29

30 Ms. La Costa: Thank you. And one last question in some of the items that we are reviewing it
31 gives conditional approval based upon X, Y and Z and I've noticed that the amount of insurance
32 required is only a million. I mean, only a million nowadays is nothing so I'm wondering if we can
33 render an opinion and one of the conditions can be increase liability of X, Y, Z dollars naming
34 the County and everyone else that is involved.
35

36 Mr. Galazin: You know I think that's...you know numbers that we have in place in terms of
37 fines, in terms of you know dollar amounts for insurance, in terms of dollar amounts as
38 thresholds for exemptions we set these things by Code and we set them by you know, by policy
39 and they aren't reviewed for years and years and sometimes decades and you're right what
40 seems like a lot of money at one point in time for exemption for an SMA may be next to nothing.
41 You can put up a shed now that might cost enough that it wouldn't be exempt in the SMA. So
42 yeah looking at a condition you can certainly if you feel that there is an increased risk to the
43 County for a certain type of permit and you believe that that asking for an increased amount of
44 insurance is necessary to mitigate that impact again, you want to make sure that these are tied
45 back...I don't want to go back to the power points and slides because as the Chair mentioned
46 you get all that kind of stuff and it's sort of like you're sitting in a classroom going okay, yeah
47 right I see a slide I'm kinda half paying attention, I get what they're saying, but this is why I
48 wanted to have this kind of conversation today is that it goes back to nexus and rough

1 proportionality, everything that you do in terms of putting a condition on it and these are, there
2 are standards that are set by constitutional law as interpreted by the United States Supreme
3 Court and as interpreted by our courts here in the State of Hawaii. So something as to...any
4 condition that you put on a permit has to be related to some sort of impact and has to be you
5 know roughly proportional to mitigate for that impact. And so if you think that hey you know
6 there could be...there's a higher fire risk for this particular area because it's you know it's very
7 dry, they're far from a water source and you know it's always rented out for the 4th of July and
8 people want to have fireworks out there, yeah if you have...if you want to say I think the
9 condition should be that it, you know it should be a million five, it should be two million. As long
10 that's reason and it's related to it then those are, then those are things that you can consider.

11

12 Mr. Robinson: Commissioner Castro you have any questions?

13

14 Mr. Castro: Yes, thank you Chair and Counsel thank you for your presentation. You mentioned
15 that the application bears the burden when they come before us making sure that...anyway so
16 when they come before us they bear the burden of making sure everything is correct and you
17 also mentioned that for us to make a decision it should be based on fact and not opinion with
18 that being said, why is it not a good idea to defer an item.

19

20 Mr. Galazin: Well, it depends why the deferral is taking place. If you feel as though the
21 applicant hasn't met its burden but the applicant says, the applicant's telling you look I wasn't
22 prepared to you know address that issue, I didn't realize that that was gonna be a thing of
23 concern and so I can provide you with more information on that that might be one reason to
24 defer. If you, you know, have...if you have a bare quorum and you obviously you can't get a
25 majority vote one way or the other that's a reason to defer. My comment about deferral would
26 be...is that was more geared towards...well, there's two things. One, deferring items is in
27 advisable in most situations because you do have that timeline for a permit, for development
28 related permits in which to take action and that action is your vote. The D&O will come after
29 and sometimes it takes a while to get those written, prepared and have you vote on them. I
30 think just last year you voted on from 2015. So sometimes that could take a very long time, but
31 that was something that was tied up in litigation so that's pretty rare. So deferral is not usually a
32 good option because you've got that time limit. But deferral when it comes to advisory
33 questions from the County Council if they say the Department has a proposed bill that they want
34 to take before Council, by Charter you've gotta give your opinion on it. You know it's your
35 opinion and like I said, some Council members defer to what the...this body says, some Council
36 members give it less deference, some Council members try and look at everything through, you
37 know a vacuum or try and combine it in certain ways, but deferring it, you know if you have six
38 people here deferring it just for the sake of waiting to hear from the other three people, you
39 could do that but I don't know that it necessarily adds more value because things take just so
40 gosh darn long, you know, legislative process and I'm not even going to ask the Director to
41 opine on this 'cause we'd be here another half hour, if he were given a chance to speak about it.
42 Things just take a long time. And so if something comes before you it's gone to Council, by
43 resolution been referred to these committees, all the planning commissions, you're just one of
44 them, the sooner you can get some kind of statement back to the Council so they can make a
45 legislative action the better. You know if it's only six of you making your recommendation okay,
46 you know if it's all nine of you make your recommendation, great but for these advisory types of
47 things on you know legislation if you really think that there could be a strong difference opinion
48 among the members, if you've discussed it once before and it's coming back around and you

1 know the Chair feels as though there really needs to be a more robust discussion on it, okay, in
2 that case there would be, there would value to deferring it. Otherwise I think you want to look at
3 whether it adds value to defer or not and my comment was more towards those advisory
4 comments you make to the Council. A lot of times it's not really going to add a lot of value to
5 get you know two more people just to raise their hands and say the same thing.

6
7 Mr. Castro: Thank you.

8
9 Mr. Robinson: Commissioner Tackett.

10
11 Mr. Tackett: I don't have any other questions, but the questions that you guys all asked were
12 informative so I appreciate what you contributed. Thank you.

13
14 Mr. Robinson: At this time I'm going to ask the Director to put his input in and after seven and a
15 half years I know he's gonna have a lot of input that will help us and I'll open the Q&A
16 more...(inaudible)...talk to the Director as well, but at this time I'd like to take a quick ten-minute
17 break. For all of you out there that are on the different agenda items, we do have two more
18 items that are gonna be heard before 12:00, and if there's no disagreement from the
19 Commission I would like to say that we'll start those at one o'clock after lunch if those people so
20 they could leave and not have to hang out here, maybe portion of that. Is that okay with the
21 Commission? Commissioner Tackett, Commissioner Carnicelli you're fine? Okay, just let you
22 know that. So, Vice-Chair?

23
24 Mr. Hudson: ...(inaudible-not speaking into a mic)...

25
26 Mr. Robinson: No, we're gonna do D.1 before lunch, but as far as E, so we're going to take a
27 quick break but I just want to let you guys know out there that on Public Hearings E.1, E.2, and
28 E.3 we'll take that back up no sooner than 1:00 p.m., ten-minute recess, thank you.

29
30 A recess was called at 10:29 a.m., and the meeting was reconvened at 10:44 a.m.

31
32 Mr. Robinson: Aloha, the Maui Planning Commission is back in session. At this time I'd like to
33 give time for the Director to respond to all that he's heard in the comments and from his
34 experience, ...(inaudible)... his point of view and knowledge. Director.

35
36 Mr. Spence: Thank you Mr. Chairman. Just a couple of comments. Mostly I want to say
37 something about why the Commission and then also some things about Staff and how we
38 handle projects. But first off why...the question was asked why is...why do we have a planning
39 commission? Part of the reason is I mean you look at round you, look at the diversity that you
40 have. You have labor representation, you have realtors, you have cultural, you have small
41 business, you have a former police officer, and so everybody brings something to the table in
42 your viewpoint. You are, in a lot of cases you're...you represent a diverse viewpoint of our
43 community on this island.

44
45 The second thing is you're not elected. You do not have to vote with anything in the back of
46 your mind about getting re-elected. You can, you know, state your opinions, you know that your
47 term is of five years regardless so that doesn't always have to weigh on you the way an elected

1 official might consider that. So that's, you know, I mean the big debate right now is taking
2 politics out of stuff, that takes a big chunk of politics out.

3
4 Just a little on staff and how we process permits. This is more for your information. When we
5 get an application in, we definitely look it over, we look at all the information in there and earlier
6 Mr. Galazin said they sort through a lot of material and they do. They sort through just a ton of
7 technical studies, subjective statements within the application and they do a pretty thorough
8 evaluation of what is presented to them. The 99 percent of the time they will go on a site visit
9 because you know sometimes what's presented in an application is not necessarily what a
10 professional planner would see on the ground. They would go to the site and take a look and
11 see okay, is this information accurate. Is there other information I can derive from this site visit
12 that isn't reflected in the application. So in that sense they do sort through a tremendous
13 amount of information. A regular short-term rental home permit that is just administrative that
14 this Commission will never see may take up to six months to make...to process just because
15 there's so much information involved in that and applications may be may require additional
16 information or something like that. For the ones that the Commission does see you're gonna at
17 least add a few months onto that because there's public notice that has to go out, there's...we
18 have to publish in the paper, those kinds of things and that's just a simple short-term rental
19 home, maybe not so simple but it's...you know it involves a single house or house and ohana.
20 When you start getting into larger projects like SMA or subdivisions or new commercial or
21 something like that it may take, it may take more than a year to process.

22
23 We...there was a question on going out and getting additional public information. We have no
24 rules, we have no rules that says the developer or an applicant must go out to his neighbors or
25 her neighbors, must go to community associations, must go to community groups, but it's kind
26 of expected of them because it goes a lot better when they finally do get to Commission and you
27 start hearing different things. You know it's being a good neighbor. So we just...we expect that
28 and it's just like what was said if I...when I was a consultant I would reach out to all the
29 neighbors within 500 feet, invite them to a meeting, I'd have...you know that could be 40, 50
30 people. I'll have two people show up and sometimes it just for the snacks that you're providing,
31 serious...but it's a good thing to be able to stand in front of the commission and go I reached out
32 to the community, these are the results that I got as a consultant. The Planning Staff is very
33 good about reporting back to you whatever you know notice was sent out, providing to you the
34 comments that have come in both pro and con. They generally don't...I've never seen Planning
35 Staff say you must go do this, it's always recommended but that's certainly the choice of the
36 applicant and reflects one way or another when it reaches this commission.

37
38 All your staff reports, you know the discussion on what information is included in staff reports
39 one thing that you will always find is the decision making criteria. David was talking about the
40 difference between or talking about decision making criteria on short-term rental homes, there's
41 other things for special use permits, there's others for SMA those will always be included as a
42 part of your staff report. You can depend on those things as you go through and say this is a
43 good project or there's problems or whatever. Those reports are always reviewed by the
44 Director or the Deputy Director so it's not uncommon for me to review a draft report and go
45 okay, this is missing or I heard that the Commission wants this information or that information
46 and I'll direct Staff go back and get this information and then we'll come to the Commission on
47 that. Then you know, of course the Commission will have its own questions on what's adequate
48 or not and we're happy to provide that information if at all possible.

1
2 The question on can we advocate for planner...can we advocate for projects or can we
3 advocate for just good planning. We don't act...to the degree we can, there is going to be a
4 professional opinion that comes through in the presentations to the Commission and mostly it
5 comes from, you know, because it takes such a long time to process some of these permits on
6 the order of a year, several years for some of the really big, some of the very complex things
7 and all this while they're working things through with the applicant whether not just what is
8 acceptable to the Commission but how to reduce the impacts of a project. And so this other
9 thing that David was saying is they have not just sorted through, they have changed together
10 with an applicant projects have changed midstream before they ever get to you. It might be
11 something that this Commission might want to ask of, you know, sometime how long have you
12 been working with Planning Staff, what has changed, what has improved in a project, that's
13 good information because it's very often the applicants will change their project based on the
14 concerns of the professional planner and then the public input that they get.

15
16 A couple of things that Item D.1 and D.2 I think these are good examples of advocating for good
17 planning. We have some issues with our Code so we are advocating changes to our Code in
18 order to make our life easier and the Planning Department, make applicant's lives easier and
19 clearer so we're in this sense it's perfectly fine for us to advocate towards good changes to our
20 codes and to our rules. Thank you Mr. Chairman for indulging me.

21
22 Mr. Robinson: At this time Commissioners do you guys have any questions for the Director, any
23 clarifications on that? Commissioner La Costa.

24
25 Ms. La Costa: I'm always the question girl. Yeah, I do have a question when you're talking
26 about reaching out during the process I know it's an extraordinary amount of work and
27 inordinate amount of time that is put in by the planners and I certainly appreciate their
28 professionalism during that. Is it their kuleana to go out and talk with the folks in the
29 neighborhood if they don't get input? So if there's a project say a seawall and people don't want
30 the seawall because of the accretion that it creates is it up to a planner to call the folks in the
31 neighborhood to find out what their opinion is if they have not presented one for or against?

32
33 Mr. Spence: Planners don't...if planners receive calls from the public or if they receive letters or
34 something like that they will return those calls and solicit that input. It seems very odd to me
35 that a planner would just go, go solicit that input on their own that's the responsibility of the
36 applicant. They're supposed to do their own public outreach, they're supposed to do all their
37 own notification. So it would be extraordinarily unusual for a planner to go around and solicit the
38 opinions of individuals I think that's...honestly I think that's rather improper.

39
40 Ms. La Costa: Thank you.

41
42 Mr. Robinson: Anything else?

43
44 Ms. La Costa: That's it.

45
46 Mr. Robinson: David would you like to comment on ...(inaudible)... Yes, Kahu Hill.

47

1 Kahu Hill: Mahalo Chair. Just on that note about what P. D. La Costa was saying if someone
2 comes...(inaudible)...community and wanting to know what's on the agenda is once it's on the
3 Maui County website that's public and therefore can be talked about or shared and just send
4 them there to say this is what's coming as far as if people want to know?
5

6 Mr. Spence: Yes. The information, you know we post on the website with hyperlinks to the
7 documents and so those documents are available for public download and members of the
8 public are totally free to come here and testify or testify by letter or by email and we pass all that
9 information along to the commission.

10
11 Mr. Robinson: Thank you. Is Director, I guess I'd like to go back a question is we had that
12 regrettable moment and I'd like to apologize to you and your department and your planners on
13 that while you're here. I'd like to say my apologies. On that note, is I'd like to, I'd like to talk
14 about a question about planners and advocacy is I know we had a conversation before about
15 you know planners as a, not as a, not as a job, I don't know what I'm looking for, planners as a
16 profession are advocates so for a planner to not advocate is sort of going against planning. I'm
17 mean, and so I know David said that they're not supposed to but, but I don't...is I want to
18 understand if you know, if planners are seen as advocates and it's to ask them not to advocate
19 would be to something not to do something that the profession sort of does and if you could
20 comment on that. But my question is is sometimes you know a planner is you know very well
21 spoken, you know lays out a very, very good case for an applicant and a different planner may
22 not be as talented ...(inaudible)... or a speaker and how do we, how do we keep all applicants
23 on a level playing field or do they get to choose who their planners are? How does that work in
24 the Department?
25

26 Mr. Spence: When applications come in they are pretty much divided up amongst the different
27 planners some according to skill levels, some other criteria we have, we have a set of planners
28 that generally deal with shoreline issues or other large SMA issues they have particular
29 expertise in that. We have some planners that deal a lot with short-term rental homes and so
30 you're gonna see those on that kind of basis. The skill levels do vary just in terms of years of
31 working with things like Ms. Cua has 35 years in the Department, Clayton Yoshida who is not
32 here he has like 30 or 32 years, I mean so they've seen a lot, done a lot, they're able to handle
33 more complex types of things than someone that's been in the Department for five years or so.
34 So when applications come in those things are weighed and work is distributed accordingly.
35 Does that answer the question?
36

37 Mr. Robinson: Yeah, so it's distributed and it's not a number system where it's a just a random
38 thing?
39

40 Mr. Spence: No. No.

41 Mr. Robinson: Okay, thank you.

42 Mr. Spence: I would say applicants do not get choose their planner.

43
44 Mr. Robinson: Okay, it's good to know. Yes, Commissioner La Costa.

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46 Ms. La Costa: Thank you. Can someone change their planner?
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Mr. Spence: That is extraordinary rare, but it has happened, but it's very rare.

Mr. Robinson: Is I had a couple questions as different questions from the commissioners came up David and I'll start off with notices. Notices for CUPs and SUPs do they fall in the same category as STRHs and other types of things that come in front of us?

Mr. Galazin: Excuse me Chair without going to the exact sections I don't recall off the top of my head whether the notice requirements are exactly the same. I can say they're similar I don't know if the Director knows off the top of his head. Didn't mean to catch him mid-bite, but—

Mr. Robinson: And the reason why I brought that up is we've talked about Leona and she had neighbors the two or three that were her friends that were in the 500, but then we had the whole street that weren't noticed you know that were here testifying and one of the complaints is that they didn't get a notice and so does the SUP and that's...you know again there's the Code, right. Code is 500 feet and is that CUPs, SUPs?

Mr. Spence: The Code is sometimes inconsistent. For most of our permits, most of the permits that this Commission sees it's owners within 500 feet, owners or recorded lessees, and sometimes that could be ten landowners. I have seen, I have personally notified when I was consultant like 1,400 different landowners and all of those are notified by certified mail, but 500 is pretty standard. I think Conditional is just adjoining landowners.

Mr. Robinson: So, and I have a follow up on that. So we have a person who has a complaint, RFS or NOV and then they apply for...to become legal and get a permit, do we notify the person that filed the complaint or the NOV...to get the NOV that this person is coming in for a permit, but what if this person doesn't live within 500 or a community association?

Mr. Spence: So I understand the question correctly, somebody files an NOV which triggered somebody coming in for a permit would we tell, inform that person who filed the NOV?

Mr. Robinson: Correct.

Mr. Spence: Or the request—

Mr. Robinson: Or the RFS yeah.

Mr. Spence: Yes, normally we would.

Mr. Robinson: Is that Code or is that decency.

Mr. Spence: That's decency.

Mr. Robinson: Okay.

Mr. Spence: Consideration of the person who stepped forward to say something.

1 Mr. Robinson: And so, you know, we're asking for RFS would it be inappropriate for us to ask
2 planners to let us know that there was an RFS and this person's coming to be compliant and
3 then that way we would have the name of the person that asked for that RFS? I mean or is that,
4 is that you think stepping out of our bounds?
5

6 Mr. Spence: Normally we keep the name of the person filing the RFS confidential unless the
7 person, the accused in this case unless they come...they request that identity. So I don't know
8 if that's...maybe Corporation Counsel wants to comment on whether we just share all that
9 information with the Commission.
10

11 Mr. Galazin: Yeah, thank you Director there is, there is nothing mandating the confidentiality of
12 somebody who files a Request for Service. I believe it is the Administration's policy at this point
13 in time to not promise to keep the identity of somebody filing an RFS confidential. If somebody
14 were to request that through say a Uniform Information Practices Act Request that information
15 would be subject to disclosure if it's part of an application packet I believe it would within the
16 discretion of the Department whether or not to include that. So there's an administrative policy
17 from this current administration regarding RFSs generally and then there's the Department's
18 own function in how they want to handle it. While you were speaking I was just kind of looking
19 through general application procedures and I believe there's...I concur with the Director but I
20 think it's you know owners and lessees of record located within the 500-foot distance from the
21 parcel are generally notified and it's up to...incumbent on the applicant to provide evidence that
22 they've provided those mailings and there is the...usually publication and then...they've got to
23 publish once a week for three consecutive weeks prior to the date of a public hearing. So
24 there's, there is different ways of notifying members of public and of course it's posted on the
25 agenda on the website at least a week in advance.
26

27 Mr. Robinson: Commissioner La Costa.

28
29 Ms. La Costa: Thank you Chair. I just heard a comment about not everyone is familiar with the
30 acronyms that you are discussing.
31

32 Mr. Robinson: I apologize, is it's Conditional Use Permit was the CUP and Special Use Permit
33 was the SUP.
34

35 Ms. La Costa: Thank you.
36

37 Mr. Robinson: I'm sorry.
38

39 Ms. La Costa: It was someone in the audience that wasn't familiar with that. Thank you very
40 much.
41

42 Mr. Robinson: My next question is when we were talking about recommendations for Council
43 and how we want to be able to get something and not defer it. We come from a wide range of
44 opinions and so when we have a recommendation does it have to be a unanimous
45 recommendation or can we take eight different recommendations from eight different
46 commissioners? One commissioner is for, one's against, one's likes it blue, the other one thinks
47 it should be yellow?
48

1 Mr. Galazin: That's a really good question because I think a lot of people may be under
2 misapprehension that the Commission needs to come to some kind of consensus before it can
3 make its recommendation to the Council. No, the recommendation can be you know, can
4 include you know members expressed the following concerns, you know, color, height, number
5 of lot size, you know anything else and then you know you can just include all those comments
6 and say this is our recommendation and we want to include everybody's comments and as the
7 Chair you can make sure that you have the Director and that the appropriate staff you can make
8 sure that they accurately captured everything that was voiced by members of the commission
9 because yeah, often times you are going to have different commissions who raise different
10 points and there's no need to vote on each one to say do we think we need to tell Council about
11 this or we need to tell Council about that, it's just you can vote on...what you're doing is you
12 make your general recommendation and you want to include, if a member brings something up
13 you can ask that member you know Commissioner Carnicelli do you want that included in the
14 recommendation we send up to Council and then he can say, well of course I do that's why I
15 said it in the first place.

16
17 Mr. Carnicelli: If I could Chair?

18
19 Mr. Robinson: Commissioner Carnicelli.

20
21 Mr. Carnicelli: I believe, correct me if I'm wrong, but I believe there's also... part of what we do
22 is also put things such as that into the record so Council can discuss them, right? 'Cause
23 they're sort of hand strung by, hand strung by like what it is they can talk about and not so if we
24 kind of hand them something like hey you need to consider this, we put it on the record and so
25 then therefore they can take that you know and run down whatever bunny trail they want to as
26 well.

27
28 Mr. Robinson: Yeah, and you know and Commissioners when I...my first year there was a
29 couple things that came through for recommendations and I had a couple of opinions but
30 nobody else did so a couple things like the huge development in Waikapu had zero comments
31 or recommendations to the Council you know except hurry up and build it. And I guess you
32 know that's one of my thoughts is you know we all have our little different things and you know if
33 it doesn't have to be approved by everybody but if we can just you know, have something and
34 have our input especially for cultural advisor please look at this or you know, doesn't even have
35 to have her name on it or one commissioner was concerned about that, you know at least it's on
36 record and we're here to, we're here to not to just nod and not say anything, we're here to give
37 our input and to give our opinions on things and that's why we have a commission and that's
38 where my feelings come from on that. So I hope that we're all open to when we do get
39 recommendations that you know we can feel open enough to say I'd like to you know have them
40 think about this or think about that and not just you know not just we have no comments and be
41 worried about you know being unanimous 'cause that's one thing that we don't have to be
42 unanimous on.

43
44 The last thing I want to touch on guys is enforcement of our conditions and how we will get
45 comfortable or feel comfortable legally that when we put a condition on it's actually gonna be
46 enforcement because you know we talked about this 120 days and okay, well we don't want to
47 just defer this and it becomes automatically a permit with no conditions. So we want to be able
48 to agree on a condition but we also want to be confident that those conditions will be held and

1 will be enforced because if we don't have confidence in the enforcement of conditions we might
2 deny a permit, and I know there's things that we're able legally to take into account. I assume
3 that we're...we have to take in account that there is going to be enforcement, but again when
4 there's testimony or evidence otherwise you know like the comment you made where it says,
5 well the Council approved short-term rental homes, yeah, they approved 90 not 200 illegal and
6 90 legal. So how should we approach this from a legal standpoint on this Commission?
7

8 Mr. Galazin: And that's a good question that dovetails nicely with something that the Council
9 right now is...has been trying to work on in terms of both revocation and reissuance of permits,
10 and one of the things that they wanted to change was to change the discretion from a Planning
11 Director to more of a mandatory directive that one of the things that a permit renewal could be
12 looked at is whether there's compliance with the permit conditions. So that's a really huge hook
13 for most of these permits because when you look at it they're for a limited period of years and
14 they have to come back in for renewals. If you're putting conditions, if nobody is complaining
15 about a certain condition that you've put in, you know, Planning's not going to know about a
16 condition not being followed and they're not necessarily going to have the power to revoke a
17 permit if they're not aware of it. When it comes up for renewal however, then that gives
18 Planning Department another opportunity to go out and look and see and if it turns out they find
19 out that that a condition that you've put on a permit that you've granted and said you are entitled
20 to this permit only so long as you follow these conditions and Planning finds that they didn't
21 follow one of these conditions then that permit would be ineligible for renewal and then if they
22 operated without a permit then they would be ineligible to even reapply for another permit for
23 another period of years. So I think that's where Council is trying to help out what you're doing in
24 terms of the conditions because you know again, enforcement is always...it comes back to
25 enforcement with a lot of these issues on both the, you know the B&Bs, short-term rentals, the
26 Airbnbs, TVRs, however you want to discuss the problem. You know Council's aware, Planning
27 Department's aware, I think the vast majority of the public is aware that enforcement of the
28 illegal ones is a big issue. The more permitted operations that can be gone through obviously if
29 there's more permitted that would probably lead to fewer unpermitted ones so fewer illegal
30 ones, but to in order to make sure that your conditions are followed there's two ways one is you
31 put the conditions on and you allow the public they've gotta have you know, the permitted ones
32 have to have their signs up, they have to have the contact information and there is an ability to
33 contact the Planning Department and put in a Request for Service which says hey I think that
34 something is going on here that shouldn't be and they can look at that and a permit can be
35 revoked, but the bigger thing is that now with permit renewals requirements, you know following
36 all permit conditions and that's the conditions that you put on as a requirement for renewal of
37 these permits and that's a bill that's going right before—
38

39 Mr. Robinson: Is I guess is this going to be discussed in D.1 or is there is something that you
40 would like to add to Director?
41

42 Mr. Spence: Part of...both of the C. 1 and C.2 are going to address a portion of enforcement
43 where we think there's some pukas in our Codes and we can go ahead and deal with that. But
44 also enforcement starts with the conditions that this Commission puts on permits. There
45 is...you will also see requirements on each one of the conditions that says to the satisfaction of
46 the Department you will do this, to the satisfaction of the Department you will do that, and
47 reporting on those conditions will come at a couple different stages. First is with the preliminary
48 compliance report that's something you will see in most of your permits is a report has to be

1 made to the Department on...prior to issuing you know a grading permit or a building permit
2 something like that and so they'll go through all the conditions and they will...an applicant will
3 provide documentation on how they are providing compliance with that. So if it says you're
4 gonna provide insurance, they get us an insurance certificate that says County of Maui on it that
5 we're an additional insured or if it says, you are going to have storm water control of I don't
6 know a 50-year or 100-year storm or petroleum separators they have to show us right on their
7 construction plans where those controls are and they'll provide us documentation on what
8 model of separator they're using et cetera. So that's just preliminary before they get building
9 permits or grading permits then at the final part of construction if it's a construction project
10 where they provide...give us all this information again on how they did it. So we don't sign off
11 on a Certificate of Occupancy or whatever the final thing is unless they provide us with that
12 documentation. So each kind of permit it's a little bit different on how to provide that but they
13 must report back to us on how they are complying with the Commission's conditions.
14

15 Mr. Robinson: Okay, and David...when it comes to that is when we put conditions down is it the
16 Director has the authority to take a condition out or can it only be done by another commission?
17

18 Mr. Galazin: You're asking if the Planning Director has the authority to remove a condition from
19 a permit.
20

21 Mr. Robinson: Yes.
22

23 Mr. Galazin: No, the Director does not.
24

25 Mr. Robinson: Okay, thank you.
26

27 Mr. Galazin: But you are correct that you know a subsequent request for renewal if it comes
28 back before this body or if an applicant requests to come back in and ask that a certain
29 condition be removed for a particular reason, if you find it justifiable then that's I suppose
30 something you could consider although that would be an outlier. Typically you want to make
31 sure that the conditions are intended to be for the duration of the permit and intended to
32 contemplate future uses as well.
33

34 Mr. Robinson: So if a applicant had an extension and had condition on that extension, the
35 extension, the conditions couldn't be removed unless they came back and asked for a new
36 permit is that my understanding 'cause the permit's for five years, they ask for another five-year
37 automatic renewal, those conditions would carry onto the next permit or could they be, you
38 know abated?
39

40 Mr. Galazin: So if they come back in for a renewal generally it would be for a time, you know,
41 renewal for an extension of time and you wouldn't be looking at any of the conditions. I suppose
42 it's possible you could revisit them but that would be again...I mean there would have to be a
43 change in circumstances that would justify that otherwise what you're doing for a renewal it's
44 really a time extension to continue doing what they've already gotten their permit to do. So if
45 you get a permit then it becomes a permitted use even if it's for a period of time as long as they
46 continue that same use and do not change it either expand it or intensify it in any way then the
47 request it just for a time extension based on the same conditions. This Commission would have
48 very limited authority to unilaterally decide to change any other conditions that were already a

1 part of that original permit because you know the makeup of the Commission when they come
2 back in five years down the road may be quite different than the Commission that originally
3 granted the permit and you know somebody would have a right, an expectation, a vested right
4 to operate under a certain set of conditions and not think that when they come in just for a time
5 extension there's seven new people sitting around the table saying, well, I want you to do now a
6 whole new set of different things.

7
8 Mr. Robinson: Well, I think that brings up the point are we granting five-year permits that we get
9 renewed forever as long as they've always had it and is it always grandfathered in or at every
10 five years can a Department or can a Mayor say okay, well you know they had their five years
11 now everybody has to reapply because, because conditions have changed in the County.

12
13 Mr. Galazin: So when it comes to land uses generally speaking if the law changes as it has for
14 some of these permits that you've issued they are subject to renewal as the Code read when
15 the permit was first granted. So as long as they meet the conditions and standards for renewal
16 as it was when the permit was granted then they are eligible for renewal. Somebody getting a
17 new permit after the law's been changed if it has different eligibility requirements for renewal will
18 then be subject to those different requirements. The Council as a legislative body has the ability
19 to decide whether or not to make that a different requirement. It's not an administrative policy call
20 to say well I'm going to subject you to new requirements now. It would have to be a legislative
21 action to say okay, after a certain point in time, you know, you get one renewal subject to the old
22 criteria and then any subsequent renewals will be subject to the new legislation that we've
23 enacted but that goes to nonconforming uses generally speaking. We've talked about it a few
24 times in the past, but those do continue and they are presumed to continue under the same
25 constraints as when they originally applied because the expectation is you have your permit so
26 long as you keep doing these things as it says in the Code then you are eligible for renewal and
27 you can't just change that in the middle of the game. Legislatively you can but you have to
28 allow a certain amortization period otherwise it puts the County at risk of lawsuit for the takings.

29
30 Mr. Robinson: Sorry, my question isn't during the five-year term, my question is at the end of
31 the five-year term is when we vote on a one-year permit is that one-year permit forever because
32 then the one year is just semantics and I guess, you know that's my question.

33
34 Mr. Galazin: So when you vote on a one-year permit they have one year and then it's eligible
35 for renewal and it's in the Code stated what they have to do in order to be able to be renewed.
36 So when they come back a year later if they've met everything that's in that Code then they can
37 be renewed. If they come back a second time they can be renewed. If the Code changes you
38 know before their third renewal that...they don't suddenly have to comply with a new set of
39 requirements for their renewal, they keep going by the old criteria and if they don't meet them in
40 a particular year their expectation, their investment back expectation is that so long as I do
41 these things my permit is eligible for renewal. So long as I continue to do these things my
42 permit is eligible for renewal. You can't say suddenly well, now you have to do a whole set of
43 different things when they built their business model on doing this thing. They have an
44 expectation that it's going to continue a certain way and yes, they have to come back for
45 renewal but the way you consider them, you're gonna be considering different permits as the
46 law changes you're going to be considering different permits under a different set of criteria
47 which can be confusing but Planning and myself will help, you know, walk through any
48 discrepancies and you will see that from time to time there will be somebody who comes in for a

1 renewal and they're subject to different standards and the question might be why is that. Well,
2 it's when they got the original permit the standards were a certain way and the renewal
3 standards were a certain way. Even if the Code changes they have a right to continue on that
4 use even if it's a continuing use and they have to apply for a time extension or renewal of their
5 permit it's a renewal of an existing permit meaning it's renewing the same thing that existed
6 before not you're getting a new permit every year so you're just renewing it. And that's a
7 distinction, the Council can change that but this body cannot change that.

8
9 Mr. Robinson: Any other questions? Commissioner Kahu Hill.

10
11 Kahu Hill: So I'm just looking at renewal so let's...I'm looking at this, let's say that it's for a five-
12 year renewal and then in that five years coming through the Planning Commission and coming
13 through whatever it needs to come through that there's three or four other developments that
14 have now come up in that community and five years later it looks different now the community.
15 I'm wondering how that would look for a commission then to give another five years if when they
16 were given the permit originally that it was different or let's say there was a nearby flooding in
17 the area that may affect that development do these not come into play or it's just always looked
18 at from the original time they apply.

19
20 Mr. Galazin: Yeah, it's looked at from the original time they apply unless the Council decides to
21 legislatively change that because in the realm in land use law the way that vested rights work
22 and nonconforming uses work is that when you do something and if you'll Chair permit me to
23 get on a soapbox for about a minute and a half here?

24
25 Mr. Robinson: Well, is I think we want to figure out is why don't permits expire like licenses?
26 Why does it automatically renew if you just...if you didn't do anything wrong.

27
28 Mr. Galazin: Okay.

29
30 Mr. Robinson: And so if it is then why have a year on a permit instead of you have a permit.

31
32 Mr. Galazin: Okay, so as I climb on my soapbox, the way that the Zoning Code is laid out in
33 Title 19 is...I'm trying to think of a legal word to say crappy but I can't, so it needs work and
34 inadequate, yes it might be one way of saying it. When you end up having so many different
35 uses that are allowed by special use or by you know permit that's subject to renewal or by you
36 know these conditional use or conditional zoning you have a zoning system that is failing at a
37 fundamental level.

38
39 The way the zoning should work is that you should layout certain areas and say these uses are
40 here, these uses are here, these uses are here, if you're in that zone you can do this or as an
41 accessory use you can do this, but you can't do...if it's not there you can't do it and that's the
42 way the zoning should work it's not how it traditional has developed over the years. Hawaii has
43 a very odd structure in terms of zoning generally. Maui has a very odd structure itself. You've
44 got you know State Land Use Commission, you've got your community plans, you've got your
45 Maui Island Plans, you've got your zoning, you've got all these inconsistencies, you have
46 Interim Zoning which was established in 1958 and some parcels are still zoned Interim which is
47 more of a misnomer than anything else. Interim just meant well we didn't know what else to do
48 so we're going to zone it something. They might have just well called it place holder or

1 something. But when they get these uses it is more akin to saying okay, you are granted a
2 zoning, sort of a special zoning category and in the majority of jurisdictions what you would do
3 is, you would say okay, you rather have something as a principle use, an accessory use or a
4 special use and if you're allowed to do a use as a special use you don't have to come back in
5 for a renewal of a...it's not considered a permit, it's a just a special use under the zoning.
6

7 The way we do it here is the same kind of thing except we try and call it a permit and we try and
8 keep it coming back for renewals but it really from a zoning and land use perspective it's just
9 another use of the land that you are allowing and once you allow somebody to use their land in
10 a certain way it's a permitted use. If you change what can be done with that then somebody is
11 entitled to keep using their property the way that they were as long as it was lawful when they
12 started, as long as they don't discontinue it, and as long as they don't intensify or increase it.
13

14 And these special use permits that we have or short-term rental permits that have a period of
15 five years and they come back for renewal we really only have that in there as a kind of a
16 secondary enforcement mechanism just to make sure, okay are you up to date with everything,
17 are your tax filings in order, have you had any complaints, if so then they know that they can
18 have that taken away, but it's not like we're giving them a you know a business license that can
19 be revoked or some other kind of license. It really is a type of zoning even though we call it a
20 permit, it's a strange way of doing it, it's not a very elegant way of doing it but this is the system
21 we have and until we overall Title 19 this is what we've got. So I will climb back down off the
22 soap box. Thank you.
23

24 Mr. Robinson: Commissioner Kahu Hill.
25

26 Kahu Hill: I just have one more question but it's not related to what you're on right now so
27 before you conclude...
28

29 Mr. Robinson: Ask the last one.
30

31 Kahu Hill: Okay, I have a clarification and I wanted to see Corp. Counsel for and you had
32 mentioned about the RFSs for the Request for Service and I understood that nobody could
33 make an anonymous complaint and if I heard you right which leads me to wonder if somebody
34 had a very angry neighbor or heard that there was some domestic or illegal activity, police were
35 called, something happened and for safety reasons or for other reasons they wanted to make
36 an anonymous complaint that would to an RFS does any of that, is any of that apply that
37 someone can't make an anonymous complaint leading to an RFS.
38

39 Mr. Galazin: So we're drifting a little off of, you know our topic but I will say that is, that is a
40 policy that was made by this Administration and I think it was in response to a extraordinarily
41 large number of anonymous complaints that came flooding in to the point where the, you know
42 ZAED, Public Works inspectors were unable to keep up with any of these of complaints, weren't
43 able to track down anybody to find out to give them resolution and so a administrative
44 determination was made at the highest level that anonymous complaints would not be accepted.
45 So if somebody wants to make a complaint that there's a zoning violation or a building code
46 violation or something related to their neighbor then they have to put their name and contact
47 information to that and if requested then that will be, that will be given out and that was as I
48 understand it this is something that happened during my absence was to curtail the

1 extraordinary number, explosion of anonymous complaints that came flooding in and were
2 hampering actual functions of Public Works, of Planning and that may be different under a
3 different administration. I know different jurisdictions take a different approach to it but that is
4 how this particular Administration has dealt with this issue and is dealing with this issue
5 currently.

6
7 Kahu Hill: Mahalo.

8
9 Mr. Robinson: Thank you. Commissioner La Costa.

10
11 Ms. La Costa: I have one quick question when you're talking about renewals I just want to step
12 back a second, when someone is in the permit process if the rules change and they're in that
13 process do they have to comply with the new rules or are they grandfathered per se under the
14 old rules based on when they applied for their permit.

15
16 Mr. Galazin: So typically when a permit is deemed complete and accurate, if they paid their fee
17 and it's been accepted by the Department and they've determined that it meets all the criteria
18 for processing then they are vested into whatever the Code says at the time it's deemed
19 complete and that is, you know in different states having practiced in a variety of jurisdictions in
20 Washington State I'll give you an example, that's statutory. As you soon as you put in a building
21 permit and is deemed complete, boom no matter what the Code says afterwards you're vested
22 to that. Vested rights in Hawaii are a little more of a nuanced approach it's to what extent have
23 you started to invest the time and money and resources into a project, but the safest rule to
24 apply is to say that you know once you got an application that's in and it's complete and it's
25 being processed then it's being processed under the what the Code was when that application
26 was submitted because it was presumed by the person who submitted it they probably put in a
27 lot of time, money and effort before they submitted their application and they've got an
28 expectation that it will be reviewed under these set of criteria. Now again like I said, legislatively
29 that can be changed and that's a discussion that I've had with the Council on a couple different
30 occasions but that is something that would have to be, that would have to be codified.

31
32 Ms. La Costa: So if I might ask so when you say complete, if I ask for one through ten and you
33 provide me one through ten and then it goes into the bin for processing then it is deemed
34 complete then and those rules, regulations, and codifications apply at that time?

35
36 Mr. Galazin: I'm going to let the Director take this one.

37
38 Mr. Spence: Okay, again it depends on the permit. Short-term rental homes we generally
39 have...well, short-term rental homes we generally have all the information once there's been
40 notification to the neighbors and we have all the agency comments in for the ones that we do
41 send out for agency comments. Mostly and I think this is statutory for some of the changes in
42 zoning under our permits process under 19.510 the Director deems the application complete
43 like we will send certain permits out for agency comment, we'll send something to DLNR or to
44 the Department of Health, once those comments come back in and you see those pretty
45 commonly in your application at that point we will...and an applicant has addressed all of the
46 comments then we can deem the application complete, all the information is there to send it to
47 the commission for public hearing and notification of the neighbors. I mean the only thing that

1 comes in after all the agency comments are pau will be notification to the neighbors and that
2 public testimony element.

3
4 Ms. La Costa: Thank you.

5
6 Mr. Robinson: Okay, any other questions? Seeing none, Corp. Counsel thank you very much
7 for all that information. It helped me. I hope it helped the rest of the Commissioners. I'd like to
8 move onto Item D-1, Director.

9
10 Mr. Spence: Commissioners, we have two bills for you this morning still. The first one is an
11 amendment to Title 19 of the Maui County Code for temporary extensions of special permits,
12 conditional permits, B&Bs, et cetera, and our Administrative Officer David Raatz is here and he
13 will explain the bills to you.

14
15 **D. UNFINISHED BUSINESS**

- 16
17 **1. MR. WILLIAM SPENCE, Planning Director, transmitting proposed**
18 **amendments to Title 19 of the Maui County Code to allow for the temporary**
19 **extension of any State Special Permit, Conditional Permit, Bed and**
20 **Breakfast Home Permit, Short-Term Rental Home Permit or County Special**
21 **Use Permit while an application for the permit's extension or renewal is**
22 **being processed, unless the applicant causes substantial delay in**
23 **processing. (D. Raatz) (Public hearing conducted on June 12, 2018)**
24

25 Mr. David Raatz: Thank you Director. Good morning Chair and Commission Members.
26 Item D-1, this bill was subject to a public hearing before this body back on June 12th. And
27 again, the bill would establish a grace period for a permitholder who submitted a timely renewal
28 application unless that permitholder has caused or is causing a substantial delay in the
29 processing of the application.

30
31 We've identified four issues that have come up both before this body and the other two planning
32 commissions that have considered the bill. I can just briefly go over those if you'd like Chair and
33 then we can continue on with the discussion?

34
35 Mr. Robinson: Please.

36
37 Mr. Raatz: So one is a question, should the grace period that this bill would establish be for an
38 indefinite duration which is how it's currently drafted or should there be a specific limit that the
39 County has to process the renewal before the grace period would expire? On that point, we do
40 think it's appropriate to have it indefinite the way it's currently drafted but we'd welcome a
41 different recommendation just because it would be hard to establish a one size fits all limit for
42 how long it should take to process renewal applications. So that's point one, the duration of the
43 grace period, indefinite or a set period.

44
45 Point two or question two, there was a fair amount of discussion before this body on the
46 standard of substantial delay. So again the applicant would lose the grace period or the grace
47 period would expire if the applicant is causing a substantial delay in the processing. And this
48 body was talking about whether there should be a set duration, how much time would be

1 considered a substantial delay. We went back and did a little research and we acknowledge
2 substantial delay, leave some room for interpretation but it is a common legal standard. Courts
3 have employed it without regarding it as too vague or unfair, but again we would welcome any
4 recommendations this body might have if you have a different view point.

5
6 Point three, was a drafting or formatting question that came up back on June 12th. Currently the
7 bill amends several different sections of Title 19, the different types of permits that do have
8 expiration dates and a question came up would it be more efficient from a drafting standpoint to
9 just put this principle in a general section of Title 19. And again we're would welcome the
10 body's viewpoint. That does seem to have some merit, you know, particularly in the future the
11 Council establishes different types of permits. We wouldn't have to worry about going into those
12 different elements of Title 19 if this is just a standard that applies generally throughout Title 19.

13
14 Finally another question that's come up is would this bill have the effect of limiting any entities
15 existing authority for processing or approving renewal applications and would this change the
16 standard that applies. And the answer to that is no, we're not intending to look at the substance
17 of how you get a permit renewed or extended. But we're just saying while that question is being
18 reviewed whether it be by the Planning Director or the Planning Commission or the Council, the
19 applicant would have a grace period with that underlying permit would remain in effect.

20
21 So with that Chair, thank you very much. We would welcome your comments or questions.
22 Again ultimately we're asking you to sit in your role as an advisor to the County Council and
23 we'll transmit your recommendations up to the Council.

24
25 Mr. Robinson: Thank you. At this time, we're gonna take public testimony on this item. Is there
26 anybody in the audience wish to testify on this? Aloha. Aloha, please...

27
28 Ms. Francine Aarona: I asked if this was going to come up because I have three kids at home
29 with husband driving them nuts, but anyway...

30
31 Mr. Robinson: Please state your name and you have three minutes.

32
33 Ms. Aarona: Francine Aarona.

34
35 Mr. Robinson: Aloha.

36
37 Ms. Aarona: Aloha. Also Aunty Mopsy Protect Paia. Have to put that in. Whenever you speak
38 about vacation rentals, special use permit it triggers a flag in my brain and I've been out of
39 commission for a while but surprisingly enough I just read about Title 19 and the audit done in
40 2016, this is 2018. It wasn't a great review just going on different elements of that audit. But
41 anyway the word, "amendment" has a...well, it sends a red flag because anytime you amend
42 something to whatever is going on and forgive me David if I'm out of the box as far as
43 explanation of the bullet points, but whenever you talk about amendments you talk about
44 amending something that is already in position. So my question is don't we have something in
45 place that takes care of these renewals? I mean they are renewal. They're stamp date. So
46 that date means something. They met the qualifications the date is in. Of course, everybody
47 has to do their homework. They have to go through this application again or to renew this thing.
48 The people still maintain their operation. How does that affect their ongoing process and

1 whatever we're doing as long as they're legal.

2

3 The other thing that triggers me is that there are permits in there that are in violation. Now in
4 amending this to put them on hold to say give them more time to make money and whatever
5 that triggers another area of concern. So what I'm saying and thank you for all the discussion
6 this morning because that's something for a resident like me to listen to. And it's so important
7 that the community comes and digests everything that you do because I respect all of you doing
8 such hard work. It takes a lot to sit there because you are our sounding block. You're the one
9 that we rap first. We give it to you and you have to listen to us and you have to take it all in for
10 whatever it's worth. So I just have a big concern on this that you take a look at doing all these
11 amendments and see what's in place. Who's gonna benefit by it these illegal violation permits
12 that are there? Are they—

13

14 Ms. Takayama-Corden: Three minutes.

15

16 Ms. Aarona: --just gonna carry on? So that's my big thing as far as the amendments. Thank
17 you so much.

18

19 Mr. Robinson: Any questions from the Commission? Aloha, thank you.

20

21 Ms. Aarona: Thank you.

22

23 Mr. Robinson: Anybody else like to have public testimony? Hi, aloha. Please state your name
24 you have three minutes.

25

26 Ms. Zandra Amaral Crouse: Aloha kakahiaka kuu mau hoaloha. Good morning my friends. I
27 simply want to say I'm glad to see this on the floor.

28

29 Mr. Carnicelli: State your name.

30

31 Ms. Amaral Crouse: Zandra Amaral Crouse. Zandra comes from the missionary handbook,
32 Amaral from my daddy and Crouse from my dear husband who is serving overseas. But I'm
33 glad to see...I just want to say, I'm glad to see this on the floor because it opens the discussion
34 to you guys and gives us the public mana`o on what comes out of this body and I really thank
35 you. I thank you all. Mahalo.

36

37 Mr. Robinson: Mahalo. Any other public testimony? Seeing none, public testimony is closed.
38 Commission, open up for any questions for David. Commissioner La Costa.

39

40 Ms. La Costa: Thank you Chair. Thank you David. I have still major concerns about the non-
41 definition of both, substantial delay and the indefinite period. If I have heard once, I've heard a
42 thousand times why bother go get a permit when it takes so long because everyone keeps
43 shuffling it from time to time. People do not feel represented. They do not feel worked for. And
44 those, those periods must be definitive in order for the public to have trust that once they go to
45 the expense and the time 'cause it is a lot of work having done a building permit myself to have
46 an expectation from the Planning Department or whomever the departments are that they are
47 done timely and not just tossed out there and then get put on the bottom, put on the bottom, put
48 on the bottom. So both indefinite and substantial delay need to be defined in my estimation.

1
2 Mr. Robinson: And David is, is we're not talking about building permits though, we're talking
3 about—

4
5 Ms. La Costa: No, we're just...(inaudible)...

6
7 Mr. Robinson: --yeah, the renewals.

8
9 Ms. La Costa: --how much time that I had, so...

10
11 Mr. Robinson: Well, building permits is another three-day conference, yeah, so but, but on top
12 of that.

13
14 Ms. La Costa: But the permit process is what...(inaudible)...

15
16 Mr. Robinson: Yes.

17
18 Ms. La Costa: Sorry.

19
20 Mr. Robinson: Okay. Any other comments Commissioners? Commissioner Carnicelli.

21
22 Mr. Carnicelli: So David if you would please address Aunty Mopsy's concerns about, you know,
23 a permitholder that has a permit but may also be illegal or in violation at that time and how that
24 figures into this please?

25
26 Mr. Raatz: I would say that issue is not directly addressed in this bill but in D-2, our next item
27 we get into that principle and you know, it's possible we could do some mixing and matching of
28 some of the same elements in both bills. But yes, we're stilling here now that is regarded by me
29 at least is a different category.

30
31 Mr. Robinson: Yeah, I think Commissioners I think what we're looking at here is the word,
32 "indefinite". You know it's the, and David you can correct me if I'm wrong but that's what you
33 guys are looking for. You're looking for an indefinite extension on permits that people have
34 applied for and the Department is asking for as long as time as possible to process those
35 permits. Not people having a definite time to reapply but they've applied for their renewal and
36 you want to be able to take your time until you get to...well, I mean, I mean, but really I want to
37 take it away from the applicant but it's really us asking for that internal time is that correct?

38
39 Mr. Spence: Thank you Mr. Chairman. It's not...we're not looking to untimely process permits
40 or time extensions. A lot of times an applicant will be timely in requesting a renewal and for a
41 myriad of reasons they cannot be processed within that 90-day time period. So what we're
42 looking at is at no fault of the applicant we're requesting additional time to process their renewal
43 application. There's things that are...I mean, if something has to be reviewed by the
44 Department of Health or DLNR, I mean that may take six or eight months to do. Their permit is
45 technically expired already but it's no fault of the Department and it's no fault to the applicant.
46 So that's what we're looking to be able to hold an application open for that applicant. So it's just
47 not automatically done and they have go reapply and go through this whole process again.

48

1 Mr. Robinson: Do we have any discussion or a motion? Commissioner Carnicelli?

2

3 Mr. Carnicelli: I guess at this point I mean if nobody has any other questions maybe it's
4 appropriate just to put a motion on the floor so we have something to discuss.

5

6 Mr. Robinson: If you wish.

7

8 Mr. Carnicelli: So I'll go ahead and make a motion to approve as recommended by Staff. We'll
9 just start there.

10

11 Mr. Robinson: We have a motion to approve.

12

13 Mr. Hudson: I'll second it.

14

15 Mr. Robinson: Second by Commissioner Hudson. For discussion on the motion, speak to the
16 motion?

17

18 Mr. Carnicelli: Yeah, so you know we put this substantial delay on the applicant verbiage but
19 you just said something Director that I think may be appropriate and that is to maybe put...okay,
20 if you're going to go to this indefinite thing because it's at Department of Health or DLNR or
21 whoever you need to hear back from and they're not...at no fault of the Department, you know
22 we have no fault of the applicant, but what if...like rather than okay you know, it be nice for us
23 we have our own trigger date, right we have a 120 days. We have to do something otherwise
24 it's approved. We probably don't want to do that because we want to get some sort of...but if
25 it's outside the Department's hands then maybe we give them more time. But if it's internal, you
26 know, maybe it's just like hey you guys gotta move?

27

28 Mr. Robinson: Any other Commissioners? Commissioner Hudson.

29

30 Mr. Hudson: I would like to speak to the motion too. This is a recommendation to County
31 Council.

32

33 Mr. Carnicelli: Right.

34

35 Mr. Hudson: So we don't have a final say on this and as we learned earlier today, we can put
36 comments from other people, it doesn't have to be unanimous decision going to County Council.
37 I'm concerned about substantial delay. I understand that the legal verbiage is okay, but I'm still
38 concerned about substantial delay with an individual who delays, and delays, and delays, and
39 delays. I don't like that. So I concur with that. I'm good with the delay caused by the
40 departments because having worked for the County for 30 something years sometimes these
41 things take a long time and I don't think it's right for us to hold the applicant accountable for
42 something that the County delays and I think we hold...the accountability should be with the
43 applicant. Thank you.

44

45 Mr. Robinson: You're welcome. Any other Commissioners?

46

47 Mr. Spence: Can I make a comment Mr. Chair?

48

1 Mr. Robinson: Director.

2

3 Mr. Spence: Okay, thank you. One delay that especially for...pertaining to renewals, your
4 permit renewals, it depend...you have to read the way that the condition is on each one of the
5 types of permits. Some of them are renewed through the Department, some of them are
6 renewed through the Commission, and sometimes you know we can experience delays again,
7 this is another thing that at no fault of the applicant we may have a hard time getting something
8 on your agenda. It may be full, you may have something controversial on it, you may have
9 quorum issues, again, this is...we're looking at being able to honor some of these, you know
10 efforts in going through the permitting process without burdening them with something that is
11 just not their fault. So this is not an unusual situation that there will be delays because
12 something that's outside the applicant's responsibility or outside of their ability to deal with or
13 even out...you know there are things that are outside of the Department's ability to deal with.
14 You know we may be dealing with a State agency or something so, we're just trying to help our
15 applicants out with this is a pretty standard practice within the Department already. We are just
16 codifying it.

17

18 Mr. Robinson: Okay. Commissioner La Costa.

19

20 Ms. La Costa: Thank you Chair. I know I sound like a, you know, I'm beating a dead horse but
21 there has to be some accountability and timeline set on this for both parties, both the applicants
22 have to have some kind of timeline, the substantial delay portion and the indefinite period for the
23 different departments. If those parameters are set then the expectation is in order to do it
24 properly then you will do your job and they will do theirs and they will do the other person so
25 there are not indefinite delays. And I do understand how things come up, but I think that leaving
26 that open is someone could go three, four, five, six, seven, eight, ten years and never have their
27 day in court if you will because indefinite delays pops in or you could be, can be accused of a
28 substantial delay if it's not determined and defined.

29

30 Mr. Robinson: Commissioners? Commissioner Carnicelli?

31

32 Mr. Carnicelli: So David I just want to...even though the motion on the floor is to approve as
33 recommended, the dynamic, the four items that you listed will also be transmitted with this
34 particular recommendation, correct?

35

36 Mr. Raatz: Thank you for that question. Yes, we will give the Council a full report on the range
37 of issues that are raised by all the commissions and regardless of what the bill that we actually
38 put forward looks like, we'll let them know the various concerns were raised.

39

40 Mr. Carnicelli: Okay, if I could Chair?

41

42 Mr. Robinson: Yes.

43

44 Mr. Carnicelli: So you know as the testifier had stated, you know Title 19 was made in 1959 or
45 1960 whichever one it was. It's a patch of a patch, of a patch, of a patch, of a patch. This is
46 codifying something that's just been in practice. I think that trying to make it general might make
47 a lot of sense. You know, rather than...'cause then also and we're gonna come back with
48 another patch that we found some place else or something like that. I think that that just really

1 makes a lot of sense.

2

3 And then also to tie into the next item with this item is in the process I think that it's also
4 important that people know and understand that if something is found along the way, this permit
5 does....you know, isn't automatically, you know, granted. So I think that that's also important
6 that the public understands and knows that. It's not like okay, you know you're okay until your
7 renewal, but it's like well, you're okay until you're not. So I think that that's also important that
8 that's stated. Thank you. Thank you Chair.

9

10 Mr. Robinson: Commissioners? Is, you know, I'm of the thought that everything affects
11 everything and so if we make something indefinite then who does that affect? Well, it affects
12 the applicant not being able to reinvest, to retro whatever they want to do because they're not
13 sure because their permit's holding up and when you have short-term rentals, when you have a
14 cap, the person who's next on the list wanting to apply can't get theirs because they're waiting in
15 line from somebody who already has one. I don't agree with the word, "indefinite" unless it's no
16 taxes indefinitely you know. But other than that, can't we come with some reasonable time
17 frame that we think we should be able to get something done like a year, 18 months? I mean,
18 we have a 120 days, you know. I mean, and that's where I think, you know, I say when the
19 people look to us, they look to us to say, be reasonable. Indefinite is not reasonable. We
20 understand there's circumstances, we understand there could be a ...(inaudible)... out
21 somewhere. I mean, after a year I think we're gonna, we're gonna...they come back to the
22 Commission and ask for something differently. And that's, I'm going to you guys
23 Commissioners is indefinite is a blank slate. So you know, so I think if we're gonna do
24 recommendation we gotta think of something. Let's us think of something reasonable.
25 Commissioner Carnicelli.

26

27 Mr. Carnicelli: So okay, with this being transmitted to, and maybe this is way too much work for
28 the Department to do, but I think it be appropriate to see how long it actually does take. I mean,
29 if we had something quantitative, you know, and say like okay well these permits take six
30 months typically. Oh here's an anomaly that's you know, 18 years or you know whatever it is,
31 but I mean to come with the data. I'm saying like this is the typical what happens and not. So
32 it's not just this well, we don't know so let's just make it indefinite.

33

34 Mr. Robinson: Director.

35

36 Mr. Spence: It's hard to say because each case is different. I mean, the second bill here is in
37 regards to violations and we...

38

39 Mr. Robinson: But that's...but that's a different bill so we can yeah—

40

41 Mr. Spence: It's a different bill, but sometimes when we go into renewals of bills we will find a
42 violation and so what does it take for that renewal to come into compliance so we can issue a
43 renewal?

44

45 Mr. Robinson: But if we have that, then there's no fault of the applicant is now triggered.

46

47 Mr. Spence: Yeah,--

48

1 Mr. Robinson: So, so, yeah, I mean, you know what I'm saying so in the—

2
3 Mr. Spence: Okay.

4
5 Mr. Robinson: --next one we're gonna be able to take care of that.

6
7 Mr. Spence: Yeah, you can. Yeah, the...but again—

8
9 Mr. Robinson: A year Director? Can we go a year?

10
11 Mr. Spence: You know the Commission is free to make a recommendation.

12
13 Mr. Robinson: No, but I mean as reasonable as do 95 percent of the renewals happen within a
14 year?

15
16 Mr. Spence: Oh absolutely.

17
18 Mr. Robinson: That's what I'm saying.

19
20 Mr. Spence: Absolutely, more...probably more like 98 percent.

21
22 Mr. Robinson: Commissioner Kahu Hill.

23
24 Kahu Hill: Aloha. I also have an issue with that indefinitely as Chair Robinson spoke of and if
25 something happens 90 percent of the time within a year, I think looking at that whether it's
26 12 months or 18 months maybe something we might want to consider. It's a very big word and I
27 think we're all sitting here to be fair. That's one of the things we do on the commission. So I'm
28 just chiming in.

29
30 Mr. Robinson: Commissioner Tackett.

31
32 Mr. Tackett: So do we have an average time for something like that?

33
34 Mr. Spence: No. It's easy to say the renewals are issued within a year. I can't say, it just
35 varies case to case that's why we were going for indefinite. We know when something is the
36 cause, the applicant and when it is not. We request information and get no response for three,
37 four, five six months. We know that the cause is by the applicant. We also know if the delay is
38 the cause of an agency outside of our control. It could be a federal agency, it could be a state
39 agency, even sometimes county, we're just not in control of those things. So that's why we say
40 indefinite. If this Commission wishes to put a timeframe on this, and I'm sorry I interrupted,
41 that's your purview.

42
43 Mr. Robinson: Proposed. We're proposing. We can't put it, we can propose it.

44
45 Mr. Spence: You can propose that.

46
47 Mr. Robinson: Recommend it.

48

1 Mr. Spence: We're, I think we're gonna be okay with that. There should be maybe some
2 language that says, I don't know...Dave is more the legal mind than I am. Preponderance of
3 the evidence.

4
5 Mr. Robinson: Commissioner Tackett.

6
7 Mr. Tackett: So the way I was thinking of it is, is perhaps if you took all the variables out, if you
8 took the person that was trying to get the permit, if you took their delays out, if you took all the
9 people that could theoretically delay your function out, how quickly could you do one and then if
10 you added a couple months onto that, you could come up with a number and then you could
11 come up with verbiage that said that none of that stuff is relevant if it's things that is causing this
12 delay beyond your control, you know. So that's just...I think what everybody's trying to get to is
13 that, that number.

14
15 Mr. Robinson: Yes, so Commissioners is can we agree that indefinite is unacceptable as a
16 Commission?

17
18 Ms. La Costa: Correct.

19
20 Mr. Robinson: So I think David, I think that's the first thing and then can we maybe recommend
21 the Council look at a year?

22
23 Mr. Carnicelli: I will take that as a friendly amendment if the seconder is okay with that?

24
25 Mr. Hudson: I'm good with that.

26
27 Mr. Robinson: So, so David what I hear and we'll take a vote on it is I hear that that we think
28 indefinite is unacceptable and that we'd like the Council to look at looking at year and then you
29 guys can then have some data or study to support or move that.

30
31 Mr. Raatz: Okay, and the only thing I would just raise not to complicate things further but let's
32 say there is a one-year deadline established what happens if that deadline isn't met?

33
34 Mr. Robinson: That's up to the Council, right? So I mean, I mean, we gotta get somewhere
35 from indefinite. Commissioner Carnicelli.

36
37 Mr. Carnicelli: So that I'm gonna say, I'm gonna put what happens to us into this and say if
38 within a year then it's automatically approved, right? So it's not like they...like if the County
39 drags their feet and it doesn't happen in a year, I don't suddenly lose my permit what the County
40 did. It's just like no it's no different than what we do here. We have a 180, 120 days to act
41 otherwise it's approved. So if the County doesn't get their act together in a year then it's
42 automatically reapproved. That's, that's what I will place as part of—

43
44 Mr. Robinson: Yeah, and again, and this is recommendations so we can all have different
45 points of view. It doesn't have to be a unanimous vote. So David please add that for
46 Commissioner Carnicelli. Commissioner La Costa.

47
48 Ms. La Costa: Thank you Chair. I also would like to have something in there about substantial

1 delay and have a timeframe on that because again that goes against the applicant. So put their
2 feet to fire if the County's feet to fire is being done.

3
4 Mr. Robinson: Well, well, the applicant it is only if it's no fault of their own otherwise they do
5 have time, they do have a time limit and it can be adjusted.

6
7 Ms. La Costa: Okay, but it's talking about substantial delay. We haven't defined what
8 substantial delay is and that's important is it 30 days, 60 days, 90 days?

9
10 Mr. Robinson: Well, we're looking at a year right now.

11
12 Ms. La Costa: No, that's the indefinite portion. I'm looking at the substantial delay which to me,
13 maybe they're one in the same and I'm being a blond I'm not sure, but just saying—

14
15 Mr. Robinson: Okay, is David you got that?

16
17 Mr. Raatz: Yes.

18
19 Mr. Robinson: Okay. Commissioners, would anybody like to add anything else? Yeah, so we
20 don't need to vote, right? We're just, we're giving our recommendations?

21
22 Mr. Galazin: ...(inaudible)...motion to recommend.

23
24 Mr. Robinson: Motion to recommend. All those that agree with what was stated raise your right
25 hand. We have six ayes.

26
27 Mr. Raatz: Thank you very much.

28
29 Mr. Robinson: Thank you David.

30
31 **It was moved by Mr. Carnicelli, seconded by Mr. Hudson, then**

32
33 **VOTED: To Recommend Approval to the County Council of the Proposed**
34 **Amendments to Title 19 of the Maui County Code to Allow**
35 **Temporary Extension of Permit While an Application for Extension**
36 **or Renewal is Being Process Unless the Applicant Causes**
37 **Substantial Delay in Processing with the Recommendations Made**
38 **by the Commission During the Discussion of the Motion.**
39 **(Assenting – L. Carnicelli, L. Hudson, A. Hill, C. Tackett, S. Castro,**
40 **P.D. La Costa)**
41 **(Excused – T. Gomes)**

42
43 Mr. Robinson: Commissioners, seeing that it's 12:05, I'll see you guys back here at 1:05.
44 Aloha.

45
46 A recess was called at 12:05 p.m., and the meeting was reconvened at 1:07 p.m.

47
48 Mr. Robinson: We are on Item D-2 of Unfinished Business. Director.

1
2 Mr. Spence: Okay, Commissioners we are on Item E-1.

3
4 Mr. Robinson: D-2.

5
6 Mr. Spence: Oh, I'm sorry. I'm jumping ahead. D-2, this is a second bill proposed by the
7 Planning Department and this is about...another tool for enforcement. Take it away Dave.

8
9 **2. MR. WILLIAM SPENCE, Planning Director, transmitting proposed**
10 **amendments to Title 19 of the Maui County Code to prohibit or suspend the**
11 **processing of an application for land use on a parcel that is the subject of a**
12 **pending enforcement action by the Planning Department. (D. Raatz) (Public**
13 **Hearing conducted on June 12, 2018)**
14

15 Mr. David Raatz: Thank you Mr. Director, Chair and Commission Members. For the record, I'm
16 David Raatz, Administrative Planning Officer with the Department of Planning. And this item
17 D-2, we're again asking you to sit in your capacity as advisor to the Maui County Council on a
18 proposed land use ordinance. The bill before you has a purpose clause on Page 1 that states,
19 the purpose of this ordinance is to prohibit the Planning Department's processing of an
20 application for land use on a parcel, excuse me, on a parcel where there is a pending
21 enforcement action by the Department. The operative proposed new language to be placed in
22 Title 19 of the County Code is on Page 2 of the bill, it the underscored sentence which reads, an
23 application shall be deemed incomplete if it is for or relates to land use on a parcel where there
24 is an unresolved enforcement action for a violation of the Comprehensive Zoning Ordinance
25 pursuant to Chapter 19.530. Chapter 19.530 is our general enforcement chapter in the County
26 Code.

27
28 We did have the public hearing on this item back on June 12th. The discussion at that time
29 focused to a significant degree on the question of how this proposed prohibition would apply in
30 the sense that the current bill says it's a parcel specific prohibition. There was some discussion
31 about should that be a project specific prohibition, perhaps even an applicant specific
32 prohibition. Corporation Counsel mentioned the word lot might be a better term than parcel
33 based on definitions in Title 19. There was some discussion about comprehensive property or
34 excuse me, condominium property regimes, CPRs. In that case, could there be or should there
35 be a unit specific prohibition, maybe some combination of these various types of standards.
36 And we would welcome again, any comments or recommendations to the Council that the
37 Planning Commission has. Thank you.

38
39 Mr. Robinson: Thank you. At this time, we'll open the floor for public testimony for Item D-2. Is
40 there anybody in the audience that would like to testify on this item, please step forward?
41 Seeing none, public testimony is closed. Commissioners do we have any questions for David
42 on this item? Commissioner Carnicelli.

43
44 Mr. Carnicelli: David have you guys reworked any of the language based on like you know, the
45 conversation we had last time, do you guys have wording or you know, have you reworked this
46 at all based on that? Do you have a recommended amendment to the original language?
47

1 Mr. Raatz: Thank you for the question. We don't at this time. We're still going through the
2 planning commission review process with the three commissions. Lanai just last week
3 recommended approval as drafted. We're going back to Molokai tomorrow and I don't...until we
4 finish that process with the three commissions, we'll probably just be dealing with what we've
5 submitted.

6
7 Mr. Carnicelli: Okay.

8
9 Mr. Robinson: So, so David it's you know, the last time you were here we expressed concerns
10 about a major project that might have four, five permits going on at one time and if they were,
11 you know with one, it would stop the other four. A hotel being built or remodeled with guests
12 inside of it. I mean, and we pull their permits, we pull their C.O., where we're moving, we're
13 moving visitors. So how does this not affect it if we grant this? I mean, I guess we want to be
14 fair to all, I mean, are you looking at it to be arbitrary?

15
16 Mr. Raatz: Definitely not looking to be arbitrary. We're trying to come up with a fair and
17 objective standard the best we can. And this bill is limited in scope in the sense that it wouldn't
18 apply to every possible permit that an applicant might need to proceed with a project. It's
19 dealing with permits that are processed through the Department of Planning and obviously we
20 deal a lot with development, but we wouldn't be dealing with Public Works related permits or
21 any other County agency. So basically they have to get right with us before we'll grant them
22 something new is the concept in this bill that we're putting forward.

23
24 Mr. Robinson: Can you give an example of that because right now a short-term rental he can't
25 have two properties. So he can't right with you to go get another one, right? 'Cause only one
26 person's allowed one STRH each. So if they use a fictitious or they use a different entity I
27 understand they go...(inaudible)...bush, so how is...can you clarify how in a real life situation
28 how that could help us?

29
30 Mr. Raatz: Well, there's a variety of possible violations of Title 19, and again, I don't have a
31 specific case, but it's basically the concept that we're trying to propose here that if we're in the
32 process of enforcing a Title 19 violation, we just don't think we should have...devote the
33 resources to processing a new application on the same parcel.

34
35 Mr. Robinson: I'm looking for leverage.

36
37 Mr. Spence: Exactly.

38
39 Mr. Robinson: Commission? Commissioner Carnicelli.

40
41 Mr. Carnicelli: Thank you Chair. So is I like what you brought up though 'cause you're going...I
42 mean, say a hotel, I don't think a C.O. is gonna get pulled, you know, they're not going suddenly
43 lose their Certificate of Occupancy, but there's gonna be a balance between not issuing a new
44 permit to somebody that's already in violation which is really what we're trying to do. We're
45 trying to codify that. And at the same time, you know, what if there's two TMKs, we talked about
46 that before, right. So I think that there's something that the Council needs to address in that we
47 don't want it to be overarching but yet we also want to catch the bad guys. So where is that line
48 in the sand I think is really what we're trying to get to here rather than just saying, okay this

1 language is good, done it's you know what is the definition with which we're going to try to cast
2 the net over. That's the tricky part which I think what we said lot or something like that last time.
3 Is it owner? You know, like Chair Robinson is saying, you know you got a property over here
4 that you got multiple violations on but you're doing something, you know on the other side of the
5 island, you know, does that...is it just the word applicant, you know, come into play? But then
6 even then it's like okay, if just set up a different entity. So anyways I'm getting all convoluted in
7 the back and forth but it's like what is the net that we cast to try to get and accomplish what we
8 want to get accomplished.

9
10 Mr. Robinson: And I'll give Corp. Counsel a chance but a perfect example is a lot of people
11 have different partners.

12
13 Mr. Carnicelli: Right.

14
15 Mr. Robinson: You know you have people that are...he's in 17 different entities 'cause he
16 brings one special talent. And so if there's a NOV in one of his talents that he's in partners with
17 all these different developments, you know, so it's you know...Corp. Counsel if you'd like to
18 chime in?

19
20 Mr. Galazin: Yeah, thank you. And forgive me, Dave if this was something that was discussed
21 at the last meeting that I was not at, but the way that it's drafted right now in terms of incomplete
22 application if it relates to a land use where there's an unresolved enforcement action does that
23 obviate the need to have that in there if the application is to resolve the actual underlying
24 violation?

25
26 Mr. Raatz: Thank you for that question. It did come up briefly last time but it's good to reiterate.
27 Our intent certainly would not be deny, to deny anybody the ability to fix an unresolved violation
28 through the means of issuing a new permit. So if this goes forward we probably want to spell
29 that out in expressed terms that we want to help people with any type of permit that would help
30 them resolve an outstanding violation with the caveat that any accrued fines or fees wouldn't be
31 waived by that action.

32
33 Mr. Robinson: Commissioner La Costa.

34
35 Ms. La Costa: Thank you Chair. Has there been a resolution to the CPRd properties that are
36 happening all over ag land?

37
38 Mr. Raatz: I'm not sure what you mean by resolution if you can be more specific?

39
40 Ms. La Costa: When we're talking about the permits and not allowing them. So if you have a
41 CPR parcel and Johnny on A Parcel has a violation but Suzie on B Parcel wants to build a
42 garage which she can do will that affect Suzie's ability because that is all on one parcel and has
43 that been ascertained.

44
45 Mr. Raatz: Thank you for that question. After you raised that issue at the last meeting we did
46 give some consideration to that issue and if the body recommends we could address that similar
47 to how it's down in Chapter 19.65 for short-term rental homes where it generally talks about lots
48 but it says if you're in a CRP instead we'll look at condominium units instead of lots. It's the

1 appropriate measure. So if the body desires, we could draft this so that the prohibition would be
2 unit specific as opposed to lot or parcel specific when you have condominium property regime.

3
4 Mr. Robinson: Commissioner Carnicelli.

5
6 Mr. Carnicelli: But a CPR is a state issued designation not a county issued designation.

7
8 Mr. Raatz: That's correct. It's a form of ownership.

9
10 Mr. Carnicelli: It's not a subdivision. It's not a dividing of anything.

11
12 Mr. Raatz: Correct.

13
14 Mr. Carnicelli: It's just that the only thing it's dividing of is ownership.

15
16 Mr. Raatz: That's correct.

17
18 Mr. Carnicelli: You know so...and as much as I hate to say this, you know when you buy a CPR
19 property you're kinda marrying the person that you're on the other side of the CPR with. So as
20 much as I understand that you know, where do you draw the line, for me I'm gonna say that you
21 know the CPR doesn't count 'cause again it's a state thing. It's only ownership. It's not an
22 actual subdivision.

23
24 Mr. Raatz: Thank you.

25
26 Mr. Robinson: Are we opening ourselves up for litigation for people having to litigate
27 themselves out of bad partnerships because a partner has a violation at some other condo?
28 You know I mean if you're a timeshare owner, you're one 1/52nd

29
30 Ms. La Costa: Fifty.

31
32 Mr. Robinson: So if a guy owns multiple condos or multiple timeshares...I mean, again this is
33 you know, it seems to me more complicated than it is trying to keep it simple. I know we're
34 trying to go for leverage but are we gonna make just a big mess of it? Corp. Counsel?

35
36 Mr. Galazin: Yeah, Chair thank you. You know if you stick with parcel CPR, you know
37 generally it's gonna be taxed as its own TMK parcel. In that case, that would take care of part
38 of the issue that you describe there. And again, I would strongly caution against making it
39 applicant specific. I would recommend that it be specific to the parcel involved because an
40 applicant may own a parcel, may be even buy a parcel that has an unresolved issue on it,
41 receive an NOV, you know a our Notice of Warning for it because there's an unresolved issue
42 and also want to build something or do a development on another part of the island and you
43 don' want to discourage that and there's been some case law out there not specifically
44 addressing it within the state but I think that would be somewhat analogous that would preclude
45 a body from assessing or withholding a permit for one person if they have an unsolved violation
46 on an unrelated property. That's more in the building permit aspect that applies but it is
47 something to consider and I think Chair, you're right to bring up that we could find

1 ourselves...either the County would find itself in litigation or you would find people, the buyers,
2 sellers in litigation with each other.

3
4 Mr. Robinson: Commissioner La Costa?

5
6 Ms. La Costa: Thank you Chair. So David when we're talking along the lines of CPR look at all
7 the thousands of units that we have on condominiums and I know this was referenced earlier.
8 So if someone is doing an illegal activity in a condominium, who is responsible? Is the AOA
9 because they manage it? Is the...and if they're all fee simple owned, is the owner and how
10 does that affect everyone else if it's on the same parcel, it just happens to be a condominium of
11 that same parcel. So those are the things that are concerning when we talk about whole
12 parcels and you could have 250 owners on one parcel with a condominium.

13
14 Mr. Raatz: Yeah, thank you. Our enforcement actions are against individuals. Say somebody
15 has a permit and they're violating the conditions that's the entity that we would enforce against.
16 We typically unless the AOA for some reason were the actual permit holder we wouldn't be
17 involved with him directly.

18
19 Ms. La Costa: If it's on the same parcel though and it's gone bi-parcel everyone in that
20 condominium will be affected because they're all on the same parcel. They just have separate
21 unit numbers.

22
23 Mr. Raatz: That's correct if this bill goes forward.

24
25 Ms. La Costa: With the parcels, yeah.

26
27 Mr. Raatz: Yeah.

28
29 Mr. Robinson: Commissioners? Yeah, is I think violations are supposed to be independent in
30 its nature to penalize without having to go through penalize something else. I think the financial,
31 financial stability of any project you know is singular and it should be singular and the
32 enforcement should be singular and the violation penalty should be singular. And if you have to
33 go and grab somewhere else to help have leverage then that means your enforcement and your
34 law is not strong enough to begin with and I think it's just a can of worms. Commissioner
35 Carnicelli.

36
37 Mr. Carnicelli: I'm gonna agree. I'm convinced. So I retract my other statement. And unless
38 anybody else has other questions. I'll just put a motion on the floor to recommend as noted with
39 the Commission's comments if that makes sense rather than as recommended by staff, I'll just
40 say as noted with our recommendations. That's the motion.

41
42 Mr. Robinson: Do we have a second?

43
44 Mr. Castro: I'll second that.

45
46 Mr. Robinson: Second by Castro. Discussion? Director.

47

1 Mr. Spence: So what I'm hearing from the Commission is they're expressing a concern about
2 enforcing on...I mean, just like if you had a 50-unit condo, we enforce on the individual condo
3 owner, but the same would be true of a CPRd ag property, you would want to enforce on the
4 individual CPR owner not on both of the owners is that what I'm hearing?

5
6 Mr. Robinson: And I think what we're trying to express is that if you don't have enough power
7 and leverage then you need to get more power and leverage on that individual property and that
8 individual violation instead of trying to grab it from somewhere else and I think that's the best
9 way to fix your problem not trying to, trying to add on. Is that right Commissioners?

10
11 Mr. Carnicelli: Yeah, I mean, is for me. I think like what you even said is I want to give enough
12 leeway to wordsmith it as you need rather than saying okay, we're just gonna recommend it as
13 staff wrote initially. So based on the comments from Molokai which you'll get and us then yeah,
14 just rewrite and that's the intent of the motion I guess.

15
16 Mr. Robinson: Wait, are you recommending that? You're recommending that they get this
17 leverage or you're recommending –

18
19 Mr. Carnicelli: Yeah, no, no, like what you said. I'm saying what you said.

20
21 Mr. Robinson: Not recommending this leverage.

22
23 Mr. Carnicelli: I'm recommending that they get the leverage.

24
25 Mr. Robinson: Yeah, the—

26
27 Mr. Carnicelli: Of what you said. I don't want to...whatever you said is I'm good with.

28
29 Mr. Robinson: David, what did you hear if we're going to put that as forth of the Commission?

30
31 Mr. Raatz: I understood the Chair's statement that you would be recommending that we not
32 move forward or not have the Council adopt this legislation and that we look at other means to
33 shore up our enforcement capabilities if that's needed.

34
35 Mr. Carnicelli: Are you saying no recommendation at all?

36
37 Mr. Robinson: No, is we're saying we think this is a bad...this is not a good fix. This isn't fixing
38 anything. It's making it...it's gonna fix one and mess up others, but it's your motion.
39 Commissioner Hudson.

40
41 Mr. Hudson: Thank you Chair. The concept of enforcement is a very good concept. Are there
42 faults with this? Yes there are. Do some of the faults have to be worked out? Yes they do. But
43 I agree with the motion to push it through and start letting people do some wordsmithing. I would
44 support a motion to not make any recommendation to the County which is our other alternative.
45 Thank you.

46
47 Mr. Robinson: Thank you. Commissioner La Costa.

1 Ms. La Costa: Thank you Chair. So David when you said that Lanai approved it, it was
2 approved as written and that has to do with the parcel versus the owner?

3
4 Mr. Raatz: That's correct.

5
6 Ms. La Costa: Thank you.

7
8 Mr. Robinson: Commissioners you have any input. This is recommendation so it doesn't have
9 to be a majority that way we heard from Commissioner Hudson, heard from Commissioner
10 Carnicelli, anybody else would like to add on before we move on? Commissioner Kahu Hill.

11
12 Kahu Hill: I just wanted to, just really be listening to Corp. Counsel and also if someone was
13 fined or something happened on a property that they might not be able to do something
14 on...(inaudible)...another parcel or to invest or do something else and I think that could be a
15 problem.

16
17 Mr. Robinson: Director.

18
19 Mr. Spence: Just for clarification Commissioners, I'm hearing...is the concern over CPRd
20 properties or is the concern about, I mean, the away that I think about this if a property owner,
21 forget the CPR for a second, just a regular homeowner builds a building without any permits and
22 then comes in for another building permit for a swimming pool or something like that, what we're
23 being able to say here is now you have to deal with the illegal structure first then you can get
24 your permit for your swimming pool. So that's dealing one property owner. But what I'm
25 hearing from this Commission is a concern over punishing one CPR owner for the violations of
26 somebody else is that clear? Those are two different things to me.

27
28 Mr. Carnicelli: Yes, if I could try to clarify my own motion. Yes, what you said is CPR Lot A,
29 CPR Lot B, CPR Lot B has a violation, A is not affected.

30
31 Mr. Spence: Right. Don't punish.

32
33 Mr. Carnicelli: Don't punish A because B's naughty. And so that' is how I'm looking at this.

34
35 Mr. Robinson: And I'm looking at broader. A developer has 15 lots that he's building, and one
36 of the homes that he's developing is a NOV but the other 14 may not. Do we prevent him from
37 building 14 homes because one is bad? I mean is it applicant or is it that lot, I mean if it's lot
38 specific, right and I think that's what you're looking at. If it's lot specific and his building permit is
39 incorrect and then he wants to come back and get some other type on top of it, well you can't
40 get that other, you can't get the C.O. until you finish that building permit. But if he wants to go
41 and build another home are you saying that you're gonna prevent him from building a second
42 home?

43
44 Mr. Raatz: Not as the bill is currently drafted. If we went to an applicant specific standard then
45 yes, that prohibition would--

46
47 Mr. Robinson: But we're saying lot specific.

48

1 Mr. Raatz: That's the way it's currently drafted.

2

3 Mr. Robinson: Lot, lot, unit. Right, lot, unit, whatever specific. As low as a denomination as we
4 could get is what we're looking for. Yes, Commissioner La Costa.

5

6 Ms. La Costa: Thank you Chair. Without putting anyone's words in anyone's mouth that that
7 were to say lot specific expect for those lots and/or properties that are covered under the CPR
8 because that's...(inaudible)...

9

10 Mr. Robinson: You could put that as your own words because we can add nine if we want.
11 That's fine.

12

13 Ms. La Costa: I'll add those, thank you.

14

15 Mr. Galazin: Chair?

16

17 Mr. Robinson: Yes, Corp.

18

19 Mr. Galazin: And thank you Chair. I think really tying it into how Real Property Tax Division
20 handles it because they deal with CPR units and they're able to tax them individually and so I
21 think that it be pretty easy to fix the language to affect the intent that you're hoping to achieve
22 without unfairly punishing somebody who may not be involved on the property. So if you know,
23 Dave and is staff are able to create some language that basically mirrors what is within the
24 different tax structure I think it may be one way of addressing it. I think it's more of a language
25 fix that can be easily done as long as your concerns are transmitted along with whatever
26 recommendation you make to Council then those concerns can be addressed at that time and
27 probably pretty easily fixed.

28

29 Mr. Robinson: Call for the vote. All those in favor of the motion. It's pretty long.

30

31 Mr. Spence: Could we clarify what the motion is.

32

33 Kahu Hill: Could you please clarify what the motion is?

34

35 Mr. Robinson: Go ahead David take a shot.

36

37 Mr. Raatz: Well, I think it's to approve the bill, recommend approval of the bill with amendments
38 to tighten up language to take into account CPR units and to have the lowest common
39 denominator unit, parcel, lot, wherever the case may be and that would be the prohibition and
40 not have it apply more broadly.

41

42 Mr. Robinson: All those in favor, please raise your right hand. We have six ayes. Thank you.

43

44 Mr. Raatz: Thank you.

45

46 Mr. Spence: Thank you.

47

48

1 **It was moved by Mr. Carnicelli, seconded by Mr. Castro, then**
2

3 **VOTED: To Recommend Approval to the County Council of the Proposed**
4 **Amendments to Title 19 of the Maui County Code as Noted with the**
5 **Commission's Amendments/Recommendations**
6 **(Assenting – L. Carnicelli, S. Castro, A. Hall, L. Hudson, C. Tackett,**
7 **P.D. La Costa)**
8 **(Excused – T. Gomes)**
9

10 Mr. Robinson: Moving on.

11
12 Mr. Spence: Thank you, Commissioners. I've long held the opinion that owner A should not
13 suffer the sins of owner B.

14
15 Mr. Robinson: On our agenda now is Item E-1. Director.

16
17 Mr. Spence: Mr. Christopher Ondatje requesting a Change in Zoning from D-2 Duplex and R-2
18 Residential District to A-2 Apartment at 266 Dickenson Street. We have with us this afternoon
19 Tara Furukawa and she will run us through this.

20
21 **E. PUBLIC HEARINGS** (Action to be taken after each public hearing.)
22

23 **1. MR. CHRISTOPHER ONDATJE requesting a change of zoning from D-2**
24 **Duplex District and R-2 Residential District to A-2 Apartment District and a**
25 **Special Management Area Use Permit for the proposed 266 Dickenson**
26 **Street 8-unit apartment building project and related improvements at 266**
27 **Dickenson Street, TMK: (2) 4-6-011: 011 and 028, Lahaina, Island of Maui.**
28 **(EA 2018/0002) (CIZ 2018/0002) (SM1 2018/0002) (P. Fasi) (Commission**
29 **previously commented on the Draft Environmental Assessment at the**
30 **March 27, 2018 meeting.)**
31

32 **MINUTES OF ITEM E-1 WAS TRANSCRIBED BY A COURT REPORTER AND IS ON FILE**
33 **WITH THE DEPARTMENT OF PLANNING**
34

35 **It was moved by Mr. Carnicelli, seconded by Mr. Hudson, and**
36

37 **The Motion to Recommend Approval to the County Council the Change of Zoning from**
38 **D-2 Duplex District and R-2 Residential District to A-2 Apartment District, FAILED.**

39 **(Assenting – L. Carnicelli, L. Hudson, K. Robinson)**
40 **(Dissenting – S. Castro, P. D. La Costa, A. Hill, C. Tackett)**
41 **(Excused – T. Gomes)**
42

43
44 **It was then moved by Kahu Hill, seconded by Ms. La Costa, and**
45

46 **The Motion for the Commission to Have a Site Visit, FAILED.**

47 **(Assenting – A. Hill, P. D. La Costa, C. Tackett, S. Castro)**
48 **(Dissenting – L. Carnicelli, L. Hudson, K. Robinson)**

1 (Excused – T. Gomes)
2
3

4 It was then moved by Mr. Carnicelli, seconded by Mr. Hudson, then
5

6 VOTED: To Forward the Change of Zoning from D-2 Duplex District and R-2
7 Residential District to A-2 Apartment District to the County Council
8 with No Recommendation Stating the Commission's Concerns
9 Regarding Traffic, Public Safety, Noise Relating to Construction and
10 Height.

11 (Assenting – L. Carnicelli, L. Hudson, A. Hill, S. Castro,
12 P.D. La Costa)

13 (Dissenting – C. Tackett)

14 (Excused – T. Gomes)
15
16

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

19 VOTED: To Defer the Special Management Area Use Permit Until After the
20 Council Takes Action on the Change of Zoning.

21 (Assenting – L. Carnicelli, L. Hudson, A. Hill, C. Tackett, S. Castro,
22 P.D. La Costa)

23 (Excused – T. Gomes)
24

25 Mr. Robinson: We are now moving to Agenda Item E-2. Mr. Yoshida.
26

27 Mr. Yoshida: Thank you Mr. Chair, Members of the Commission. We have a request from
28 James Lecron for a Special Management Area Use Permit in order to construct the
29 Roddenberry Residence, a 7,825 sq. ft. single-family residence, including a 1,032 sq. ft.
30 detached garage, a 658 sq. ft. accessory dwelling, a 318 sq. ft. pool cabana, a 218.5 sq. ft.
31 covered lanai, and a 6-ft. deep swimming pool with spa at 10 Kai Ala Place, TMK: 4-4-014: 001,
32 Kaanapali, Island of Maui. The Staff Planner is Keith Scott.
33

34 2. MR. JAMES LECRON requesting a Special Management Area Use Permit in
35 order to construct the Roddenberry Residence, a 7,825 sq. ft. single-family
36 residence, including a 1,032 sq. ft. detached garage, a 658 sq. ft. accessory
37 dwelling, a 318 sq. ft. pool cabana, a 218.5 sq. ft. covered lanai, and a 6-ft.
38 deep swimming pool with spa at 10 Kai Ala Place, TMK: (2) 4-4-014: 001,
39 Kaanapali, Island of Maui. (SM1 2017/0007) (K. Scott)
40

41 Mr. Keith Scott: Good morning Commissioners. Thank you for your long, hard day. The project
42 is a single-family residence that happens to be in a Hotel zone, and it's before you because it
43 has been determined that there...Hawaii Revised Code to be a development under 205A
44 because it exceeds 7,500 square feet. I should note that there have been no Notices of
45 Violation on this property that we are aware of and there was one RFS, Request for Service
46 back in '02 that the beach walk needed repair. That is the responsibility of their homeowner's
47 association and subsequently the beach walk has been replaced. With that, I'd like to introduce

1 Jim Lecron of Arri Lecron Architects. He's going to give you some more detail on the specifics
2 of the project.

3
4 Mr. Robinson: Is I have a quick question before that Keith, how come this is...how come we
5 don't have a EA?

6
7 Mr. Scott: There is no requirement for an EA.

8
9 Mr. Robinson: Okay, thank you.

10
11 Mr. James Lecron: Thank you Mr. Chair and Commissioners. Mr. Chair, Commissioners,
12 James Lecron, architect and my partner Karen Arri, architect. This is a project in...yeah, maybe
13 we can turn the lights down. We'll try and make this quick.

14
15 This is Kaanapali. Our site is located here. It's in North Kaanapali so this is Black Rock.
16 Everybody's familiar with this. The site is on Kaiala Place which Kaiala comes off of the
17 highway here. This is the Maui Kaanapali Villas, Royal Lahaina, and this is the Westin project
18 Phase 1, Phase 2, and now there's Phase 3 up there. This is Airport Beach Park and there are
19 six originally planned, approximately one acre single-family residential lots that are part of the
20 original Amfac development for Kaanapali.

21
22 Many of you may not remember this, I unfortunately am old enough to remember it, this is
23 Kaanapali Airport, that's why it's called Airport Beach. Used to be in that area where the Westin
24 is. This is Kaiala Drive that comes off and Kaiala Place and the Kaanapali Villas was there as
25 the lots at the time. Parking lot was here and the little terminal and the runway was in a sugar
26 cane field.

27
28 This is an old photo looking at Black Rock and you can see the runway here. This is where our
29 six residential lots are and the Royal Lahaina. The runway came all the way to the beach and
30 went through a sugar cane field. Little terminal which is...this is where the Westin Kaanapali
31 Villas are. And this closed in 1986 to make way for the Westin projects. This is the Airport
32 Beach public park and the facilities there or the parking lot and this is directly adjacent to our
33 project. This tree is right on the border of our project. This nice little plaque dedicating the
34 airport.

35
36 As I said there's six lots that have...these houses were built I believe right early on when the
37 development was put in. This is the Kaanapali Villas condominium complex. This is the
38 Castaway Restaurant here. Parking for the park. And then the Villas there. This house was
39 built I believe in the '90s, these houses were built before that and these lots have remained
40 vacant.

41
42 Flipping it around looking the other way we come off of the highway, the original Kaiala Drive,
43 Kaiala Place goes in here. These houses were...this whole development is in a Hotel zone and
44 there was a homeowner's association established by the original developer that was supposed
45 to sunset when all the lots were sold. It has remained in place and is...they have design
46 guidelines and we have approval from the homeowner's association for our design.

47

1 As you come, this is Kaiala Place and Kaiala Drive comes in. That's the Westin. This is our
2 corner lot. All the improvements along the street have been done and are maintained by the
3 HOA. Each property is gated and has a wall. All the landscaping is in, maintained. All the
4 utilities are to the sites. Everyone's got a different design for the gate but everything is cohesive
5 in the little neighborhood there.

6
7 This is the lot. Our lot here there are these big trees at the end of the lot that are on the beach
8 and very popular with beachgoers. This is the beach path that Keith referred to that's brand
9 new now been replaced. These are the same trees as here. They're actually on the property
10 but they're across the beach path and they're maintained by the HOA. This is looking back from
11 the beach path at the lot. There's the house next door. There's a HOA maintained wall that
12 separates the parking lot from the residential lot. And the beach walk that goes along all the
13 properties and up north past the Westin and Honua Kai and all the resorts.

14
15 I want to take note of this drainage basin. I'll talk more about that in a little bit. This is the house
16 directly adjacent to our lot. There's another vacant lot, and then another house, and then
17 another house, and another house. So just the two lots remain. This is the survey showing the
18 shoreline. There is a drainage easement that parallels the beach walk and really separates the
19 buildable area of the residential lot from the public area of the beach walk. The beach walk is
20 an easement that runs along all of the...all the lots and is maintained by the HOA.

21
22 Our property...this is the shoreline setback for the SMA. This is the easement setback for the
23 HOA and the drainage feature here. We propose to come in where the existing gate is that was
24 designed for this lot. Come in with a driveway and a motor court turnaround detached garage,
25 one-bedroom ohana and then the main residence here, and then a cabana, barbeque area for
26 the pool out here and the pool is here. You can see we're quite a bit back from the shoreline
27 setback.

28
29 These are the floor plans. Think you'd care too much about that. We can come back to them if
30 anyone has any questions.

31
32 The elevations, we've maintained the same building height, 30 as all the other residences and
33 this has been reviewed and approved by the HOA Design Review Committee. It's also been
34 approved by the Urban Design Review Board. All right, so...well, we had some other slides but
35 for some reason they're here.

36
37 I wanted to talk about the drainage there. The drainage swale that runs along the entire
38 frontage of all those lots and adjacent to the beach walk was designed and engineered
39 originally...and all the drainage for the residential lots goes into that drainage swale and then it's
40 dissipated in retention basins. Goes actually goes under the park and out in front of the hotels
41 it's all been engineered and the drainage for those lots has been engineered to...everything to
42 flow into that drainage basin and it works quite well. It's been almost 30 years and tested with
43 all the storms and we're...we've designed our project to work in conjunction with that.

44
45 That's about it. We comply with...I should say we comply with all the height restrictions, the
46 zoning, it's zoned Hotel, we could conceivably as far as the County's concerned build a six-story
47 hotel, but it's part of the original development and the CC&Rs that these be single-family homes

1 and we're the same use as that. So we comply with everything with the SMA, the West Maui
2 General Plan and not looking for any variances of any kind.

3
4 **a) Public Hearing**

5
6 Mr. Robinson: At this time, I'd like to open it for public testimony. Does anybody at this time
7 would like to speak on this subject? Seeing none, public testimony is closed. Commissioners
8 any questions for the applicant? Commissioner Kahu Hill.

9
10 Kahu Hill: Mahalo Chair. My question, I have a few of them the reclaimed wastewater that is
11 mentioned in the application if it happened is that sewage or sewer water that has been treated?

12
13 Mr. Lecron: We're gonna look into that. That's a requirement that people are started to go to.
14 I'm not sure it's available. It would be...we have County water and County sewer and all of that.
15 If gray water is being used at the park for irrigation then we would like to participate in that. But
16 the water meter's been installed, everything is there to the site, but if we're allowed to and have
17 opportunities gray water for irrigation we'd certainly like to do that.

18
19 Kahu Hill: Yeah, that was a question I also had. If it was going to be gray water using on the
20 property into itself just looking at the amount of water and I had a question about the
21 environmental management of constructing...(inaudible)...talk about putting that all on Kaiala
22 Place and if there was any time frame on that I was just wondering about, just wondering about
23 the water being from sewage water if it would normally go into the ocean or another process if
24 that happened if that could create any type of public hazard or safety issues leaching into the
25 beach, the sand, and the ocean and the waters.

26
27 Mr. Lecron: Right. It's not something that we've come up with that we say that we want to do.
28 It was something that the Urban Design Board brought up that if the park and the rest of the
29 properties on Kaiala, which ones were doing that that we should look into participating. So we'll
30 look into that and we'll participate as we're required to do, but it's not something that we're
31 proposing on our own to do that. So those studies are being done then we'll find out about it.
32 It's not something that we're trying to—

33
34 Mr. Robinson: Commissioner are you referring to R1 water, to recycled water?

35
36 Kahu Hill: They had talked about—

37
38 Mr. Robinson: Yes, okay.

39
40 Kahu Hill: --that they were looking to make lines in that whole area to make reclaimed
41 wastewater. So I was looking if that was sewage water that would normally be pumped into the
42 ocean or go through other filtrations systems because they're right on the beach there and they
43 had said that they are gonna—

44
45 Mr. Robinson: I think it's filtered, filtered sewage water. It's not the sewage itself,
46 ...(inaudible)...waste, but it's R1, it's recycled sewage water. So it would be the byproduct of

1 the filtration that either will go out to the ocean but they also use that R1 for landscaping in a lot
2 of areas. Yeah so it's...we don't call it sewage, we call it R1.

3

4 Kahu Hill: That's why you know, and I cannot say anymore. Mahalo.

5

6 Mr. Robinson: But yes, that's what you're referring to instead of gray.

7

8 Mr. Lacron: Correct. Yeah, correct.

9

10 Mr. Robinson: Gray is more like wash and you know not really filtered.

11

12 Mr. Lacron: Right.

13

14 Kahu Hill: Things like we put through our drains in more conscious way that could go back into
15 the land and irrigate.

16

17 Mr. Robinson: Yes.

18

19 Kahu Hill: Yes. Mahalo.

20

21 Mr. Robinson: Commissioners? Commissioner La Costa.

22

23 Ms. La Costa: Quick question, you didn't mention Blackie's and the Windssock Bar.

24

25 Mr. Lecron: Oh, I should have done that. I should have done that.

26

27 Mr. Robinson: Commissioner Carnicelli.

28

29 Mr. Carnicelli: So my question is gonna be more around the drainage. And you say the
30 drainage swale there and that it's worked for however long, but right now there's a piece of dirt
31 and that's from looking at the site plan, we're going from dirt to all concrete, you know, and roof.
32 I mean, a large portion of it is going to be that. I mean that's why we're here for an SMA. It's a
33 7,500 plus square foot house. Anyways, is all of the drainage going into the swale or is any of it
34 being captured on site, I mean, I guess 'cause it's still gonna be on site, but you know what I'm
35 saying?

36

37 Mr. Lecron: Yeah, we've done the calculations. Most of the site is going...it's landscaped. It's
38 not hardscaped. So if you...as you see here this is really the only hardscape. The rest of it is
39 grass and landscaping and so there is permeability. Most of it will not end up in the drainage
40 swale, but some of it is captured in catch basins that will then flow into the drainage swale.
41 We're required to do that.

42

43 Mr. Carnicelli: Okay, so you have catch basins.

44

45 Mr. Lecron: We have catch basins in this area here and all of it will either remain on site. What
46 doesn't permeate into the ground on site goes into the catch basins. There's quite a bit of
47 permeability in these catch basins. They're really designed for a massive storm event that then

1 flows out. It flows along in front of these and flows out into engineered drainage features that
2 ultimately end up in retention and detention basins in front of the Westin hotels up there. But all
3 of that has been designed to specifically for this project and we're required to drainage into that
4 and not...the site is actually a little bit lower than the street so you know we're not pumping it up
5 into the street at all which actually even if the street runoff runs down and goes into catch basin
6 and goes into this drainage feature. So it's all already been pre-engineered.

7
8 Mr. Robinson: So Mr. Lecron do you have a calculation that you can show us of what you did
9 with that and yes, normal runoff you still have to accept on your property.

10
11 Mr. Lecron: Yeah.

12
13 Mr. Robinson: As part of—

14
15 Mr. Lecron: Yeah, it's all in there.

16
17 Mr. Robinson: So as...is—

18
19 Mr. Lecron: I don't have it in the power point but it's the application...(inaudible)...

20
21 Mr. Robinson: And do you have calculations on the difference. So under roof, so what is roof
22 square footage? I know you have square foot of building but I don't know if it's two stories or
23 three stories, but under roof what is your calculation from going .07....7 from 1.4 with a regular
24 ...(inaudible)...

25
26 Mr. Lecron: Yeah, I wouldn't be able to answer that that quickly but it is a two-story house. It's
27 a 7,100 square foot house so it's—

28
29 Mr. Robinson: The roof is 7,100 square feet?

30
31 Mr. Lecron: No, the floor area is 7,100 square feet, so it's a two-story house. If you want me to
32 calculate that it would probably be, you know, around 5,000—

33
34 Mr. Robinson: Keith do you have that information of how much water's being displaced and
35 what the catchment has to receive?

36
37 Mr. Scott: I'm sorry, I don't have that readily available. I'll see if I can find it in the report.

38
39 Mr. Robinson: Okay, Commissioner Kahu Hill.

40
41 Kahu Hill: While he's looking for that, after reading the archaeological assessment I see that the
42 parcel has been previously impacted and intensively by a lot of agricultural practices and a lot
43 with the sugar cane it showed and cultivation of other agriculture and your recommendation was
44 for archaeological monitoring was gonna be just on three parts on the property and not to have
45 full-time archaeological monitoring, that it wasn't warranted due to the factual findings based on
46 the lack of historical properties. And I would just wanted to look at that just...amazing property
47 by the way per design, but I wanted to just share that it is a really a historical area and so much

1 has been destroyed by development so I just wanted to look at this. I saw...what I didn't see in
2 the reports that the...I didn't know how I could really look at this without the SHPD, the State
3 Historic Preservation District Report for the recommendations. I didn't know if that came in, that
4 I might not have seen it or we didn't see it? So it was just wanting to make a statement
5 supporting that monitoring and what about the SHPD report and recommendations.
6

7 Mr. Scott: Yeah, we actually submitted this application to the State Historic Preservation
8 Division. We have not gotten anything from them yet. So there's a condition of approval that
9 requires that they have SHPD clearance before anything is done to the ground.
10

11 Kahu Hill: Okay, and do you know when...so we're not anticipating when we could have that
12 paperwork. I know that you recently submitted it. It wasn't that long ago, so I don't know how
13 long it takes for them to reply.
14

15 Mr. Lacron: ...(inaudible-not speaking into a microphone)...I did speak with SHPD. They called
16 a couple of months ago and she had...had it in front of her and didn't have any issues. So
17 yeah, we just don't have the report from them.
18

19 Kahu Hill: So that's what I was wondering about. How important that was to get that report for
20 theirs, the historical areas in Lahaina.
21

22 Mr. Robinson: Just personally I haven't...I don't think I've seen a project that hasn't had that
23 comment, you know, checked, box checked. That's just myself, you know, I don't know. I don't
24 think it's any of the criteria that we have to meet, but I don't remember them taking that long to
25 just say it's A-Okay.
26

27 Kahu Hill: Okay.
28

29 Mr. Robinson: So hopefully they'll be pretty fast like you said. Commissioners, any questions?
30
31

32 Ms. La Costa: To your question—
33

34 Mr. Robinson: Commissioner La Costa.
35

36 Ms. La Costa: I'm sorry, Chair. To your point and your question about the square footage
37 under roof. I was looking at Exhibit 4 which shows lot area, allowable coverage and then it
38 shows proposed coverage. It is a two-story home and it says main house first floor of 6,011
39 square feet if I'm reading that correctly. Then it goes on to give you the out buildings. I don't
40 see where the second floor square footage isn't shown on here.
41

42 Mr. Lecron: That is an HOA requirement. It's an FAR and they don't count second floor.
43

44 Ms. La Costa: We ask for the total square footage so that's why I was wondering. So do we
45 double that so it's 12,022?
46

1 Mr. Lecron: No, no, no, the total square footage is what you have in front of you, seven, eight
2 something I believe.

3
4 Ms. La Costa: It doesn't jive with this.

5
6 Mr. Lecron: The total square footage of the main residence is 7,825. So when we say on the
7 part that you're...the thing that you're looking at there, the 6,100 is the first floor.

8
9 Mr. Robinson: Is James I apologize, is your mic on?

10
11 Mr. Lecron: Yeah, can you hear me?

12
13 Mr. Robinson: Carolyn can you hear him?

14
15 Ms. Takayama-Corden: Yes, I can hear him.

16
17 Mr. Robinson: Okay, thank you. So we need clarification on the...is the...what is the total roof
18 and property coverage that is not going to be soil? What is, what is...and James I know you
19 understand that we have different classifications, right we have soil classifications for drainage,
20 we permeable, we have non-permeable, so you know that's the type of information for SMA and
21 with the drainage. And then what we also usually have is we usually have well, you have a
22 drainage capacity of you know, 25, 28 you know cubic that you can handle in a rain and all that.

23
24 Mr. Lecron: Yeah, well according to the drainage calculations, the total retention basin, I think in
25 that drainage area capacity and this is not considering permeability is 23,463 and then the
26 development site area is...just where the development is going to take place is 29,637 square
27 feet. That's the whole area, most of that is landscape. The water volume for cubic feet is 1,234
28 and then the pipe capacity that we're doing is 2,460 so it's double, pipe capacity into that. But
29 the 1,234 is far less than the 23,463 that's the volume of the retention basin. So we're way
30 under.

31
32 Mr. Robinson: And do you have data showing what is the run on is on the property from the
33 street?

34
35 Mr. Lecron: I think that's what...that would be the area of the 29,637 square foot and the water
36 volume is assuming looks like they've got a rain event of one inch per hour. So I don't see
37 where they took into a permeability factor in that because assuming all the water was run off
38 and that's would end up being.

39
40 Mr. Robinson: Do you have an engineer that actually did the calculations?

41
42 Mr. Lecron: Yeah, we worked with Linda Taylor.

43
44 Mr. Robinson: And is Linda Taylor's report in here?

45
46 Mr. Lecron: No. Just the calculations.

47

1 Mr. Robinson: Commissioners? Commissioner La Costa.

2

3 Ms. La Costa: I have one last question please. Thank you. It's an absolutely gorgeous home.

4

5 Mr. Lecron: Oh thank you.

6

7 Ms. La Costa: So thank you for adding that beauty to that neighborhood. I used to live across
8 the street at MKV so very familiar. I used to hang out at that parcel and watch sunset actually.
9 So my question is there, I notice there are eight parking places exterior as well as the garage.
10 This is a single family home. At any point in the future is it going to be considered for other uses
11 so that that might have an impact in the area?

12

13 Mr. Lecron: No, it's...we want...we can't park on the street there. So if anybody's having a
14 party or you know, many guests over, something like that we wanted to accommodate parking
15 on the site. But we didn't want to have a lot of paving so most of the parking spaces are for turf
16 lot. We're just reinforcing the lawn. It's gonna look like a lawn but if there was a party or
17 something like that we'd want to be able to park as much as we could on the site, but it's a
18 single family residence.

19

20 Ms. La Costa: Thank you.

21

22 Mr. Robinson: Mr. Scott, we have a question for you. On top of the recommendation from the
23 Department we seem to be missing page 1 and 2. We have 3, 4, 5, 6, 7. Is two in white? No,
24 the green. Yes, Keith.

25

26 Mr. Scott: I'm sorry that happened. The first pages...Page 1 is actually the over page that you
27 see, Page 2 starts the relevant...

28

29 Mr. Robinson: Keith, if you look at the lettering on No. 3, it starts at F, so that means we're
30 missing A to E.

31

32 Mr. Scott: Right.

33

34 Mr. Robinson: And so is that on the...but I see, 2 a, b, c, 3 a, b, c, d, e.

35

36 Mr. Scott: Right. Those are the same applicable regulations that you have in your staff report.
37 So I'm starting on Page 3 of your staff report. I apologize. I don't know why Page 2 was not
38 part of what you got.

39

40 Mr. Robinson: Let's take a quick five-minute break and let...let's give Keith a second. Thank
41 you.

42

43 A recess was called at 3:44 p.m., and the meeting was reconvened at 3:46 p.m.

44

45 Mr. Robinson: Thank you. You know, is we do have concerns with making sure things are on
46 top of public notice on line and things like that and documents that, you know make sure
47 everything so things don't get kicked back or denied as technicalities and sometimes it's better

1 to take a pause than to move forward to make sure that it keeps on going forward. With that, do
2 we have a motion on the floor?

3
4 Mr. Carnicelli: Chair, I'd like to make a motion to defer for two weeks.

5
6 Mr. Robinson: Okay, do we have a second.

7
8 Kahu Hill: I'll second.

9
10 Mr. Robinson: Kahu Hill seconds that motion. Carnicelli would you like to speak to the motion?

11
12 Mr. Carnicelli: Yeah, Chair like as you said, there's a couple of things that are say missing or
13 just not congruent for public to be able to see. I believe you said that SHPD—

14
15 Mr. Robinson: State Historical Preservation...

16
17 Mr. Carnicelli: State Historical Preservation Society still needs to weigh in. So at this point in
18 time, I think that it would just be best for the applicant and us to get our concerns addressed, to
19 come back and be able to make an educated decision with all of the information.

20
21 Mr. Robinson: Commissioners any discussion? Seeing none, like to vote on the motion.
22 Clayton?

23
24 Mr. Yoshida: The motion is to defer.

25
26 Mr. Robinson: For two weeks or if you have available for the next meeting.

27
28 Mr. Scott: To the next regularly scheduled meeting.

29
30 Mr. Robinson: To the next regular scheduled meeting, yes.

31
32 Mr. Carnicelli: Yes.

33
34 Mr. Robinson: All those in favor please raise your right hand? That's five. Deferment passes.
35 We'll give you some time in the next two weeks and we'll get it going. And you can start off right
36 where you left off. It doesn't have to be a whole presentation again. Thank you so much.

37
38 **It was then moved by Mr. Carnicelli, seconded by Kahu Hill, then**

39
40 **VOTED: To Defer the Special Management Area Use Permit to the Next**
41 **Regularly Scheduled Meeting In Order for the Applicant to Address**
42 **Concerns Raised by the Commission.**
43 **(Assenting – L. Carnicelli, A. Hill, C. Tackett, S. Castro,**
44 **P.D. La Costa)**
45 **(Excused – T. Gomes, L. Hudson)**

46
47 Mr. Robinson: Our next applicant, I know we're trying to squeeze in your time. Do you have
48 time or would you like a few minutes?

1
2 Ms. Callentine: I'm ready.

3
4 Mr. Robinson: She's good. All right, let's do it. Clayton.

5
6 Mr. Yoshida: Thank you Mr. Chair. The third public hearing is from Sprint Wireless requesting
7 a Conditional Permit in order to install a new wireless telecommunications facility consisting of a
8 35-foot stealth mono-palm, twelve panel antennae, one microwave dish, twelve remote radio
9 heads, 200 square foot equipment lease area on the ground to house two MMBS, power
10 cabinets, one GPS antenna, and one H-frame with ancillary equipment located in the A-2
11 Apartment District at 3740 Lower Honoapiilani Road, TMK: 4-3-006:004, Lahaina, Island of
12 Maui. Staff Planner is Livit Callentine.

13
14 **3. SPRINT WIRELESS requesting a Conditional Permit in order to install a**
15 **new wireless telecommunications facility consisting of a thirty-five foot**
16 **stealth mono-palm, twelve panel antennae, one microwave dish, twelve**
17 **remote radio heads, 200 square foot equipment lease area on the ground to**
18 **contain two MMBS, power cabinets, one GPS antenna, and one H-frame**
19 **with ancillary equipment; located in the A-2 Apartment District, at 3740**
20 **Lower Honoapiilani Road, TMK: (2) 4-3-006:004, Lahaina, Island of Maui.**
21 **(CP 2018/0001) (L. Callentine)**
22

23 Ms. Livit Callentine: Good afternoon Commissioners. We've been having a wonderful meeting
24 today I see. For this item additional testimony has been...no I mean, seriously...additional
25 testimony has been received this morning and then some more this afternoon and then there
26 was another agency review comment but it was actually a comment of no comment, but it
27 should have been in the report, we just didn't have it in time. So all of that was laid out on the
28 table for you in one of your breaks. I apologize for the lateness but sometimes that's the way
29 things work.

30
31 Let's see, so I am...the applicant is represented here today by John Yager who is with Sprint
32 Wireless and Rich Conte from Wireless Resources, Inc., and Mr. Conte will now provide a
33 project overview and I will be available after that's done and you can ask questions.

34
35 Mr. Rich Conte: Aloha Board and Chair and Commission. Appreciate your time and I know it's
36 getting late and I'll try to be as quick as I can, but as thorough as I can.

37
38 Mr. Robinson: We have time for you.

39
40 Mr. Conte: Okay, no. I got a plane to catch too, so no, no, I'm just kidding. Anyways, my name
41 is Rich Conte and I do the entitlement and real estate portion of the project. And as
42 Ms. Callentine mentioned, I'm here with my colleague Pete Yager who is...will hopefully help
43 me out on any technical questions. So today, Sprint is seeking a Conditional Use Permit for a
44 wireless telecommunications facility. The project will be located at 3740 Lower Honoapiilani
45 Road, Lahaina, 96761. TMK: 4-3-006: 004. The zoning designation for this property is A-2,
46 Apartment District with a governing height limit of 60 feet. The proposed facility will involve 12
47 panel antennas with remote radio heads. The pole will be a 35-foot mono-palm design with
48 fronds up to 40 feet. There will be MMBS cell site base station equipment and a 10 x 20 fenced

1 in compound with one GPS antenna and auxiliary equipment and I'll explain a little bit more
2 about what those are later. The facility will also provide improved voice, data and text
3 messaging coverage in the surrounding community while minimizing visual impact to the
4 surrounding properties.

5
6 The project map and location. So if you look to the left that Lower Honoapiilani Road and if you
7 look at all the red rooftops that Maui Lani Terrace. That is the property and it's an L-shaped.
8 So as you come down to the right-hand corner there right on Honoapiilani Highway or actually in
9 their parking lot is where we located a site that is right next to their shed and we're going to
10 proposal a 10 x 20 equipment leased area, fenced in leased area and a 35-foot mono-palm right
11 there. Okay.

12
13 This is photo simulation of the site. So if you look at the top picture that is looking north in the
14 parking lot. Now I just want to point out that there's existing palm trees on the property line right
15 along the highway there. And if you look at the bottom depiction that's the after where the
16 proposed mono-palm will be located and we're trying to keep it consistent so this would be
17 technically the sixth mono-palm along the property line along the highway. Next.

18
19 Next picture is looking west before and then looking west after and that's right along
20 Honoapiilani Highway driving right by it. Okay. Next picture is a...that's the residential area in
21 the fronting the parking lot and the bottom that's looking east you see it's picking up in the
22 background there.

23
24 This slide right here is really crux of what we're trying to accomplish and right now I'll set it up.
25 This is called a radio frequency engineers this is what they use to show what our coverage
26 would be before and after and in green is...we'll let me just set this up...up at the upper very top
27 there's a yellow, you can't really see it but it's a yellow circle that's the Royal Kahana. That is
28 the neighboring cell site. And if you look at the very bottom yellow circle that is the Kaanapali
29 Shores cell site and that's...that would be the two neighboring cell sites. The black in the
30 middle is the proposed. Okay, so the green is current coverage and then the red would be the
31 future coverage. So you can see there's a gap right there. So if anybody who has Sprint
32 probably don't if you live on the west side 'cause they know the coverage is in and out and real
33 spotty out there, they know that this whole area is bad coverage and so that is our objectives to
34 get that coverage there.

35
36 So in addition to that we're providing continuous data coverage along Honoapiilani Highway to
37 provide high speed data for the Napili Honokowai. It's actually...(inaudible)...engineer say
38 Napili but we are doing other sites in Napili but for this picture it's mainly for the Honokowai
39 community. And enhanced in-building coverage in the vicinity of the site. Now with the advent
40 of upcoming technology called 5G essentially what that's gonna do is gonna be...they're telling
41 us, but until we actually get it installed we don't know for sure but what they're saying right now
42 is that when 5G roles out that's gonna be 10 times the speed as cable. Now if you can get this
43 type of...what they're trying to do, the wireless community is trying to offer competition just like
44 they did with voice, and you used to have hard line and eventually everybody got wireless
45 phones and they got rid of their hard line phone that's what's the trend gonna be with data
46 meaning that now they can get high speed data and reliable via wireless they'll offer that service
47 as well. And then of course, increase capacity to support users in the vicinity of the site. So as
48 you can right now we just have these two sites, Royal Kahana and Kaanapali Shores and in

1 between there's a lot of dead spots so what this site is also gonna do as you get more and more
2 users these cell sites can only accommodate certain amount of calls, but as you load the
3 system, load the system this site will then be justifiable just on picking up some of the offloading
4 off the other neighboring sites.

5
6 This picture is an architect drawing a bird's eye view or an overhead looking down. So if you
7 look to the right that will be Honoapiilani Highway and you can see right there to the right there's
8 a box right there that will be our 10 x 20 compound, fenced in compound. We'll trench
9 underground to the tower to the left. As you can see we have three sectors and two sectors and
10 on each...two antennas on each sector. As you can see there's three sectors that gives you
11 360 degree coverage and as you're pointing, one's pointing up north towards Napili, the other
12 one pretty much south towards Lahaina, and then the other mauka right towards the mountains.

13
14 Just want to point out in this drawing that the...this facility is an unmanned facility. So it doesn't
15 require anybody there. Doesn't require any...not any impact on traffic. Doesn't affect any
16 services. When I say services, sewer or anything like that. And this type of pole is built with the
17 same integrity as any other building out here, we go through the same process. We go through
18 the building department. We have licensed engineers do the structural. We do a geotech for
19 the foundation. The poles are rated structurally. And yeah, and that's it for this one. Okay, next
20 one.

21
22 The architects...these architectural drawings is the elevation view. This is once again, this is a
23 mono-palm. Actually do you have the...I'm sorry you want to grab...actually I should have this
24 out during the photo simulation. We can pass it around. We've come a long way with the
25 stealth type towers now and they have the bark. They actually have bark on the poles so it
26 looks like a tree now. You know, it's definitely it's a tower but it's for people who've been around
27 a lot of these, a lot of times you drive right by, you probably won't even see it, but well at least
28 that's the intention. I know fronds look a little...they look like plastic 'cause they are plastic but
29 what we do is these...the purpose is to hide the antennas so the antennas are painted, painted
30 to match and I don't know if you've seen any of them around in other states or on Oahu but
31 there actually are a couple here on Maui that have been approved in the past. But we've come
32 a long way as far as the design.

33
34 ...(inaudible)...to the left, that is the actual shed that's already there but we see a picture of the
35 fence, the fence line is actually open and those are the two cabinets. The term MMBS means
36 multi-media base station. That is the brain of the compound or the site. Essentially what
37 happens is, is a call goes through the antenna, it goes down through fiber optics through the
38 pole into this cabinet and then the cabinet then is interfaced into the phone network switch and
39 that's how calls are generated. To the left is the auxiliary equipment. On that auxiliary
40 equipment you'll have the meter, power distribution panel and a fiber cabinet.

41
42 I attached this information only because this seems to always come up in every meeting and it's
43 just basic information, it's out there and I'll just go ahead and just read it. Three expert agencies
44 that usually classify cancer causing exposure carcinogens are the International Agency for
45 Research on Cancer that's IARC, the National Toxicology Program (NTP), and the U.S.
46 Environmental Protection Agency (EPA) and these are all official statements have not classified
47 cellphone towers specifically as their cancer causing potential. Once again, this information's
48 out there. This next agency is the U.S. Federal Communications Commissions. Now our whole

1 industry the wireless industry is regulated heavy by the FCC and it's been around for over, over
2 40 years as far as cell towers and things like that. And right now at this point there has not been
3 any documented incidents regarding hazard concerns, health hazards or concerns at all. And
4 what they say, FCC has said that this about cellphone towers near homes or schools, radio
5 frequency emissions from antennas used for cellular and PCS, personal communication service
6 transmission result in exposure levels on the ground that are typically thousands times below
7 safety limits, therefore there's no reason to believe that such towers could constitute a potential
8 health hazard to nearby residents or students.

9
10 And I'm just going to read the yellow highlights and this is the International Agency for Research
11 on Cancer, IARC also noted that exposure to the brain from RF fields from cellphone base
12 stations mounted on roofs or towers is less than 1/100 exposure to the brain from mobile
13 devices such as cellphones.

14
15 Then last the EPA, cellphones and wireless networks produce RF but not at levels that cause
16 significant heating. In addition, RF energy decreases quickly over distance. At ground level
17 exposure to RF from sources like cellphone towers is usually very low.

18
19 Just to sum up, once again our intentions for that Honokowai area because it's very limited in
20 our coverage is to increase, enhance voice data and text messaging in building coverage.
21 That's the big push is to get a strong signal for your smart phones to not just get voice but to get
22 data at a high speed quality level. There's no reduction in the view plain. Now once again, yes
23 there is a tower there, but technically it could be another tree or a 60-foot structure there and it's
24 not affecting any ocean view or any type of view and we try to stay consistent with the
25 landscaping, the current landscaping. Allows parody among other wireless carriers. As we
26 know competition, good...good healthy competition always seems to work out, good for the end
27 user. Allows more residents to work remotely with faster data rates in building. Once again,
28 we're just trying to get faster data speed in building coverage. Allows locals and tourists alike to
29 have that ability. Of course, public safety better coverage for 911 or any emergency calls for
30 friends and family members. As we all know we all use phones. There's nothing worse than
31 trying to make a call. It can either be an emergency call or not and it either drops or we can't
32 get any service. No health impact.

33
34 And this last one I do have to make a disclaimer, increase property value through increased
35 service to the area. So I'm just going to change that saying, increased...increased perceived
36 property value and the reason why I say that is that I don't have any documentation that it
37 increases property value, and I don't have any documentation that it decreases property value
38 for those some people are concerned. But I can say this as someone who's been in real estate
39 for a long period of time, when you do look at property in assessing your value and how it
40 affects you a lot of times listings other than price you do look at services. You know what's
41 there. Is it electric? I've got water there. I've got cable service, phone service and various
42 phone services are listed. As far as appraisals go, if you follow the appraisal standards as far
43 as price per square foot usually a couple things come into play is if there's a structure or an
44 asset on the property or if you got income producing tenants on your property that increases the
45 value. So that...the tower checks off both those boxes. So once again I'm just, just from my
46 experiences I can say that that could hold true.

47
48 So in conclusion this installation will allow Sprint to provide improved wireless communications

1 coverage to the surrounding community while minimizing visual impact to the surrounding
2 properties. The proposed use will not significantly detrimental to the public's interest,
3 convenience and welfare and will be in harmony with the area in which it is located. The facility
4 will not greatly affect the purpose of the current use or of the existing land and therefore will be
5 minimal alteration to the landscape. Sprint Wireless seeks to provide optimum service to its
6 customers while working within the guidelines set by the County. The use of creative design
7 provides opportunity for improved coverage without changing the character of the community.
8 Therefore, Sprint submits this application and humbly requests the approval of a Conditional
9 Use Permit. Thank you and any questions.

10
11 Mr. Robinson: Thank you. At this time, we'll take public testimony. Is there anyone here that
12 would like to testify on this item please...aloha, please state your name and you have three
13 minutes. You don't have to sign in, you can just come straight to the podium.

14
15 **a) Public Hearing**

16
17 Mr. Carnicelli: You get an award for being here all day.

18
19 Ms. Shelley Snyder: I feel like I know all of you. I don't really love public speaking but this will
20 be, this will be easier because I've spent the day with you. So my name is Shelley, and I—

21
22 Mr. Robinson: And your last name please.

23
24 Ms. Snyder: Snyder. I live at 3788 Lower Honoapiilani Road which is...pardon me, I'm a little
25 worked up at the moment.

26
27 Mr. Robinson: Just take your time. Take your time.

28
29 Ms. Snyder: Right next door to the proposed property where this will go and I have so many
30 feelings on this. I cannot...I don't know where to begin. First you know, you've noted off these
31 different—

32
33 Mr. Robinson: And I apologize you have to address the Commission not the applicant, but he
34 can hear you.

35
36 Ms. Snyder: Okay. So you know it was noted these different organizations like the Cancer
37 Institute and things like that had said there's no health implications. Well, you know the World
38 Health Organization says there are. There's not enough research been done. There's very
39 limited data that's been collected and on developing children it's proven this is not healthy. This
40 is a very highly populated area. There are over 7,000 people living in Honokowai, most of them
41 families with young children all over. There's a park across the street where they're proposing
42 to put this. And it's just not the right place. This is not a good area. All up and down lower road
43 you have condominiums where we all live. This is where we've decided to raise our families.
44 This is not a place to put this pole. I ask all of you to think back to when you bought your place,
45 your home, your piece of land, your condo, think about that fondly. That's your sanctuary.
46 That's where you go to unwind. Now think about that with a pole in your backyard. Think about
47 it with a cellphone tower right in your backyard where you can look out your back window and
48 that's what you see and that's what you get day in, day out every minute of every day all of

1 these emissions going right through your neighborhood. You can choose to be on your phone
2 an hour a day, two hours a day, three hours a day that is your choice. If they put this up I don't
3 get a choice anymore. It's going to be in my backyard every day, every minute of every day and
4 I don't like that at all. And my property value is gonna go down. I don't know where they think
5 they're coming from thinking it's gonna go up or people are happy about this. I went to every
6 single property and talked to dozens of people, maybe even a hundred people not one person
7 has a concern of making a call. We all get our calls. We all can use data. There's no
8 absolutely no reason we need higher coverage. And 911 calls, we all can make a 911 call.
9 You've gotta be kidding me that we need Sprint to put up a tower to make a 911 call that's
10 asinine. So I am absolutely opposed to this. I'm here on...I'm on the board for Hale Royale. I
11 had some of my board members here this morning as well. They had to leave unfortunately.
12 We have a couple of letters they wrote. Also there was a board member—

13

14 Ms. Takayama-Corden: Three minutes.

15

16 Ms. Snyder: --for the property across the street from us who was here this morning. He was
17 absolutely opposed to this. I've talked to all the residents up and down lower road. I didn't talk
18 to a single person that said yay let's do it, not one out of all the people I spoke to. There needs
19 to be more research. There's needs to be breaks put on this. This does not need to go where
20 7,000 people call home. It's ridiculous. Thank you.

21

22 Mr. Robinson: Thank you. Commissioners we have any questions for the testifier?
23 Commissioner La Costa.

24

25 Ms. La Costa: Mahalo Chair. We did receive some written testimony and previously it was read
26 into the record. Would that be possible at that time?

27

28 Mr. Robinson: I made the exception because it was a Senator—

29

30 Ms. La Costa: Oh okay.

31

32 Mr. Robinson: -- and because we never get representatives.

33

34 Ms. La Costa: Okay.

35

36 Mr. Robinson: But if nobody did not receive that I think that's...yeah, 'cause we didn't have a
37 testifier on the other side. All we had was testifiers pro, we didn't have it against, that's why I
38 gave Kahu Hill at least to have somebody on the opposite site and I think she's...and like I said,
39 she's representing, you know she's talked to the people representing an association so, I feel
40 that you know, one and one I think is fine. That's all. But if you'd like to comment on the...on
41 any of the information you're free to.

42

43 Mr. Galazin: ...(inaudible)...

44

45 Mr. Robinson: Yeah.

46

47 Mr. Galazin: And just so you know any written testimony that is received and distributed is part
48 of the record. When I talked about earlier the record on appeal. That is part of the evidence

1 that's considered so there's no need to read it out loud. But as the Chair pointed out you can
2 certainly point to it and give comments or ask questions based on other testimony.

3
4 Ms. La Costa: Thank you.

5
6 Mr. Robinson: Commissioner Kahu Hill. Either way.

7
8 Ms. La Costa: Okay, I do have a question, thank you.

9
10 Mr. Robinson: Sure, Commissioner La Costa.

11
12 Ms. La Costa: But it's actually for the presenter, so—

13
14 Mr. Robinson: So the questions is for the testifier. Do you have a question for the testifier?

15
16 Kahu Hill: I do. Aloha Shelley.

17
18 Ms. Snyder: Hello.

19
20 Kahu Hill: Do you...you said you had researched and found...they did present some
21 information about that it wouldn't cause cancer and people are concerned about that and health
22 concerns. Do you have any information, any organizations, anything about young children that
23 are being developed, their brains, anything you could share with us on that at all?

24
25 Ms. Snyder: Absolutely. You know the World Health Organization has done many studies and
26 like I said there's limited research and data collected but it says, it says, the World Health
27 Organization recommends that we address the general health effects including cancers in
28 children who use mobile phones or live near base stations of radios, T.V. and cell towers. This
29 is of high priority. So I mean, the research goes on and on, there are pages of this, but what it
30 basically says is here, yes in the U.S. we haven't done as much research as we should. We
31 need to slow down. We need to really collect some data. In Europe they've already...they don't
32 put these cellphone towers near schools or near communities where they're highly populated
33 because they don't feel that it's safe. Here we're a little behind the times and we're kind of
34 steamrolling ahead without the data and research. And unfortunately I don't have any like data
35 to pass along to you, but what I don't want to have happen is in five, ten, fifteen, twenty years
36 and say oh yeah, that was really bad. Why don't we stop, do more research, collect that data
37 and then move forward. There's no reason that we have to have this particular thing happen
38 right now this week, this year, this five years. Why not wait until we get that data and then we
39 can go forward.

40
41 Kahu Hill: And Shelley one more thing on that, did you see any research as far as like what
42 Europe is doing or other countries are doing as far as how far that they make them 200 feet or
43 how many yards or meters between residences or anything or schools or...

44
45 Ms. Snyder: Well, I don't know the limitations exactly I apology.

46
47 Kahu Hill: I know I'm kind of asking questions ...(inaudible)...

48

1 Ms. Snyder: I know I wish that I was a little bit more...I knew the limits and things, but I don't, I
2 don't know those offhand but they do...if more research was done we could find that they have
3 definite restrictions and you cannot put it within a certain limit of school zone or within
4 communities that are populated to X amount. So there are restrictions and limitations.

5
6 Kahu Hill: Can I ask one more Chair? Thank you, mahalo. So what you're saying is that
7 United States or us has not done enough research. So even if we were to defer this to get
8 paperwork and documentation to give any other research on the matter it doesn't exist at this
9 point in time?

10
11 Ms. Snyder: Well, and that is something that maybe, you know, you all need to do your due
12 diligence and see if there is some research. I personally couldn't find anything that was just like
13 this is the guidelines, this is where we can put them or we can't put them. I think it's all just
14 being kind of developed as we go along. I couldn't find anything that gave like limitations of
15 restrictions, but it's possible it's out there and maybe you have more access to that.

16
17 Kahu Hill: Mahalo.

18
19 Mr. Robinson: Thank you for your testimony. You have a question for our testifier? I apologize
20 we have another question for you. I'm sorry. Commissioner Tackett.

21
22 Mr. Tackett: The closest building that I saw to the cell tower seemed to be makai of it. Is that
23 where you live?

24
25 Ms. Snyder: We actually live north of the proposed zone. So we are on mountain side of the
26 Lower Honoapiilani Road and we're on ocean side of the highway and it's proposed to go on
27 ocean side of the highway right behind the property where I live.

28
29 Mr. Tackett: How far do you think your building line is from the tower that they're proposing?

30
31 Mr. Robinson: Commissioner, can you please the Exhibit 4 on top of the screen please. Thank
32 you.

33
34 Ms. Callentine: We don't have that on. ...(inaudible-not speaking in to a mic)...you're talking
35 about Exhibit 4 from the report?

36
37 Mr. Robinson: From the report.

38
39 Ms. Callentine: No, the report is not there. This is their presentation.

40
41 Mr. Robinson: Oh, I apologize.

42
43 Ms. Callentine: But I did pull up Exhibit 4 myself.

44
45 Mr. Robinson: So Commissioner Tackett if you can look at Exhibit 4 on your page?

46
47 Ms. Snyder: It's two stories. We're just north of where the proposed site is.

48

1 Mr. Robinson: Yeah, right there, right there.

2

3 Ms. Snyder: And it's only a few hundred feet I would say from where the proposed site is.

4

5 Mr. Robinson: So you live in Hale Royale?

6

7 Ms. Snyder: Yes, sir.

8

9 Mr. Robinson: So that's No. 2 Commissioner Tackett. And you see...and can you find out
10 where the Maui Lani Terrace and where the parking lot is on there?

11

12 Mr. Tackett: Okay, I see that.

13

14 Mr. Robinson: And you see where the L is and see where the parking lot is and where the
15 proposed shed is on the bottom right? There's a little shed there.

16

17 Mr. Carnicelli: Little brown dot.

18

19 Mr. Tackett: Down here?

20

21 Mr. Robinson: Yes. I got your bearings. Oh yeah it's up there too.

22

23 Mr. Tackett: Okay.

24

25 Mr. Robinson: Okay, thank you. I'm sorry continue.

26

27 Mr. Tackett: That was my question.

28

29 Mr. Robinson: Thank you so much. Any other questions?

30

31 Kahu Hill: I just have a question—

32

33 Mr. Robinson: Well, if it's not for the testifier I'm going to close public testimony and then we
34 can have discussion. Do you have testifier or you're good? Is there anybody else that would
35 like to testify on this item? Seeing none, public testimony is closed. Commissioners, any
36 questions for the applicant? Commissioner La Costa.

37

38 Ms. La Costa: Mahalo Chair. Thank you very much for your presentation. So I have a few
39 questions. I actually used to live within about 35 feet of where that tower is going up. Why did
40 you happen to pick that specific area of Honoapiilani and Honokowai because is it very densely
41 populated?

42

43 Mr. Conte: Well, there's in a selection process there's four criteria. One is and probably the
44 overriding one is coverage. The radio frequency engineers tell us where they need coverage.
45 They circle it on a map and say if you find something in this, in this circle that's constructible,
46 zoneable and leasable that should accommodate our coverage. So that property I was able to
47 obtain a lease, it's zoneable, it's constructible and it meets the RF objective. So the key is that
48 we have two neighboring sites. So there's RF there already and let me just point out for the

1 record that, you know, I respect her. I can understand the emotions involved because people
2 hear things, but she uses a phone so she's fully aware that there's RF and she uses RF. So all
3 we're asking is that we have the same opportunity to offer some competition in the area.

4
5 Ms. La Costa: So you mentioned that leased, so you are leasing the area where it is.

6
7 Mr. Conte: That's correct.

8
9 Ms. La Costa: And was that a determining factor of the position of that? That that was the only
10 place that would lease it.

11
12 Mr. Conte: Yes, absolutely. Ideally we look for existing structures first. That's why we looked
13 at the...once again, it's right up the street from her and everybody there's Kahana, the Royal
14 Kahana and then also the Kaanapali. So the way the network works is, once you drive out of
15 the range of one tower, you driving to the range of another. So on this island alone there may
16 be 30 sites. So we have to...so in order to get the coverage and either which carrier you're with
17 the whole island's blanketed with RF. It's everywhere. So that is...there's going to be no way
18 around that. And so in talking about density that's where we go. We go...that's the intention is
19 go where the population is because that's our customer base, that's everybody's customer
20 base.

21
22 Ms. La Costa: The other two sites that you mentioned Kaanapali Shores and Royal Kahana,
23 those are for the most part vacation rentals so people are coming and going and they don't have
24 continuous exposure as all of that residential area does where you're proposing to erect the site.

25
26 Mr. Conte: Not necessarily. I wouldn't say that. I mean there's locals that live all in that area.
27 That coverage...once again, there's coverage around the whole island. There's more than just
28 two...so there's 30, pretty much almost 30 sites on every island.

29
30 Ms. La Costa: Yeah I was thinking of the density in that area not only living there but also being
31 familiar with the real estate there, so...and my last question if I might please Chair is at 35 feet
32 with planes coming in and out of Kapalua Airport what kind of...and also birds, there's a fella
33 who lives on Haku Hale that has homing pigeons. What kind of impact is that going to have on
34 the birds with the continues...(inaudible)...or on the planes?

35
36 Mr. Peter Yager: We do studies related to—

37
38 Mr. Robinson: I apologize can you please introduce yourself?

39
40 Mr. Yager: Certainly. I was introduced as John Yager, I actually go by Peter, my middle name.
41 Thank you Commissioner for your question. As far as the Kapalua Airport goes we follow the
42 FAA guidelines on that and we'll do a study checking to make sure that we don't have any
43 interference with the flights coming and out of that airport.

44
45 Ms. La Costa: What about the birds?

46
47 Mr. Yager: We an NEPA study on that and that would be addressed in the NEPA study.

1 Ms. La Costa: Thank you. As far as the NEPA study is a huge flock of homing pigeons in that
2 neighborhood and so as far as numbers go I understand that there are specific criteria you must
3 adhere to if there is livestock that could be impacted or birds or anything like that. What does
4 your studies say?(inaudible)...that there was one...(inaudible)...

5

6 Mr. Yager: Our study is in progress. It will be completed at the end of July.

7

8 Ms. La Costa: Thank you.

9

10 Mr. Robinson: Commissioner Kahu Hill.

11

12 Kahu Hill: My question is for Peter not John. Peter just looking at phone technology and
13 telecommunications I'm thinking about the environmental impacts of the telecommunications
14 sites and wondering about the EMF, the electromagnetic fields and including the radiation and
15 microwave radiation of frequency levels that radiate from those cell towers and everywhere,
16 antennas, dishes. And I know with the technology it's saying that with FCC that you guys gotta
17 stay on frequencies so I get that. I'm wondering with looking at this and you're talking about 5G
18 and about, you know, we just keeping going, our cellphones keep evolving, our pads, our
19 tablets, our computers, we keep evolving and I'm sure the technology will keep evolving and
20 there's things to look at with health concerns. I'm just wondering does the environmental
21 impacts here include monitoring, like monitoring the safety levels of radiation or things like that,
22 the telecommunications site or sites.

23

24 Mr. Yager: Well, we design the site under the OET 65 Regulations of the Federal
25 Communications Commission and we operate the transmitters within the specified power levels
26 using that study as our guidance. And then they're monitored continuously because the power
27 is set and if there's any deviation in the power that would be brought out as an alarm in the
28 system.

29

30 Kahu Hill: And where would that happen 'cause you said that it was unmanned and so where
31 would you...how do you monitor something like this?

32

33 Mr. Yager: We have multiple network operation centers throughout the country that monitors
34 these sites.

35

36 Kahu Hill: And would your intention be if you come to this 5G that as technology advances
37 being able to use what you're wanting to put in place on this pole to add higher technologies to
38 this platform, this area?

39

40 Mr. Yager: Yes we would. Yes.

41

42 Kahu Hill: Mahalo.

43

44 Mr. Robinson: Any other Commissioners have a question, comment? Commissioner Carnicelli.

45

46 Mr. Carnicelli: So I don't know which one of you can answer this one, but did you make contact
47 with the County Communications Coordinator Walter Pacheco at the Police Department for his
48 input?

1
2 Mr. Yager: We know Walter quite well and we will make contact with him, but we have not yet.

3
4 Mr. Carnicelli: Okay, so you know him quite well, but you haven't contacted him about this yet.

5
6 Mr. Yager: That is correct.

7
8 Mr. Carnicelli: Okay. If I could continue?

9
10 Mr. Robinson: Please.

11
12 Mr. Carnicelli: So we've got reaching out to Walter and the bird study that haven't been done.
13 What else has not been done yet or not completed yet?

14
15 Mr. Yager: We're in the zoning phase right now so that's the NEPA and communication with the
16 County, Walter. That's normally with...as part of the stipulation on the zoning approvals that
17 you reach out to the County...(inaudible)...and talk about it at that point.

18
19 Mr. Carnicelli: Okay. If I can continue? So when we've gotten these in the past you know I
20 guess, and I'm gonna use real layman's term for someone that knows all the technical words,
21 you got the tower and then you got your, you know, the signals going out and there's a band
22 width with which it physically goes and that's why we put them up and yet the most hazardous
23 part is that piece that goes like that. I don't see any elevations or something like that to
24 where...I mean, I get that this area is on a grade, so you know, you're gonna be at the top by
25 the upper road and I don't know if those...that shoots over the top of the houses or not, that
26 main say beam of—

27
28 Mr. Yager: It is a beam width.

29
30 Mr. Carnicelli: Oh beam, there we go. All right, I know the technical term then. So can you...do
31 you have a slide or something like that where you show the beam?

32
33 Mr. Conte: No, I'm sorry the next, the one right before that one. Might not be able to see it.
34 Actually it's on this one too. It's called an exclusionary. It's on this one.

35
36 Mr. Robinson: The right side.

37
38 Mr. Carnicelli: Right, but that doesn't show relative to anything else. I mean, it just shows a
39 parking lot with a tree. You know it doesn't show where the houses are below that. It doesn't
40 show where the Maui Lani Terrace is next to it.

41
42 Mr. Conte: Well, it's 35 feet up in the air, 20 feet going straight out there's absolutely...

43
44 Mr. Carnicelli: Okay, I'm just...I'm trying to—

45
46 Mr. Conte: I'm not...(inaudible)...I just want to explain a little bit more on the exclusionary just
47 so everybody understands. That is a calculation done by the antenna and then also the ERP,
48 the Effective Radiating Power and then they determine this exclusionary. In other words,

1 anything in this exclusion that crosses this exclusionary zone, you just need to have some type
2 of notification that you can't be there too long on it. But anything after the exclusionary zone or
3 so long you're not in it, you're...and everything past that you're pretty much fine. You are fine.

4
5 Mr. Carnicelli: One more question.

6
7 Mr. Conte: And this is yeah, 35 feet up in the air.

8
9 Mr. Carnicelli: So my next, my last question is around say Kaanapali, North Kaanapali to
10 Kahana, how many cell towers are in that area now, not just Sprint. I got where you guys are on
11 Royal Kahana and Kaanapali Shores, but if I take AT&T and everybody else, how many towers
12 are there. How much, how much is the neighborhood getting blasted now?

13
14 Mr. Yager: I would...this is would be an estimate 'cause the other companies don't always
15 share their locations with us, but I would guess it to be anywhere from five to seven towers per
16 company.

17
18 Kahu Hill: Per what?

19
20 Mr. Carnicelli: Per company. Five to seven per company in the same area that you want to
21 put...that you now have two and you want to put a third.

22
23 Mr. Yager: Well, you went from Kaanapali—

24
25 Mr. Carnicelli: Yeah, I'm saying North Kaanapali...Kaanapali Shores which is you know, say the
26 north end of Kaanapali to Kahana. So you guys have two, everybody else has four or five.
27 Okay.

28
29 Mr. Robinson: I don't want you guys to take this personal. I think you know, it's always...no I'm
30 serious. The last person always seem to you get more questions and we're a thorough
31 commission than it was a few years ago. We ask a lot more questions and some guys might
32 have been able to slide in more. There's more research. There's more out speak and lot of us
33 we just want to understand you know, what's going on and so I want to, you know, it's, it's just a
34 process and try to...try not to take it personal, and we'll keep on going. Commissioner Kahu
35 Hill.

36
37 Kahu Hill: I just wanted to understand 'cause I heard before also that sometimes when it was
38 T-Mobile or Sprint or AT&T or Verizon that sometimes they would use others towers or use
39 Verizon towers or something does that exist within Sprint?

40
41 Mr. Yager: Yes, we do co-locate on other companies facilities.

42
43 Kahu Hill: And is there nothing on the west side that you could do that with?

44
45 Mr. Yager: We could not find it in this particular RF search range.

46
47 Kahu Hill: One last question. If you advance your technology from what you're looking at today
48 and believing that it wouldn't create cancer or health concerns with what you know what about

1 future technology looking to be in this housing and not knowing those stats but of course
2 wanting to keep up with telecommunications and technology and always staying up with that
3 being so close to residents and life.

4
5 Mr. Yager: I think that the future for wireless telecommunications is you have multiple facilities
6 much closer to the residents, many more facilities as we enter into the 5G phase where you'll
7 see them on light posts, electrical tower facilities. They're gonna be much more prolific.

8
9 Kahu Hill: Are you saying that because of the density of people or overpopulation in areas?
10 Would that be the main reason that they would be closer?

11
12 Mr. Yager: The demand I think. Like these particular cell sites that we're proposing and there's
13 a total of eight on Maui by the way, we have received feedback from our customers and these
14 are directly in relationship to our customers telling us that they need coverage in this area to
15 continue to work with us.

16
17 Mr. Robinson: We only got today guys. Is let me ask a question and so we can try to move this
18 along so we can get a motion. Can you quantify the exposure of no matter what you call it
19 'cause is heard that you have...at 30 feet high we have a beam right. We do have two stories in
20 that neighborhood. Quantify the distance, quantify the radiation and what I'm asking is, is we
21 have cell phones everywhere right? I mean, I actually rather live at some place I have a better
22 reception than I don't have one in my room. That's me, everybody's different. But I also have
23 Bluetooth, I also have modem that's all remote so I don't have anything wired. So I'm a
24 wireless. So is our modems in our home just like a cell phone. I mean, you know can we
25 quantify everything instead of just cell phones and just focus on cell phones because is our
26 internet and what's going on in the internet is that the same, you know. And then to further the
27 question does 5G give out any more, any less compared to 2G or 3G?

28
29 Mr. Yager: I'll start with 5G first.

30
31 Mr. Robinson: Okay.

32
33 Mr. Yager: And that, the answer to that is no. They operate on...5G is a type of signaling
34 format that is used in order to enhance the data bit stream to allow more data in a particular
35 time frame. So whether you're operating at 800 megahertz or 600 megahertz or 1,900
36 megahertz, or 2,500 megahertz or 700 megahertz which the cell phone companies are using.
37 They all would support 5G. Generally they're going towards the higher frequencies to allow
38 better penetration into...in buildings. And as far as the rest of the—

39
40 Mr. Robinson: Modem to a cell phone and a tower. What's a modem tower, cell phone tower is
41 that compatible or are we talking apples and oranges?

42
43 Mr. Yager: Well, they're different, sort of...well, I don't know, apples and oranges I guess
44 because they're different frequency ranges. So you're talking about a much different frequency
45 that you're using for your Wi-Fi than we are for the—

46
47 Mr. Robinson: Is there a difference in exposure regardless if it's noncancerous or cancerous?
48

1 Mr. Yager: It's a lower, lower power output on those—

2

3 Mr. Robinson: On the modems.

4

5 Mr. Yager: Yes, but they're right in your house.

6

7 Mr. Robinson: Okay.

8

9 Mr. Galazin: Chair?

10

11 Mr. Robinson: Corp. Counsel.

12

13 Mr. Galazin: Thank you Chair for allowing me just to chime in real quickly. Just to make sure
14 that all the members understand that this is for a Conditional Permit and you guys are making a
15 recommendation to the County Council so whether or not to approve it. It's gonna be up to
16 them to do it. A fun fact, in the Middle Class Tax Relief and Job Creation Act of 2012, they
17 slipped in a provision related to colocation of similar type units where powers, municipalities with
18 zoning powers are pretty limited in what they can do as far as regulating colocation. So
19 standalone entities like this you have a little bit more...in the report you'll note that there is
20 reference to Shot Clock, that 2012 Tax Relief Act that somehow also relates to cellphone towers
21 and zoning approvals has an even shorter shot clock. So you can make your recommendation.
22 You are not going to prohibit these things from being proliferated around the island. These are
23 very good questions to ask but I would say this is one way in which conditions can be put on it
24 through conditional permit by the County Council. If it's colocation then there's less control over
25 it. So a standalone tower actually provides a little bit more...(inaudible)...of control. And as I
26 mentioned that was something that's(inaudible)...put on as a condition when Council makes
27 a final determination, but it's just something to throw out there for everybody.

28

29 Mr. Robinson: Do we have a motion?

30

31 Mr. Castro: I move to adopt the Department's recommendation.

32

33 Mr. Robinson: And do I have a second?

34

35 Mr. Carnicelli: Second.

36

37 Mr. Robinson: Seconded by Commissioner Carnicelli. Discussion Commissioners? Is you
38 know, is I'm just going to put my two cents in this. I come from communication equals mobility
39 for economic. It's proven, internet is proven, phone access is proven that people that are able
40 to communicate can help their economic stability. Reducing people's ability to communication
41 affects them economically and I'm not sure about all the medical or legal...medical aspects of it.
42 You know, I'm gonna claim I'm ignorant on that, but I do know that communications help
43 people's economic upward mobility. Any other comments? Commissioner Carnicelli.

44

45 Mr. Carnicelli: Yeah, Chair you know I appreciate the testifiers concerns and I'll be perfectly
46 honest with you I've had similar concerns and my wife and I have talked about moving to the
47 middle of Montana or something like that you know. But I was actually yesterday in Honolulu
48 staying in Waikiki and from my room I looked at every single hotel and every single hotel I

1 looked at had a tower looking at this. You know I do have the concerns about how much is too
2 much, when's enough enough, and yet, at the same time you know there is competitive balance
3 if we've let one company do it but we don't let another company do it where do we fall in that.
4 So yeah, I'm gonna go ahead and support the motion to approve to the Council.

5
6 Mr. Robinson: Commissioner La Costa.

7
8 Ms. La Costa: Thank you Chair. I am against this motion for two reasons. Number one, these
9 studies are not complete. There were two very important, one of them is communications with
10 the police and you talk about 911. The airport is close by as well. That's probably a concern.
11 And also, what you're doing about the NAPA, WEPA, whatever survey...NEPA see I'm not a
12 bird person, but what you're doing about that and when's that going to be concluded. So I
13 cannot support this without all the information.

14
15 Mr. Robinson: Okay, we'll take this to a vote. All those in favor of recommending to Council
16 please raise your right hand? All those opposed? I will pass this. Motion is approved.

17
18 **It was moved by Mr. Castro, seconded by Mr. Carnicelli, then**

19
20 **VOTED: To Recommend Approval of the Conditional Permit to the County**
21 **Council.**
22 **(Assenting – S. Castro, L. Carnicelli, A. Hall, C. Tackett,**
23 **K. Robinson)**
24 **(Dissenting – P. D. La Costa)**
25 **(Excused – T. Gomes, L. Hudson)**

26
27 Mr. Robinson: Next item, Clayton.

28
29 **F. DIRECTOR'S REPORT**

- 30
31 **1. MR. WILLIAM SPENCE, Planning Director, notifying the Maui Planning**
32 **Commission pursuant to Commission's SMA Rules of the following Special**
33 **Management Area (SMA) Emergency Permit:**

34
35 **NAPUOWAIOLUPE LP obtaining a Special Management Area (SMA)**
36 **Emergency Permit by letter dated May 31, 2018 for the demolition of a**
37 **failing portion of an existing non-conforming seawall and removal of a**
38 **failing CMU wall located at 459 Hana Highway, TMK: (2) 2-6-009: 001, Paia,**
39 **Island of Maui. (SM3 2018/0005) (SSA 2018/0008) (J. Buika)**

40
41 Mr. Yoshida: Thank you Mr. Chair. Under Director's Report, the first item is the Department
42 notifying the Commission of the issuance of a SMA Emergency Permit to the Napuowaiolupe LP
43 for the demolition of a portion of a existing non-conforming seawall and removal of a failing
44 CMU wall located at 458 Hana Highway in Paia. This is for notification and review purposes
45 pursuant to your rules. Jim Buika is the Staff Planner. He is here.

46
47 Mr. Robinson: Does anybody have a question for Mr. Buika? Jim, I do. We got this there's no
48 pictures of the seawall or what the plan is can you quickly in 30 seconds or less tell us...Jim, is

1 I'm curious is what's happening, is this going to be the only one, is it a you know, a domino
2 effect that's gonna come across?

3
4 Mr. Buika: Jim Buika, Planning Department. I anticipated your question so I have a one-page
5 handout with pictures of what's going on. I think it's self-explanatory.

6
7 Mr. Robinson: Can you get those in by 9:00 a.m. next time please?

8
9 Mr. Buika: This is for reference it's at the blue tile house if you any of you know in Kuau right
10 out front there. So let's see more...the front page has two people on it, the picture of beach out
11 in front there and then more of a close up. This is the piece that needs to be removed. It's
12 hanging in midair. It's a old CMU wall that is pulling apart from the bluff with that old Hawaiian
13 rock on it. Turtles frequent there and moms with little keiki play underneath there so we're just
14 trying to remove it. The large plan I think you asked is to a secondary step through the permit
15 process with the State and the County would be to grade back at an angle this bluff here and
16 then at least to protect it with a kind of a water resistant blanket and then look at long term work
17 for the area potentially moving part of the building back but the owner does want to come in to
18 talk about what are the options here at this parcel. If any of you know the parcel it's right at the
19 parking lot and...

20
21 Mr. Robinson: So has the Department approved any temporary mitigation for him yet?

22
23 Mr. Buika: Not yet. I have that on my desk, but this is the first step is to remove the failing
24 seawall here.

25
26 Mr. Robinson: And is there any neighbors that's going to be affected as well that has seawalls
27 or is he...

28
29 Mr. Buika: None, this is pretty much independent right here. I mean there are, there is riprap
30 and a wall farther, it's not pictured in here. But to away from the parking lot there it is all
31 riprapped in back in the 40's and 50's I think, riprap meaning lot of large boulders along the
32 coastline there. But it won't, this won't have any impact directly on the neighbors.

33
34 Mr. Robinson: Okay, thank you. Any questions Commission? Commissioner Kahu Hill.

35
36 Kahu Hill: Just one question. Is any of these walls, I'm just noticing the pohaku is the rocks,
37 historical in any way?

38
39 Mr. Buika: I don't know. We have...we do have the SHPD, I do have a archaeological
40 monitoring plan for this parcel. I don't know about the pohaku if they are. I don't know the date
41 of this, it is non-conforming, it's older. We could hang onto the rocks as a condition or at least
42 keep them in place or collect them anyway, so that would be desirable I'm not sure. I'll look into
43 it. I'll look at the SHPD document.

44
45 Mr. Robinson: Thank you Mr. Buika.

46
47 Mr. Buika: Thank you.

48

1 Mr. Robinson: Clayton.
2

3 **2. SMA Minor Permit Report**

4 **3. SMA Exemptions Report**
5
6

7 Mr. Yoshida: The Department has circulated the list of SMA Minor Permit and SMA Exemptions
8 issued for the period from 5/30/18 to –
9

10 Mr. Robinson: Commission all those in favor of adopting the minors, please raise your hand.
11 Thank you.
12

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

14 **a. July 10, 2018 agenda items**
15
16

17 Mr. Yoshida: Your next meeting is scheduled for July 10th in my memo to you. We have three
18 public hearing items scheduled, the AOA of Valley Isle Resort for a SMA Permit to reconstruct
19 the fire damage, two-story commercial building in Kahana. The Department's proposed
20 amendments to Title 19 to allow for structures to be located on the same lot as farm dwellings if
21 the structure's use is customary, incidental and usual to the farm dwelling. And a bed and
22 breakfast home permit application on Maui Paradise located on Front Street in Lahaina. There
23 is a Communication item which has been noticed before from Honuaula Partners LLC
24 requesting adoption of the Draft Preservation Mitigation Plan and Habitat Conservation Plan for
25 the proposed Honuaula project formerly known as Wailea 670 in South Maui. And then we
26 have the deferred item, James Lecron, SMA Permit for the residence on Kaiala Place.
27

28 Mr. Robinson: Is Clayton is can we move the deferred item to A.1 please on the agenda for the
29 next meeting?
30

31 Mr. Yoshida: Yes.
32

33 Mr. Robinson: And about how long do you think the communications with Mr. Jencks is going to
34 take on Honuaula Partners is it something that we're gonna review? That you're going send out
35 to us in the packet or is that a presentation?
36

37 Mr. Yoshida: They probably will because this project has a very long permitting history dating
38 back to the 1980's till now. So the applicant many want to go through you know various
39 entitlements that they received thus far and where they're at in terms of getting to the next step.
40 I mean they've done an EIS. They're trying to get through the Phase 2 Project District review,
41 but there's certain conditions in the zoning that they have to finish before they can get to that
42 next step.
43

44 Mr. Robinson: Okay, Commissioners anything else. Thank you for the...yes,
45 Commissioner La Costa.
46

1 Ms. La Costa: You know I'm always the one with the mouth, right my dad used to call me
2 Gabby when I was a kid, but did we, could we vote on this, I know we voted on the not leaving
3 the SMA, but do we have to take action on this 'cause there wasn't a motion the thing, so...

4
5 Mr. Robinson: You know that's a good question. Corp. Counsel.

6
7 Mr. Carnicelli: Emergency SMA.

8
9 Mr. Galazin: It's non action item on the agenda.

10
11 Mr. Robinson: Thanks Denise. Commissioners, thank you for the day, thank you for your time.
12 Aloha.

13
14 **G. NEXT REGULAR MEETING DATE: JULY 10, 2018**

15
16 **H. ADJOURNMENT**

17
18 The meeting was adjourned at approximately 4:50 p.m.

19
20 Submitted by,

21
22
23 Carolyn Takayama-Corden
24 Secretary to Boards & Commissions II
25
26

27 **RECORD OF ATTENDANCE**

28
29 **Present**

30 Lawrence Carnicelli
31 Steven Castro
32 Kahu Alalani Hill
33 Larry Hudson, Vice-Chairperson (Excused at 3:06 p.m.)
34 P. Denise La Costa
35 Keaka Robinson, Chairperson
36 Christian Tackett

37
38 **Excused**

39 Tina Gomes

40
41 **Others**

42 William Spence, Director, Planning Department (Excused at 3:06 p.m.)
43 Clayton Yoshida, Planning Program Administrator, Current Planning Division (In attendance
44 from 3:00 p.m. – 4:50 p.m.)
45 David Galazin, Deputy Corporation Counsel, Department of the Corporation Counsel
46