

**MAUI PLANNING COMMISSION
REGULAR MINUTES
SEPTEMBER 27, 2016**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Max Tsai at approximately 9:14 a.m., Tuesday, September 27, 2016, County Council Chambers, 8th Floor, Kalana O Building, 200 South High Street, Wailuku, Maui.

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

Chair Tsai: Good morning and thank you for your patience waiting. Today is September 27, 2016. Maui County Planning Commission is called to order. I'd like to take a moment and recognize our Commissioners present. We have Commissioner Carnicelli.

Mr. Carnicelli: Good morning Chair.

Chair Tsai: Commissioner Robinson, Commissioner Higashi, Commissioner Castro, and Commissioner Hedani.

B. PUBLIC TESTIMONY - At the discretion of the Chair, public testimony may also be taken when each agenda item is discussed, except for contested cases under Chapter 91, HRS. Individuals who cannot be present when the agenda item is discussed may testify at the beginning of the meeting instead and will not be allowed to testify again when the agenda item is discussed.

Chair Tsai: At this time, I'm gonna open the floor public testimony. Anyone wish to testify on any agenda items you wish to testify now instead of waiting for later and this just gives people an opportunity to testify now instead of having to wait for the agenda item to come up. So you can choose to testify now or wait till the agenda item comes up one or the other. I do have one person signed up here and I'm sorry, Davis you want to testify now?

Mr. Hal Davis: Sure.

Chair Tsai: Okay. Please identify yourself. You have three minutes.

Mr. Hal Davis: My name is Hal Davis. 516 Kulaiwi Drive. I have three parts to my testimony this morning. Number one is about Commissioner Hudson and I'd like to give you a petition and that's about the...it's a recent one. We're requesting that Mr. Hudson recuse himself from the Wilson matter and a number of reasons why. First of all, I went back and I looked when the Commissioners were seated on this committee and I said to myself why is Mrs. Wilson not going for a special events, special exception permit back in 2012. Well, I think I got my answer, in 2012 Mr. Hedani was commissioned and then in 2013 Mr. Medeiros, and then in 2014 Mr. Higashi who is living with Mrs. Wilson and then 2015 Mr. Hudson was seated on the Commission. If you take those dates and you put them together that's 12, 13, 14, and 15 and then Mrs. Wilson applies for a special events permit. Maybe it's coincidence or maybe I'm just paranoid but it looks like we have four out of nine people seated now that are...would be in favor Mrs. Wilson's permit. Mr. Hudson, cousin, Mr. Higashi, a boyfriend, Mr. Hedani who is

sympathetic to her cause because he signed the petition for her and then Mr. Medeiros who frequently went up to Mrs. Wilson's house for get-togethers. I just wanna bring that to your attention when you see that petition which is signed by over 130 people and there's to more to come. I think this commission should really look at smell test and the fact that why would you want any type of conflict of interested shedding shadow over this issue with Mrs. Wilson by having friends and relatives and boyfriends sitting on the Commission.

Number two is this petition for the people that live within 500 feet of Mrs. Wilson's property. It was left out of the paperwork turned to your committee by Ms. Flammer because she earlier attached it to my intervention. I'd like to give you a copy of that and this is also the format that I used for the distance but that was revised so there are actually more people that live within 500 feet of her house that originally.

Ms. Takayama-Corden: Three minutes.

Mr. Davis: Also on Page 1 you'll see that there's an asterisk next to Mr. Michael Kowalski's name he wished to be removed off of that so I did so.

Chair Tsai: Thank you.

Mr. Davis: Last but not least.

Chair Tsai: You're up, sorry. We have three minutes that's all. Any questions from the Commission?

Mr. Davis: Could I just say one thing about the email that sent in that all the commissioners have? I'd like you to read that and ask yourself why any commissioner that's sitting on this board would send a letter to his constituents saying that the ...(inaudible)...was on the front page therefore we have no position. Then why the public hearings are closed. They're not closed. And then the last one says, the future public hearing and testimony is a technicality, I think not.

Chair Tsai: Thank you Mr. Davis.

Mr. Hedani: Mr. Chairman?

Chair Tsai: Commissioner Hedani?

Mr. Hedani: Although I have decided to recuse myself on this particular issue that Mr. Davis is testifying on in light of his circulation of private email comments that were going to the Board of the Directors of the Phase 1 members of the subdivision which is not involved in the Lona Ridge controversy I would like to offer comments when decision making comes in.

Chair Tsai: Absolutely.

Mr. Hedani: Thank you.

Chair Tsai: Thank you. Thank you Mr. Davis. Anyone else which to testify at this time? Seeing none, public testimony is now closed. We'll go to our public hearing agenda number one, Director?

Mr. Spence: Good morning Commissioners, and we are Public Hearing Item No. 1 is a request from Ms. Debbie Mitchell, consultant for Short-Term Rental Home Permit for the International Colony Club. What we have for you today is application we're lumping all 17 properties together into one public hearing but there are 17 different applications. Mr. Kurt Wollenhaupt will make the presentation and sort of explain the circumstances.

C. PUBLIC HEARINGS (Action to be taken after each public hearing.)

- 1. MS. DEBBIE MITCHELL, consultant requesting Short-Term Rental Home Permits for the current owners of the following units at the International Colony Club in the R-3 Residential District at 2750 Kalapu Drive, Unit #4, 8, 12, 13, 14, 15, 16, 18, 19, 21, 23, 24, 26, 37, 39, 41, and 43, TMK: 4-4-006: 006, (0003, 0007, 0011, 0012, 0013, 0014, 0015, 0017, 0018, 0020, 0022, 0023, 0025, 0036, 0038, 0040, and 0042), Lahaina, Island of Maui. (STWM T2016/0005 to STWM T2016/0021) (K. Wollenhaupt)**

Mr. Kurt Wollenhaupt: Good morning Mr. Chairman and Members of the Maui Planning Commission and also thank you to the applicants for showing up on this issue that is going to review a hearing required for short-term rental homes because there are two currently within 500 feet of the proposed 17 that you're going to be discussing today. That was on the 24th of May 2016. The Council adopted revisions to 19.65 of the Maui County Code and the revisions then required a public hearing would be held if there were more than two within 500 feet which in this case there are and in addition, the International Colony Club was discussed well in May and also by ...(inaudible)... a number of times that they represented a unique situation that was going to be addressed in the Code change. So in May when the Code change 19.65.030A then allowed a condominium regime which had a detached style family homes for each of those individual lot owners to apply for a Short-Term Home Rental Permit. This applied to International Colony Club and subsequently Debbie Mitchell on behalf of the residents, many of whom are in the audience today then submitted separate applications, all with separate fees in order to be considered for short-term rental home use.

Now the International Colony Club was built in the early 60's and it ties in to the overall master plan of Kaanapali Resort. There's some historic old photos, in your brochure

that alludes to this. In addition, the International Colony Club has for years been renting out these as short-term from the early 60's so there is precedent that this community, this non-gated community has been used for vacation rental. In fact many of the homeowners were under the impression that the ...(inaudible)... they've been paying actually the hotel tax were being used but certainly with regards anything that's used need a GET.

So in order to become legal with the County of Maui's new Code we do have 17 coming in at once. This isn't unprecedented. There have been changes in zoning which review multiple lot owners when it affected all of the individual owners in really the same way. So from a administration standpoint instead of having 17 separate hearings we're going to do these all in one today.

There are representative floor plans of the two and three-bedroom that are included in the report. The homes are very similar in nature, it's spread across the area up at the International Colony Club at 2750 Honoapiilani Drive.

Just to give the Commission some background. There are approximately 41 short-term rentals that have been approved in West Maui. The limit is 88 so were these you know approved today we'd be moving towards the limit but we wouldn't be anywhere near the threshold. The Code says that when we become close to 90 percent from the threshold then the County Council will have to review the threshold and they can do whatever they wish but they're still going to have quite a number of ...(inaudible)...that threshold.

Has indicated before the ICC was built under this horizontal property regime that attached dwellings each have its own sub TMK so that allows them to apply for the rental home permits today. Let's see...you may ask well, why are we here. This is resort zoned, well no actually this is zoned Multi-Family Residential, R-2 Residential District. So this is not within the Hotel District they do have to come before this board in order to review for the Short-Term Rental Permit process.

That being the case, Ms. Debbie Mitchell is the applicant. She has a Power Point presentation that's going to go over this. I would point out that deemed by the number of notifications that had to go out everybody within 500 feet and what's remarkable is we only had two responses out of all of those. So there doesn't appear to be an up swale of opposition for this project. So Ms. Mitchell will give the presentation. Without any other questions we'll move forward.

Chair Tsai: Thank you, Kurt.

Ms. Debbie Mitchell: Good morning Commissioners, Mr. Spence. My name is Debbie Mitchell and I'm here representing 17 owners of the International Colony Club. Kurt's already given a great description of the project. It is located in West Maui just above North Kaanapali area along the resort area of North Kaanapali. There's several large resorts starting up with the Aston Kaanapali Shores going down through Honua Kai, The Westin Resort, I think they're on Lot 3 now.

Chair Tsai: Excuse me Debbie can you speak to the mic.

Ms. Mitchell: Certainly.

Chair Tsai: Thank you.

Ms. Mitchell: Is that better? I'll sit then. Okay, as I was saying The Westin Kaanapali I believe they're on Lot 3 now, very large resort. There's the Aston Maui Kaanapali Villas and the Royal Lahaina. In addition, to the east are the Masters at Kaanapali and the Kaanapali Plantation Condominiums which also do short-term rentals.

This aerial view kind of shows how it is isolated. The red lines indicate the boundaries of the property and the Royal Kaanapali Golf Course divides it really from any residential areas. It is just mauka of Honoapiilani Highway and then you'll see the major resort areas there. To the north is the old sugar cane train station and the coffee...Kaanapali Coffee Plantation which is a new housing development that is on Ag land and they are conducting vacation rentals. So with the exception of the small island there, Kolepa Place which is just east and south of the property it is all either resort or condominium vacation rental area.

As Kurt mentioned there two short-term rental permitted areas within 500 feet. The first is actually on the property itself, it's cottage no. 42 and then the second is at 2810 Kolepa Place. It is just up at the end of the driveway on Kalapu Drive.

The property is on 10 acres and it was constructed as Kurt mentioned in 1964. The red indicate the cottages that have applied. So you can see how they're spread out and there are four general parking areas. They're not parking areas at each of the cottages, they are general parking areas, but each cottage is assigned two parking spaces. So they are not specifically called out to each parking area but there are enough parking spaces to accommodate that.

These are some of the views of the area. This is just facing directly west and showing you the West Maui North Kaanapali Beach Resort area and that road will take you right down to Kahekili Beach, Airport Beach and then just to the right is the big Westin Villas,

just to the left is the Aston Kaanapali Villas. And this is south facing you can see the corner of the property. Those are the old sugar cane train tracks that run south there. And you can see the property is buffered by Kalapu Drive as well as an access road, utility road there before the highway.

This is old sugar cane train station which is just to the north and again you see the large Westin Kaanapali Villas there across the highway. East facing going up the hill to the left side or where all the Coffee Plantation lots are located and then just up the hill will take you on to Kaanapali Hillside.

These are the large resorts which are fronting and just makai of the highway. Westin Kaanapali Villas, the Aston Kaanapali Maui Kaanapali Villas and you can actually see up there in the left-hand corner you can see where the International Colony Club is located so it is just very adjacent to this particular development. And then lastly to the south is the Royal Lahaina Resort and consists of a main hotel and then all the additional cottages which are all for removal.

Kalapu Drive is the main street that goes along the western border facing south and facing north so you get an idea of the sides of the street and then a buffer area between the property and the highway.

The main parking area is large. It accommodates about 36 vehicles and then to the space around the property and you can see from the handout that I gave you where the other parking areas are and highlighted in yellow. And then additionally along Kalapu Drive there are designated parking spaces for vehicles so the parking is very adequate without impacting any of the internal ...(inaudible)... and I'll just point out back on this, just to the right of that van is the manager's office. There is a full-time site manager on that handles any guest arriving. They check-in with him. He is aware of the vehicles that are there and he handles any repairs and things. So there is a full-time onsite manager for the property.

As Kurt mentioned we're just giving you an example of the floor plans of the cottages. They all have been individualized to some extent. But this will just give you the basic layout. They're from between 800 and 1,300 square feet.

This is a little view of the neighborhood. They're all one-story cottages, very neat, very well kept. They have very mature and well-kept landscaping. Again, because of the nature of where the parking areas are located golf carts are often used for guests to unload luggage or food, just supplies from the store. So you'll see the golf carts around. And I again, I won't take up too much of your time, the interiors you've seen those in

your report they're very neat and tidy, two and three-bedrooms and the living areas very well done. You know, just representative of what they all look like.

This is a great...one of the owners provided this. This is a postcard which I also have included your packet that was from the mid 60's and International Colony Club was developed as a vacation rental and the text and the verbiage on the postcards make reference to vacation rentals, your you know maid service is available. So its intent from the start was a vacation rental situation.

House and ground rules also when folks are...purchase their property they're made aware of the house and ground rules. They make frequent mention of long-term and vacation rentals about notifying that renters must register with the site manager, the site manager is aware of the cars that are on the property and where they're parking so it deals with...it has dealt with vacation rentals from its very inception. And on top of this if these permits are granted they will of course be provided with the house rules that apply to this ordinance so those will take precedence over these as well.

We have 17 different applicants, the applicants are a great majority of them have appeared here today before the Council. In mixture we have local residents who are applying, we have one resident who has lived there since 1973 and she can testify if you have any questions about what life has been like there, what the property is like. We have board members here that are applying. We have part-time residents and frequent visitors. Some folks have, as we have said have been renting because they thought it was legal to do so. They were not aware that it was not. And so as soon as it became rather public knowledge that this was happening before the ordinance was even finalized the changes they contacted me, they put down a lot of money and they got this process started so that they can be legal as soon as was possible. And then there are some new applicants who have not applied before.

I won't belabor too much with the zoning 'cause Kurt's covered that pretty well, but again they are R-3 Multi-Family Residential and the changes to the statute basically allow this horizontal condo regime for each condominium unit which these are they're all single-family separate little houses that they each be allowed to apply for a short-term rental home. I know were some look at rezoning but there are folks that live there full-time so we wasn't, we weren't able to get enough to actually rezone it. There are a couple of folks that were able to grandfather because they were able to produce the records that showed continuous rentals since 1991, but for these 17 applicants this was the method that they had to legalize their operations.

And I went back into the Planning Committee minutes and show where when this was being discussed. International Colony Club was mentioned directly as an example of

what this change would apply to and so there were several instances where International Colony Club this was the intent or certainly one of the intentions of this change in ordinance. So this portion there were many revisions to this ordinance but this particular portion was passed by the Planning Committee on 4th of February of this year and then the complete bill was passed I believe on the 20th and I believe it was enacted by the Department on 24th.

So the entire process was followed 17 times as Kurt can attest here. We did 359 certified registered return letters. The Department placed an ad in the paper as required about the hearing. Kurt had mentioned there were two, I was only aware of one protest.

Mr. Wollenhaupt: As of the date of today we have one letter of support and one letter of opposition.

Ms. Mitchell: Oh a letter of support, okay.

Mr. Wollenhaupt: Right, so we have two of the 359. No phone calls were ever received.

Ms. Mitchell: Thank you. So the one letter of protest that we did receive was from a gentleman on the very fringe on Kalepa Place of the 500 foot. I have done several other applications in that area and he has opposed every single one so his opposition is to short-term rentals it is not to International Colony Club. I did reach out to this gentleman, we sent him a letter and we attempted to call and visit but he does not live here full-time so we're able to connect with him but we did reach out in a letter. And as we mentioned there are two other permits within 500 feet which is why we are here today before you.

Again, just want to reiterate that these owners want to do the right thing. They believe they were doing the right thing all the time, they were paying GE taxes, their TA taxes. They had chosen the Hotel rate which is the highest tax rate because they thought that was the appropriate thing for their operation. So they have been paying taxes all along. And of course, operation of these homes they bring revenues to local businesses and as well as residents and continued tax revenues to the County of Maui and the State of Hawaii. This allows this...granting these permits will allow local residents and businesses employment opportunities, tourist based companies will also benefit from this, and of course, again the tax revenues to the County of Maui and the State of Hawaii.

We thank you so much for your consideration of this. We do have as I mentioned many of the applicants are here today. We would be happy to answer any questions that you have. Again we have one of the residents that currently lives there and has been there since 1973. She can give you an idea of what it's always been like. We have the board president is here and we also have the property manager that's handling most of the management for the different individuals as well as the rest of the individual. So thank you very much and I hope we can answer any questions you might have.

Chair Tsai: Thank you Debbie.

a) Public Hearing

Chair Tsai: At this time I'm going to open the floor for public testimony. Anyone wish to testify please come forward? Seeing none, public testimony is now closed. We are now open for comments, questions from the Commissioners? Commissioner Robinson?

Mr. Robinson: This is for Kurt. Kurt is there any Notices of Violation currently at this property?

Mr. Wollenhaupt: No Notices of Violation on this property, no.

Mr. Robinson: Is there a reason for that?

Mr. Wollenhaupt: Again, enforcement and probably the Director might wish to allude to this but enforcement is often time driven by complaints. So if there are no complaints or if no one puts in a request for service, then enforcement of short-term rentals does not normally happening. However, they have been proactive in recent times and the Director can probably speak more to Zoning's current strategy. But it has been just from the complaint perspective and it's my understanding from Ms. Mitchell that the applicants are not renting now and so they immediately stopped operations. And also in looking at this the Department considers this from a historical perspective, right just to kind of further answer your question. I know that there's been comments about short-term rentals and whether the Commission likes this process. The Council has determined that 88 in the West Maui region are a appropriate number. This is from a historical perspective some place that has been operating in a resort community very different than Launiupoko, very different than gentleman farms, very different than single-family houses that have been built recently. So that's how the Department would come about in supporting this, but no Notices of Violations were issued for this property. How Zoning may be going forward in the future with regards to acting short-term rentals that's more of a policy decision and probably the Director can speak to that.

Chair Tsai: Director?

Mr. Spence: Thank you, Mr. Chairman. First let me ask, Kurt were there any RFSs? Were there any complaints?

Mr. Wollenhaupt: No complaints that I that I've ever seen from neighbors regarding rental operations.

Mr. Spence: Okay, so I think that might file in one of the blanks for the commissioner, the... there was some discussion at one of the last, I think it was the last planning commission meeting of is the Planning Department doing proactive enforcement? Yes we are. The information that person testified about was incorrect. When this ordinance was passed there was a big push for proactive enforcement by the County Council, by members of the public and we pursued that. We wrote about 400 Notices of Warning, we you know looked up ads on the internet, we did the research to find the exact addresses and then followed up and found the owners and issued Notices of Warning for those properties. We are now following up with those 400 that we initiated. There have been some Notices of Violation issued. I can't tell you how many off the top of my head. But this is just our proactive part of it. In the meantime, the members of the public have not ceased to file requests for service or issue...we can almost interchangeably refer to requests for service or RFSs or complaints those are in this kind of case pretty much synonymous. We get a steady stream of complaints about vacation rentals and we do follow up on those. I don't know how many Notice of Warning we've issued. I do know that one very enthusiastic gentleman filed about a hundred RFSs within in a period of about two days. So I get these notices in my inbox and it was just like wow, it was the same person. He was proactively looking for enforcement. So we are very busy with enforcement and we are pursuing them, those things diligently. We're trying not to get too far ahead of ourselves otherwise it's ineffective. Somebody gets a warning and just go, oh I just got a warning, you know it takes some time to go back and follow up and pursue those things. So...

Chair Tsai: Commissioner Hedani?

Mr. Hedani: The International Colony Club is outside of Kaanapali Operations Association, my company's operating the area so there's no conflict of interest relative to providing testimony on this subject. What I'd like to mention is that the Kaanapali Beach Resort was the world's first master planned resort. As part of that master planning process actually ahead of their time they incorporated projects like the International Colony Club to be one step above the hotel room type of accommodation within the resort and that's why when it was condominiumized and when it was brought

onto the market the ability to rent short-term for the project itself I believe was part of the intent of that particular project. Something that provided a little bit more than you can get in terms of a hotel room as an accommodation. The intent of the master plan itself was to contain all of the impacts that hotels and short-term rentals have within a confined destination resort so you don't impact the community in which you operate and that was the basic principle behind the master planning for the resort. And so you don't have what we see today that impact some short-term rentals filtering through all of the residential areas of the communities and creating impacts for residents that had no notice of what was intended for that particular residence. In this case the notice was provided. The subdivision that's immediately next to it I believe came after the International Colony Club that was built and the residents that were there were already aware of the International Colony Club's operation at the time they purchased their interest so I would be supportive and from my perspective this would take out 16, 17 short-term rentals that would otherwise be scattered all over the community and put it in the right place from my perspective.

Chair Tsai: Thank you Commissioner Hedani for the insight. Commissioner Carnicelli?

Mr. Carnicelli: This is probably for the Director. Explain to me the difference between the ICC and Puamana like the difference 'cause in my mind I was saying why didn't they just come to the table during Puamana when we were doing the whole Puamana thing? And this is sort of separate. Is it the same or is it different? I mean how is it, how is this different than Puamana, I guess or is it?

Mr. Spence: I don't think it's that much different. My understanding is it was discussed not just this one time at Council, but and for whatever reason the Council declined to include this in their, in that ordinance they passed to include Puamana entirely as a short-term rental. I'm not sure why that is but—

Mr. Wollenhaupt: I could –

Mr. Spence: Puamana is a planned unit development. Okay so ICC is not a planned unit development, but it is a condo.

Mr. Carnicelli: Thank you.

Chair Tsai: Commissioner Robinson?

Mr. Robinson: Anybody can answer this question, whoever can give the answer. I understand there are 17 different applications on 17 different lots are there 17 different tax map keys or are they...is it one division tax as one?

Ms. Mitchell: It is one master tax number but each of the cottages have individual sub numbers. So they each have a unique tax, tax parcel number but it's considered one tax parcel.

Mr. Robinson: Here's my comment. I understand that it was supposed to be master planned and people had been renting it but it's an R-3 tax zone. So did the people of ICC go to the Tax Department and say we're actually working as a hotel and we should be taxed as a hotel not as accommodation tax but as property tax?

Ms. Mitchell: They were given the option for their property taxes to choose that what their use of the cottage was. Some people chose apartment, a few chose homeowner, but the majority of the folks chose, it was their option to pick the hotel rate and they delivered it. One of the owners when he purchased it was under the apartment number when he purchased it, he chose the tax parcel number and his property taxes went up over 500 percent so this is a deliberate choice by the owners.

Mr. Robinson: Okay with that question, so if their tax on their one tax map key how do they individually pay taxes per lot?

Mr. Spence: So it...I would think of it just like a regular condominium project where you have six or eight stories and a hundred different units, all of those units sit on one piece of property but each one of them are owned by different owners they each one of those units have their own unique tax map key number. It's I mean I'm pulling numbers out of the air.

Mr. Robinson: No I know what you're saying—

Mr. Spence: Yeah.

Mr. Robinson: It's dealt like an apartment—

Mr. Spence: Yeah. So they are taxed on an individual basis.

Mr. Robinson: Okay, that's good. And you said this has been going on since 1991 when they were grandfathered in or...

Ms. Mitchell: This has been happening since 1964 since they were...since the inception. Different owners have come in. I'm just saying there were a few owners that were renting that were able to produce the records necessary for the grandfathering which provided unbroken proof of rental all the way back to 1991 and that was the

requirement for grandfathering, nonconforming...I guess it's a nonconforming use or whatever they call it. But the rest were not able to produce those records. Had they been able to they would have been also to do this but they just didn't have the records to prove it. So this was the only mechanism for them to legitimately get their permit and continue renting.

Mr. Robinson: As far as grandfathered in I saw where there's only one short-term rental. Is that only one person that was grandfathered in or is there more?

Ms. Mitchell: No this was the first applicant. It's cottage 42 and they applied two years ago. I assisted them with theirs and they, during their application process it was discovered there really wasn't a mechanism for the whole...for anyone in the property to—

Mr. Robinson: Right, but there's some that are grandfathered in. How many units are grandfathered? How many total units of the 40 are considered rental?

Ms. Mitchell: Three.

Mr. Robinson: Three?

Ms. Mitchell: Correct.

Mr. Robinson: Shouldn't we be able to add that to the short-term rental pool of 88 since it's grandfathered in?

Chair Tsai: Director?

Mr. Spence: Thank you Commissioner Robinson. No, we would not consider 88. Those caps are permits available to be granted. They are not, they would not include grandfathered units and just a comment on grandfathering, Ms. Mitchell noted it's rather difficult to do. You have to...any kind of use that you could consider grandfathered it's somewhere along the line a use is conforming, a use is permitted, something changes in the law, a lot of times oh my goodness, I think it's 1991 some of our laws changed that redefined short-term versus long-term where there was no definition before. So if somebody wants to prove that they can do short-term rentals they have to prove that before that date they were doing short-term rentals and then continuously without a one-year break, it says if you discontinue a nonconforming use for more than a period of a year that extinguishes that use. So if they can show that it's been...a particular use has been done for since whatever time the law changed to the present that would be considered grandfathering. So long as there's not a one-year time lapse, a gap in that

they can continue. So since 1991 you know you're talking well over, you're talking 25 years, you have to come up with records that show that they had been in this use, it's difficult to do and it's getting harder and harder to do as time goes on and properties pass on from one owner to the next, to the next. So we seldom say that a use is grandfathered simply for this reason they have to show it. Only the couple there had been able to do that though many more have been short-term rented over time.

Chair Tsai: Thank you Director. Commissioner Higashi.

Mr. Higashi: I have a question that this pertains to parking because I notice you have four different group parking versus having the guests park next to the cottage is that correct.

Ms. Mitchell: That's correct.

Mr. Higashi: Okay, as I look at your application there whole lot in that one Parking A area if you look at your map.

Ms. Mitchell: Okay.

Mr. Higashi: And I'm just wondering how do you prioritize if I was a guest in one of these rental units as to whether I can park in A, B, C or D or is it just open?

Ms. Mitchell: It's one of the requirements during check-in, guest check-in is that they check-in with the site manager. The site manager is located, his office is located by the big parking lot but he would then direct them probably in the direction of where the cottages are located where to go where would their logical parking. It is open so if they were to come and park in any of the lots it would be acceptable, but their initial direction would come when they check-in with the site manager.

Mr. Higashi: So it's not priority where a homeowner who doesn't have a short-term rental and that particular area is all filled with parking they have to find their own parking elsewhere?

Ms. Mitchell: I would, I would say that the site manager is aware of those and it would definitely keep those reserved aside for long-term residents. There are not that many long-term residents, I think maybe four or five that actually live there. And the site manager is well aware of who those are and so...if maybe you can see from the pictures there are cars that are covered with you know car covers so obviously they've been there for a while. I would say that he would be the one that would direct the

individuals to park and possibly leave those spaces open for those long-term residents 'cause certainly they would, they would have priority.

Chair Tsai: Commissioner Higashi.

Mr. Higashi: Just further. So if I'm an owner and I don't have a rental unit will I be able to recognize which is a guest and which is a homeowner from the standpoint of having enough parking space in that particular area. For instance if I was a guest and applied for a cottage—

Ms. Mitchell: Right.

Mr. Higashi: --but the guest manager apparently would put some kind of a card or something on the dashboard to tell the people that this particular person is a guest and is authorized to park there?

Ms. Mitchell: That I don't know. Does anyone in the audience know? So it's just open. Jo is the resident that lives there now so she would know, she's a great resource for that.

Mr. Higashi: I was, yeah I was just asking if...because if I was a resident and I wanted to park and I didn't know who was and the parking lot was full would I know whether they'll authorized or not.

Ms. Mitchell: Sure. And I think the residents since this has been an ongoing practice this is something that the residents who live there are accustomed to. I would say this is something that they are well aware that there are strange cars there all the time and certainly the reason why the site manager is located there is to just provide an overview. Certainly they would be able to ask him if they had any questions about vehicles because those vehicles are required to...the guests are required to register those vehicles with the site manager. So he would be the resource person for that.

Mr. Higashi: Thank you.

Chair Tsai: Commissioner Carnicelli.

Mr. Carnicelli: Thank you Chair. Debbie, why did the other 26 owners not apply with them? I mean, if...'cause you know if this is what it's been since 1965 and this is what it's supposed to be and it's in Kaanapali and everything like that why are only 17 people showing up and not everyone.

Ms. Mitchell: Because they're not all short-term rentals. There are some local residents that live there. There are some that are rented long-term. So it's not all, it's just the majority of them are short-term rental and there were in all honesty that chose not to for one reason or another, but these are the four and they may have hired another consultant but these, I can speak to the ones that have contacted me, by they are, they are not all short-term rental uses.

Chair Tsai: Go ahead.

Mr. Carnicelli: So the other part of this I guess is you know when we get these applications one of things that I personally look at is is this one of those people that you know is a catch me if you can kind of person, you know like they were doing it illegally and then you know they get caught and what have you. So I guess you know since this is just a bundle of 17 I can't necessarily drill down each one of these, I guess there's a couple different things, you know GE Tax, TAT, who was paying it, who wasn't and then the hotel, you know rate, you know were there people saying oh I want to get my exemption and they were still doing it. You know is like those kinds of things I'm just sort of curious out of 17 where do we land on that?

Mr. Spence: I'll just...Mr. Chair?

Chair Tsai: Director.

Mr. Spence: I'll just say that if there are other vacation rentals and they choose not to obtain a permit and they're not operating legally they run a risk of getting caught and getting fined.

Mr. Carnicelli: I'm saying what if there's one of these applicants? I'm talking about the applicants themselves. Let's say you know was there somebody that was doing it illegally and saying you know what I want the...they not paying, they weren't paying the GE, they weren't paying their TAT, they were paying...they're getting their homeowners exemption and they were still doing a short-term rental.

Mr. Spence: Well, we did get 17 applications.

Mr. Carnicelli: Right.

Mr. Spence: And with each one of those applications an applicant is required to provide their GET and their TAT licenses and proof that they—

Mr. Carnicelli: They have it now.

Mr. Spence: Yeah, well they're required to show that they've been producing, paying their taxes correct?

Mr. Wollenhaupt: All of the 17 did show that they had TAT and GET and what was really kind of remarkable was that certainly the vast, vast, vast majority and the super majority have been paying hotel resort tax in addition which is extraordinary rare for anyone coming in even if they...if they had private house in Kapalua or they had a private house in Kaanapali or Kihei, yes, they've been paying their GET and TAT that I'm pretty such that all 17 have, but what's more remarkable is they actually elected voluntarily for years to pay hotel and resort taxes. That's very rare to see in any of the applications that have been coming in. Now whether other people should have done it that's a question, but this one is noted that I mean I'm just taking this example here and they are hotel resort for years prior so that's my answer to your question for these people and we've looked at all 17 applications.

Mr. Carnicelli: Thanks Kurt.

Ms. Mitchell: May I make another point as well?

Mr. Carnicelli: Sure.

Ms. Mitchell: One thing to be noted is these folks when they...before the ordinance was even amended, it was even finalized and it was unsure whether or not it would be finalized they took the step...were willing to take the step to engage me to make their applications happen. So they weren't waiting to find out if it was going to be bad or trying to hide they actually as soon as they knew pulled down their advertising and contacted me to start their applications so there was preponderance of evidence that they were attempting to do the legal thing, the right thing, they thought they were doing the right thing.

Mr. Carnicelli: Thank you Debbie.

Chair Tsai: On that note, Kurt what is the hotel rate, tax rate do you know?

Mr. Wollenhaupt: I'm not sure, we'd probably find it on the internet there.

Chair Tsai: Okay, no problem. Just thought if you guys know off the top of your head.

Mr. Wollenhaupt: It's a lot more, a lot more than residential.

Ms. Mitchell: It's between 820 and 870 and they're per thousand evaluation. So it's significantly higher than a homeowner rate. It's significantly higher than the homeowner rate. It's between 820 and 870 per thousand. I think the homeowner rate is 560 per thousand so it's a significant increase. As I mentioned the one homeowner that went from the homeowner rate to the hotel rate his taxes increased over 500 percent.

Chair Tsai: Commissioner Robinson. Thank you.

Mr. Robinson: Tax rate increase is because the profit increases when they're classified as a hotel and they can rent out as a short-term rental instead of a long-term. Kurt, you mentioned and this is going with my fellow commissioner's question about people paying the hotel rate and you said that they were all paying the TAT and the GET which I think is fantastic but just like my fellow commissioner's concern is there's 17 in a group and I may not be obliged to approve a person who wasn't, you said majority, majority is not all. So how do we find out, out of the 17 which one was not paying the hotel tax rate for the property tax? You know I saw something on T.V. last night one person said to avoid taxes ...(inaudible)...that's smart. I think it's actually unethical. So that's where my vote usually it gets suaded. How did it right? It sounds to me that the majority did but if we're applying for 17 I'd like to know that all 17 were doing the right thing.

Mr. Wollenhaupt: Well first off of course on any other short-term home rental we've never gone...we've never had that criteria of them having paid hotel tax on any prior than this is just an example of people. So it would have to go back to the tax department and you have to cull through all of the 17 people's tax returns to get that...to get to that number.

Mr. Robinson: Right, well you mentioned that the majority did so I assumed that you looked at it to say that statement.

Mr. Wollenhaupt: We're looking at the real property tax, you can pull off one page it has to do with their assessment information whether they're taking a homeowners exemption and it has to do with like looking...I mean this one for example it says hotel resort for 2016.

Mr. Robinson: And I have that information here?

Mr. Wollenhaupt: Well, I didn't bring all 17 files with me. This was just an example to show that that's the kind of information that we had in here and their assessed land value, exemption value like they all weren't, none of them were taking the homeowners if they had been renting. With regards to all of the hotel and resort tax out of the 17 I don't have all of the tax information for that.

Mr. Robinson: And I understand the Planning Department's criteria but it might differ from my criteria as far as what we think is.

Mr. Wollenhaupt: In looking at other examples of short-term rentals we're usually finding that they would have been...the GET, TAT they weren't taking the homeowners exemption, but certainly no one would have ever moved up to hotel resort. They may have moved to commercialized residential but it would be...I've never seen any other applications to come in would say we just voluntarily went to hotel resort for any other STRH that I processed. Now, yeah, they weren't taking any homeowners exemption, they're paying the State GET and TAT but to voluntarily to push oneself up that's a great thing and I understand your question but that's not something that anyone else I've ever seen has done.

Mr. Robinson: Well I tell you what before when I just got the paperwork and I walked in here was 17 homes that 17 families in Maui could definitely use and the testimony that I've heard with, with people paying the hotel tax rate for a lengthy period of time has suade me because those...these are people doing the right thing the whole time. Now the law's been out for a few years so applying this year compared to three years ago you know I mean I guess you could go...(inaudible)...but that's here or there but that's a good thing but you know if one of these 17 hasn't been paying the hotel tax you know he's piggy backing on the rest of the people and when we have one short-term vacation rental already on this property and then we have three grandfathered in that's 21 out of 40 which they will control the board which means the homeowners, the homeowners might be voted out on the next time and that's a concern of mine of having 40 properties and 21 under the short-term rental, the other 19 might have to move if they all elect, the board to pay a certain tax rate and say we're all going to be short-term rentals. So you sure you don't have it in front of you?

Mr. Wollenhaupt: Well I only have...I only have this file from...this is from Cottage Number 4. So I—

Mr. Robinson: So just one. You know Cottage Number 4 is solid.

Mr. Wollenhaupt: Four would appear to be okay, yes.

Ms. Mitchell: Mr. Hedani...or Mr. Robinson might I just mention—

Mr. Robinson: Yes please.

Ms. Mitchell: --that some of these applications are new. They have not been renting and they are new applications. So they may have been paying a different rate but it was appropriate. So they are now going to have to pay the new rate because this is a new application and just confirm that there are four residents, full-time residents there, the rest are not. So that's...but just in Kurt saying the majority are that may explain the difference because there are some new applications that have not been renting previously.

Mr. Wollenhaupt: I think there were two or three that had never been so they would not have been—

Mr. Robinson: And I totally understand that if you haven't been using it as a, you know, but if you have a TAT and you have a GET odds are you were renting it out so the people that had the...so why would all 17 have a TAT if they weren't renting it out?

Mr. Wollenhaupt: Well, actually we require them to get that before they even apply.

Mr. Robinson: But you said prior to coming in they had a TAT. I mean—

Mr. Wollenhaupt: Oh, the application. Everyone has to apply for a TAT and GET. They have to show their certificate before we'll even accept the application. A lot of people have other properties that they...businesses they have one, so...

Mr. Robinson: Well, and I guess it's the testimony because like I said with my fellow commissioners when we...we're trying to find the validity of the honesty of these people and you said, well they all came in with TATs.

Mr. Wollenhaupt: Which they have to...you have to have even if you just got it.

Mr. Robinson: Well, yeah so it's sort of, it's sort of misleading right because they have to come in with a TAT, but prior to applying how many of them had TAT would have been a good answer. You know what, let's get off of that I think I got the answers that I needed and you know it be fine. I have one other question though for now.

Chair Tsai: Go ahead Commissioner Robinson.

Mr. Robinson: Okay, parking. Let's talk about parking. So what is the, what is the requirement first, a rental home for parking from the County? Is it one stall, is it two stalls per two bedrooms?

Mr. Wollenhaupt: Oh, two stalls for a single family house.

Mr. Robinson: And a two-bedroom, three-bedroom it doesn't matter?

Mr. Wollenhaupt: No, if you're doing a short-term home rental with over four bedrooms then you have an additional parking. So if you had a five-bedroom STRH then you'd need three.

Mr. Robinson: But a three-bedroom is still two stalls correct?

Mr. Wollenhaupt: Yes, that's right.

Mr. Robinson: But I also saw in the ordinance that there's no parking on the street as part of this ordinance but I notice on the map that on the street there's designated parking stalls. Is that the owner of...is that a prior owner that is their designated stalls or they just made those stalls theirs. Is it a private road?

Mr. Spence: It's a private road. So those are roads for the International Colony Club jointly owned between all the owners.

Mr. Robinson: So is the ordinance no parking on a public street or no parking on a street?

Mr. Spence: I recall it says no parking on the street, but this is a different case in which there's no set parking for each unit. What we're—

Mr. Robinson: Well a street and a...a public street and a private street is still a street so if it's counting parking stalls and we're having short-term rentals I guess the...I mean I'm trying to find what our ordinance is for the County.

Mr. Spence: Okay, well there are no parking stalls assigned to any one unit.

Mr. Robinson: But—

Mr. Spence: Regardless of whether they're on a street, whether they're in a parking lot in any location on this particular property—

Mr. Robinson: But we're counting street parking as part of available parking spaces correct?

Mr. Spence: Do you have the ordinance?

Mr. Wollenhaupt: When I visited out there all the parking are in defined lots. So I guess I'm sure where the street parking is.

Mr. Robinson: On the application map there's highlighted areas.

Mr. Wollenhaupt: There's four highlighted areas which were all in defined lots. That's, that's part of the lot.

Ms. Mitchell: That's the main lot.

Mr. Wollenhaupt: Which is off of Kalaupalapu Drive.

Mr. Robinson: Okay so ...(inaudible)...on top of your paperwork to us.

Ms. Mitchell: ...(inaudible)...photograph

Chair Tsai: Debbie can you speak through the mic please.

Mr. Robinson: Okay, I guess we can do this another way. You have four designated parking lots.

Ms. Mitchell: Yes.

Mr. Robinson: Do you have the number of parking stalls in each one of this lots?

Ms. Mitchell: There are approximately 70 in the lots total.

Mr. Robinson: So ten are on the street.

Ms. Mitchell: Yes.

Mr. Robinson: Okay.

Ms. Mitchell: And there's the photograph in the lower right will show you—

Mr. Robinson: Yeah, that's the, that's the parking on the street that I was talking about.

Ms. Mitchell: And the other...

Mr. Robinson: And our ordinance says that there's no parking on the street. It doesn't say if it's public or private and that's what I'm trying to get clarification on.

Ms. Mitchell: Okay.

Mr. Robinson: Is I also noticed in the bylaws where some units have two stalls and some units have one. Are you aware of that?

Ms. Mitchell: Yes, and I said the ordinance if these permits are granted, this ordinance will take precedence so with these...the addition of all of these parking space there is adequate parking for two parks for every, every cottage.

Mr. Robinson: So the question I have Ms. Anderson is in the bylaws it states that certain units have one parking stall and certain units have two parking stalls.

Ms. Mitchell: Right.

Mr. Robinson: So a unit that has one cannot become two because it's...it's, it's...that's in the bylaws unless the board has changed it. So...

Ms. Mitchell: Do you know Todd? The board president is here I could ask him. Todd are you able to speak to that? Would you be willing to discuss? Actually Ms. Jo Rockwell who is the current resident is going to address that issue.

Ms. Jo Rockwell: So sir when you say the bylaws are you—

Chair Tsai: I'm sorry Ma'am can you identify yourself real quick for the records?

Ms. Rockwell: Oh, Jo Rockwell.

Chair Tsai: Thank you.

Ms. Rockwell: International Colony Club. So I'm not sure when you say the bylaws. What we have is something called the house and ground rules and in the house and ground rules everybody gets two parking stalls. The two small lots that go up Puukolii fill up fast because they're very small so what we tell people is if that's where you're gonna be you can only have one in that lot and your other one is in the big lot. So we're not telling anybody that they can only have one car. Everybody can have two cars it's just that because for those two small lots we can only have one car in the small lot, excess cars go in the big lot.

Mr. Robinson: That makes sense. That makes sense. But I double check, I mean what you say makes sense and that it's not...(inaudible)...but I'll double check.

Ms. Rockwell: So to find that you would have to look at our house and ground rules.

Mr. Robinson: Yeah, well is and that's the number 20 so it says, so it says parking lot privileges shall be limited to not over two spaces per cottage, Puukoolii lots A and B are limited to one space per cottage and then they have to sort of rough take to take to kind of get the other space on number 20 on your house rules.

Ms. Rockwell: Right. So first it says everybody gets two.

Mr. Robinson: Right.

Ms. Rockwell: So nothing takes that away. Everybody gets two

Mr. Robinson: No, no limited. It doesn't say get, it says it's limited to two so you can't get more than two but it doesn't say you're allowed two.

Ms. Rockwell: Yes.

Mr. Robinson: Limited.

Ms. Rockwell: Does that do it.

Chair Tsai: Yeah, Commissioner Carnicelli.

Mr. Carnicelli: Hang on Jo 'cause you might have to answer this too, but we're kinda splitting hairs here. If you could go back to the main parking photo. Again we're splitting hairs here but I do notice that there's a couple of covered cars back there meaning it's obviously somebody that you know has their car, they're gone, they cover it, they come back, they use it. So if we're doing two stalls per unit for each one of these 17 are the covered cars one of those 17? Is like those people can't...I'm just saying okay that's gonna eat up one of their stalls.

Ms. Rockwell: Right.

Mr. Carnicelli: Right if they got a car sitting there. So of the 17 do they have...Jo and maybe you can answer this question or people in the gallery can answer the question but of the 17 do they have a stored car on property that you know of?

Ms. Rockwell: So I'm not sure I understand your question. The cars that are covered are counted as one of their two cars.

Mr. Carnicelli: Correct. And if they have an STRH they need to have two stalls of which now one of them is eaten up by their covered car if you follow what I'm saying so now it's three.

Ms. Rockwell: It just happens. It's not been a problem.

Mr. Carnicelli: Thank you.

Chair Tsai: Director.

Mr. Carnicelli: Like I say, I'm splitting hairs, I get this, but...

Mr. Spence: Okay, Commissioners I agree as Mr. Carnicelli we are kinda splitting hairs here. The only two requirements for parking for short-term rental homes regardless of the...I think for a normal...regular single-family house there's two required. This isn't a normal single-family house. Okay, so the requirements are one parking space if there are more than four bedrooms being used. They're not more than four bedrooms. Each one of these are one or two-bedroom units. So all they need is one space.

Mr. Carnicelli: Got it.

Mr. Spence: The other one is, I was looking...it just says that the parking cannot be on the street. That's all it says. They have adequate parking if the guests don't park on the particular street they're covered because they're not assigned stalled. So as far as the Department's concerned we're good to go with the way that they have their parking arranged.

Mr. Robinson: One party to a vehicle. ...(inaudible-not speaking into the mic)...Right, you're saying one parking stall is required for a two to three-bedroom house that's the...right? What I'm hearing you, you just said only one parking stall is required to any home less than four bedrooms.

Mr. Spence: Yes. No, if there's more than four bedrooms...a regular single-family home needs two parking spaces that's by Code. If the short-term rental home is renting is more than four bedrooms then they need to add a stall. So all of these are less than four bedrooms.

Mr. Robinson: So one stall per unit is all that's required.

Mr. Spence: That's...this is fine for this.

Mr. Robinson: That's your Code?

Mr. Spence: Yes.

Mr. Robinson: Okay.

Mr. Spence: And then the other, the other section says, you just can't park on the street.

Mr. Robinson: Chair can I ask a question to...

Chair Tsai: Yeah go ahead Commissioner Robinson.

Mr. Robinson: Hi, thank you. While you're up there did you say that you're on the board?

Ms. Rockwell: Yes.

Mr. Robinson: Does the board have any opinion on half of their residents getting to be, to be licensed as a STRH?

Ms. Rockwell: Just to clarify before when you were talking about 19 or 21 I think it was, we have 44 houses. It's not 40.

Mr. Robinson: Okay, good to know. Okay.

Ms. Rockwell: Is that it?

Mr. Robinson: No, but the question you had is, my question is does the board have any input in the, you know, 45 percent of your property becoming a short-term...licensed short-term vacation rental?

Ms. Rockwell: We've remained neutral through this whole thing.

Mr. Robinson: I'm sorry?

Ms. Rockwell: We've remained neutral.

Mr. Robinson: Is there a reason why you're neutral on such an important issue? I mean, this is your...

Ms. Rockwell: It's just our policy, we just remain neutral. We've tried to get this clarified over the years. It's been hard to get clarified so we're just happy to have it finally clear what we have. We've had people you know buying with the idea that they're going to do vacation rental and there are real estate agents who market this property as you can do vacation rental and that's been hard for us to handle because we have seen nothing that tells us that's legal, it's clear. We know it was the basis for this place being built in the first place but it's been fuzzy.

Mr. Robinson: Thank you.

Chair Tsai: Commissioner Hedani.

Mr. Hedani: Yes, this is a question for Debbie. Just to put the parking issue to bed I believe Kalapu Drive is a private road.

Ms. Mitchell: Yes it is.

Mr. Hedani: Yeah, it's owned by the International Colony Club.

Ms. Mitchell: That's correct.

Mr. Hedani: And there's an easement for the Royal Kaanapali Estate Subdivision that they're allowed to traverse to get to the single-family subdivision.

Ms. Mitchell: That's correct.

Mr. Hedani: So the road itself is owned by International Colony Club and if they have a need for overflow parking you could actually use it for overflow parking because it's not a County road.

Ms. Mitchell: That's my understanding, yes.

Mr. Hedani: Thank you.

Chair Tsai: Thank you. Thank you Jo. Any other questions from the Commission? Commissioner Higashi.

Mr. Higashi: Debbie, this particular subdivision apparently is kind of in an enclosed area with 40 plus owners so you have your own CC&R that governs that.

Ms. Mitchell: That's correct.

Mr. Higashi: So you don't have anybody else that would interfere with your application of what you're doing?

Ms. Mitchell: No that's correct.

Mr. Higashi: It's strictly within your neighborhood.

Ms. Mitchell: Yes, that's correct.

Mr. Higashi: Okay. One more.

Chair Tsai: Go ahead.

Mr. Higashi: This is just for information. I was curious I looked at your evacuation plan 'cause I didn't see any floor plan for the cottages, you know, in your...

Ms. Mitchell: Let's see if I could give you...we gave some examples since there are 17 and they all basically fall into the three-bedroom or the two-bedroom floor plan and in the, each of the applications had their own fire escape plans so they each individually have those.

Mr. Higashi: Yeah, I was not concerned about the fire escape, I was concerned about the bathroom. I notice that the way the location of the bathroom is is very unusual. I mean if you look at the plan

Ms. Mitchell: Right.

Mr. Higashi: And I don't know whether it's accurate or not, but you have bathrooms next to the kitchen, bathroom one and two.

Ms. Mitchell: Right, is this kind of the configuration you were looking at? This is a general representation. Obviously all of them have some slight modification, personalization, but—

Mr. Higashi: Okay, so this is not accurate?

Ms. Mitchell: The plans that you were given they're accurate to each of the individuals. So yes, if that's the floor plan then that was accurate to that unit and I believe Kurt assembled those so I'm not exactly sure which ones he was showing, but we just

provided...I provided these to give you a general layout of what a two-bedroom looks like. And as you can see the two bathrooms are directly on the other side of the kitchen just the way they were constructed.

Mr. Higashi: Yeah, now that makes sense. I was looking at your evacuation plan and I noticed the designation of the bathrooms are next to the kitchen.

Ms. Mitchell: Yes, and that's correct, they are.

Mr. Higashi: They are. So the bedroom number 3 has no bathroom there, has to go down to bathroom one and two.

Ms. Mitchell: That's correct. That is correct. You can see from this layout. This shows you also the same.

Mr. Higashi: Oh, okay. So that was accurate.

Ms. Mitchell: But there is for bedroom 3 there is also just directly outside there is an exit door outside so that does...they do have egress without going down that long hall. They can get outside immediately but in order to use the restroom they do have to come down to the bathroom number 2 that's correct.

Mr. Higashi: Okay.

Mr. Wollenhaupt: Just to give you some perspective these permits are reviewed in more detail than perhaps the average person could know. There is a 28 point checklist and this does require not only confirming that building permits were obtained by the County of Maui or a miscellaneous inspection was done or an architect's stamp of approval was done at the time that the building was built. In addition to that every property owner is required to hire an ASHI certified inspector to do a very detailed review on windows water shut off, electrical, GFI and they're...most of the places have to do upgrades. And then in addition to that we send our planning...planners out for a review to look at things like fire extinguisher size, smoke detectors, whether the plans are accurate so these permits have a considerable degree of review by Planning and other departments throughout the County.

Chair Tsai: Commissioner Robinson.

Mr. Robinson: Mrs. Anderson, in the 1992 bylaws on Article 8, Section 4, have you read this section. Want me to give you a second to read it?

Ms. Mitchell: Yes.

Mr. Robinson: Okay, thank you. While she's reading that, Director is there any requirements for ADA parking or ADA accessible units in say places that are, that are more than...I mean, I know we're chopping this up into each individual unit but to me I'm looking at this as 17 units, it's a organization of rentals. I mean, shouldn't this be looked at as a different way instead of just one house that's a standalone when we have so many that are next to each other as far as ADA accessible? I mean do we open ourselves up for something like that?

Mr. Spence: The answer to that would be no, we're not opening ourselves up to anything. If this was a single structure then that would be a consideration. As far as my understanding about ADA works, but for this we have...these are all individual applications. We're just bringing it to you instead of holding 17 different public hearings, we're holding one consolidated public hearing, everything...but these are still individual applications for individual homes that are proposed to be used for this use. ADA doesn't apply to the individual home. It would if it was you know a condominium building as such or a hotel or a public facility like this building. But in this case, no, it would not apply.

Mr. Robinson: Well, in one sense we want to treat it like it's always been a hotel you know with it being grandfathered, in other things and it's always been the intent and then now we're saying it's not the intent. And again, it's the Planning Department's but if we're having this many units and no ADA access I just think it's something maybe the ICC could look at.

Mr. Spence: Okay, these are 17 individual applications. If we took one, this particular commission meeting and for the next 17 commission meetings we took another individual application I think that would be a waste of the Commission's time for one, but we would not consider ADA with each one of those individual applications stretched out over a year's worth of time.

Mr. Robinson: I fully agree, but I think putting 17 together I don't think it gets 17 units...I don't think it get 5 units if it came in one at a time with the way we've voted in clustering in different areas, but again that's near here say I just wanted to address the ADA portion of that. So hi...

Ms. Mitchell: Hi.

Mr. Robinson: So on the bylaws and the timeshare, I notice in the middle through there it said and people should not have a vacation license. I wanted to be sure we're not

giving you a vacation license and we're purposely violating the bylaws 'cause you know since the board has no...is neutral on this, that's the only reason why I'm bringing this up. If the board had a stance on it and the board's in control of bylaws but what I read here and I don't know if I'm reading it wrong, and you know, I'm asking you 'cause you're the consultant there, it's you know, it's a vacation club license is one of the things that they don't want to have happen here.

Ms. Mitchell: My understanding is that this is dealing with timesharing which is specifically an attempt to divide the ownership use or right of possession and it's...that's what it's prohibiting. I believe it may use the word vacation but I believe the intent of this paragraph was to prohibit timesharing which is a division of the ownership right or use. That's my understanding of that.

Mr. Robinson: So a timesharing program shall include any arrangement whereby a party has a vacation license. So you're reading it as, as long as there's only one owner?

Ms. Mitchell: Yes, that's correct.

Mr. Robinson: And the other owners won't...

Ms. Mitchell: And they're not dividing that ownership that's what's prohibited. To me that's what prohibited.

Mr. Robinson: Okay. I'm not a lawyer so I'm not going to say what I think it is, but I just saw this and I saw vacation license and I just wanted to bring that to your attention.

Ms. Mitchell: Thank you.

Mr. Robinson: Thank you.

Chair Tsai: Corporation Counsel.

Mr. Murai: You know Commissioner Robinson I've not studied this closely but I do know that the term license refers to an interest in real property and it's my guess that when the word license is used here they mean like...a license is a legal right to use or occupy a property as opposed to another kind of license to do vacation rentals. So it's my guess that the term license in this clause refers to a legal right to use property and you know which is consistent with timesharing.

Mr. Robinson: Yes, but in this paragraph it said about timesharing now if a person only has to be 51 percent owner and another person is 49 and they both have...able to have a license, you know there's a license to rent a property...(Inaudible)...time to me that's still timesharing. But I'm not the legal counsel for ICC it's just I'm seeing bylaws where you know it looks...like I said, hotel, not hotel, no timeshares, you know we want to be 100 percent rental, it's just...and that's why I ask if the board had a position on it but since they're neutral that's why it's to me a little, little confusing.

Ms. Mitchell: Mr. Hedani, the board president is here, Mr. Todd Haley and he could address that directly if you would so desire, Mr. Todd Haley...I'm sorry Mr. Robinson. I'm sorry, I'm Mrs. Mitchell by the way. Yes, we're even.

Chair Tsai: Commissioner Robinson you want to...

Mr. Robinson: Yeah, if he'd like to clarify that would be fantastic, thank you.

Chair Tsai: Please identify yourself.

Mr. Todd Haley: Todd Haley the current board president for the International Colony Club and owner of Number 23 and as Jo had stated earlier Commissioner Robinson the board has remained neutral based on the opinion of our counsel for the bylaws because there was the Minatoya Study, the confusion that had been brought up over the last probably five to seven years regarding the current status of vacation rentals. And so we were given the opinion that, that we should not take a stance either for or against but remain neutral until all of the matters were resolved and so I think the board is certainly in favor or supports the general ownership of the entire International Colony Club. So I just wanted to make sure that...

Mr. Robinson: So this timesharing in your bylaws are you, are you...you folks require people to be a 100 percent ownership?

Mr. Haley: No, no we don't require 100 percent ownership, the other comment that I would like to make Commissioner Robinson is I believe the board, you know if you look at the bylaws, the last revisions I believe in the 80's.

Mr. Robinson: 1992 is the one I have in front of me.

Mr. Haley: And so it would be our goal this year as we are making this effort for the permits to go back and make sure that our bylaws actually reflect the current situation and condition at the International Colony Club.

Mr. Robinson: And, and thank you. That was part of my concern. You know there's 17 plus people here for one, one way to move the ICC and we're here for Maui and the rest and I just want to make sure that you know everybody's, every angle is being thought of because if it does get to where it's 51, 49 that board's gonna look a little different and the rules might change but because you guys have 44 units and we're not at max so I think that might make some commissioners more comfortable. Thank you.

Chair Tsai: I just one to make clarification, I'm looking at exhibit, the Lancore system and part of the...after declaration of the property regime it's listing as 45 units. Each apartment and a list is all the apartment numbers so I'm seeing.

Ms. Mitchell: Manager. That's correct, it's manager's unit.

Mr. Haley: We didn't have a number 13 I believe was why it was 45, so I believe it skipped number 13. Jo is that? It skipped number 6, sorry okay, 13 was 12 A and it skipped number 6 so there are 44 individual homes that is correct, but the last number is 45.

Mr. Robinson: But is that with the manager's unit or is it without the manager's unit.

Mr. Haley: There is no onsite manager's unit anymore. There is actually just a manager's office that is located right in the parking lot not considered part of the units.

Chair Tsai: All right, thank you. All right can we have our Department's recommendation please?

Mr. Wollenhaupt: The recommendation from the staff of the Planning Department is the applications for the short-term home rental permits, the 17 separate applications do comply with the applicable standards for a short-term rental home in accordance to Chapter 19.65.030 for the restrictions and standards. In light of that the Maui County Planning Department does recommend approval of the short-term home rental home permits each of which will be given a separate short-term home rental number, each of which will be monitored under the 22 different conditions of the report. Therefore, in consideration the Planning Department recommends approval of Docket Nos. Short Term West Maui T2016/0005, T2016/0021. Thank you.

Chair Tsai: Thank you Kurt. Do I see a motion? Commissioner Hedani?

Mr. Hedani: Move to approve as recommended.

Mr. Higashi: Second.

Chair Tsai: Okay, I have a motion by Commissioner Hedani, a second by Commissioner Higashi. Discussion regarding the motion? Commissioner Carnicelli.

Mr. Carnicelli: Thank you Chair. First off, I want to just say Kurt and Debbie thank you very much for all the work that you guys did on this 'cause this was not, this was not light duty so I just want to say thank you. Thank you for everything that you did here. I honestly was on the fence walking into here after reviewing everything and I really appreciated the testimony, appreciated everything you guys got, you provided to us and the fellow commissioners comments and questions, I'm going to vote in favor of this. There's a few things that I look at is you know when you purchase a property you're given a bundle of rights and I think in the ICC whether it's true or not, I think that there's an implicit bundle of rights that I can do short-term rentals here. You know we have a Minatoya factor, you know the grandfathered in which kind of adds to that sort of perception of the bundle their rights. I think you know any time we have STRs in front of us you know I always think like can this be long-term rentals, you know families displaced, whatever it is. I don't think that we're really displacing families. I liked Commissioner Hedani's comment of well, we've got 17 of them in one spot so I kinda like...you know it's like we're not scattering them all over the place so I kinda like that and this is sorta what you know the use of this was really intended to. So I'm gonna go ahead and be voting in favor of this.

Chair Tsai: Commissioner Hedani.

Mr. Hedani: Yes, I'd like to express appreciation for the applicants coming forward and complying with the process of filing of the applications and getting the permits to operate something that originally they thought they already had the right to operate. With the law changing around them, keeping track of that and following up on it, I think it's very conscientious and I appreciate that.

Chair Tsai: Commissioner Higashi.

Mr. Higashi: I seconded the motion based upon the fact that I think this particular community is already a well-established community since 1966 and so the laws kind of persuaded them to make sure that they fall within the category of the threshold and that was one of the questions I wanted to ask Staff was that according to the count in West Maui it's 88 and I was wondering where are we in the threshold of that particular count if we approve this 17 applications?

Mr. Wollenhaupt: Right now it could vary a couple but I counted 41. There were a

couple approved I think at the last meeting so we could be at 43, but 41 as of the first of the month and if we add 17 we'll be at 58 so that would still leave 30 for review.

Mr. Higashi: Okay, thank you.

Chair Tsai: Commissioner Hedani.

Mr. Hedani: And if we could get the balance of the members of the International Colony Club to apply we'd be there, right?

Chair Tsai: Commissioner Robinson.

Mr. Robinson: That would actually be great. But my feeling is that 88 number will probably move with our track record. I do commend everybody paying their TATs even though they have to put application but most people doing the property tax and I think that's what you hardly never see in Maui is people actually paying what they're supposed to pay and I think that's great. However, under things that we looked for population, land use, environment and cultural resources, under population our policy says to maintain a balance between residents and visitor population by controlling and regulating growth for our visitor facilities. I think, and again I think it's just a time that we're in there's just so many families without, without the ability to have a home and the price. And if you just look, if you just look at what HUD is, you know, people is going to rent these homes out and they're going to make some money but the three bedrooms are \$2,400 plus a month that the people could make money off of. They also could make a profit out of 1,650 for just the two bedrooms. So there is money to be made for long-term rentals. I know it's...your taxes will be lower and maybe it will offset some of the profit you have to make but I am a proponent of that. I actually be more attracted for this being a 44-unit rental and again, this whole property be one but being mixed use and the cluster of it I don't see where the enjoyment is going to be for the other long-term residents and the part-time residents. And if you also look at the land use you know the goal was an efficient and sustainable land use pattern, sufficient housing and services for Maui residents and that's what I'm going back to it's the residents of Maui. I think we have enough hotel rooms. There's always more coming on board. We have another one in Kihei. There's always rooms being built but we don't have enough people to work in these hotels, people to service these hotels, people to be able to live here without having to move away and to a cluster of 17 at one time I just think is not needed and the objective is to protect the resident quality of life. I think this could help the quality of life. I don't think it's damaging it, but I think 17 units that were to be put into a long-term rental program would go a long ways to alleviate the shortage we have on the west side. You know when we have the economic, you know to provide a balance between visitor industry employment and non-visitor industry employment

people on the west side don't have...they can't accept certain jobs and have to move from the west side to this side because they can't afford rent because there is a lack of rental housing and to me that's part of the objectives that we're looking for is for Maui residents to be able to have a place. And I know there's the...of course there's the other side saying well, why is, why is it their burden to find, to find residential housing and it's I think it's all our burdens I think the better the community does, the better the island does, the better the people do, the better all businesses will be. And I will not be supporting this because of the amount and the number of what I feel are very attainable rentable cottages. They're not overpriced, they're not, they're roach shacks. I think these would be gobbled up just like the affordable housing project that is just half a mile down the road where there's five times the amount of applicants for the new housing going up at Ainalani. It's a need and it's there and I appreciate your time. Thank you.

Chair Tsai: Any other comments? Seeing none, Director can you please repeat the motion?

Mr. Spence: The motion is to approve all 17 applications as recommended by Staff.

Chair Tsai: Okay, call for a vote. All in favor of the motion raise your hand. I see four ayes.

Mr. Spence: Four ayes.

Chair Tsai: Opposed?

Mr. Spence: One nay.

Chair Tsai: My vote is yes. So motion carries. Congratulations.

It was moved by Mr. Hedani, seconded by Mr. Higashi, then

**VOTED: To Approve the Short-Term Rental Home Permits as Recommended by the Department.
(Assenting – W. Hedani, R. Higashi, S. Castro, L. Carnicelli, M. Tsai)
(Dissenting – K. Robinson)
(Excused – L. Hudson, S. Duvauchelle)**

Chair Tsai: Okay, we're gonna take a 10-minute recess because at 10:55.

A recess was called at 10:48 a.m., and the meeting was reconvened at 10:58 a.m.

Chair Tsai: Okay, Maui Planning Commission is called back to order.

Mr. Spence: Okay, Commissioners we're on Item C-2, this is your second and final public hearing for this meeting. This is a bill that the Planning Department proposed to update and change the flood hazard area ordinance under Title 19.62. Our Staff Planner this morning is Carolyn Cortez.

2. MR. WILLIAM SPENCE, Planning Director transmitting proposed amendments to Chapter 19.62 of the Maui County Code relating to Flood Hazard Areas to incorporate changes required by the Federal Emergency Management Agency (FEMA). (C. Cortez)

Ms. Carolyn Cortez: So what I prepared for you in your packet is a detailed list of the revisions that are being proposed and the rationale and as you can see a lot of the changes were dictated by FEMA to update our ordinance in conjunction with the map changes that occurred on November 4, 2015 of last year. And so I don't have a presentation but I can take any questions you may have on the amendments.

Chair Tsai: Thank you.

Mr. Spence: And...Mr. Chairman?

Chair Tsai: Director?

Mr. Spence: Commissioners I would just know that in order for Maui County to participate in the flood insurance program we are required to have this chapter as a part of Title 19 and as Carolyn Cortez pointed out that most of these changes are dictated by FEMA we're required by them in order to be a part of the program. Pretty much the other ones that we opted for were just mostly to clarify individual sections of it. So it's not...this certainly not one of the more controversial items that we've brought before you. It's pretty much something that we gotta do. So thank you.

Chair Tsai: Thank you, Director. At this point going to open the floor for public testimony. Seeing none, public testimony is now closed. Comments from the Commission? Commissioner Robinson?

Mr. Robinson: I just have one question on the 2.12-14, deletion of Item No. 7 and maybe Commissioner Carnicelli can answer this, don't realtors disclose that a property is not flood insurancable or is that not a requirement?

Chair Tsai: Commissioner Carnicelli?

Mr. Carnicelli: Realtors are mandated to disclose anything and everything that they may know about a property. As far as the legality of whether it's in the flood plain or not I believe will become a part of the title report but to say that a realtor will know whether this particular property is in the flood plain or not I wouldn't...I personally wouldn't just trust a realtor's knowledge of the flood maps.

Mr. Spence: Mr. Chairman?

Chair Tsai: Director?

Mr. Spence: We regularly have realtors send in flood confirmation forms, flood and...I should say zoning confirmation forms and when they're selling a house or they are representing a buyer they will send in like a whole list of tax map key numbers for all around the island. They wanna confirm what the zoning is so they can disclose it. So that form includes the State Land Use District, the Maui Island Plan area if it's in the growth area or not and which particular growth area, the community plan designation, the zoning, flood zone, which flood zone, any other special designations like the Special Management Area or the Historic District or the redevelopment district there's a whole number of things. So a realtor may not know but they can always call in and so can any other property owner. They can call in and we'll give them this form confirm all these different things for them the flood zoning being one of them.

Chair Tsai: Commissioner Robinson?

Mr. Robinson: With that being said Director, so for banks or mortgage companies wouldn't they require some type of information from you or again they would go back to the title report?

Mr. Spence: We don't, I don't...I can't tell you what goes on a title report or not. We don't generally get requests from banks, we get requests from realtors and property owners. What they do with that information I'm not sure. Probably as a part of the disclosure but that's all I know.

Mr. Robinson: So with Iao Valley happening and some of them not having flood insurance how does that impact the County tax payers?

Mr. Spence: I can't answer that.

Mr. Robinson: I mean, I mean so the County does the clean up or is it State or the government. I saw...I see different things but it's too complicated?

Mr. Spence: Yeah, I can't answer that. I'm not sure with what all goes with the...I know some things go along with the Governor's proclamation that we can waive certain state laws as far as doing repairs and those kinds of things but as far as what it means to the taxpayers or the flood insurance rates I can't say. Those things I are probably yet to be determined.

Chair Tsai: Commissioner Carnicelli?

Mr. Carnicelli: So this may be a redundant question and probably is a redundant question, just having understanding and knowledge that at the state level right now we've got a conflictual law with FEMA regulations that we're trying to fix, hopefully we'll fix this particular legislative session. Is this along the same lines? Is this I guess does this follow what the State law did and then we're gonna have to correct it again or does this follow or is this kinda FEMA driven? The State thing being Ag land you know the shed?

Ms. Cortez: Right, HRS 46-88—

Mr. Carnicelli: Yes.

Ms. Cortez: --they are FEMA feels that being able to build structures without having to obtain a building permit and review—

Mr. Carnicelli: Correct.

Ms. Cortez: --is in conflict with the Flood Code, so what they're trying to do is they are trying to correct it at the State Legislature and our, my counterpart, the State Flood Insurance Coordinator Carol Tyau-Beam is taking that, the changes to legislation through the next session because FEMA has given us a deadline of I believe it's next year mid-July or August to correct that or else they may look into...what is that...they may look into suspending us from the program.

Mr. Carnicelli: Right. Where we have to repeal the law if we can't come to a—

Ms. Cortez: Correct.

Mr. Carnicelli: So I guess my question then being do we know, is there any oops in here? 'Cause that was an oops on our part, you know the State's part. Is there any oops in here that we know of?

Ms. Cortez: Actually these oops were actually identified by FEMA and so that's what they want us to revise. It's not really oops, but so for example the severability clause is one that is located in another part of the Maui County Code but FEMA wants it to be located in Title 19 which is the Zoning Code also and 19.62 specifically. Also they wanted the Director to be named specifically as the person who implements the National Flood Insurance Program for the County of Maui that was always sort of an understanding but they wanted it stated specifically in the Code. So those are the types of things that FEMA is requesting us, of us to change in this code revision.

Mr. Carnicelli: One more question Chair?

Chair Tsai: Yeah, Commissioner Carnicelli.

Mr. Carnicelli: So then I guess as I look at this of all of the changes that we're looking at are all of FEMA mandated or is there then something you as the Department are saying while we're in here doing it we actually wanna add this as well? So or is everything pretty much FEMA mandated?

Ms. Cortez: I think many of them and the majority of them are FEMA mandated, but one that I can think of that we put in was the clarification for substantial improvement and substantial damage. So that is Page 6, Lines 30 thru Page 7, Line 17, and that is clarifying the definition of substantial improvement because when we first drafted it in 2009 it wasn't clear to which valuation of the property that we were referring to. So we were referring to the initial valuation so say if the property was worth \$100,000 in 1990 we were referring to that valuation throughout the 10-year period when computing a fifty percent substantial improvement because what happens if you exceed the fifty percent or \$50,000 in this example you have to comply with all flood regulations and that means you have to actually elevate your house and comply with current codes. So this is sort of a grandfathering clause where if your improvements stay below the fifty percent over a 10-year period your house can remain at the elevation that it was built and in this case it's below the base flood elevation. So we're clarifying the \$100,000, the initial valuation and because what how we wrote it before is that we would carry that \$100,000 through for the entire 10-year period.

Mr. Carnicelli: Thank you.

Chair Tsai: Commissioner Robinson?

Mr. Robinson: So on the changes and I know is, I see where the Planning Department has to require certain require to the flood...when we have special events, you know special tents or building permits and you know they're on a golf course not a flood zone things like that are those then going to be exempt or are we still gonna have...the Planning Department's gonna have the ability to do a special use permit or is that gonna tie your hands now?

Ms. Cortez: The special use permit?

Mr. Robinson: It's the Director shall not issue or recommend issuance of any permit or approve of any modification or construction, you know, I mean like we do a lot of those little things, hotels you know and so it all gonna...on Page 18 I'm not sure which one of this, it was one of your kinda highlighted areas.

Ms. Cortez: Oh, okay, Commissioner Robinson so that's Page 18, Line No. 14 and 15?

Mr. Robinson: Yeah, yeah.

Ms. Cortez: Oh, okay, so yeah, so the Director shall not issue or recommend issuance actually that is with regard to building permits because we don't issue building permits actually we're just a reviewing agency so FEMA wanted us to put that in because it sounds like it would only be applicable if we issued the permit.

Mr. Robinson: So when we have dire circumstances like the flooding against the walls or something like that with the building of it and we have the temporary structures that would be exempt or is that not considered a building permit?

Ms. Cortez: Right. So tents are not actually don't meet the definition of structure for flood plain management purposes because the structure needs to be walled and roofed so—

Mr. Robinson: How about emergency seawalls or emergency rock walls? Is that my...I'm just trying to think about the minors that have come along and the special circumstances that we've given permits to help protect certain things.

Ms. Cortez: Okay, I believe that's for SMAs, emergency permits.

Mr. Robinson: Well, I mean, but if he's not, if he cannot recommend or a approve permit, I mean is this just one specific area or are they gonna be—

Ms. Cortez: Oh yes, I'm sorry yes this is—

Mr. Robinson: Going to encompass all permits.

Ms. Cortez: Involving modification, construction, lining or alteration of any drainage facility, river or stream. So it's not, it's not on the ocean.

Mr. Robinson: Not applicable?

Ms. Cortez: Yeah.

Mr. Robinson: Okay. Thank you.

Ms. Cortez: Thank you.

Chair Tsai: Commissioner Hedani?

Mr. Hedani: So our purpose here today is to recommend approval to the County Council?

Chair Tsai: Correct.

Ms. Cortez: Yes, that's correct.

Mr. Hedani: Move to recommend approval of the changes as presented to the County Council.

Mr. Castro: Second.

Chair Tsai: Moved by Commissioner Hedani, second by Commissioner Castro. Discussion? Director can you please repeat the motion?

Mr. Spence: The motion is to recommend approval of these changes to the Maui County Council.

Chair Tsai: Thank you. All in favor of the motion?

Mr. Carnicelli: I guess I don't move or he moved it?

Chair Tsai: We already—

Mr. Spence: The motion was made.

Chair Tsai: So I'll call for a vote. All in favor raise your hand? Five—

Mr. Spence: There's five ayes.

Chair Tsai: No opposition. Motion carries.

It was moved by Mr. Hedani, seconded by Mr. Castro, then

**VOTED: To Recommend the Amendments to the County Council as Recommended by the Department.
(Assenting – W. Hedani, S. Castro, K. Robinson, L. Carnicelli, R. Higashi)
(Excused – L. Hudson, S. Duvauchelle)**

Mr. Spence: Thank you Carolyn. And just so everybody knows Carolyn is our Certified FEMA Flood Zone person for the County and extraordinarily knowledgeable on flood zones and how to treat them, et cetera.

Chair Tsai: Great. Thank you Carolyn. Are we ready to go on the next item?

Mr. Spence: Commissioners, it's about...I'm looking at Item D, there's a workshop to be conducted by Mr. Mark Fenton that will take place at 1 o'clock. So I'm just assuming that the Commission would like to bypass this one and continue onto the other items and we can take care of those things and reconvene down at...I'm not exactly sure of the exact location.

Chair Tsai: Do I see any objections to that Commissioners? Commissioner Hedani? No. So we will skip Item D go to E.

Mr. Spence: Okay, Item E, the acceptance of the Action Minutes of the September 23, 2106 meeting.

E. ACCEPTANCE OF THE ACTION MINUTES OF THE SEPTEMBER 23, 2016 MEETING

Mr. Hedani: Move to approve.

Chair Tsai: Moved by Commissioner Hedani.

Mr. Castro: Second.

Chair Tsai: Second by Commissioner Castro. All in favor say aye, raise your hand. Opposed? None.

It was moved by Mr. Hedani, seconded by Mr. Castro, then

VOTED: To Accept the Action Minutes of the September 23, 2016 Meeting.
(Assenting – W. Hedani, S. Castro, K. Robinson, L. Carnicelli, R. Higashi)
(Excused – L. Hudson, S. Duvauchelle)

Chair Tsai: Okay, Item number F.

F. DIRECTOR'S REPORT

- 1. SMA Minor Permit Report**
- 2. SMA Exemptions Report**

Mr. Spence: Item F, 1 and 2 are the Minor, SMA Minor and SMA Exemption Report. I call them together just because they're...

Mr. Carnicelli: Chair I have a question for the Director.

Chair Tsai: Yes, please.

Mr. Carnicelli: So on the SMA Minors, the top one Kaanapali Investments it says it's a five-lot subdivision and we're going to minor, why is it not a major? Why is it a minor?

Mr. Spence: Well, Kurt happens to be here.

Chair Tsai: Thank you Kurt as you were walking away.

Mr. Wollenhaupt: I don't have all the notes but to give some history, this would be I believe the third time extension for a subdivision of five lots. So we agreed to give them a time extension. It actually is relatively small valuation it's like \$60,000 so that's why it becomes a minor.

Mr. Carnicelli: Right, I know that there's a monetary threshold but how do we get to a five-lot subdivision on Maui being \$60,000 worth of value?

Mr. Wollenhaupt: It's just like street improvements. That's all it is and then it's not the house...the cost of houses, it's merely just like a street stub out. It's pretty minor.

Mr. Carnicelli: Are there existing houses already there?

Mr. Wollenhaupt: No, no, it's just...

Mr. Carnicelli: So they're gonna do road improvements. So they're coming in for road improvements and then they're gonna come in for something later and then they're gonna come in for something later and so the total valuation is going to be more than...I mean, of the entire subdivision is going to be well in excess of \$60,000.

Mr. Wollenhaupt: Well, they'll have to come for the separate houses that's true. But this is only for just infrastructure improvements. It's been around for...we did put a condition that we want to know through the land management company what their time frame is because if it's truly this relatively straightforward project then why can't the company and boards of directors and get it just completed and done. So we're wanting more information upon the next time extension. So this is like the third time extension.

Mr. Carnicelli: So when is the time extension actually expire?

Mr. Wollenhaupt: For a year, it goes year to year.

Mr. Carnicelli: No but I mean the current one. If we say no, you know what is their drop dead date?

Mr. Wollenhaupt: How does that work...well, it would be relatively soon, that's what I'd have to say. Soon like this month I'm sure. I think actually I think it's the end of the month if I remember right.

Mr. Carnicelli: Okay. I mean I get that I'm the new kid on the block here so I get that you know there's a little bit ... but it's just as I look at these anyways, I just look at it a dollar threshold for a 5-lot subdivision and I get that it's only for curb, gutter, sidewalks or something like that, but it just seems as though it would...'cause what is the threshold again I can't remember.

Mr. Wollenhaupt: Half million.

Mr. Carnicelli: Half million. Okay.

Mr. Wollenhaupt: And it's in the golf course area on Kapaa Street. So that's I guess they're having discussions with the Kaanapali Investment Company and management about what exactly they want to do. But I was concerned this time about why is it taking so long to do project that appears to be so straight forward. The answer is well, we're having debate with our management company.

Mr. Carnicelli: Yeah, if it's really just paving something and some curbs, gutters and sidewalks why is it their third time extension? I have no other questions I guess.

Chair Tsai: Thank you Kurt. Please continue Director.

Mr. Spence: Any other questions on this Commissioners?

3. 2017 Meeting Schedule

Mr. Spence: The 2017 meeting schedule. I think all the Commissioners have this lovely mauve colored piece of paper with all the dates. My compliments to Carolyn who I'm sure chose the color paper. Anyway...

Chair Tsai: I see purple by the way Director.

Mr. Spence: Well okay, mauve, purple, I didn't go to art school or designer school. It say the Commission may act to adopt this meeting schedule.

Chair Tsai: Commissioner Robinson.

Mr. Robinson: Wonder if the Commissioners would look at changing February 14th to maybe February 7th?

Chair Tsai: That happens to be Valentine's Day. I noticed that too. So we can...is that...Corp. Counsel is that...what do we need to do just make a...if it's motion, is it an amendment.

Mr. Murai: Well, there's...it depends on the...(inaudible)...depends on the availability. Sorry I wasn't paying attention was there a motion to adopt this?

Chair Tsai: Well, I'm just trying to figure out what the legality, what do we need to do to if we do want to make a change to the meeting schedule is that a purely an amendment or is it a motion required or...

Mr. Murai: This is a schedule proposed by the Department, of course sets the meetings subject to room availability, availability of staff that kind of thing. So if there's a consensus that there's going to be a change we can make that decision subject to the availability of the meeting room.

Chair Tsai: Okay, and we need majority vote here, consensus.

Mr. Murai: Well, you can do it by motion or it can just say, you know is there any objection? And do I have a consensus?

Chair Tsai: Okay, Commissioner Hedani?

Mr. Hedani: This is just a question for Carolyn is the second fourth Fridays of every month.

Ms. Takayama-Corden: Second and fourth Tuesdays of—

Mr. Hedani: Yeah, I mean, sorry. I was under anesthesia yesterday so...I'd like to see us keep to the same schedule so we know when to expect the meetings to be, putting it on calendars ahead of time and block everything else out.

Ms. Takayama-Corden: Actually the first Tuesday is usually Urban Design Review Board uses the room, so it won't be available.

Mr. Hedani: So it's second and ...it's the second and fourth.

Ms. Takayama-Corden: Second and fourth.

Chair Tsai: I think Commissioner Robinson is saying because of Valentine's Day perhaps the Commission will entertain a different date if it's available? It's okay?

Mr. Robinson: As I understand there's different departments and there's different commissions and it will be a conflict of interest, yeah a conflict of interest I understand, so...I'll just be in trouble again.

Mr. Carnicelli: As long as, as long as the Department makes it a really light load that day we'll be okay.

Chair Tsai: We all get flowers that day.

Mr. Spence: There you go.

Chair Tsai: Okay, so you're okay with that Commissioner Robinson. All right moving on.

4. Discussion of Future Maui Planning Commission Agendas

a. October 11, 2016 meeting agenda items

Mr. Spence: The discussion of future Maui Planning Commission Agenda. So for October 11th we have two public hearings scheduled and there is an Unfinished Business item. The two public hearings, the first one is a transmittal of a proposed bill that would clarify some items in 19.04 regarding ministerial and discretionary applications, various things. The second

it's...there's going to be a lot of different things in that so stay tuned for the staff report. It's going to be very important to clarify for the Department and for the public certain things within that part of the Code. The second one will be a request for a short-term rental home permit in Lahaina. And then with the Unfinished Business with Mr. Mark...(inaudible)... requesting an SMA permit for the demolition construction of single family residence on Front Street and we shall stay tuned for that.

b. Determination of the Commission's next meeting date, time, and place to consider the following applications:

MS. LEONA ROCHA WILSON requesting a State Land Use Commission Special and a Conditional Permit in order to operate the Lona Ridge Special Events Project for special events, photo shoots, filming, art shows, retreats, and workshops on property situated in the State Agricultural District at 588 Kulaiwi Drive, TMK: 3-5-002: 010, Wailuku, Island of Maui. (SUP2 2015/0007) (CP 2015/0003)

No action will be taken on the applications or the Petition to Intervene from Mr. Harold Davis at the September 27, 2016 meeting. The Commission will only be acting to determine the date, time, and place for its consideration of these applications.

Mr. Spence: The second item...we need to decide a day to...for Ms. Leona Wilson's application. I understand there are quite a few people wanting to testify so we're going to choose a larger facility such as this or perhaps go back to the Wailuku Community Center, but we need to do two things. One is to take...the public hearing has been closed. We have completed the public hearing on that day a few weeks earlier. But we need to decide, it's going to take some time so we need to decide a day in which we can take it back up and because we are expecting other people to testify that may take a good portion of the day, so the...so we may even want to continue the meeting to another time and date. In other words we need to choose two days that the Commission can meet. One probably to take testimony, the other one to actually take action. So...even though the...and let me explain, even though the public hearing is closed, the official public hearing the public has a right to testify on any agenda item. So it won't be official, the official public hearing but there will still continue to be testimony on this item until the Commission takes final action.

Chair Tsai: Question Director. So if I'm clear on this we're allowing everyone who has testified prior the opportunity to retestify again?

Mr. Spence: If they so choose, they can. It's part of sunshine law, you know open meetings law and that's the way it's written so that's what we follow.

Chair Tsai: Okay. Commissioner Robinson.

Mr. Robinson: Is there a reason why we start at 9:00 and not 8 o'clock?

Mr. Spence: Probably 9 o'clock more for the convenience of the commissioners.

Mr. Robinson: I'd be inclined to have one meeting have the testifiers, and I commit to staying and deliberating and get this done. I think prolonging this and making it...it gets bigger and crazier every meeting and if we could start a little bit earlier and you know I think we'll get the same testifiers I think we'll do it again, I think we could wrap up. I think the last time we moved we lost an hour. I think we probably could have deliberated there. I don't think it's that complex a issue to where this commission you know has so many things to weigh, but I think we can, I mean to you know think about. I think we could probably get it done in one day and that's my feeling.

Mr. Spence: That is certainly option.

Chair Tsai: And also too if we're talking about having it on two separate days does that mean the same, doesn't the same case applies if we readjourn on a second time, we're gonna allow testimony again Corp. Counsel or Director?

Mr. Spence: No, I'm sure Corporation Counsel will weigh in but the last meeting we had we adjourned that meeting. That meeting came to an end. So any new meetings on this particular...on any agenda item is a new meeting and the public has a right to testify. If you recess a meeting...let's say, I mean just because we're already discussing it, let's say testimony takes up eight hours and the commission if you don't want to you know continue on to make decisions the commission could choose to recess the meeting to another determined time and day. And I believe it has to be within eight or ten days of that recess. And so it's not a new meeting it's a continuation of the same meeting.

Mr. Murai: That's correct. So in other words you're not adjourning and starting a new meeting. If you recess the meeting then you're only allowed one, one opportunity to testify.

Mr. Castro: So we should have recessed then the last one.

Mr. Murai: Well, no because...we couldn't...well, because we needed to end the public hearing and the other thing that was on the agenda which we could not take up was the motion or the petition to intervene. You know I do have an opinion about that too though. I do believe that when we take up the motion to intervene or the petition to intervene the Chair would have the discretion to limit the testimony just to the issue of intervention. You know, but you know then again too it gets very unwieldy because you know when people...one thing that we may, the Chair may want to consider doing is when you have a witness come up to testify ask them you know which matter are you testifying on just so it's clear. But the other thing the commissioners do have to keep in mind is we have not yet heard the petition to intervene and depending on which way the decision goes on that that may tell us whether we're going to proceed to the hearing of the application of itself because one of the things that...if the intervention is granted then you know go down one path, if it's denied you go down another path. So with...for the

sake of discussion should the motion to intervene be granted then one of the things you're gonna think about is whether to hire a hearings officer or whether you folks are gonna hear it yourself or whatever the case may be.

Chair Tsai: On that note can we put that item on front like can we hear the motion to intervene first on the agenda?

Mr. Murai: Oh no it would have to be...you know procedurally it should be heard first because you need to dispose with the intervention first before you can go to the hearing of the application itself.

Chair Tsai: Okay because before we had the motion to...I mean it's on the agenda after the actual item so you're saying that we could have the motion to intervene be placed on the agenda before the actual...it seems like a shortcut for us.

Mr. Murai: Well, I think that's how it was set up, wasn't it how it was set up at the last hearing.

Chair Tsai: No.

Mr. Murai: There was a public hearing...there was a public hearing which is completed and the next matter that we could not take up because of time constraints was the petition to intervene.

Mr. Hedani: Correct.

Chair Tsai: Right, but what I'm saying is I guess we have to do the public hearing first but it sounds like that...

Mr. Murai: The public hearing is pau, right?

Mr. Hedani: Yeah.

Mr. Murai: It's pau.

Mr. Spence: It's a technical, it's a technical difference. You're required to hold a public hearing which we did but then now it becomes...now this item becomes another...just another agenda item. Public hearing's done. But the public has a right to testify on any agenda item. I know it seems like splitting hairs but when things get appealed to court and everything there is a very definite difference.

Chair Tsai: Okay, I'm sorry. So if I'm understanding this correctly then if the public hearing is pau, is finished then we're only going to be looking at the next item which is the motion to intervene so we don't... but as part of motion to intervene we have to take public hearing.

Mr. Murai: Public testimony.

Chair Tsai: Testimony, yeah, testimony.

Mr. Spence: That's correct.

Mr. Murai: That's correct.

Chair Tsai: Okay.

Mr. Murai: On the issue of the intervention.

Chair Tsai: On...(Inaudible)...correct, okay.

Mr. Murai: And I believe the Chair would have the discretion to limit testimony that's not about the intervention.

Chair Tsai: Okay. Commissioner Higashi and then Commissioner Hedani please.

Mr. Higashi: Oh this is just point of information. Since you're talking about an application that I excused myself from am I given the opportunity to participate in the discussion or not at all.

Mr. Murai: Of discussion of what the permit, the application itself?

Mr. Higashi: Application.

Mr. Murai: You know Commissioner Higashi I don't have the Board of Ethics opinion in front of me, I think it was my...so you should go read your copy but it's my recollection that because the Board opined that you know you had a financial interest you...my memory is that you would need to disclose that fact and then refrain from participating in the discussion and voting. That's my memory.

Mr. Higashi: Yes, you're correct. What I'm getting to is there is an addition to what is happening and that I did not discuss at all and that was the intervention and that's part of the discussion that we're having right now is that is the application for the hearing...public hearing portion on the special use permit is closed. If that portion is closed then I already excused myself from that, what I'm talking about is the intervention that is coming up.

Mr. Murai: I just want to make sure I understand your question. What you're asking is if you have...if you did not participate in the public hearing, you're asking may you participate in the hearing of the petition to intervene?

Mr. Higashi: No actually what I want is I wanted an interpretation from Corporation Counsel on the validity of the intervention that's being introduced.

Mr. Murai: I can't opine on the validity of the intervention that's the board's decision to determine whether the petitioner meets the standards for intervention. In other words you know

because our rules list a set of elements that the petitioner has to meet in order to be eligible to intervene that's the...that would be the commission's kuleana based on the testimony and evidence that you hear whether that the petitioner should be allowed to intervene or not.

Mr. Higashi: I think more specifically and I don't know that's why is it allowable in a discussion in a meeting itself pertaining to an item that's coming up which is the intervention is that something that's allowable or it's not?

Mr. Murai: Are you asking, are you asking whether you may participate in the hearing of the petition to intervene?

Mr. Higashi: No, basically what I'm trying to say what is the interpretation of Corporation Counsel on the intervention that's supposed to be coming up?

Mr. Murai: Oh you know for that...for one thing it would be premature to have that discussion today because today all we're doing is we're setting the hearing date. Now should we come to a hearing and the board, I'm sorry the Commission wanted to discuss with me the board's powers, duties, the authority, liabilities, that sort of thing then we could have, we could go into executive session at that time.

Mr. Higashi: Okay, so right now just for clarification the special use and conditional use permit public hearing is completed.

Mr. Murai: The public hearing portion is pau. Next, you know my understanding is that the next matter would be the matter of the intervention and for the sake of discussion let's say the intervention is granted then the commission would have one set of decisions to make. If it's denied my presumption is that the commission would go to the hearing of the application itself.

Mr. Higashi: So for right now just for my sake what we're discussing is the intervention not the permit itself or am I wrong?

Mr. Murai: No, you mean today right now?

Mr. Higashi: Yeah, today.

Mr. Murai: Right now all we're doing is one thing, finding a date.

Chair Tsai: Right. And Commissioner Higashi if you have any specific legal questions maybe you can consult with Corp. Counsel offline regarding your participation or anything else more in detail if that's okay.

Mr. Murai: Well, what I would recommend to the Commissioner is to take a look at the Board of Ethic's opinion and follow the opinion.

Chair Tsai: Okay.

Mr. Higashi: Yes, I'm very clear on the application itself, I excused myself. So I'm not, I'm not basically talking about that. I just wanted clarification about what I had heard and that is... 'cause I was not at the commission meeting that the Chair closed the public hearing on the application.

Mr. Murai: Only the public hearing portion, that's correct.

Mr. Higashi: Right, so that cannot come up again.

Mr. Murai: Well, I'm not sure whether you mean come up, what you mean by come up again, but...

Mr. Higashi: That the application, the application for the special use permit.

Mr. Murai: We've not had the hearing yet. The hearing hasn't happened yet.

Mr. Spence: The...I would say we've had the public hearing. All of this is still about this one application. So the way I'm hearing Commissioner Higashi the intervention is about the application so will be Planning Commission's ultimate action whether intervention is granted or not there will be some commission action at some point. That's all has to do with the application. So it's...these are just different phase...different parts.

Mr. Higashi: Right. So basically that's what I want clarification, today's discussion that you're having is about the hearing itself not about the intervention.

Mr. Murai: No, no, no we're not, we're not discussing the merits or demerits of the intervention or on the application. The only thing on the agenda today is finding a date, a date, a time and place.

Mr. Higashi: For the intervention.

Mr. Spence: No, for the next commission meeting which we will take up the intervention and/or take action.

Mr. Higashi: At the hearing, that that SUP hearing.

Chair Tsai: Oh, maybe, maybe I can help clarify this Commissioner Higashi. I think for the process sake basically we'll have an agenda item for your...for the application that we have a public hearing which already happened before a few weeks ago. At the same there's a motion to intervene that's also on the agenda that we have to take up, but unfortunately due to lack of time we didn't get to it. So we're trying to decide where here on the date to take up that motion to intervene. And as part of the motion to intervene in our discussion right now is that we have to open up for public testimony again as form and legality and we can have further discussion

and we can...based on our commission's discretion where we want go, we either going to grant that or not then the position is going to have...

Mr. Higashi: So just, so just to close it when you decide on that particular date, meeting date I will have to excuse myself again is that correct?

Mr. Murai: Well, I would say yes based on the Board of Ethic's opinion.

Mr. Higashi: Right. So it's like it's a continuation from the hearing.

Mr. Murai: Yes.

Mr. Higashi: Okay, well that I just wanted the clarification on whether I'm able to participate in the intervention which is separate from the application.

Mr. Murai: I would say you would not be able to. That would be my interpretation of the Board of Ethics opinion.

Mr. Higashi: Okay.

Chair Tsai: Commissioner Robinson.

Mr. Robinson: I'd like to move to have a meeting at 8:00 a.m. and do it all in one day.

Mr. Carnicelli: Second.

Chair Tsai: Discussion regarding...do you want to set a date first or do you want to just starting...figure out the start time.

Mr. Spence: Mr. Chairman, if I could ask Carolyn do we have proposed dates?

Ms. Takayama-Corden: ...(inaudible-no microphone available)...

Mr. Spence: You're going to have to use the mic, Carolyn otherwise we can't pick you up.

Chair Tsai: Can we possibly...I'd like to vote for having it here due to lack of AC if I may say it that way at the community center so we can look at what date it's available here. Maybe I'd like to say probably the Tuesday. Since we don't have agenda item for the October what is it the fourth, the second meeting in October which is the 25th. If that date is available we can have the meeting.

Ms. Takayama-Corden: We have items scheduled for that day.

Chair Tsai: We do.

Ms. Takayama-Corden: We do have public hearings. It would have to be if you want it during that week it would be a special meeting on top of your regular meeting.

Chair Tsai: We can't move to November.

Ms. Takayama-Corden: November 7th this room is not available.

Mr. Carnicelli: I won't be here November 7th either.

Chair Tsai: Okay.

Mr. Robinson: I'm open to come on the maybe a following Tuesday or something. I mean, whatever is open is why don't we get the dates, but I mean if I think if we can get down today that we want to make a commitment we're gonna do it in one day you know and not prolong this into a three-day. It's a single permit, we don't need to...(inaudible)...too big, of all these sessions for just one permit.

Chair Tsai: Commissioner Hedani.

Mr. Hedani: You know the part that I'm confused on is I guess we made a mistake in adjourning the first meeting rather than recessing it so we have to go through the whole public hearing again.

Mr. Murai: No, no, no.

Mr. Spence: No.

Mr. Murai: Well, first of all, I don't necessarily agree that we made a mistake because we completed the agenda except for one item, the intervention and I don't know whether it's even possible to have recessed the meeting indefinitely without having a firm date. So the public hearing portion is pau. However, while there is no...and the public hearing is basically the public's right to know, you know, what the application is and to come and testify on it. But at every juncture or at every meeting that this matter is put on the agenda the public still has a right to come and testify on the agenda item even if it's not the public hearing itself. They would be testifying on the agenda item. And while I have the floor though, I would recommend...well, first of all when it comes to setting agendas and you know meeting dates and that kind of thing, that's the call of the Chair. The Chair has the authority to set agendas and the meetings, but you know I think as a courtesy to all the...as many commissioners as possible we hear input as to availability because we all know, you know no more quorum no more meeting. And you know, so while it's good to have a consensus the one thing I want to remind folks of is, we...you know Commissioner Hedani you've already indicated that you will continue to recuse yourself, Commissioner Higashi may not be participating so knowing that we're down two members already I think it's real important that we get a consensus of when we do this because there's so many moving parts to scheduling this kind of meeting especially one where we know we're gonna use a larger room that maybe one suggestion, I don't know...you know I look at Carolyn

'cause she's gotta do all the work, maybe we have to...maybe we should you know email folks like Larry Hudson and you know, Sandy to make sure that we know when it's gonna be. I guess what I'm saying is that you know perhaps the one thing you may want to consider doing is everybody give their feedback as far as availability, what time is good to start and if you're okay with it let Max have the final say based on when the most commissioners are available. That's just my suggestion.

Chair Tsai: Yeah, thanks Corp. Counsel.

Mr. Hedani: The real question that I had. The real question that I had was because we've already had people testify and we do have a rule in the commission that if you testified once on an issue you'll not be allowed to testify again on the same issue unless new material is being brought forward. Can that apply to everyone that comes? If we have 80 people that sign up for the meeting again can we require that those 80 people introduce new material rather than repeating over and over and over what they've already told us 'cause we're not stupid we can read.

Chair Tsai: Absolutely. Thank you Commissioner Hedani and I guess a question...I was thinking about the same thing Corp. Counsel is that that rule if I'm interpreting that correctly is that it only applies to a certain agenda item. So we covered the public hearing for the application already, they already testified does that only allowed to testify one time but it's only on the same agenda item but we're on the petition to intervene so can the same people testify on the previous session can they be allowed to testify again? It appears to be a different agenda item so I'm hearing that...

Mr. Murai: That's correct. It's a different issue. So my opinion would be that if people are there to...if a testifier says I'm here to testify on the issue of intervention I believe that the commission would be required to take their testimony. If someone says you know in other words, the Chair could limit the testimony just to the issue of intervention.

Chair Tsai: Right.

Mr. Murai: However my understanding is that the petition to intervene as well as the matter of the application itself are going to be on the same agenda. So you know, I think it's a good idea to endeavor to do both things all in one day and if it looks like we don't have a second day, I mean if we don't finish in one day have a backup date scheduled so that we can recess to a date certain.

Chair Tsai: Okay.

Mr. Murai: But what I don't want to see someone basing an appeal on a violation of the sunshine law. The problem with the sunshine law violations is it allows a court to set aside or overturn what the commission or board did. So in other words, we need to be careful about trying to save time because our efforts to save time might create even a bigger headache and might force us to do it all over again. So you know...

Chair Tsai: I like the fact and I'm gonna go ahead with that so to limit only testimony that's regarding the petition to intervene hopefully that would limit—

Mr. Murai: Well, the Chair does have the authority to limit testimony to what's on the agenda. It's always my recommendation if you err on the side of allowing it as opposed to being overly restrictive.

Chair Tsai: Okay. Commissioner Robinson.

Mr. Robinson: This morning we had a person with testimony that had no agenda item and the same person testified on that agenda item at a previous time and we allowed it to happen. So we have the intervention which is one, we have public hearing which is two, and we have Leona Wilson Lona Ridge which is three. Is that three opportunities for somebody to testify?

Mr. Murai: Well, you know as a suggestion in the future the Commission may consider whenever someone steps up to the mic to ask them which item are you testifying on. And if the person said, well I'm here to testify on the item whatever it was you know the hearing setting then I believe we would be required to allow him to testify but maybe only as to the date and time.

Mr. Robinson: But, but, so, so are we saying that they're still...if we do it the same day like you're recommending so then are you saying that they still have two chances to testify that day on the intervention item and as well as the Lona Ridge item?

Mr. Murai: I think so, yeah.

Mr. Robinson: Now, we closed Lona Ridge so then if we don't have public testimony and all we have is agenda testimony then the only thing they could testify on would be the intervention because we already did the Lona Ridge, we already closed and concluded that meeting. So it's either public hearing...I mean, that's where we have to get clarified especially with time 'cause if people can do two or three times then it's going to be a long time. I mean, you know it's, of course, hindsight is 20/20 we should have tried to wrap it up. But I have a follow up question is what is the application date of Lona Ridge and what is the automatic, what is the deferral...

Mr. Murai: When is the 120 days run?

Mr. Spence: The 120 days concludes on December 26th. I asked that same question.

Mr. Robinson: And I mean because you know we always have to do an agenda, we always have to do certain notice and stuff and that might be something we want to share with our testifiers that you know you can filibuster this as long as you want but the way the County rules are says, you're gonna filibuster to a automatic approval.

Mr. Spence: Yeah, I think they're aware that but I'll make sure.

Chair Tsai: Commissioner Carnicelli.

Mr. Carnicelli: So on that same vein I do...is does the Chair have the ability to say, okay when you come up you have to tell me what you're testifying on. He can definitely say you don't get three minutes and one second, you get three minutes period and you only address the Chair. Those are the things he can do, like truly do I mean according to Robert's Rules and Sunshine and everything like that, correct?

Mr. Murai: The Chair...well, because the...because the public is allowed...we are required to allow public testimony on an agenda item and it is discretionary with the Chair to allow other testimony. It is permissible to say you know ma'am which item are you testifying on, oh okay, that's fine, go ahead or no, you know what we don't have time...depending on what they say the Chair can allow it or disallow it.

Mr. Carnicelli: Okay, so if he allows I'm here to testify on Item A and I get up and start talking and I go down a rabbit hole can he, you know, stop you and say I'm sorry you're no longer testifying on A.

Mr. Murai: You know, it's up to the Chair how he wants to handle it but you can redirect the witness because the thing is...(inaudible)...why do witnesses come to persuade the commission. Query whether you know wasting commissioner's times is effective persuasion. So you know, I guess I'm not sure what you're asking. You're asking me can the Chair cut you off?

Mr. Carnicelli: Yes.

Mr. Murai: It depends.

Chair Tsai: On that note---

Mr. Murai: Oh, I'm sorry your question about three minutes. What the rules say is that you know the Chair may allow a reasonable time and it's the general rule of thumb that three minutes is reasonable. You know you can just out of courtesy I've noticed that we generally tend to allow people to wrap up, but to me as soon as Carolyn says three minutes, I think especially if you impress upon the people in the gallery that we will adhere to the three minutes then I think people will tend to be more likely to shut up after three minutes as opposed to rambling on until they're stopped.

Chair Tsai: On that note is that three minutes step in the Robert's Rules?

Mr. Murai: No, it's just been generally accepted that three minutes is reasonable?

Chair Tsai: Could I reduce it?

Mr. Murai: I'm sorry?

Chair Tsai: Can I reduce that time?

Mr. Murai: You could.

Chair Tsai: Like two minutes for testimony.

Mr. Murai: You know you could reduce it, you know you could make it a minute if you wanted but then again what you don't want to do is invite a challenge. So it's, it's as I said if...

Chair Tsai: Commissioner Hedani then Commissioner Robinson.

Mr. Hedani: I think what you could possibly do is say you know we invite people to testify, this is an open meeting, you could testify on the agenda item, however try not to be repetitive if you've already testified on this issued and not repeat the same material again and introduce new material.

Chair Tsai: Commissioner Robinson.

Mr. Robinson: Yeah, I don't think we squelch testimony, is we're trying to...(inaudible)...redundancy and the time. We're trying to get to a point where we wanna make a vote on this permit and if we have a hundred testifiers and they're gonna do it twice, I mean, is there a way where we can say you have total of three minutes to testify on one of the two items or both. You know, I guess we're trying to get to where we can actually vote, we can't get past this testimony part.

Mr. Murai: My understanding is that's not been the practice of this commission.

Mr. Robinson: Okay.

Mr. Murai: And generally speaking you know the public has been allowed to testify on different agenda items and would have three minutes on each. So but you know, again, I just want to remind us we're only talking about one thing today, setting a hearing date and to the extent that we need to talk about logistics so we can talk about things like public testimony. I mean, certainly the Chair can announce to the people who are here that we have limited time that you know we want to be efficient but we don't want to limit your right to say your piece. I know that for example in the Legislature they encourage written testimony because it saves people from having to fly to Oahu, you know that kind of thing so certainly the Chair can encourage people to be cognizant of that. Certainly you can encourage them to say their piece in three minutes on all items, but I don't think it would be wise to say, no you cannot, you may not testify more than once on different items. Again, what I don't want to see is our practice or procedure give people reasons to appeal any decision of the commission.

Chair Tsai: Okay, thank you. So what I'm hearing regarding the date here is that in order to get full quorum, as many people as possible we probably should consider doing it on the Tuesday because that's already set in the schedule instead of trying to find a separate date to come which I'm open to as well. I think that's a good point because we are...we want to make sure we have full quorum. Commissioner Robinson.

Mr. Robinson: My feeling that we shouldn't do the two items at the same day. I think we should do the intervention as a last agenda item on our scheduled meeting and hopefully we can wrap that up because I think that's gonna be a very quick deliberation between us and then we can deal with just Lona Ridge on another day, but that's just my opinion.

Chair Tsai: Well, the intervention is the next item on our...we are going to go straight to that but part of the intervention I have to open the floor for public testimony.

Mr. Robinson: Right, correct, correct.

Chair Tsai: So it's really taking up where we dropped off, where ended the last.

Mr. Robinson: Yeah we're not talking about moving intervention and the Lona Ridge on the same day, we're gonna continue with the intervention and then looking at having just Lona Ridge on a separate day is that correct?

Chair Tsai: Well, I think it depends on our decision on intervention. We may not even get to that so I think we should focus on the intervention. Director.

Mr. Spence: If the Commission votes to grant intervention that will settle it for that particular meeting. We'll go into selecting hearing officer those kinds of things. If petition to intervene is denied then the commission would go into deliberations on the merits of the application and may vote at that meeting or may put off voting to another time as well. So you could take up both. In other words, depending on how it goes you could take up just the one item or you could take up both at the same meeting.

Chair Tsai: So does the commissioners wants to do...I mean I'm seeing that if the 11th of...sorry if the 8th November is taken...So how about 22nd is this room available? No? Don't know. How does Commissioners feel about either having it on the regular scheduled Tuesday, the second or the fourth Tuesday of November of keeping it...or trying to set a separate date for this? Commissioner Robinson?

Mr. Robinson: Did I just hear you say the fourth week of November?

Chair Tsai: Yeah, the 22nd.

Mr. Robinson: If we do that, and we don't get it done December 26 is D Day and with the holidays and all that we're looking at...if we don't get it done there I don't, I don't see us making a decision. I think we might have to do it a little bit sooner than the 28th.

Chair Tsai: Well, it sounds like we can't because according to...

Mr. Robinson: Well, I mean, well that's Tuesday. I'm open to other days besides a Tuesday if you know...to me, as long as it's a different day of the week.

Chair Tsai: How would all the other commissioners who are not recused feel about that? Because my concern is getting the other commissioners agree to a date because we're gonna be short two people already and to find a separate date that all of us can make it would be a challenge.

Mr. Castro: Well, on the 22nd I'm on vacation. I'm pretty set for those two, Tuesdays of the month because I'm going into a lot of different negotiations.

Chair Tsai: Right. So you're not available on the 22nd any way November.

Mr. Castro: Yeah.

Chair Tsai: Okay.

Mr. Robinson: October?

Chair Tsai: Well, seems like we already have agenda item set correct Carolyn for the 11th and the 25th so both of those two Tuesdays we already have agenda items set so we can't change that.

Mr. Spence: Well, you could have a special meeting.

Chair Tsai: Right and that's what we're discussing.

Mr. Spence: Carolyn, I'm just guessing this is an off week for Council where they don't have committee meetings so the regular week I'm making this assumption, she's really good at correcting me when I'm wrong, so I'm guessing the regular weeks of commission meetings would be the best time for special meetings because this rooms probably is available.

Ms. Takayama-Corden: The only dates that they had told me was open was the week of October 24th to the 28th. We already have our regular meeting on the 25th which has two or three public hearings scheduled already.

Chair Tsai: So it sounds like we're looking at that week of 24th to 28th. Is there a particular day that you guys want to look at and have a backup date?

Mr. Robinson: I'm open the 27th.

Chair Tsai: That's a Thursday.

Mr. Carnicelli: Chair I'm definitely open to a special meeting just to get this done so that's it. The week of the 24th I am not available on 27th. I'll be on Oahu that day. I'm actually not available on the 28th either, but I could do Monday or Wednesday so anyways...

Chair Tsai: So we have a 26th?

Mr. Robinson: 26?

Mr. Carnicelli: 26th, I can do Wednesday the day after because we got an October 25th meeting and so the next day I would be open to coming back at 8:00 a.m. and just saying hey you know what we're gonna make a day of it and pack a lunch and here we go.

Chair Tsai: Commissioner Castro is that, are you open on that date, 26th of October?

Mr. Castro: Yeah, I'm good for the 26th.

Chair Tsai: So well, we're gonna...

Ms. Takayama-Corden: I have to confirm.

Chair Tsai: Yeah, we gotta confirm, make sure this room is available, if not, I guess sounds like the backup is Monday the 24th which is the day before. Does that sound like a good plan then we get the other commissioners hopefully can make it.

Mr. Carnicelli: If I could then also suggest Chair that should we have to recess maybe the 9th of November, I mean we might as well, 'cause I think we have to have a backup in case we have to recess is that correct Corp. Counsel so I mean, it's just like Carolyn while we don't want to give her double duty, I mean while you're checking maybe just...

Ms. Takayama-Corden: This won't be available.

Mr. Carnicelli: We're gonna get it done? We're not going to recess.

Mr. Robinson: ...(inaudible)...

Mr. Murai: You know I'm not real positive about that, I know that you can't let the recess go too long.

Ms. Takayama-Corden: Six days.

Mr. Spence: Right.

Chair Tsai: Six day, oh okay.

Mr. Murai: That's reasonable.

Mr. Spence: I know it has to be a...you have to know the location and the time that you're going to meet.

Chair Tsai: So shall we set up the recess the second day just in case now?

Mr. Robinson: Is it couldn't we put everything on the 26th agenda and we have the 27th to spill over and that way we can...we know we only have one day of testimony. Oh, I'm sorry 25th to 26th? I mean, can't we do that the 25th put everything on the agenda since we're already agreeing to coming the next day and say 25th, 26th is our meeting dates 'cause we know the agenda is so big.

Ms. Takayama-Corden: 25th is your regular.

Mr. Robinson: And get it done.

Chair Tsai: 25th is the regular meeting so we have two—

Mr. Robinson: My idea is to add it to the last part of the 25th's agenda and we're just gonna go down the line and that will be the last things and we'll start whenever it is on the 25th and we'll continue onto the 26th that way public testimony will already be taken and then we just go into the agenda items.

Chair Tsai: Commissioner Hedani.

Mr. Hedani: Just a reminder you're making the minutes of this meeting impossible to transcribe. You need to recognize people to speak before they speak.

Chair Tsai: My apologies thank you for the reminder. It's lunchtime, I think we're all hungry too so okay, so let's put...can we do that? Put it on the two dates, 25th and 26th hopefully this room is available, hopefully the 26th Commissioners Duvauchelle and well, Commissioner Hudson are available also on the 26th and if that's agreeable...Commissioner Castro.

Mr. Castro: I kinda have a concern with two already being recused there's a possibility of the third one Hudson.

Ms. Takayama-Corden: We have a new Commissioner.

Mr. Castro: The other commissioner.

Chair Tsai: I think he said he's not gonna...in the last one he didn't, he decided not to recuse himself if he still stands then he's gonna be...

Mr. Castro: Well, just in case there's a challenge.

Mr. Murai: Well, I thought about this, again just purely for the purposes of planning I'm counting heads what Commissioner Hudson would need to do is because I'm gonna presume that someone is gonna challenge his ability to hear this matter according to our rules, Rule, I guess 25, once a challenge is made then the commissioner must disclose whether he has a financial interest and then the commissioner decides whether to participate or not. So I cannot...I know that you mentioned that Larry, the last time said no I'm gonna participate, I cannot presume what he's gonna do the next time but you folks may probably have your ideas about what he's gonna do.

Chair Tsai: Commissioner Hedani?

Mr. Hedani: This is for Corp. Counsel if I recuse myself from voting does my presence still count toward a quorum.

Mr. Murai: Yes.

Chair Tsai: Commissioner Higashi.

Mr. Higashi: Will I be informed as to which one I'm gonna be excused the 25th and the 26th?

Chair Tsai: You're recusing from voting but you can still attend the meeting, you just can't participate in discussion and voting of the agenda item. If 25th we already have other items on the agenda so you can definitely participate and vote on those, you just can't...it's your decision.

Mr. Higashi: Just on that specific item.

Chair Tsai: Exactly. Okay so are we in agreement on that? So we're setting the date of 25th, well which is our regular agenda meeting date and the 26th.

Mr. Murai: And Mr. Chair just so you know on the 26th in the morning I'm a trainer for a class at 9 o'clock so I'm just going to have someone else from my office stand in for me. Unlike you folks there's more than...I have back up so.

Chair Tsai: Sounds good. Thank you.

Mr. Carnicelli: Excuse me Chair is the 26th going to be at 8:00 a.m. or the 25th going to be 8:00 a.m., are they both at 8:00 a.m. or are they 9:00 a.m.?

Chair Tsai: Good point. I think we're gonna keep the regular session time at 9:00 a.m. for the 25th and if it's okay with the rest of your guys who are present 8 o'clock on the 26th okay?

Mr. Carnicelli: That's fine with me. Thank you.

Chair Tsai: Director you want to finish up the rest real quick?

5. 2016 Hawaii Congress of Planning Officials Conference, September 21-23, 2016 on Kauai

Mr. Spence: Okay, Item F-5, I know a number of the Commissioners attended the HCPO Conference last week on Kauai and if you wanted to discuss, this item is on the agenda for you to discuss you know what you learned, what you liked, what you didn't like. I know that it is...my suggestion is if you want to put this off it might be a good idea simply because at 1 o'clock we're reconvening up here with Mr. Mark Fenton and then we're gonna go on a field trip I guess. We're gonna have a workshop to begin at 1 o'clock. Up to you if you want to discuss HCPO or if you want to...

Mr. Carnicelli: I'd like to discuss it. However, being that you know we got a schedule to adhere to at 1 o'clock I think just for the sake of everybody is you know, whether it be before Mr. Fenton or after Mr. Fenton or next meeting or something like that. I think that it be nice just to discuss what I was able to experience, but I think for the sake for everybody stomachs I'll not do that now.

Chair Tsai: Yeah, I agree so can we Director put this on the next agenda item.

Mr. Spence: Sure.

Chair Tsai: On that note, Director's Report is finished and our next meeting is October 11th and at this point we're gonna break for lunch. Commissioner Robinson.

Mr. Robinson: Director I just want to make a notation that on the first item that was approved the County, the Planning Department's recommendation for length of permit time and the applicant's testimony was different. Her testimony was one year and her written testimony and I believe the recommendation was for three. I'm just... I don't know if that's to do with anything but I just wanted to put that on record.

Mr. Spence: Okay.

Chair Tsai: Thank you Commissioner Robinson. At this point we're gonna break for lunch. I guess we have to be back here at 1 o'clock.

A recess was called at 12:17 p.m., and the meeting was reconvened at 1:08 p.m.

D. Workshop conducted by MR. MARK FENTON, public health and transportation consultant on Complete Streets and Walkability (Workshop to begin at approximately 1:00 p.m. or soon thereafter)

Mr. Mark Fenton presented a power point presentation and discussed complete streets and walkability.

G. NEXT REGULAR MEETING DATE: October 11, 2016

H. ADJOURNMENT

The meeting was adjourned at 2:35 p.m.

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Present

Lawrence Carnicelli
Stephen Castro
Wayne Hedani
Richard Higashi
Keaka Robinson (9:14 a.m.-12:17 p.m.)
Max Tsai, Chair

Excused

Sandy Duvauchelle, Vice-Chair
Larry Hudson

Others

Will Spence, Director, Planning Department
Gary Murai, Deputy Corporation Counsel, Department of the Corporation Counsel