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**MAUI PLANNING COMMISSION
REGULAR MINUTES
DECEMBER 8, 2020**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Lawrence Carnicelli at approximately 9:02 a.m., Tuesday, December 8, 2020, online via BlueJeans; **Meeting ID: 822 847 362**

Mr. Carnicelli: Good morning everybody. The Maui Planning Commission meeting of December 8, 2020 is now in session. If everybody would please mute themselves that would be very helpful 'cause we're starting to get a little bit of feedback. So if you're on the call, please mute yourself. My name is Lawrence Carnicelli, I am the Chair. Also, in attendance with us today is Vice-Chair Christian Tackett.

Mr. Tackett: Good morning, Chair. Good morning, Commissioners.

Mr. Carnicelli: Good morning. Commissioner Jerry Edlao.

Mr. Edlao: Good morning Chair. Good everybody, and Director.

Mr. Carnicelli: Good morning. Commissioner Dale Thompson.

Mr. Thompson: Aloha and good morning all.

Mr. Carnicelli: Good morning. Commissioner Kelli Pali.

Ms. Pali: Aloha kakahiaka everyone.

Mr. Carnicelli: Good morning. Commissioner Stephen Castro.

Mr. Castro: Buenos dias a todos, there we go. Good morning everyone.

Mr. Carnicelli: Commissioner Mel Hipolito.

Mr. Hipolito: Good morning Chair, Director, fellow Commissioners and everyone.

Mr. Carnicelli: Good morning. And Commissioner P. Denise La Costa.

Ms. La Costa: How do you top Commissioner Castro's introduction? Aloha all.

Mr. Carnicelli: Let the record show that Commissioner Kawika Freitas is excused, and we do have quorum. Also in attendance with us is Director Michele Chouteau McLean.

Ms. McLean: Aloha Chair, Commissioners, good morning.

Mr. Carnicelli: Good morning. Corporation Counsel Michael Hopper is also in attendance with us.

1 Mr. Hopper: Good morning, Chair.
2

3 Mr. Carnicelli: Good morning. So as I stated if you please keep your video and your audio
4 muted for the call. If you would like to testify, the way that the Maui Planning Commission does
5 it we take testimony after each item so we will pull up each item on the agenda, there'll be a
6 presentation on that agenda item and then we'll go ahead and take public testimony after that
7 presentation, we will then deliberate and make a decision after each item and so we'll kind of do
8 it as we go down the thing. So if you would please...if you would like to...if you would like to
9 testify please use the chat function and use the chat just to let the Director know that you would
10 like to testify on a particular item, we'll go ahead and call people as they sign up. Also, the chat
11 function is not to be used to communicate with each other or us. It's strictly just to be used in
12 that function so we would ask that you please respect that and don't use it for testimony or
13 communication in any way. I believe that is all. Also, just being that this is the last meeting we
14 have before Christmas, figure I just Merry Christmas and Happy Holidays to everybody and look
15 forward to a festive, jolly meeting. Director.
16

17 Ms. McLean: Thank you, Chair. There is one public hearing item on the agenda today, and that
18 is a request from Mr. Sean Kading for a Short-Term Rental Home Permit in order to operate
19 Kaanapali Dream, a four-bedroom short-term rental home located at 1010 Anapuni Place in
20 Lahaina at TMK: 4-4-019: 058, and Kim Willenbrink is the project planner.
21

22 **B. PUBLIC HEARINGS** (Action to be taken after each public hearing.)
23

24 1. **MR. SEAN KADING, requesting a Short-Term Rental Home Permit in order**
25 **to operate Kaanapali Dream, a four-bedroom short-term rental home**
26 **located at 1010 Anapuni Place, Lahaina, Island of Maui, TMK: (2) 4-4-**
27 **019:058. (STWM T2020/0003) (K. Willenbrink)**
28

29 **This request is being brought to the Maui Planning Commission for**
30 **decision making as the neighboring owner protest threshold within the 500**
31 **foot radius received within the 45 day protest period has been met.**
32

33 Ms. Kim Willenbrink: Good morning.
34

35 Mr. Hopper: Mr. Chair?
36

37 Mr. Carnicelli: Yes.
38

39 Mr. Hopper: Yeah, just a reminder to swear everybody in and ask for, for applicant questions at
40 the conclusion of any witness testimony.
41

42 Mr. Carnicelli: Thank you, Mr. Hopper. You promise to be truthful?
43

44 Ms. Willenbrink: I promise, Chair.
45

46 Mr. Carnicelli: Okay, thank you.
47

1 Ms. Willenbrink: You're welcome. Good morning, everyone. Happy holidays. Hope you are
2 well and safe. My name is Kimberly Willenbrink, and I am the planner assigned to this item.
3 This matter being brought before you today is an application to operate a short-term rental
4 home in a four-bedroom home located at 1010 Anapuni Place in Kaanapali Golf Estates.

5
6 Pursuant to Section 19.65.060, Subsection A.2, Maui County Code, the Commission is the
7 deciding body for this discretionary permit request because a 15 percent threshold for protests
8 to the proposed STRH has been reached. Mr. Sean Kading is here, I believe. He may be noted
9 as Sean in your in your list of people, the owner/applicant is attending the meeting here this
10 morning. He's available to answer any questions you may have and he wishes to share a brief
11 presentation with you.

12
13 Mr. Kading is requesting the STRH permit to operate on the Kaanapali Dream in the
14 four-bedroom primary residence on the property. The property also has an accessory dwelling.
15 This will not be rented short-term pursuant to the provisions of Section 19.65.030.A of the Code
16 which currently disallows STRHs in accessory dwellings. At this time, the Department is unclear
17 of Mr. Kading's intentions for the accessory dwelling usage.

18
19 The Department is in receipt of ten written protests within a 500-foot radius of the proposed
20 STRH. This is two above the 15 percent requirement. The Department received a total of
21 18 letters in opposition to the rental and eight letters in support of the proposal. The applicant
22 also submitted testimony on his own behalf. There are no permitted vacation rental operations
23 within 500 feet of the property. There was previously one request for service filed with the
24 County, this is in the past, it did not relate to the STRH, and there was no citation. It's filed and
25 closed.

26
27 The subject property is in the State Urban District and County R-3, Residential Zoning District.
28 The proposed use is consistent with property designations and the Hawaii State Plan. The
29 application is in compliance with restrictions and standards in Chapter 19.65 of the Code.

30
31 Members of the Commission, in addition to the quantity of protest, the Department notes
32 potential concerns related to this application for your consideration. The Maui Island Plan
33 provides direction for future growth, the economy and social and environmental decisions. The
34 plan looks broadly at many factors that influence the physical, social and economic
35 development of the island and addresses key environmental, housing and economic
36 development issues. The plan is intended by the County Council, the Planning Department and
37 this body as a policy foundation for day to day decisions and is specifically intended to be used
38 to assist in reviewing discretionary permits. This proposed project may contribute to the visitor
39 industry and result in ancillary jobs associated with the industry and could also provide an
40 opportunity for visitors to contribute to the local economy outside the hotel resort areas.

41
42 However, there are potential adverse impacts anticipated as a result of short-term rental
43 approval. The protest letters include concerns related to potential large gatherings in the home,
44 excessive usage of the pool, guesthouse and other common areas of the existing gated
45 subdivision rather than the many areas of the island dedicated for use by the general public.
46 Numerous other vacation opportunities are available near the property. The Department notes

1 that hotel demand an occupancy in West Maui is quite low due to the constraints of the current
2 Covid19 pandemic. I'm sure we're all aware of this.

3
4 The Department further notes the County's already seriously compromised demand for
5 long-term rental opportunities are increased at this time as people teleworking seek to relocate
6 to the island. As such, the Department has considered the following very clear Maui Island Plan
7 policy statements during its review.

8
9 Section 4.2.2.C - manage impacts from transient vacation rentals, hotels, bed and breakfast
10 units, timeshares and resort condominiums on residential communities, public infrastructure and
11 community facilities.

12
13 Section 4.2.2.D - discourage supplanting of existing island housing to visitor accommodations
14 that may have a negative impact on long-term rental housing, price of housing and price of land.

15
16 No serious environmental impacts are anticipated as this application concerns visitor use in an
17 existing dwelling. However, if the Commission approves the proposed STRH permit, the
18 Department recommends a condition to read as follows, "that the applicant shall ensure that all
19 guests are educated about Maui Nui's history and culture, and about the potential detrimental
20 impacts to natural and cultural resources, particularly to the coastal environment and the near
21 shore waters. Evidence of such an educational program shall be provided to the Planning
22 Department for approval prior to operation."

23
24 The Department calls out for your consideration the following relevant short-term rental
25 ordinance restrictions and standards. Section 19.65.030.N states, short-term rental homes shall
26 conform to the character of the existing neighborhood in which they are situated. Prior to
27 issuing a permit the Department or applicable planning commission shall consider the following,
28 and one states in part, the Director and the Planning Commission shall not be bound by any
29 private conditions, covenants or restrictions upon the subject parcel, any such limitations may
30 be enforced against the property owner through appropriate civil action. This particularly
31 prop...particular property, is the subject to Lanikeha and Kaanapali Gold Estates CC&Rs, blah,
32 blah, blah. Subsection N.4 discusses community input and you have that testimony in front of
33 you today, both in opposite opposition to and in favor of. Department notes for the record that
34 this is a gated community.

35
36 Section N.5 potential adverse impacts, including excessive noise, traffic and garbage. Potential
37 adverse impacts, including noise, traffic and garbage were considered by the Department.
38 Based on the revolving maximum occupancy in the short term, as well as the accessory
39 dwelling uses, noise and traffic impacts may be increased as compared to those of either a
40 home owner occupant or long-term rental occupant.

41
42 And six the number of permitted short-term rental homes surrounding the proposed short-term
43 rental home property and their distance to the property. As of November 17, 2020 there were
44 no permitted short-term rental operations located within 500 feet of the subject property in this
45 community.

1 And seven, the number and substance of protest to the short-term rental home application and
2 protests related to the cumulative short-term rental homes in the neighborhood or area. So, as
3 previous mentioned, you have 18 letters in opposition, ten of which are within 500 feet, and also
4 a number of letters in support of the operation.

5
6 Finally, Section 19.65.030.S states, prior to issuing a permit, the Director or planning
7 commission may impose conditions for a short-term rental home if the conditions are reasonably
8 designed to mitigate adverse impacts to the neighborhood. Members, if you decide to approve
9 the STRH permit, conditions that have been recommended by the Department are included in
10 your staff report and we can go over those if you would like. The Commission may impose
11 additional conditions as deemed fit designed to mitigate adverse impacts to the neighborhood
12 today. And right now, if there are no objections, I will turn the screen over to Mr. Kading. Sean,
13 are you there?

14
15 Mr. Carnicelli: Hang on a second, Ms. Willenbrink, before we go to Mr. Kading, I would just like
16 to first off, say thank you for such a thorough presentation and Commissioners as you guys are
17 all aware, very rarely do we get something where the recommendation is a denial, right? I
18 mean, is typically when we get to this place, you know, the applicant say says, oh okay, and
19 kind of acquiesces, and so Mr. Kading is moving forward. So, I just wanted to kinda say that
20 we're sort of going in a unfamiliar territory, is all, is that, and so anyways, I appreciate you
21 putting on the record something very, extremely thorough that we can, you know, potentially use
22 if we are going to approve or deny. So, I just want to say thank you and then I guess we'll go
23 ahead and go to Mr. Kading now. So, Mr. Kading, are you there?

24
25 Mr. Sean Kading: I am. Can you hear me okay?

26
27 Mr. Carnicelli: We can, I just...is if both of you are going to talk I need you both to state your
28 name for the record and then promise...do you promise to be truthful.

29
30 Mr. Kading: Okay, good morning to the Planning Commission, the Chair and the Director. My
31 name Sean Kading, and yes, I do promise to be truthful. I'm here with my wife Terri.

32
33 Ms. Terri Kading: I also promised to be truthful. Good morning, everyone.

34
35 Mr. Carnicelli: Thank you, guys.

36
37 Mr. Kading: And I'd like to do a screen share. I've got a short PowerPoint presentation just to
38 walk through a few things if I could. Okay, can everybody see the PowerPoint?

39
40 Mr. Carnicelli: Yes, go ahead. Great.

41
42 Mr. Kading: I'm going to let my wife go ahead and start.

43
44 Ms. Kading: Hi, yeah, we just wanted to start out by saying that, you know, we, we love Hawaii
45 Island, the Islands of Hawaii and Maui specifically, and you know, we would not do anything to,
46 to harm the island, and that's not our intention in any way. I've been coming to the island since I
47 was a child. My grandparents instilled the love in the islands and in me and my family and my

1 twin sister actually lives on Hawaii Island, as does another sister of mine. We were married and
2 in West Maui, in Kapalua, in 2005. And it's our love of the islands that led us to buy a lot here
3 and build a home here. Our intention is to ultimately retire here and spend as much time here in
4 the meantime as we can. We did not build the home to be a hotel. We did not build as a spec
5 home, it's never been listed for sale, it's not our intention to do that.
6

7 And when bought we were looking for a place where we could ultimately live, but also because
8 we knew it was going to be a little bit of time before we were able to live here permanently, you
9 know, we wanted to buy in a place where we could offset some of the cost of owning a home.
10 And so, we looked at that many areas and many lots with that idea in mind. And when we
11 bought here in Kaanapali Golf Estates, we were told that that was going to be permitted, that's
12 in our CC&Rs, and so we bought with that in mind, and our intention, again, is not to do rent
13 weekly. Our intention is not to rent on a regular basis. Our intention is to lease a few times a
14 year for two to four months at a time simply to offset the expenses of owning and operating our
15 home.
16

17 Our home, in order to own and operate this home, it cost us in excess of ten thousand dollars a
18 month, and that's everything from utilities to landscape to exterminator to, you know, all of the
19 different monthly expenses that go into owning home. Primarily, it will be used for us and our
20 friends and our family and that's something that since 2013, when we built the house, we have
21 offered our home to friends and family on a regular basis. If the home is regularly used by
22 people here on vacation on a short-term basis because we operate to our friends and family.
23 And in addition to friends and family, I mean, we've as an example, you know, we've offered it to
24 someone, a friend of my sisters on Hawaii Island whose son goes to school here. So she didn't
25 have to be in a hotel. She could be in a home and visit her son who goes to school here on a
26 full-time basis. So, it's not...the, the allowing the permit would not change the character of the
27 home, it would, it would essentially just mean that some of the people were writing a check
28 whereas no one up until now has been doing that.
29

30 We absolutely far in favor of sharing the aloha spirit, educating our guests, even with family and
31 friends that's something that we do on a regular basis. We care very much about the reefs,
32 using reef safe sunscreen is something that, you know, we have always made available to our
33 guests, our family and friends. It's important to us to educate people about the culture, the
34 language, the environment, protecting the environment and protecting the reef. We have for our
35 family and friends books, information available to them to educate them about Hawaii now, and
36 if the permit was granted, we would continue to do that.
37

38 Mr. Kading: So just to summarize the application, what we're really requesting is simply the
39 right to follow the County approved CC&Rs which allow a minimum rental term of 30 days.
40 Most of our renters would likely be 60, 90, 120-day renters particularly post-Covid or during this
41 pandemic. We've been hearing that there's increased demand. I think Hawaii is also aware
42 that, you know, there are a lot of people that want to work remotely and so we've been getting
43 offers, unsolicited offers from families of four or five people who want to rent our home so they
44 can come here, work remotely, be part of the community, but we typically would not want to rent
45 for six months or longer because we use the home, our family uses the home.
46

1 We waited five years. We've never rented the home. We followed all the rules as the planner
2 indicated, it's always been used part-time. Some of our neighbors that wrote letters were
3 concerned about strangers. Ironically, I don't even know some of those folks. And therefore, if
4 they saw me walking down the street, they would think that was a stranger.

5
6 The Kaanapali Golf Estates and Lanikeha, both the associations sent in letters confirming that
7 rentals of less than 180 days are allowed pursuant to the CC&Rs. CC&Rs are a binding
8 contract between owners. We have to follow those provisions related to how our community
9 operates, how it's funded, all aspects. It's 100 percent of the owners in the Golf Estates and
10 Lanikeha agreed to follow those contracts, and we do. There's only one exception where this
11 small group of owners say, well, we don't want to follow Section 27 of KGE CC&Rs which allows
12 a minimum term of 30 days. They tried to impose a minimum term of 180 days. The Lanikeha
13 CC&Rs, Lanikeha is a sub association, and those these CC&Rs specifically say that, yes, it's a
14 residential community, but residential is defined as both permanent and transient use, and
15 Lanikeha allows short term-rentals and rental pools. Both HOAs again, sent letters affirming
16 that information.

17
18 Now, what is the character of KGE? I didn't see a lot in the report, but it's something we need to
19 consider and Kaanapali Golf Estates is a planned community that was approved by both the
20 state and the county back in the early 90s, late 80s, and it is part Kaanapali Beach Resort,
21 South Mauka. I spent considerable time going through the County archives and, you know, it's
22 clear that this was intended to be part of the resort and a location where both long-term and
23 short-term housing would be provided. Short-term as an alternative to hotel rooms.

24
25 There are a total of 378 units in KGE. Approximately 80 percent of those homes are second
26 homes and they're vacant most of the time. Only an estimated 20 percent live in KGE full-time.
27 That information's been provided by the association. Again, the CC&Rs were recorded
28 30 years ago. KGE was approved in nine separate phases, and during each of those phases,
29 the subdivision process was followed and the County has record of the CC&Rs, which you
30 know, they're covenants that run with the land, all owners get them during escrow and agree to
31 follow them. I've been informed by owners that have lived in KGE for decades that homes here
32 have been leased for terms of 30 days or more typically to snowbirds from colder climates.
33 They come for 60 or 90 days. I've also been informed that some of the KGE board members
34 who have tried to impose a six-month minimum rental have actually rented their own homes and
35 ohana units on short-term basis. If you drive around our community, you rarely see any other
36 people. We go by the clubhouse there's nobody using it. It's really a, it's a hillside of vacant
37 homes that resembles a ghost town.

38
39 This is one of the drawings that depicts the Kaanapali Beach Resort. The red arrow points
40 approximately to where our home is. And there are a number of documents like this that
41 confirm that we're part of the resort. You know, people routinely drive their golf carts on the
42 private roads and go head down to the beach. You know, it's a pretty uniquely resort area.

43
44 Here's an aerial view of the Kaanapali Golf Estates and the Kaanapali Resort area. This is
45 really...I know that short-term rentals are disfavored, but this is where you want to put them.
46 This is, in fact, where the County did place them and has approved them. I think it was
47 Chair Carnicelli a couple of weeks ago that commented, you know, we need to put these

1 somewhere, and it's really in the four resort areas where, you know, this use has always been,
2 you know, favored to be in those areas and not in the established residential areas.

3
4 If we take a closer look at Lanikeha, it's not an established neighborhood. This is an aerial view
5 from Google Earth. The arrow points to our home, and as you can see, the majority of the
6 property are vacant lots. Many of the objections that she received were from vacant lot owners
7 that have their lots for sale. It's not an established neighborhood. Another comment was made
8 a few weeks ago by, by the Chair that we don't want to put necessarily short-term rentals into
9 the established neighborhoods, but rather unestablished areas. Well, this is a prime example.
10 This neighborhood was approved in 2005 or 2006. It was sold to a lot of folks from the
11 mainland and with these rental rights, but as you can see, it hasn't been built out.

12
13 Lanikeha consists of 133 units. There are approximately 45 homes that have been built, but
14 88 vacant lots. It's not yet an established neighborhood. It clearly allows residential and
15 transient use. Very few of the Lanikeha homes have ever been leased long-term. I'm only
16 aware of a few. One on my street was rented to a Russian family for six months. They may
17 have extended to a year. You know, it's really foreign travelers that use or would rent these
18 homes long-term and not the local Hawaii residents.

19
20 Now, the short-term rental debate obviously has been alive and well and hotly contested in a lot
21 of neighborhoods. We were told when we were buying land in 2011 to do so in the resort area
22 in Kaanapali Golf Estates and to stay away from the agricultural areas, and that's what we did.

23
24 During construction, you know, the debate sort of heated up and a small group of owners tried
25 to change the CC&Rs to require six-month minimum rentals, and they did so using a process
26 that was later determined in an arbitration to be illegal and unlawful. Because there was a
27 dispute over the minimum rental term that could not be resolved in the community we had to
28 take it and follow the dispute resolution procedures that are required by the CC&Rs. We went
29 to mediation, we couldn't agree so we submitted to a binding arbitration. That binding
30 arbitration concluded this year in 2020, and a panel of three arbitrators, including two retired
31 judges that you may be familiar with and a condo specialist, and they ruled in our favor. We
32 received an injunction against the KGB Board that prevents them from enforcing a rental term in
33 excess of 30 days by any means or method. The arbitrators stated simply as between owners,
34 the rule is 30 days. That ruling was affirmed recently by the Honorable Peter T. Cahill, Maui
35 Second Circuit. Nonetheless, we have some owners that are, you know, undeterred,
36 undaunted, and they now seek to use this process in order as a means of method to change
37 and enforce a minimum term of 180 days.

38
39 Now, the neighbor notice that goes out to owners requests only protest letters. It does not
40 simply request letters. It asks for protest letters. Nonetheless, some owners in my
41 neighborhood sent in letters supporting the application. Importantly, both neighbors on our left
42 and on right sent in letters in support of the application. And you can see on the screen some of
43 the comments they made. They wholeheartedly support granting the application. I've been a
44 great neighbor, always willing to lend a hand, confident that we will continue to be respectful of
45 our neighbors and ensure that their quiet enjoyment is maintained. We received those letters
46 from the adjacent neighbors and the neighbor across the street. Obviously, these are the folks
47 who would be most impacted, if at all, by this permit being granted.

1
2 Now, the letters sent in opposition, the planner indicated that she had received 10 in opposition
3 and that was two above the threshold. I asked that those letters be identified because I could
4 not locate 10 letters from owners of record within 500 feet. I believe the threshold was not met.
5 At least two of those letters were signed by individuals, but the owner of record is a trust or an
6 LLC, and there is no indication what the relationship is. At least three of those letters were sent
7 by owners who participated in the arbitration and found themselves on the losing end. One of
8 those letters was sent by an owner who was held in contempt of court for violating the
9 injunction.

10
11 Now, if you look at the substance of the objection letters, there's no substance. There's nothing
12 particular about me and my wife as owners or our property in particular. They're all just general
13 objections to the concept of short-term rentals. One of them, simply opposes leasing for less
14 than 30 days though stipulated. They also say that our...they're concerned about use of the
15 clubhouse, as the planner indicated. But our house rules specifically tell all of our guests that
16 the clubhouse is for owners only and that they won't have any access. So that objection doesn't
17 state any basis because we agree with his concerns.

18
19 Ms. Kading: We also have a pool in our yard, so there would be no reason for any of our guests
20 or if the permit were granted, you know, people we would lease to, to ever use the clubhouse
21 pool.

22
23 Mr. Kading: You know, and a lot of these concerns it's you know, they're concerned about party
24 houses, they're concerned that there are going to be eight or ten people with three or four rental
25 cars coming and going, every week a different group. I wouldn't want that, that's not how our
26 house has ever been used that's not how we would allow our house to be used. I simply
27 request to rent...be able to rent my home and to receive payment for a rental that's three or four
28 months long. This is...we're kind of looking at a middle lane, you know, there's, there's the fear
29 over the weekly rentals and then there's the desire to have six-month and longer rentals, but
30 we're kind of in the middle saying, well, what we were wanting to do is one-month, two-month,
31 three-month, four-month rentals. It's really a longer term and it doesn't have you know, I don't
32 know when the last time was anyone here took a three-month vacation or even a 30-day
33 vacation. People don't come and blow off steam for 30 days.

34
35 Again, just to reiterate, you know, short-term rentals are allowed in the Golf Estates. It was
36 approved. The Department of Planning back in 2011 issued its recommendation and said that
37 in the four resort areas short-term rentals should be an outright permitted use. The County of
38 Maui has allocated 88 permits to the West Side. The Council and the Mayor determined that
39 88 homes, if used as short-term rentals, would not have an appreciable impact on housing
40 availability. There are still 28 permits available.

41
42 You know, we're required to follow our CC&Rs. Just as an example, the CC&Rs allow us to
43 have two dogs and two cats. If ten owners decide that dogs make more noise than cats and
44 they want to ban dogs, they wouldn't be able to because they agreed to follow the CC&Rs, and
45 that's really where this comes down to is, is those covenants. So, all we're asking is to be able
46 to rent for less than six months. As my wife indicated, the use of the property is unchanged.
47 The only difference is that some of the folks who use our home would be able to write us a

1 check, and in return, we would provide taxes to the State and County and those...denying the
2 permit and having this tight restriction, you're really...it's causing a harm to the County of Maui
3 and to the local residents because you're not receiving the tax revenue that was intended.
4 You've got 28 permits that have not been issued, and if they were issued, it would double or
5 triple our taxes, and you could use that money to provide affordable housing.

6
7 When short-term rentals are, you know, prevented in the resort area it has a tendency to push
8 people into the traditionally residential areas, and you're kind of creating illegal rentals by not
9 allowing them in the Golf Estates. Another thing to alleviate the concerns of a few neighbors,
10 it's worth noting that we have a private security guard. We have onsite managers. We have
11 gates. You know, we have a lot of ways to deal with any problems that might arise. And over
12 the years, there haven't been really any reported incidents with short-term rentals or there have
13 been an equal number of problems with long-term renters, I can put it that way, too. And the
14 only issues on short-rentals, if you look at the requests for service over the years, it's been
15 at...reports of advertising. It hasn't been parties. So, I believe that the burden of proof and
16 persuasion has been met. The requirements have been satisfied. The HOA supports granting
17 the permits to allow less than 180 day rentals, the land use entitlements support granting the
18 permit, my neighbors immediately left, right and across the street support it along with others
19 that believe we should simply be able to follow the covenants that run with the land. I don't see
20 anything substantive and no objective reason to deny the permit. It's all speculation of what
21 could go wrong, but I think that in a well-regulated system like what Maui County has, where I
22 have house rules posted on the wall, those concerns have all been, you know, mitigated. I
23 believe that in this instance, the benefits of approving a permit in the resort area far outweigh
24 any speculative burdens.

25
26 This just reiterates what's in the planners report. We believe the application is consistent with
27 decades of planning by Maui County officials and will benefit the local economy and increase
28 tax payments. I couldn't find any reason to deny the application. As the planner indicated,
29 there were some letters in opposition. They were non-specific and the concern of long-term
30 housing was dealt with when the cap of 88 homes was put in place. To deny a permit based on
31 unsubstantiated concerns would mean that you should deny every STRH permit because in
32 every neighborhood you're gonna have a handful of neighbors opposed and you're going to
33 have concerns over parties and you've still got your long-term housing problem. One house
34 isn't going to fix your long-term housing problem.

35
36 Now, what does the law say? Well, the law favors the free use of real property and vested real
37 property rights are jealously protected by the courts. Courts from across the country have
38 concluded that not recognizing the validity of vested rights would be fundamentally unfair and
39 the same as pulling the rug out from under property owners. Quite simply, owners should be
40 allowed to follow their vested covenants.

41
42 I've reviewed the Maui County Code. There are several different ways that short-term rentals
43 can be approved outside of the permit process. One of them is Section 19.32, which applies to
44 planned developments like the Golf Estates and that's how, you know, our community was
45 approved with these vested entitlements.

1 There is an interesting decision by the U.S. Supreme Court. They have long held that refusing
2 to grant a permit based on neighbor objections is a denial of due process because these
3 neighbors are not bound by an official duty and they could withhold consent for selfish reasons
4 or arbitrarily. Clearly here you've got a few owners, I think four out of the ten have been
5 previous board members during the arbitration and they're upset that they didn't win and they're
6 trying to win now through this process. And it really wouldn't be proper, you know respectfully,
7 for the Commission to try to overturn an arbitration decision. This issue was litigated in this
8 community and it was resolved.

9
10 At the time KGE was created, the only restriction was on rentals of less than 30 days in multi-
11 family buildings. Many other communities that are zoned R-3 on the west side have been
12 grandfathered. I believe the only reason KGE is not on the grandfathered list is because false
13 information was provided by the KGE board to the County. In 2011, they falsely told the County
14 that a majority of owners opposed short-term rentals. They never did a survey. They had no
15 basis for making those statements. But what they really should have been doing is saying our
16 covenants allow it.

17
18 Now, with the neighbor notice, we sent a personal letter. We included phone numbers and our
19 email addresses. We invited our neighbors to reach out so we could discuss any concerns. We
20 told them we love our home, we love our neighbors and we love the community. We will
21 continue to not allow unruly or disruptive guests to use our home whether they stay for free or
22 they pay for the privilege. We did not receive any phone calls or emails from any of the owners
23 who later sent in those protest letters.

24
25 So, in conclusion, we simply ask that the permit be granted. Thank you for your time. I will stop
26 sharing and I would be happy to answer any questions.

27
28 Mr. Carnicelli: Thank you, Mr. Kading, I appreciate it. At this point, we're gonna go and open
29 up the floor for public testimony. So, Director, has anybody signed up that would like to testify
30 on this particular item?

31
32 Ms. McLean: Chair, right now, there's just one person who signed up to testify, and that is
33 Jean Hardie or Jeannie Hardie. Ms. Hardie, you can unmute your audio and if you wish to, also
34 in your video.

35
36 Ms. Jeannie Hardie: Hello.

37
38 Mr. Carnicelli: Hello, we can hear you.

39
40 Ms. Hardie: Great, I don't, I don't know how to turn my video on, so I thought I'd just talk. We—

41
42 Mr. Carnicelli: Okay, so wait, wait, before, before you get started, I just need you to say your
43 name for the record, and then also—

44
45 Ms. Hardie: Jean Hardy, H-A-R-D-I-E.

46
47 Mr. Carnicelli: And Ms. Hardie, do you promise to be truthful?

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Ms. Hardie: Yes.

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

Ms. Hardie: Oh, okay, thank you. We are neighbors within the 500-foot limit. Our house, there's one empty lot between our house and Kading's house, and we're downwind and downhill from him. His, his picture of the Google Earth is very misleading there are many more houses in this neighborhood built. That's an old picture. And there are many more permanent residents than he is alluding to. Four of the seven houses on our street are full-time residents. We're full-time residents. Yes, the trust owns our home, our trust, our personal trust but we've lived in Maui for 30 years and we...and when we lived in previous neighborhoods, we lived next door to short-term rentals, and it was really awful, the noise and disruption. We had to call the police numerous times because people didn't abide by the 10 o'clock time noise limits and various things like that. So, we really don't want this neighborhood to be turned into short-term rentals. Several of his neighbors who are supporting his application want to apply for short-term rental applications themselves, and we really don't want that in our neighborhoods. We don't have any short-term rentals here that have been permitted by the County and we don't want them, many of us who are permanent residents here. So, I just want to add my objection.

Mr. Carnicelli: Thank you. Is that all?

Ms. Hardie: Yeah, I think so. I mean, there have been a lot of long...he said there'd only been one long-term rental in the neighborhood, and I know many, and so I know that people want to do rent long-term rentals in here. And like he said, right now, more people are wanting them than ever before. And not just people from the mainland, but people from all over Hawaii not just Russians. So, I understand what he's saying, but once you give him a short-term rental permit, he can do whatever he wants. He can say he's only going to rent it for a month or two at a time, but he would have no limitations put on him. So, thank you.

Mr. Carnicelli: Thank you, Ms. Hardie. Mr. Kading, do you have any questions for the testifier?

Mr. Kading: No, I don't have any questions for her. Thank you.

Mr. Carnicelli: Thank you. Commissioners, any questions for the testifier? Seeing none, thank you very much for your manao, I appreciate it.

Ms. Hardie: You're welcome.

Mr. David Murray: Chair?

Mr. Carnicelli: Yes, who is this?

Mr. David Murray: I'm sorry, this is David Murray, I'd like to testify if given the opportunity.

Mr. Carnicelli: Okay, okay, hang on a second. Are you on the phone is that what it is?

1 Mr. Murray: Yes, I'm only on audio. Sorry, I'm not on the chat.

2

3 Mr. Carnicelli: Okay, so if you just...hang on, what is your name?

4

5 Mr. Murray: David Murray.

6

7 Mr. Carnicelli: Okay, Mr. Murray, is if you'd hang on, we've got some people that have signed
8 up in the chat. We're gonna go ahead and call them and then when we're done with
9 those people in the chat, we'll go ahead and call you as well. So appreciate it.

10

11 Mr. Murray: Thank you.

12

13 Mr. Carnicelli: Okay, thank you. Director, who's next?

14

15 Ms. McLean: Chair, we have had a few more people sign up to testify. Next is Joe Davane.
16 Mr. Davane, you can unmute your audio, and if you wish to unmute video.

17

18 Mr. Joe Davane: I think I did that right. And I swear to tell the truth.

19

20 Mr. Carnicelli: Hang on a second, please say your name for the record.

21

22 Mr. Davane: It's Joe Davane.

23

24 Mr. Carnicelli: Hi, Mr. Davane, do you promise to be truthful?

25

26 Mr. Davane: Yes, sir.

27

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

29

30 Mr. Davane: So we've lived in Lanikeha since March of 2009. We were the third people, to
31 move in here and the first family with kids to move in. When we moved here our kids were four,
32 six and eight because we bought from Whalers Realty where I work from. It was meant to be a
33 community where you going to raise families and there was some second homes. Vacation
34 rentals was not part of the deal. Me and my wife actually had to work to live here. She's a flight
35 attendant for United. I do property management at Honua Kai and also a real estate broker. So
36 this isn't a second home, this is where we raised our kids and this is a really personal to us
37 because I couldn't imagine sitting next to me and having a vacation rental next to me because it
38 does change the community. I do vacation rentals. I have house rules. They don't follow
39 house rules. They wait till somebody corrects them not to do the house rules. And so when I
40 hear the applicant talk about aloha and how they're going to spread aloha. I didn't hear much
41 aloha. I heard this is a profit and loss statement. How can I maximize my investment? And I
42 go back to '05 and '06 when these were first sold and this was just a real estate investment.
43 Everybody bought here because they were flip city. They want to buy um, and they wanted to
44 flip them, and they got caught, and that's what's happening now. That's why we have the
45 vacant lots that we have now.

46

1 On that note, I'll go to the last two months, we've had six vacant lot sales. One of my clients got
2 a unsolicited offer on another one their lots up here. So things are moving up here. But I don't
3 really want to talk about the profit and loss statement, cause that's not what this is to me. This
4 is my home and I'm against this 100 percent. Thank you.

5
6 Mr. Carnicelli: Thank you, Mr. Davane. Mr. Kading, do you have any questions for the testifier?

7
8 Mr. Kading: No, I don't have any questions for him. Thank you.

9
10 Mr. Carnicelli: Thank you. Commissioners, any questions for the testifier?
11 Commissioner Edlao.

12
13 Mr. Edlao: Mr. Davane, you mentioned that you have properties that you manage where people
14 do not follow the house rules. Where are these properties?

15
16 Mr. Davane: They're at ...(inaudible)...Kai which short-term rentals, so like the Kaanapali Alii,
17 The Whaler where vacation models are supposed to be.

18
19 Mr. Edlao: Okay, and then when they do not follow the rules, what are your actions to that?

20
21 Mr. Davane: Well, I...I either...usually I go down and handle them myself, but if I have to get
22 security involved, they have to get security involved. But the fact of the matter, you know, if they
23 don't stop themselves from like smoking on lanais, and really what they always come back to
24 say is, oh, I didn't know, I didn't read those, you know, well what do you do?

25
26 Mr. Edlao: Well, don't you feel that maybe when you did rent them out that you should have
27 gone over the house rules with them prior to having them come in? I mean, as a property
28 manager that's your responsibility, right?

29
30 Mr. Davane: Oh, correct. So, they had to do—

31
32 Mr. Edlao: Have you done that with these...did you do this with these renter or you just gave
33 them the keys and go?

34
35 Mr. Davane: No, sir, I'm very hands on. I run a one-man operation with the cleaning lady, so I
36 usually check my guests in personally and go through everything with them. So, not only do
37 they have it in their contract, but they also have it right there on the counter. The four pages
38 that they're supposed to read, that I go over and tell them—

39
40 Mr. Edlao: Okay, okay, supposed to read, supposed to read, but as the property manager do
41 you make sure they read it?

42
43 Mr. Davane: How would I do that? I mean, they sign the contract. It says that they read
44 everything.

45
46 Mr. Edlao: Well, it doesn't matter. You know, I'm asking you if you went over the rules with
47 them or not, yes or no. Or you just tell, oh it's there and, you know, you just figured, well, they're

1 going to read it. They have to read it because they signed the contract. That's gonna make a
2 difference in my mind, anyway.

3
4 Mr. Davane: Yeah, I don't know if I follow you because I have a contract that they actually
5 signed. I go over it with them. I don't have a middleman. I usually check them in.

6
7 Mr. Edlao: Okay, okay, the question is, my question is your house rules, you said it's there on a
8 counter, they should read it. They have to because of the contract. But I'm asking you because
9 you're such a efficient property manager, do you verbally go over these house rules with the
10 renters, all the renters?

11
12 Mr. Davane: All four pages?

13
14 Mr. Edlao: Yeah, if that's what it is.

15
16 Mr. Davane: I go over the important ones like no smoking and being quiet, but to go over all
17 four pages on every single check in, that's even...that's not standard—

18
19 Mr. Edlao: Why, why, why? Why is it not? If it's the house rules and if you're such an efficient
20 property manager, wouldn't you want to make sure that they know all the rules?

21
22 Mr. Davane: Yea, I don't know if I follow you. I mean, when you check into a hotel, do they
23 go—do they read you all of the rules?

24
25 Mr. Edlao: That's, that's, that's not the question I'm asking you. We're not talking a hotel.
26 We're talking about property that you manage, and I'm concerned because, you know, you
27 could say, well, I'll go over to important things and skip over this because they may not do it is,
28 they may not do that, just this, this, this, this. To me, you know, you're not, you're not really, you
29 know, going over the house rules. I mean, if it's four-page, then, then, you know, if it's a four-
30 page house rules, then, you know, the renters should know everything.

31
32 Mr. Carnicelli: I can, I can, I can, I jump in here for a second? Could I just jump in here for a
33 second? I'm sorry, Commissioner, is what's before us right now is an STRH application with
34 which this, Mr. Davane has testified. He's giving his testimony and he's a property manager and
35 I understand that you're trying to understand his protocol, but I'm just, I want to kind of keep us
36 within the confines of what it is that we're here to talk about today, which is the STRH permit
37 application of Mr. Kading, and I get that you're trying to...is that we can draw a nexus and
38 maybe get specific with what you need clarity on his testimony for that would be great because
39 we're kind of going down an avenue right now that I'm, I'm just, I'm feeling is a little bit of a
40 slippery slope, so if you could get a pointed question for him, that would be fantastic.

41
42 Mr. Edlao: Well, you know, his, his opposition is based on people not following the house rules
43 and yet on his own property, they don't follow the house rules, so I'm fine with that. That's all I
44 have to say. Thank you.

45
46 Mr. Carnicelli: Okay, thank you Commissioner.

47

1 Mr. Davane: I'd like to answer—

2

3 Mr. Carnicelli: No, no, no, hang on, hang on Mr. Davane is he said his peace, hang on.
4 Commissioner La Costa has a question for you.

5

6 Mr. Davane: Thank you.

7

8 Ms. La Costa: Thank you, Chair. Thank you, Mr. Davane. It's nice to see you, and in full
9 disclosure I do know Mr. Davane as a fellow realtor. You bought in Lanikeha and built your
10 home up there. You also represented or worked with Whalers Realty at the time who was the
11 sales agent. Part of the testimony was that Mr. and Mrs. Kading were told that if they bought
12 there, they could rent it because it wasn't in Ag. So as one of the sale agents for that can you
13 please tell me from where that came and the reason I'm asking that is because that would have
14 given them the, the supposition that they could rent it regardless of whether it's in a resort area
15 or not, so could you please clarify that for me, Joe? Thank you.

16

17 Mr. Davane: Yeah, so I was at Whalers Realty and I left Whalers Realty I believe in 2000, end
18 of 2008 so I wouldn't have been here when the applicant purchased his home, so I'm not aware
19 of who told him he could short-term rental. Always my understanding when I was at Whalers
20 Realty and one of the reasons I bought up in the Kaanapali Golf Estates is that short-term
21 rentals weren't allowed, and part of the reason is I was told that by the, you know, realtors and
22 we sell them, is like, you know, short-term rentals aren't allowed, you know,
23 ...(inaudible)...follow the rules and what not. I...(inaudible)...if short-term rentals were allowed
24 in Kaanapali Golf Estates we'd have short-term rentals here, and we've never had them, so why
25 now, you know in 2020 we're working with short-term rental issues, you know, I don't know, but
26 to answer your question I wasn't with Whalers Realty when Mr. Kading bought his lot, so I don't
27 know who told him that he could short-term rent. I know when I told people, you couldn't short-
28 term when I worked at Whalers.

29

30 Ms. La Costa: Thank you very much, Joe.

31

32 Mr. Carnicelli: Anybody else have questions for the testifier? Thank you, Mr. Davane,
33 appreciate it.

34

35 Mr. Davane: I don't get to rebut the earlier questions? I would like to invite the commissioner to
36 anytime come rent one of my units and I'll spend all my—

37

38 Mr. Carnicelli: Mr. Davane, Mr. Davane, Mr. Davane, Mr. Davane, your three minutes is up,
39 you've asked...you've answered the questions that were asked of you, I appreciate your time,
40 thank you for coming forward and giving your manao, it's time for somebody else to come
41 forward. Thank you.

42

43 Mr. Davane: Thank you.

44

45 Mr. Carnicelli: Director.

46

47 Ms. McLean: Chair, the next person who signed up to testify is Duncan Magee.

1
2 Mr. Duncan Magee: Hi, everyone I'm Duncan Magee and I agree to say the truth.

3
4 Mr. Carnicelli: Okay, let me just ask you do you promise to be truthful?

5
6 Mr. Magee: I do promise.

7
8 Mr. Carnicelli: Thank you, Mr. Magee, you have up to three minutes.

9
10 Mr. Magee: Thank you. Hey, I just wanted to say that Mr. Kading I believe is a lawyer or an
11 attorney...I'm from Canada, but you know, when I bought there with my family I read our
12 CC&Rs and our CC&Rs said, it was 30 plus days or we must follow the County rules, and I
13 believe that back in the day when our CC&Rs were built originally the County rules for long-term
14 was 30 days and that has subsequently been increased to 180, so we've always been in a
15 community where it was 30 plus days which is long-term rentals, nobody vacations for more
16 than 30 days or less or more than like Mr. Kading said, so we've always been consistent that it's
17 been for long-term only and being a lawyer, Mr. Kading should have read the documents versus
18 listening to hearsay. He kept saying somebody told them, well a lawyer should look at the
19 details, not listen what somebody who is selling him something should do. And in you know
20 general, he has been on a crusade for five years to try to change these rules. And I follow what
21 Joe said in that, you know, if rentals were always allowed we would see a lot of people renting
22 and there's never been short-term rentals in KGE or Lanikeha, so that's all I have to say. Thank
23 you.

24
25 Mr. Carnicelli: Thank you, Mr. Magee. Mr. Kading, do you have any questions for the testifier?

26
27 Mr. Kading: Just to comment. We, of course—

28
29 Mr. Carnicelli: No, no, no, do you have, do you have, a, a, do you have a question for the
30 testifier?

31
32 Mr. Kading: No, I don't have any questions for the testifier. Thank you.

33
34 Mr. Carnicelli: Thank you very much, Mr. Kading.

35
36 Mr. Hopper: Mr. Chair?

37
38 Mr. Carnicelli: Yes.

39
40 Mr. Hopper: Just to be clear, I think what you could do is, if there's questions for the testifiers
41 that's fine, and if you want a chance for rebuttal evidence to be presented that's something that
42 should be provided after the testimony as well if the applicant wants to provide rebuttal
43 evidence. He could also ask questions to the Planning Department, I remember that the
44 Department gave a presentation so that's, that's available too, but generally that should be
45 allowed for everybody if the chance for rebuttal evidence and for questions.

46

1 Mr. Carnicelli: Okay, so Mr. Kading we will give you an opportunity after testimony to give
2 rebuttal, a rebuttal, however at this point in time, we'll just go to since we have Mr. Magee on as
3 a testifier I believe you said that you do not have any questions for Mr. Magee at this time,
4 correct.

5
6 Mr. Kading: Correct, I don't have any questions. I just wanted to rebut a few things that he
7 said.

8
9 Mr. Carnicelli: Right, and we'll give you an opportunity at the end of testimony to do that.

10
11 Mr. Kading: Thank you.

12
13 Mr. Carnicelli: Okay, Commissioners do you have any questions for Mr. Magee? Seeing none,
14 thank you very much, Mr. Magee, I appreciate it.

15
16 Mr. Magee: Thank you.

17
18 Mr. Carnicelli: Director.

19
20 Ms. McLean: Chair, the next person to testify is Think Tran. If you would like to unmute your
21 audio and if you choose to, unmute your video.

22
23 Mr. Think Tran: I tried unmute my video, but doesn't unmute, so can you hear me, okay?

24
25 Mr. Carnicelli: Yes, we can. Mr. Tran, please state your name for the record.

26
27 Mr. Tran: My name is Think Tran, and I'm house—

28
29 Mr. Carnicelli: Hang on, hang on, hang on Mr. Tran. Do you promise to be truthful?

30
31 Mr. Tran: Yes, I promise to be truthful, yes.

32
33 Mr. Carnicelli: Okay, you have up to three minutes then. Thank you.

34
35 Mr. Tran: Okay, so I occupy the house next to Mr. Sean Kading, and I can tell you that when I
36 bought the property, the CC&R they did say explicitly that we have 30 days rental or more, and
37 that's one reason I bought the lot and I build my house. And the intent of myself is never to rent
38 them on a short-term basis, but I do, just like Mr. Kading ability to be able to let friends, relative
39 use it, and you know, and in case I can get some monthly rental that can help me expense
40 that's the whole idea, but I do intend to use my house for most of the time, and I would like to
41 tell everyone that anyone who bought in this property knows they have 30 days rental. And you
42 when the people who live here full-time try to force people like us who bought the thing with the
43 you know, with the CC&R allow us to do a rental and say, oh I'm scared of short-term rental and
44 so on, but you bought the property knowing that that we as owner of this property are allowed to
45 rent for 30 days or more. So, I think the two things, if you scare of a renter that don't follow the
46 rule. That's a separate thing. You should not...that should not be a reason to reject Mr. Kading
47 permit. I think we can live peacefully in this thing where we respect each other rights. I mean,

1 all here, this property are very high end property, three, four million dollar property. They not
2 little dinky house that you worry about, the people who rent this property at a certain level of
3 income. If we have house rules that everybody will follow, I think we both...people who live
4 here full-time and people who use it as a second home can live peacefully.

5
6 If you look at this whole place it's like a ghost town here, there's nobody in here. Nobody want
7 to develop land in here, nobody want even want to do anything in this place because of this
8 crazy, some of the crazy owner that try to impose their will on the rest of us. There's more
9 people who own vacation home than people who live in permanently. So I believe that having a
10 clear house rule that every follow and anybody who don't follow there's ways to make them
11 follow or get them to kick out of this if that's the thing, but one should not use the reason to
12 reject the rights of other legal owners that's my point. So I fully support Mr. Kading permit, and I
13 don't believe having few more permit in here will really change the neighborhood or anything.
14 So I would highly recommend that the Commission, I think Mr. Kading did a excellent
15 presentation going through that—

16
17 Mr. Takayama-Corden: Three minutes.

18
19 Mr. Tran: --and I would highly recommend that you all should—

20
21 Mr. Carnicelli: Thank you, Mr. Tran. Thank you very much, I appreciate it. Mr. Kading do you
22 have any questions for the testifier?

23
24 Mr. Kading: No, I don't have any questions. Thank you.

25
26 Mr. Carnicelli: Great. Thank you. Commissioners, any questions for the testifier? Mr. Hipolito
27 and then Ms. La Costa.

28
29 Mr. Hipolito: Thank you, Chair. Mr. Tran, could you, in the definition of the community that we're
30 talking about, define for me when you speak about ghost town, what it...what do you mean by
31 ghost town?

32
33 Mr. Tran: There, there nobody in the clubhouse most of the time. Nobody used the clubhouse.
34 I go there, there's nobody there because there's no, you know, I don't know where most of
35 people there nobody there. A lot of land staying vacant. They said 80 lot being vacant. The
36 property of the land, my sister owned a lot, she bought it for 1.2 million and ...(inaudible)...eight,
37 ten years ago, now, she cannot even sell it for seven hundred thousand dollars. I mean, that's,
38 there's a big reason why is because of these, these permanent owner that force these kind rules
39 on us, scare a lot of people away because you bought this as a vacation home, you'd like to be
40 able to trade it or use it or do something to you know, help your expense, and people have all
41 the rights to that. And because of this owner, this, all this property are truly depressed. You
42 can drive around here, go to the clubhouse and see it for yourself. There's nobody here. And I
43 like to remind you, in Lanikeha CC&R, we don't even have 30 days limit on rental. The CCR in
44 Lanikeha don't even have that provision, 30-days limit.

45
46 Mr. Hipolito: Mr. Tran, I really wanted your answer regarding ghost town, that's it.
47

1 Mr. Tran: I think I just answered that. Here's nobody there.

2

3 Mr. Hipolito: Okay, thank you.

4

5 Mr. Tran: ...(inaudible)...

6

7 Mr. Carnicelli: Thank you. Commissioner La Costa.

8

9 Ms. La Costa: Thank you, Chair. Mr. Tran, are you planning on applying for a short-term rental
10 permit?

11

12 Mr. Tran: I don't have any intent right now, but the I'd like to be able to rent my property out on
13 30 day plus just like CC&R allow, you know. I mean, if, if the...whatever, the County require me
14 to have permit, I may have to do that, but that's not my intent.

15

16 Ms. La Costa: Thank you.

17

18 Mr. Carnicelli: Thank you. Any other questions for the test for the testifier? Thank you,
19 Mr. Tran. Appreciate it. Director.

20

21 Ms. McLean: Chair, the next person signed up to testify is David Murray.

22

23 Mr. David Murray: Good morning, Chair and Commission Members.

24

25 Mr. Carnicelli: Good morning.

26

27 Mr. Murray: Can you hear me okay?

28

29 Mr. Carnicelli: I can. Please state your name for the record.

30

31 Mr. Murray: Sure. My name is David Murray and I promise to be truthful.

32

33 Mr. Carnicelli: Okay, thank you for allowing us to hear that you will be truthful. You have up to
34 three minutes, Mr. Murray.

35

36 Mr. Murray: Thank you, sir. I've been the owner of 990 Anapuni Place since 2006. I've been in
37 the Lanikeha gated community for nearly 15 years, and I've been Sean's direct neighbor since
38 2012. I'd like to testify that Sean has been an excellent neighbor and member of the
39 community. We have often been on island at the same time and we've never had any issues
40 with Sean or his friends or family. I'm confident that if granted this permit, Sean will respect our
41 neighborhood and my property and the community and therefore, I fully support this request. I
42 can also attest to the fact that most of the lots are empty even after nearly 15 years with very
43 few homes currently under construction and that most homeowners are second vacation home
44 owners. While I understand the concern of those are permanent residents, I don't believe the
45 opinions of the minority should affect the majority and when I bought in 2006, the CC&Rs clearly
46 said I can rent for 30 days or more. I also think the term, short-term rental is misleading. No
47 one wants weekend rentals, week long rentals, Airbnb, that's not what we're talking, we're

1 talking about month-long rentals that's a different type of person who looks at renting one, two
2 months long in a multi-million dollar house. Of course, regulations are important, I believe in
3 those and I support any regulations to make sure that everyone is respected and the community
4 is upheld. So, I do think this is appropriate and fully support Sean's request.

5
6 Mr. Carnicelli: Thank you, Mr. Murray. Mr. Kading, do you have any questions for the testifier?

7
8 Mr. Kading: No, I don't have any questions. Thank you.

9
10 Mr. Carnicelli: Great. Thank you. Commissioners, any need to clarify the testimony? Seeing
11 none, thank you very much, Mr. Murray. Director

12
13 Mr. Murray: Thank you.

14
15 Ms. McLean: Chair, the next person signed up to testify is Kai Nishiki. And so far, she's the last
16 one who indicated on the chat function they wished that they wish to testify.

17
18 Mr. Carnicelli: Great.

19
20 Ms. Kai Nishiki: Hi, good morning Commissioners. Good morning, Chair.

21
22 Mr. Carnicelli: Good morning, please identify yourself for the record.

23
24 Ms. Nishiki: My name is Kai Nishiki.

25
26 Mr. Carnicelli: And Ms. Nishiki, do you promise to be truthful?

27
28 Ms. Nishiki: I do.

29
30 Mr. Carnicelli: You have up to three minutes.

31
32 Ms. Nishiki: Thank you. I believe in looking at the records that there are numerous objections
33 by neighbors and members of the community and so I won't elaborate on all of the reasons, and
34 I've also testified on many occasions to the objection to additional short-term rentals in
35 West Maui. It is not just these, you know, less than one hundred permitted STRHs. There are
36 thousands that you folks know about because of the Minatoya listing.

37
38 Anyway, I thought it was interesting. I was, I was so happy to hear that the applicant really loves
39 his neighbors and his community, and I would just like to say that, you know, sometimes when
40 you profess love that there's actual demonstrations that need to go along with that, and actual
41 demonstrations of true love or aloha sometimes require sacrificing your personal desires to
42 honor the wishes of those people that you profess to love which is the neighbors and the greater
43 community, and then that that love should show that, you know, you care more about making
44 sure that our community is happy and vibrant, and sometimes you have to sacrifice your
45 personal desires. So, and anyone who's been married or in a relationship, they can understand
46 that concept. And I really think that the community has spoken loud and clear that we don't

1 really need or want any more STRHs in West Maui. There's enough already, and I am asking
2 for the Commission to please deny this application. Mahalo.

3
4 Mr. Carnicelli: Thank you, Ms. Nishiki. Mr. Kading, do you have any questions for the testifier?

5
6 Mr. Kading: Are we allowed to make a comment?

7
8 Mr. Carnicelli: You can do that in your rebut, but you have any questions for her?

9
10 Mr. Kading: Okay. No, I don't.

11
12 Mr. Carnicelli: Okay, thank you. Commissioners, any questions for the testifier? Seeing none,
13 thank you Ms. Nishiki. I'm sure we'll see you later as well.

14
15 Ms. Nishiki: Yes, see you later. Thank you. All day.

16
17 Mr. Carnicelli: Director, anybody else signed up?

18
19 Ms. McLean: Yes, Chair. We've had two more people signed up. First is Norm Kaufman and
20 he will be followed by Bob Strickland.

21
22 Mr. Carnicelli: Mr. Kaufman if you would unmute yourself and if you also wish unmute your
23 video as well. We can see you but we can't hear just quite yet.

24
25 Mr. Norm Kaufman: How's that? Does that work?

26
27 Mr. Carnicelli: Gotcha, got ya now. Please state your name for the record.

28
29 Mr. Kaufman: It is Norm Kaufman.

30
31 Mr. Carnicelli: And Mr. Kaufman, do you promise to be truthful?

32
33 Mr. Kaufman: I do, sir.

34
35 Mr. Carnicelli: Great. You have up to three minutes.

36
37 Mr. Kaufman: Thank you and thank you for the Commission for this. I'm a full-time resident
38 here. I live one, I live right next to Mr. Tran, who spoke. I live two doors down from Mr. Kading
39 above me as Mr. Lewis. All of these people...I'm in the middle of all of these people who likes
40 to short-term rent. And I've seen the effects of it because of the noise. When people do
41 short-term rent, when they long-term rent if it's six months or over, it's not a problem, but we
42 have heard a lot of noise. Mr. Hipolito asked a question of Mr. Tran, what's you know, define
43 the ghost town. I live here full-time time. I don't think Mr. Tran is here two weeks a year. We
44 actually have a very vibrant community. A lot of homes are being built. The pool area is used
45 quite a bit. The workout area is used quite a bit. So, I would hardly characterize this as a ghost
46 town.

47

1 Mr. Kading made some comments which I think mischaracterized what the arbitration panel
2 decided. The panel did decide to go by the CC&Rs, but they refused to hear anything regarding
3 the County ordinance for rentals, and I think now the County is on the receiving end of a lawsuit
4 from Mr. Tran to determine if KGE is, in fact, under the Maui County ordinance. So, for
5 Mr. Kading to characterize and say this has been decided, the arbitrator strictly decided that
6 we've got to adhere to our CC&Rs, but they never said anything and they actually refused to
7 comment on Maui County ordinance leaving that up to the County of Maui. And, of course,
8 you'll get to answer that now after being sued by Mr. Tran.

9
10 Mr. Kading made a comment that the Lanikeha HOA supports his decision to short-term rent.
11 I'd like to know where the evidence of that is. I have yet to see that. For a lot...for almost all of
12 Mr. Kading supporters are people who, who want to short-term rent. They don't live here. None
13 of them are full-time owners like myself, Mr. Davane, some of the other people that are in
14 opposition. This is our home. This is where we live. Changing it up is not what we'd like, to like
15 to see. And that's the end of what I've got to say. Thank you.

16
17 Mr. Carnicelli: Great. Thank you, Mr. Kaufman. Mr. Kading, do you have any questions for the
18 testifier?

19
20 Mr. Kading: No, I don't have any questions. Thank you.

21
22 Mr. Carnicelli: Thank you. Commissioners, do you have any questions from him?
23 Commissioner La Costa.

24
25 Ms. La Costa: Thank you, Chair. Thank you, Mr. Kaufman. So, you mentioned that you live in
26 an area where there are other homes that have short-term rentals?

27
28 Mr. Kaufman: Yes, ma'am.

29
30 Ms. La Costa: Okay, so let me see, how do I ask this? How do you know that they're
31 short-term rentals? And how often does the disruption occur? I mean, do you have someone in
32 there every week or is there someone there every month? I mean, if you're right in the heart of
33 all of this, then I'd like to know the disruption effects. Thank you.

34
35 Mr. Kaufman: So, I'm not sure what I'm allowed to say legally because of the ongoing litigation.
36 The first thing, Mr. ...(inaudible)...Carnicelli, did I say that right, he asked me if I would tell the
37 truth, and under penalty of perjury, I am telling you the truth, there's evidence of short-term
38 renters on either side of me which can be produced. I don't know what else I can say because
39 of litigation and, but if you want proof, we can get you proof.

40
41 Ms. La Costa: So, Mr. Kaufman, are you a board member by chance?

42
43 Mr. Kaufman: I am, but I'm speaking in my capacity as a homeowner, not as a board member.

44
45 Ms. La Costa: Okay. You mentioned about the proof of the support from the HOA. Have you
46 seen the letter from Kaanapali Golf Estates are on the stationery to the County of Maui
47 discussing the information that's dated...well, received to April 27th, so it must have been

1 somewhere around there? It is talking...it talks about the CC&Rs and the arbitration that you,
2 that you mentioned hadn't been specifically quoted correctly as to paraphrase it.

3
4 Mr. Kaufman: Well, maybe, maybe I said it incorrectly. The arbitrators did decide that we, that
5 the CC&Rs were in effect for the 30 days, but they did not rule on the County ordinance. But
6 I'm not, without seeing the letter, I'm not...I probably have seen the letter, but I'm not sure which
7 one you're referring to without being...(inaudible)...

8
9 Ms. La Costa: Okay. Thank you very much, appreciate it.

10
11 Mr. Kaufman: Thank you.

12
13 Mr. Carnicelli: Any other questions for the testifier? Quick question. Mr. Kaufman, how many
14 lawsuits and/or arbitration or legal proceedings is the association in right now regarding
15 short-term rentals?

16
17 Mr. Kaufman: One, to my knowledge.

18
19 Mr. Carnicelli: Okay, thank you. Any other questions? Seeing none, thank you, Mr. Kaufman,
20 appreciate it.

21
22 Mr. Kaufman: Thank you.

23
24 Mr. Carnicelli: Director.

25
26 Ms. McLean: Thank you, Chair. The next testifier is Bob Strickland.

27
28 Mr. Bob Strickland: Hello, can you guys hear me, okay?

29
30 Mr. Carnicelli: We can Mr. Strickland. Do you promise to be...or actually state your name for
31 the record?

32
33 Mr. Strickland: Hi, my name is Bob Strickland and I promise to be truthful in my testimony.

34
35 Mr. Carnicelli: Great. Thank you, Mr. Strickland, you have up to three minutes.

36
37 Mr. Strickland: So, I'm a full-time resident of Lanikeha where I resign with my wife, Joanne. We
38 purchased our property at Lanikeha approximately two years ago with the expectation that the
39 community did not allow short-term rentals. And when we were purchasing, considering the
40 purchase, our realtor explicitly stated this and made sure we understood the implications of that.
41 So, as recent retirees, we were looking for a community to live in that was quiet, residential and
42 that would have familiar neighbors that are not, and we were not seeking a location with
43 short-term rentals. So, there were plenty of opportunities elsewhere on the West Side to do
44 that, and we, we believed that Lanikeha was a quiet residential neighborhood that's what we
45 were seeking. That was our, that was our objective for a retirement community.

46

1 So, I also believe that even though there are many vacant lots in Lanikeha, there is a very
2 established neighborhood in Lanikeha. We've made many friends in our neighborhood with the
3 full-time residents that are here. And I can tell you right now and attest to the fact that these
4 folks really exhibit the spirit of aloha. So, the community members, it's a vibrant community. It
5 is not a ghost town. I have dinner with my neighbors. I do activities with my neighbors. I play
6 golf with my neighbors. These are, these are people that live here. So, when I hear the term
7 ghost town, it may not be that there's a lot of activity, you know, on the streets of the community,
8 but certainly people are interacting with each other on a daily basis.

9
10 I also, you know, I heard, I heard in the testimony today that the, the club house is never used. I
11 can attest that I use the clubhouse several times a week. I use the gym, I see my neighbors at
12 the gym. I use the pool. My neighbors do use the pool as well. So, there's, there's actually
13 socialization that goes on within, within the community and the clubhouse. So that, that to me is
14 something I've witnessed for the last two years. So, I would just hope that the Planning
15 Commission basically reviews all the testimony that they've heard today from the, the owners of
16 the homes, especially the full-time residents in Lanikeha and would deny the ability to short-term
17 rent in the Lanikeha neighborhood. So, thank you for your consideration.

18
19 Mr. Carnicelli: Thank you, Mr. Strickland. Mr. Kading do you have any questions for the
20 testifier?

21
22 Mr. Kading: I do have one for Mr. Strickland. What does he consider to be a short-term rental?
23 Does he consider a 90-day rental to be short-term?

24
25 Mr. Strickland: For me, my understanding, my, my, my understanding of short-term rental was
26 anything less than 180 days that, that's explicitly what I was told when we were considering
27 purchasing in the neighborhood.

28
29 Mr. Kading: And Mr. Strickland, did you read the CC&Rs before you purchased in this
30 community or since?

31
32 Mr. Strickland: We did read the CC&Rs, we were not able to, again, we were, we were not
33 looking for an explicit statement of short-term rental, but my understanding, again, was the
34 180-day requirement. That was relayed to me by my realtor at the time.

35
36 Mr. Kading: But did you see that the KGE, CC&Rs specifically allow 30-day plus rentals?

37
38 Mr. Strickland: I, I did not.

39
40 Mr. Kading: Thank you.

41
42 Mr. Carnicelli: Is that all, Mr. Kading?

43
44 Mr. Kading: Yeah, no further questions.

45
46 Mr. Carnicelli: Thank you. Okay, Commissioners, any questions for the testifier? We'll go to
47 Commissioner Edlao, and then Commissioner La Costa.

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Mr. Edlao: My question Mr. Strickland is, do you walk the neighborhood at all?

Mr. Strickland: I do.

Mr. Edlao: Okay, when you walk the neighborhood if you see that there's somebody that's you know, renting short-term rental there, do you interact with them or do you just ignore them?

Mr. Strickland: I don't believe there are any short-term renters so I've never actually seen any in this neighborhood. I just see the full-time residents that live here and the folks that come in on a part-time basis that own second homes here.

Mr. Edlao: Okay, so you really don't know if they were just renters as opposed to the owners then?

Mr. Strickland: Yeah, the people that I see, I mostly know in the neighbor, I can say that, I can attest to that.

Mr. Edlao: Okay, but if there's somebody that you do not recognize that's on property, do you say hi or interact with them at all as if you would if the owners were there?

Mr. Strickland: Sure, up at the club house, you know, apparently they're only supposed to be owners but I interact with anyone that's up there, offer aloha, and warm welcome to anyone that is, is on the property.

Mr. Edlao: Okay.

Mr. Carnicelli: Thank you, Commissioner. Commissioner La Costa.

Ms. La Costa: Thank you, Chair. Mr. Strickland, thank you for your testimony. When you purchased there at KGE was there a sign outside the main gate of the Golf Estates about short-term rental?

Mr. Strickland: Not that I'm aware of.

Ms. La Costa: Okay, 'cause at one point there was a sign describing what was allowed and not allowed. So, I just wondered if you saw that when you were in there because that talks about rentals. Thanks very much.

Mr. Carnicelli: Thank you. Any other questions for the testifier? Seeing none, thank you, Mr. Strickland, appreciate it.

Mr. Strickland: You're welcome.

Mr. Carnicelli: Director.

1 Ms. McLean: Chair, there's one more person who's indicated they wish to testify, and that is
2 Cindy Lenzi.
3
4 Ms. Cindy Lenzi: Can you hear me...(audio feedback)...
5
6 Mr. Carnicelli: oh, we got feedback there. ...(audio feedback)...you may need to turn your
7 volume down.
8
9 Ms. Lenzi: Is that better? ...(audio feedback)...
10
11 Ms. McLean: Chair, it looks like she has two devices on.
12
13 Ms. Lenzi: Turn the other one off.
14
15 Ms. McLean: Perfect.
16
17 Mr. Carnicelli: Please.
18
19 Ms. Lenzi: Okay, ...(audio feedback)...no, it's still doing it. ...(audio feedback)...should I try to
20 call on the phone instead?
21
22 Mr. Carnicelli: Try turning your volume down.
23
24 Ms. Lenzi: It's down pretty low, I can hardly hear you.
25
26 Mr. Carnicelli: Oh, okay. Try it again.
27
28 Ms. Lenzi: The feedback stopped.
29
30 Mr. Carnicelli: The feedback did stop.
31
32 Ms. Lenzi: Okay, let's try that then.
33
34 Mr. Carnicelli: Okay, so please say your name for the record.
35
36 Ms. Lenzi: Okay, my name is Cindy Lenzi, and my husband Michael is here with me. We are—
37
38 Mr. Carnicelli: Hang on, hang on, hang on, Ms. Lenzi, do you promise to be truthful?
39
40 Ms. Lenzi: Absolutely.
41
42 Mr. Carnicelli: Okay, you have up to three minutes.
43
44 Ms. Lenzi: Okay, my husband and I live here full-time, year round and our lot is adjacent to a lot
45 within the 500-foot radius of Mr. Kading's lot. I want to make it clear that on multiple occasions
46 we have heard excessive noise, loud music and even profanity late into the evening, even after
47 11:00. Now, not if, if my neighbors who are vacationing have, you know, a fun evening, I don't

1 want to impinge on that. I wouldn't dream of calling them up, but if we're talking about
2 somebody that is desiring to make money or offset the cost, now the potential for listening to
3 this type of very real noise is, is real, it's significant, and it definitely impacts us. I have
4 also...Mr. Kading said on Page 62, that he and his neighbors know that he follows the rules and
5 then he will make all necessary steps to ensure quiet enjoyment is not disturbed. He's not even
6 aware that this is going on and not that we should be, but the whole point is he's got this lofty
7 view of the way things are when, in fact, it's, it's not true. The potential for greater disturbance is
8 real, it is significant. We have been impacted and at night, everyone knows sound travels much
9 further. I'm very concerned about his point, that he'd...in his...on Page 64, he attempts to
10 diminish the weight of valid protest letters calling them irrelevant, saying, you know, that
11 because they had a legal battle. Well, quite frankly, these legal battles are a direct result with
12 people having a valid point of not wanting renters. Each lot represents a significant financial
13 and often emotional investment. And it's very disturbing to think that a neighbor who professes
14 to give an aloha spirit diminishes feelings and perspectives of neighbors and if issued a permit,
15 he can't guarantee that people will be respectful. We have...I wanted to make it clear that the
16 noise that we hear is not necessarily from Mr. Kading's home, but it's from the cul de sac which
17 impacts all of us.

18
19 Ms. Takayama-Corden: Three minutes.

20
21 Ms. Lenzi: We have a right as members in Lanikeha—

22
23 Mr. Carnicelli: Excuse me, Ms. Lenzi, Ms. Lenzi—

24
25 Ms. Lenzi: To insist that—

26
27 Ms. Carnicelli: Wait, hui, hui Ms. Lenzi, sorry, your three minutes is up.

28
29 Ms. Lenzi: Okay, thank you.

30
31 Mr. Carnicelli: Not, not a problem. Is, anyways, thank you. Mr. Kading, do you have any
32 questions for the testifier?

33
34 Mr. Kading: Just a couple quick questions. Thank you. Ms. Lenzi, you're...just to confirm, your
35 home is outside the 500-foot radius is that correct?

36
37 Ms. Lenzi: That's true, that's correct, we're adjacent to the 500.

38
39 Mr. Kading: And is it also correct, you've not heard any noise or had any problems with anyone
40 that's used my home have you?

41
42 Ms. Lenzi: It's from the cul de sac, I didn't go down to see exactly, it appeared it could have
43 been there, but I can't factually say that, no. But the fact is the neighbors, it's coming from the
44 cul de sac.

45
46 Mr. Kading: Okay, thank you. I don't have any further questions.

47

1 Mr. Carnicelli: Thank you. Any questions from the Commission? Thank you, Ms. Lenzi,
2 appreciate it.

3
4 Ms. Lenzi: Thank you.

5
6 Mr. Carnicelli: Director.

7
8 Ms. McLean: Chair, no one has indicated on the chat function that they wish to testify.
9

10 Mr. Carnicelli: Okay, so if there's anybody out there that would like to testify, please unmute
11 yourself, and identify yourself for the record please. Going once, going twice, speak now or
12 forever hold your peace. Okay, so if there are no objections, we are going to go ahead and
13 close public testimony. Seeing no objections public testimony is now closed. So, I believe what
14 we will do, Mr. Hopper, confirm here, will go ahead and give Mr. Kading some time to rebut
15 testimony and/or if he chooses the presentation by the Department.

16
17 Mr. Hopper: Yes, I think that that's correct.

18
19 Mr. Carnicelli: Okay, so is, is there a time limit to that Mr. Hopper?
20

21 Mr. Hopper: I think you can impose a time limit. I think you can maybe see how much time
22 Mr. Kading would like, and, you know, if it's...and work within that, if it's not unreasonable, if
23 there's timing issues, I think you can ask, you know, for it to be, to be a reasonable time, but I
24 think you can start with that.

25
26 Mr. Carnicelli: Okay, Mr. Kading, about how long you do you need?
27

28 Mr. Kading: I would estimate we wouldn't need more than probably ten minutes.
29

30 Mr. Carnicelli: Okay, we'll give you up to ten minutes then.
31

32 Mr. Kading: Okay, thank you.
33

34 Mr. Carnicelli: You have the floor.
35

36 Mr. Kading: Thank you very much.
37

38 Ms. Kading: I'm gonna, I'm gonna jump in first to specifically address the comments about
39 aloha and completely understand that, you know, aloha does involve sacrifice and thinking
40 about the interests of your neighbors. As Ms. Nishiki said, anyone who is married understands
41 that, but what I think we're looking for is aloha being a two-way street. That we completely
42 understand the interests of people who do live here full-time. We want them to understand the
43 interests of the people who bought here to have vacation homes and, you know, ultimately to
44 live here permanently.
45

46 I think one of the best points that was made was that we're not talking about what's traditionally
47 thought of as short-term rentals. We're not talking about a week, a weekend even two weeks.

1 As everybody seemed to note here, the CC&Rs talk about 30 plus day rentals that's what we're
2 talking about. And that is a compromise between the interests of people who live here full-time
3 and those of us who don't live here full-time who, who do frankly, outnumber those who live
4 here full-time. And so, we're just looking for it to be a two-way street. We completely
5 understand the concerns. We will have house rules. We will go over them with anyone who is
6 here and we're limited to 30 plus, 30 plus day rental. Our property will be professionally
7 managed by someone who's on island. So, if there are any issues which we would never
8 anticipate, there will be someone who are to address those issues.

9
10 Mr. Kading: And the last point I would like to make is that both informally and formally, through
11 the arbitration I requested that the association produce any records that they have showing that
12 there are problems or have been historically problems with 30-day or more rentals. And the
13 presidents of the association, former presidents testified under oath that they've never had any
14 problems with a 30-day rental. Mr. Kaufman you know suggests that he may have evidence of
15 problems with short-term rentals, but in the litigation, you know, he's been unable and it's often
16 just the assumption, well, there's a family next door, they're unfamiliar, and then Mr. Kaufman or
17 his wife will go knock on the door and meet a family member. Mr. Kaufman has made false
18 reports to the County, including one against our family, suggesting that there was a short-term
19 rental. He later had to retract that because it wasn't true.

20
21 Ms. Kading: It was my father.

22
23 Mr. Kading: And so this is really, you know, there needs to be balance. This is a community
24 that's supposed to have both full-time residents and part-time occupants. And we are simply
25 requesting that we be able to follow those 30-day rules and to, you know, lease our home,
26 short-term, while we're off island. Thank you very much.

27
28 Mr. Carnicelli: Thank you, Mr. and Mrs. Kaufmann, appreciate that.

29
30 Mr. Kading: That was Kading.

31
32 Mr. Carnicelli: Mr. Kading sorry. I just heard you say Kaufman and I doubled it down. So thank
33 you Mr. and Mrs. Kading, I appreciate that. I believe at this point in time, what we're going to do
34 is open up the floor to the Commission for questions, comments, concerns to either the
35 applicant or the Department or to Corporation Counsel. I will go ahead and start with
36 Commissioner La Costa.

37
38 Ms. La Costa: Thank you, Chair. Thank you, Mr. and Mrs. Kading. So, every time someone
39 comes before the Commission and requests a short-term rental permit this is the question that I
40 always ask, have you derived any income from any of the guests who have stayed at your home
41 prior to today?

42
43 Ms. Kading: Never.

44
45 Mr. Kading: No.

46

1 Ms. La Costa: Okay. You mentioned Mrs. Kading in your presentation that some people or
2 guests and other people give you a check. Who are the people that give you the check,
3 please? And for what is that check given?
4

5 Ms. Kading, No, I'm sorry. You misunderstood what I said. What I said was currently no one
6 gives us a check, but we allow many friends and family to use it for free. And so, my point was
7 just that, and no one knows who these people are. My point was just that if going for we were to
8 elect to rent it and get a check, the use would be no different. It's currently being used by our
9 family and friends for free. We have...up until today, we never ...(inaudible)...renting our
10 property or anything...(inaudible)...

11
12 Ms. La Costa: Okay. The other thing that I just, this is a point of clarification, when the Chair
13 said that he wanted or he thought that residential short-term rental homes should be in
14 established neighborhoods understand he didn't speak for everyone on the Commission. That
15 was his opinion. So, I want to make that very clear and I want that on the record. My last
16 question is or my last, perhaps it's a question is in the letter that was part of the packet from the
17 KGE General Manager, I've, I've read this four times, and it does not say anywhere that they are
18 giving their approval for this. What it states is that they outlined the arbitration and they also
19 said that the CC&Rs that you are not entitled. KGECA owners are not entitled to rent their units
20 for an initial term of less than 30 days pursuant to the CC&Rs, and you've stated that before, but
21 this is not an approval from KGE, what it is, is an outlining of what is required and what is in the
22 CC&RS, so I want to make that clear for the record that it is not an approval, according to the
23 General Manager, Mr. Troy Katafias, so those are my comments. Thank you.
24

25 Mr. Carnicelli: Thank you, Ms. La Costa. Commissioner Hipolito.

26
27 Mr. Hipolito: Thank you, Chair. Mr. Kading, in your earlier comments, you mentioned that you
28 have onsite security, and what is the reason for your onsite security?
29

30 Mr. Kading: I didn't mean that I have on site, but our neighborhood association has a security
31 guard that drives around the neighborhood. So, we do have a private security, not myself
32 personally, but our community does.
33

34 Mr. Hipolito: Okay, thank you. The next question I have, you mentioned you, you leave Maui
35 for two to four months. What is the reason for you leaving the island?
36

37 Mr. Kading: I work in California and I'm able to do that remotely sometimes, but other times I
38 have obligations that require me to travel back to California.
39

40 Mr. Hipolito: And usually this two to four months is an annual thing?
41

42 Mr. Kading: It's...that's an average, I think last year I flew over here six times or so and usually
43 I'll stay for you know, sometimes it's three weeks, I think, three weeks, four weeks. So, I go
44 back and forth quite a bit. We use the home and our family uses the home fairly regularly and
45 that's why we anticipate that we would only do, you know, a handful, you know, a few rentals,
46 and we anticipate those would be, you know, 60 days in duration cause that's how long I'm
47 usually gone.

1
2 Mr. Hipolito: Okay, so this period when you're gone, that's when you're planning to rent,
3 correct?

4
5 Mr. Kading: That's correct. And that would just allow us to offset some of the maintenance
6 costs and upkeep on the property.

7
8 Mr. Hipolito: And you mentioned that it was about 10K per month for maintenance fees?

9
10 Mr. Kading: Well, it's 10K, yes. To own the property, we have approximately ten thousand per
11 month in expenses.

12
13 Mr. Hipolito: Okay. Thank you, Chair.

14
15 Mr. Carnicelli: Thank you. Commissioner Pali. Oh wait, she disappeared, never mind. You
16 know, she's getting...anyways, Commissioner Castro.

17
18 Mr. Castro: My questions already been answered through Commissioner La Costa's questions.
19 Thank you.

20
21 Mr. Carnicelli: Okay, thank you. Commissioner Pali.

22
23 Ms. Pali: No questions, Chair.

24
25 Mr. Carnicelli: Thank you. Commissioner Thompson.

26
27 Mr. Thompson: Thank you, Chair. Kind of a tough one here. One, is and I'm sure maybe
28 everybody watching ...(inaudible)...our Commission has no purview over your CC&Rs. That's
29 between you guys and your own CC...or the association. We don't, we can't apply our rules to
30 your association. I yield my time.

31
32 Mr. Carnicelli: Thank you, Commissioner Thompson. Commissioner Edlao.

33
34 Mr. Edlao: Mr. Kading, you said you have a property manager that was on the island and
35 accessible when the property is rented out.

36
37 Mr. Kading: Yes, we have a –

38
39 Mr. Edlao: I thought I read that someplace.

40
41 Mr. Kading: Yes, we've designated it property manager. He is a Hawaii realtor and he will be
42 available at all times in the future when it is rented.

43
44 Mr. Edlao: Rent, it is rented out. Will he bring, you know, be there when the renters come in
45 and go over the house rules and whatever else that needs to be done?
46

1 Mr. Kading: Yes, absolutely. He lives here on the West Side and my agreement is with him is
2 that he will greet the guest, go over the house rules with them, have them initial them. Our
3 house rules, stress that this is a residential community and that quiet hours will be enforced. So
4 we've really taking every precaution that we can to, you know, protect our neighbors.

5
6 Mr. Edlao: Are there any other rules from the association that has to be abide by the owners
7 that you know of?

8
9 Mr. Kading: Well, the rules in terms of I mean, there's the bylaws and CC&Rs, that's what we
10 have to follow. The community has not adopted, as I know, its own house rules. They've
11 declined to do that so far.

12
13 Mr. Edlao: And the security you mentioned is the association pays for that security to have
14 them roam, and if so, how often does they roam the neighborhood? Is it just once a night, twice
15 a tonight, you know?

16
17 Mr. Kading: I'm not privy to what their schedule is. I see them quite regularly. I know that they
18 drive the neighborhood routinely, but I don't know what the scheduling is, you know, overnight
19 or the specifics. I can't speak to that.

20
21 Mr. Edlao: Have you had any interaction with the security that roams the property?

22
23 Mr. Kading: Just friendly hellos, aloha. They've never come on my property. They've never
24 responded to any incident. They've got no security reports. We actually requested security
25 reports regarding short-term rentals and they had nothing.

26
27 Mr. Edlao: Okay, thank you, no more questions.

28
29 Mr. Kading: Thank you.

30
31 Mr. Carnicelli: Thank you. Vice-Chair Tackett.

32
33 Mr. Tackett: I have no questions. Thank you.

34
35 Mr. Carnicelli: Thank you. So, I have just a couple of questions. One is you said that you have
36 house rules, do you currently, does your property manager, you know, even though you're not
37 charging when your dad comes, does he get a copy? Does he get checked in? Does he get a
38 copy of the house rules? Do we go over this stuff with the people like if you have friends visit for
39 the first time, whatever it would be? Do you currently do that?

40
41 Mr. Kading: We currently have the house rules posted on the wall. The irony, I guess, to the
42 situation is that there's no requirement, we could give our house to anyone with no rules for a
43 night, a week, whatever. It, it, the permit process actually provides the protection that our
44 neighbors want. Without this permit, we're free to do whatever. I can take the house rules off
45 the wall, I can rent it to a Harley gang who are gonna bring ten motorcycles, you know, and so,
46 yes, there are house rules on the wall, and all my guests are incredibly respectful and always
47 have been.

1
2 Ms. Kading: And we do, what we do also, email quiet hours to anybody who's going to use the
3 house.

4
5 Mr. Carnicelli: Now, Mr. Kading, you could you could rent to that Harley gang as long as it was
6 longer than 180 days.

7
8 Mr. Kading: Well, I could give it to them for free.

9
10 Mr. Carnicelli: You could give it to them for free. You're right, but you couldn't rent, you couldn't
11 rent it to them.

12
13 Mr. Kading: That's correct.

14
15 Mr. Carnicelli: So, the aerial photograph that you, you used in your presentation, what's the
16 date on that?

17
18 Mr. Kading: I don't have a date. I believe I captured that off of Google Earth, and you can tell
19 from some of the construction. I believe I pulled it about two or three years ago and it was just
20 something I had in my file, and so I used it. I didn't think to go grab a current one. There are
21 probably an additional five houses that been that have been built. It's still a minority.

22
23 Mr. Carnicelli: If you pulled it five years ago, because Google Earth isn't and at least in Hawaii
24 is not current. I mean, anyway, I was just curious what that is. So, essentially what you're trying
25 to do is say, okay, we want to rent, we want to get a permit that is for over 30 days, but under
26 180 because right now you could rent to somebody for a 180 and get money, nobody can say a
27 thing, but you're saying, hey, listen, we're gonna abide by Golf Estate rules and we're not going
28 to rent less than 30. So, you're basically you're trying to find a space in there where you want to
29 rent more than 30 but less than a 180 for money.

30
31 Mr. Kading: That's correct.

32
33 Mr. Carnicelli: Okay. Director, I have a question for you. And then I'll get to you, Jerry. Sorry.
34 Director, why is, why is Golf Estates not Minatoya?

35
36 Ms. McLean: The Minatoya ordinance and just for everyone's recollection, those are these that
37 are in general terms grandfathered for short-term rental use. So those are properties that were
38 developed when short-term rental use was lawful, and so they are allowed to continue short-
39 term rental use, even though the zoning restrictions for those properties have since changed.
40 This is typically Apartment Districts, but there are some other properties that aren't Apartment
41 zone that fall under this, those provisions. There are really specific criteria for falling under that.
42 It's when certain approvals were granted, whether it's SMA approvals or building permits, and
43 that the use was conducted before the law changed. And Kaanapali Golf Estates does not fall
44 under those Minatoya criteria. So, it's not a matter of whether the owners or the board wishes
45 to be on Minatoya. Properties are either on it or off it based on the criteria in the law.

46
47 Mr. Carnicelli: Great. Thank you, Director. Commissioner Edlao.

1
2 Mr. Edlao: Mr. Kading, just out of curiosity, regarding your house rules, if there was a case
3 where you had a problem or a violation of your house rules, what repercussions or is there any
4 kind of penalties that you may or may not imply on the renters?

5
6 Mr. Kading: Renters would be required to provide a security deposit. Obviously, if, if it's an
7 egregious violation, they would be removed from the property. My property manager would
8 have the authority to make that decision. We could also withhold fines in order to get their
9 attention. So, yes, I think there are, there are ways to address these issues.

10
11 Mr. Edlao: Okay, thank you.

12
13 Mr. Carnicelli: Commissioners, any other need for clarification from the applicant, Corporation
14 Counsel or the Department? Commissioner La Costa.

15
16 Ms. La Costa: Thank you, Chair. My question to Mr. and Mrs. Kading is, are you just applying
17 now because of the five-year time frame that is required by statute? Or did you just decide that
18 you weren't going to be here very much so you wanted to rent it.

19
20 Mr. Kading: We are just applying now because of the five-year rule. We couldn't apply any
21 earlier. We had wanted to get some income to offset the expenses over the years, but we've
22 been repeatedly told by the neighbors in our community that we had to have a permit in order to
23 do so. So here we are requesting that permit.

24
25 Ms. La Costa: Thank you.

26
27 Mr. Kading: Thank you.

28
29 Mr. Carnicelli: Any other questions, Commissioners? Okay, seeing none, thank you Mr. and
30 Mrs. Kading. Ms. Willenbrink if you would come back up and go over the Department's
31 recommendation please or you kinda did that but if you could resummarize it for us.

32
33 Ms. Willenbrink: Hello, thank you, Chair, Members of the Commission, members of the
34 community. Let me just turn to the right page here. This is the County's recommendation. The
35 County of Maui, Department of Planning recommends denial of the short-term rental home
36 permit due to the potential socio economic impacts and the number and substance of protest
37 letters, many from residents living in the neighbor stating concerns related to potential large
38 gatherings in the home and excessive usage of the pool, guest house and other common areas
39 in the subdivision rather than areas for use by the general public. However, in the event that the
40 Commission chooses to grant the permit request, the Department recommends that the permit
41 approval be subject to conditions stated in the staff report. In consideration of the foregoing, the
42 Planning Department recommends that the Maui Planning Commission adopt the Planning
43 Department's report and recommendation as the findings of fact, conclusions of law and
44 decision and order and authorize the Director of Planning to transmit the written decision and
45 order on behalf of the Commission. Thank you for your consideration.

46
47 Mr. Carnicelli: Thank you, Ms. Willenbrink.

1
2 Mr. Hopper: Mr. Chair?

3
4 Mr. Carnicelli: Yes, Mr. Hopper.

5
6 Mr. Hopper: Just a quick thing. One is that I think I'd give just last word to the applicant on this
7 as far as rebuttal or questions. And then the other thing is that while I know the
8 recommendation was for adoption of the staff report as the D&O, if it would be a denial, I think
9 you would also want to give staff authority to draft the D&O. It could be based on the staff
10 report and you recommendations, but I think if you're gonna go the way of denial, you would
11 need to have numbered paragraph findings of fact, conclusions of law, and decision and order.
12 Again, that's, that's...that would be part of the recommendation that I would have if you went
13 that way, but for now I think I would give the applicant on the last word on that...you know, if
14 they have any rebuttal evidence, and then you can go into your deliberations.

15
16 Mr. Carnicelli: Great. Thank you, Mr. Hopper, I appreciate it. Mr. and Mrs. Kading, you get the
17 last word.

18
19 Ms. Kading: Yeah, I think the only thing I would address is the issue about large gatherings, the
20 concern about large gatherings at that house, you know, at 30 plus day rental, I don't think
21 you're looking at large gatherings, but that being said, when I've had my brothers and sisters
22 and nieces, you know, ten, twelve people here and there's been exactly zero issues, so I don't
23 think that's a concern. And I, and I don't know that it was even referenced in the letters. That's
24 the only thing I ...(inaudible)...

25
26 Mr. Kading: And, and when we, if we were to rent to a family we would have a specific list of
27 who was allowed to occupy the home. The house rules say they're not allowed to have any
28 parties or any gatherings, and so that would be if they did, that would be grounds for them to be
29 ejected from the property. So, we'll maintain a strict hold. You know, I just think that, you know,
30 when you're granting these permits and you've got an applicant who bought based on the
31 assumption we could follow these rules and we bought in the resort area, we then wait patiently
32 for five years, you've got a couple in front of you who, you know, we follow the rules. We're both
33 attorneys. We follow the law and we're bound by it. And so, you know, we respectfully just
34 request, you know, if you want to limit the permit, but I think that we should...we deserve a right
35 to show that this community can have a balance between the full-time residents and those of us
36 who bought second homes. That's it. Thank you.

37
38 Mr. Carnicelli: Thank you, Mr. and Mrs. Kading, appreciate that. Okay, Commissioners, I will,
39 at this point in time, I guess, entertain a motion from the floor so we can kind of deliberate on
40 which way the Commission would like to go. Would anybody like to make a motion?
41 Commissioner La Costa.

42
43 Ms. La Costa: Thank you, Chair. I would like to make a motion to deny the permit based upon
44 the conclusions of law, Section 19.65 requires the Commission to approve or deny the permit
45 because the Department received 18 letters of opposition. The community has spoken—
46

1 Mr. Carnicelli: So, wait, wait, wait...let's just start with...I'll give you a chance to speak to the
2 motion. So you just say...what is it...rather than you going to the reasoning, if you could just a
3 make a motion, let's start there and see if we can get a second. So, why don't you make a
4 motion?

5
6 Ms. La Costa: I move to deny the permit based upon the conclusions of law that have been
7 presented by the Department of Planning.

8
9 Mr. Carnicelli: Okay, so how about is, is your motion is then to adopt the recommendation of
10 the Department is that what your motion is?

11
12 Ms. La Costa: That is correct. That is correct.

13
14 Mr. Carnicelli: So your motion is adopt the recommendation of the Department. Do we have a
15 second to that motion? Seconded by Commissioner Hipolito. So, let's just say, let's for the
16 record say that the...Commissioner La Costa is the movant, Commissioner Hipolito is the
17 seconder, so then now Commissioner La Costa I will give you the floor to speak to the motion.

18
19 Ms. La Costa: Thank you, Chair. And I apologize for my rambling earlier. The, the community,
20 irrespective of where they, where they stand personally, the fact that people live there full-time
21 and have spoken loudly and clearly that they don't want to short-term rental in their
22 neighborhood should be paid attention to. We have heard tens of these as long as I've been on
23 the commission. And when the neighborhood speaks loudly and clearly, we as a planning
24 commission tend to listen because that's our job, is to make sure that the laws are upheld and
25 that the, that the people that, that we are representing on the commission be heard.

26
27 The second thing is, I don't think that the applicant provided enough burden of persuasion
28 pursuant to 91-10. We all want to do things sometimes that aren't specifically allowed, but if we
29 make a good enough argument, we sometimes can do it, and I do not think that argument was
30 met. And also, it really is not the Commission's kuleana that the Kadings brought in there
31 hoping to have rental expectations. We're not the Real Estate Commission, we're the Planning
32 Commission. So, I just think that after review of the Planning Department which is what they do
33 all day long, if they think that it should be denied, then I concur with them based upon the items
34 shown in the conclusions of law and the testimonies given today. Thank you.

35
36 Mr. Carnicelli: Thank you, Ms. La Costa. Commissioner Hipolito.

37
38 Mr. Hipolito: No further comments. Commissioner La Costa had stated exactly what I would
39 have stated. Thank you.

40
41 Mr. Carnicelli: Okay, thank you. P. D. mute yourself please. Would anybody else like to speak
42 to the motion? Okay, seeing none, Director if you would restate the motion, take a vote.

43
44 Ms. McLean: Chair, the motion is to deny the permit as recommended in the staff report and
45 analysis.

46

1 Mr. Carnicelli: Okay, all those in favor of the motion, please raise your hand. That is one, have
2 one, two three, four, five. Opposed to the motion? One, two. Actually I didn't get Stephen's
3 vote I don't think. Was that six-two. Stephen how did you vote? Did you vote in favor of the
4 motion? Yes. So, six-two, dissenting was Commissioner Edlao and Commissioner Thompson,
5 is that correct, guys. Okay, so the motion passes. Six-two with Commissioner Edlao and
6 Commissioner Thompson dissenting.

7

8 **It was moved by Ms. La Costa, seconded by Mr. Hipolito, then**

9

10 **VOTED: To Deny the Short-Term Rental Home Permit as Recommended by**
11 **the Department.**
12 **(Assenting – P. D. La Costa, M. Hipolito, S. Castro, K. Pali,**
13 **C. Tackett)**
14 **(Dissenting – J. Edlao, D. Thompson)**
15 **(Excused – K. Freitas)**
16

17

18

19 Mr. Carnicelli: So, I guess at this point, we're go ahead and defer to Mr. Hopper to make further
20 clarification that we are part of our motion is to instruct staff to draft the decision and order, is
21 that correct?

22

23 Mr. Hopper: Correct. That's what I was going to bring up. You're one it.

24

25 Mr. Carnicelli: Okay. So, Ms. Willenbrink, if you would please draft the decision in order as per
26 how it was moved and presented in the...as part of this particular agendized item.

27

28 So, at that point time, it's 11:05, I think what we should do is let's take a 15-minute break. Let's
29 come back at 11:20. Okay, so as of right now, as of 11:05, Maui Planning Commission is now
30 in recess.

31

32 A recess was called 11:05 a.m., and the meeting was reconvened at 11:24 a.m.

33

34 Mr. Carnicelli: Good afternoon, everyone. The December 8, 2020, Maui Planning Commission
35 meeting is now back in session. Director.

36

37 Ms. McLean: Thank you, Chair. It's actually still morning. I know it feels like afternoon.

38

39 Mr. Carnicelli: And this is only the second agenda item of an entire day.

40

41 Ms. McLean: And I have to apologize to the applicant's representative, we have
42 Ms. Tessa Munekiyo Ng, two mistakes in how she's listed in the agenda, I apologize for that
43 Tessa, requesting a ten-year time extension for the County Special Use Permit for the Church of
44 Jesus Christ of Latter Day Saints, Kahului Stake on approximately 3.9 acres of land located in
45 the Maui Lani Project District Residential Subdistrict at 1300 Maui Lani Parkway in Kahului, at
46 TMK: 3-8-007:170 which was formerly TMK: 3-8-007: 151 (por), and Tara Furukawa is the
47 project planner.

1 **C. COMMUNICATIONS**

- 2
3 1. **MS. TESSA MUNEKIYO NG, requesting a ten-year time extension for the**
4 **County Special Use Permit for the Church of Jesus Christ of Latter-Day**
5 **Saints Kahului Stake on approximately 3.9 acres of land located in the Maui**
6 **Lani Project District Residential Subdistrict at 1300 Maui Lani Parkway,**
7 **Kahului, Maui, Hawaii, TMK: (2) 3-8-007:170, formerly TMK (2) 3-8-007:151**
8 **(Por.) (CUP 2009/0005) (T. Furukawa)**
9

10 Mr. Carnicelli: Mr. Hopper is technically a contested case.

11
12 Mr. Hopper: I think because you would be issuing a permit, it would be considered a contested
13 case, you'd be issuing an extension to an existing permit. So, yes.

14
15 Mr. Carnicelli: Okay. Ms. Furukawa.

16
17 Ms. Tara Furukawa: Good morning, Commissioners. This project is up for your review
18 because—

19
20 Mr. Carnicelli: Wait, wait, wait. Tara, hang on. I need you to identify yourself, and then I also
21 need you to tell us that you will be truthful.

22
23 Ms. Furukawa: Tara Furukawa, staff planner, and yes, I'll be truthful.

24
25 Mr. Carnicelli: Thank you.

26
27 Ms. Furukawa: So, this project is up for your review because the Church of Jesus Christ of
28 Latter day Saints Kahului Stake is seeking an amendment of Condition Number 1 of their
29 County Special Use Permit to allow for a ten-year time extension on their permit. The church's
30 consultant is Munekiyo Hiraga and Tessa Munekiyo is here to show you a brief presentation and
31 respond to any questions you might have regarding the proposal. Before we start, though, I
32 wanted to clarify that on Page 3, there's a paragraph on conservation measures and it's right
33 above the operations section and it says that conservation measures include the installation of
34 P.V. and the P.V. has not actually been installed yet, but it could in the future. So, I just wanted
35 to point that out and then turn it over to Tessa.

36
37 Ms. Tessa Munekiyo Ng: Thank you very much, Tara, and good morning, Commissioners. My
38 name is Tessa Munekiyo Ng from Munekiyo Hiraga. And if it's okay with you, I'd like to share
39 my screen. Are you able to see my presentation? Thank you, Commissioners, for your time
40 today. We are here on behalf of the Church of Jesus Christ of Latter Day Saints for their
41 Kahului Stake, requesting a time extension for their County Special Use Permit. We'd
42 respectfully like to request a 20-year time extension for that facility. I would note that in our
43 original time extension request and in the staff report, it's noted that we have requested a ten-
44 year time extension. However, and subsequent discussions with the Department of Planning
45 because the applicant developed the property in compliance with the conditions of approval and
46 there have been no complaints on the property, we would like to request a longer time extension

1 to allow for this community use to continue without the need to come back for a time extension
2 in ten years and rather request time extension for 20 years.

3
4 Many of you are probably familiar with this property and facility. This is the property here
5 outlined in red. It's located at the corner of Maui Lani Parkway and Kuikahi Drive. Just for some
6 context, the Maui Lani Golf Course is located here, Pomaikai Elementary School located here,
7 and this Waiale Road and Kehalani Foodland and Longs.

8
9 The property has a zoning designation of Wailuku-Kahului Project District 1 which is the Maui
10 Lani Project District, and more specifically is located within the Residential Subdistrict. The
11 church uses in the Residential District our special uses which require approval of a County
12 Special Use Permit or CUP from the Planning Commission and the commission did approve the
13 CUP for the project on May 25, 2010. As Tara mentioned, Condition Number 1 of the CUP
14 stated that the permit shall be valid until May 31, 2020, and on February 28 of this year, the
15 applicant filed a timely extension request.

16
17 This is a site plan of the property. Again, on the top we have Maui Lani Parkway, on the left,
18 Kuikahi Drive. There is vehicular access from both roads. So, one driveway here Kuikahi Drive
19 and a second driveway on Maui Lani Parkway. The Kahului Stake consists of one main church
20 building in the center here. It's about 24,460 square feet. There is an outdoor pavilion at the
21 back of the property and there's surface parking. These are some photos to give you a sense of
22 what the facility looks like. These two photos on the left-hand side here are from the
23 Kuikahi Drive side of the property. And this photo on the right is from Maui Lani Parkway. On
24 this slide, we show a photo of the back of the main building. And on the bottom, there's a photo
25 of the pavilion, the outdoor pavilion.

26
27 Just some brief history to note, the facility has been developed in compliance with the conditions
28 of approval, Certificates of Occupancy were issued for both the main building and the pavilion in
29 January of 2012. And a final compliance report was prepared for the project and the permits
30 that was submitted to the Department on October 14, 2020, and the Department of Planning
31 has accepted that final compliance report. So, to summarize, the Church of Jesus Christ of
32 Latter day Saints would like to respectfully request approval of a 20-year time extension for its
33 Kahului Stake facility. We have members of the church with us today on the call, if there are
34 any questions, but that concludes our presentation and thank you very much for your time.

35
36 Mr. Carnicelli: Thank you, Ms. Munekiyo Ng. Can you guys hear me? Can you guys hear me?

37
38 Ms. Munekiyo Ng: Yes.

39
40 Mr. Carnicelli: Yes. Okay, great. The only thing is I got cut off just for a second. Did you state
41 your name and promise to be truthful at the beginning?

42
43 Ms. Munekiyo Ng: I did state my name and I do promise and have been truthful. Thank you.

44
45 Mr. Carnicelli: Awesome. Thank you very much. Okay, so Director, has anybody signed up to
46 testify on this particular item?

47

1 Ms. McLean: No, Chair. No one has indicated yet that they wish to testify.

2

3 Mr. Carnicelli: Okay, so if anybody would like to testify on this particular item, please step
4 forward now, unmute yourself and if you also wish, unmute your video as well. Going once,
5 twice, oh wait I see someone, a Karin Phaneuf. Do you wish to testify? No, disappeared again.
6 Anyone else? I give you guys a couple more seconds here if you wish to testify I'll give you the
7 opportunity. Okay, seeing none then if there's no objections, we'll go ahead and oh, okay, she
8 just texted saying she's just listening. So, if there's no objections, we'll go ahead and close
9 public testimony. Seeing no objections, public testimony is now closed. Any questions,
10 comments, concerns from the Commission on this particular application? It's pretty
11 straightforward. Okay, Ms. Furukawa, if you would come back and give us the recommendation
12 from staff, please or from the Department.

13

14 Ms. Furukawa: Okay, So there are no complaints from the public and no filings with the police
15 department. The church is in compliance with all of the conditions of their permit. Therefore,
16 the Department...in the staff report we recommended ten years, but I think we would be okay
17 with 20 years for the time extension of their permit so that it's from May 31, 2020 to
18 May 31, 2040. The Department also recommends that the Maui Planning Commission adopt
19 the Planning Department's report and recommendation prepared for the December 8, 2020
20 meeting as its finding of that conclusion of law and decision order and to authorize the Director
21 of Planning to transmit the written decision in order on behalf of the Planning Commission.

22

23 Mr. Carnicelli: Who would like to so move? We'll go ahead and say the Commissioner Pali
24 moves, seconded by Commissioner Thompson. So moved as presented by Ms. Furukawa...by
25 Commissioner Pali, seconded by Commissioner Thompson. Would you like to speak to the
26 motion? Oh, and by the way, it would be or just to be clear, is it the, the longer time line?
27 That's what your motion is Commissioner Pali. She gives me the thumbs up. Let the record
28 show that that was a thumbs up, meaning affirmative, it is for, and second says the same, so it's
29 for the longer time line. Discussion on the motion?

30

31 Ms. Pali: Yeah, Chair, I think that the church, the way they handle the traffic flow and just, you
32 know, living in the area, I know I'm confident that they've followed all applicable laws. So, I'm
33 okay with the extension.

34

35 Mr. Carnicelli: Great. Would anybody else like to speak to the motion? Seeing none, all those
36 in favor, please raise your hand. Sorry Director, I cut you out of that one. I apologize.
37 Unanimous, 7-0.

38

39 Ms. Munekiyo Ng: Thank you very much.

40

41 Mr. Carnicelli: I guess she had stated the record, so I guess we didn't need to restate the thing,
42 it was then, so sorry. Anyways, but thank you, Ms. Munekiyo Ng.

43

44 Ms. Furukawa: Thank you.

45

46 Ms. Munekiyo Ng: Thank you very much

47

1 **It was moved by Ms. Pali, seconded by Mr. Thompson, then**
2

3 **VOTED: To Approve a 20-Year Time Extension for the County Special Use**
4 **Permit, as Recommended by the Department, as Amended.**
5 **(Assenting – K. Pali, D. Thompson, S. Castro, J. Edlao, M. Hipolito,**
6 **P. D. La Costa, C. Tackett)**
7 **(Excused – K. Freitas)**
8
9

10 Mr. Carnicelli: Director.
11

12 Ms. McLean: Thank you, Chair. Next on the agenda is a proposed findings of fact, conclusions
13 of law and decision and order denying the request for a State Land Use Commission Special
14 Permit by Mr. Gregory Koch, who requested the Special Permit to operate the Hana Panoramic
15 Retreat, a two-bedroom STRH on property located in the State Agricultural District at
16 630 Kapia Road in Hana at TMK: 1-4-011: 041. The Commission may take action to adopt,
17 adopt with modifications or take some other action regarding the proposed findings of fact,
18 conclusions of law, and decision and order. And Ann Cua is covering this item.
19

20 **D. ADOPTION OF WRITTEN DECISION AND ORDER**
21

- 22 **1. Proposed Findings of Fact, Conclusions of Law, and Decision and Order**
23 **denying the request for a State Land Use Commission Special Permit**
24 **(SUP2) by MR. GREGORY KOCH requesting a State Land Use Commission**
25 **Special Permit to operate the Hana Panoramic Retreat, a two-bedroom**
26 **short-term rental home, on property located in the State Agricultural**
27 **District, at 630 Kapia Road, Hana, Island of Maui, TMK: (2) 1-4-011:041**
28 **(SUP2 2018/0006) (A. Cua) (Action on the application was taken by the**
29 **Commission following public hearing at the May 26, 2020 meeting.)**
30

31 **The Commission may take action to adopt, adopt with modifications, or**
32 **take some other action regarding the proposed Findings of Fact,**
33 **Conclusions of Law, and Decision and Order**
34

35 Ms. Ann Cua: Good morning, Mr. Chair, Members of the Commission.
36

37 Mr. Carnicelli: Morning, Ms. Cua.
38

39 Ms. Cua: The Department received this application back in September of 2018, and the
40 Commission, the Planning Commission conducted the public hearing on May 26, 2020. After
41 considering all the evidence that was presented to you, the Commission voted to deny the
42 permit application. We have prepared on your behalf the findings of fact and conclusions of law,
43 and basically you concluded on Page 7, Item 7, you determined that because the use of the
44 property as a short-term rental home would be inconsistent with the agricultural and long-term
45 residential character of the area, it would adversely affect surrounding property, may
46 unreasonably burden public agencies to provide roads and streets, sewers, water drainage and
47 school improvements and police and fire protection and would not promote the effectiveness

1 and objectives of Chapter 205, Hawaii Revised Statutes. The applicant has not met its burden
2 to show that his request meets the criteria for approval a State Special Permit. And basically
3 your decision after hearing the arguments of the applicant, deliberating, looking at the
4 Department of Planning's report and considering the entire record, you voted on May 26, 2020,
5 five ayes and one no to deny the permit requested by the applicant. That's a summary. If you'd
6 want me to go...be more specific and go through all of the items I can, but I...you've had the
7 document and just thought I'd give you a brief summary.
8

9 Mr. Carnicelli: Thank you, Ms. Cua. Mr. Hopper, do we take testimony just because it's or least
10 the opportunity for it just 'cause it's agendized?
11

12 Mr. Hopper: I think this is a closed, contested case hearing. So you normally to not take
13 testimony.
14

15 Mr. Carnicelli: Okay.
16

17 Mr. Hopper: If someone on behalf of the applicant wants to speak, I suppose that they can if
18 they represent them or are the applicant themselves. But generally would not take open public
19 testimony since this is a close contested case.
20

21 Mr. Carnicelli: Got it. Thank you, Mr. Hopper. Is there anybody on the call, either the applicant
22 or represent...representative of the applicant that would like to speak to this adoption of written
23 decision in order? Going once, going twice. Okay, let the record show that we gave the
24 opportunity for the applicant or representative to come forward and speak to this decision in
25 order. So I guess at this point, we can...is Commission do you find that this accurately reflects
26 the record from our May 26, 2020 meeting? Is there any objections to adopting this? Okay, so
27 saying no objections, we'll go ahead and just take it as consensus and we will go ahead and
28 adopt it as presented and written.
29
30

31 **The Commission adopted the Proposed Findings of Fact, Conclusions of Law and**
32 **Decision and Order as presented and written by consensus.**
33
34

35 Mr. Carnicelli: Thank you, Ms. Cua.
36

37 Ms. Cua: Thank you, Chair, Members.
38

39 Mr. Carnicelli: Director.
40

41 Ms. McLean: Thank you, Chair. Next on the agenda is the Director's report, starting with an
42 update from the Temporary Investigative Group of Commissioners La Costa, Freitas, Tackett
43 and Thompson on their review regarding prior permit approvals with intervention, applicable
44 administrative rules relating to petitions to intervene and disclosure of settlement agreements
45 and their proposed amendments to Administrative Rules.
46
47

1 **E. DIRECTOR'S REPORT**

- 2
3 **1. Update from Temporary Investigative Group (TIG) (Commissioners La**
4 **Costa, Freitas, Tackett and Thompson) on their review regarding prior**
5 **permit approvals with intervention, applicable administrative rules relating**
6 **to petitions to intervene, and disclosure of settlement agreements, and**
7 **their proposed amendments to administrative rules.**
8

9 Mr. Hopper: Mr. Chair?

10
11 Mr. Carnicelli: Yes, Mr. Hopper.
12

13 Mr. Hopper: Just to note, 'cause of the Sunshine Law, so what's allowed now is a...is the
14 presentation by the group of what they've discussed and where they're at. You can ask
15 questions of the presenters. You can take testimony on that and ask questions of the testifiers.
16 However, the Commission cannot deliberate or make any decision making on this item today.
17 You can't deliberate it. You can't discuss it. You can ask questions on it and you can receive a
18 presentation from those that were in the investigative group. But you would need to agendize it
19 again to deliberate or make any decisions, such as rule changes at a future meeting.
20

21 Mr. Carnicelli: Okay, thank you, Mr. Hopper. I see Commissioner Freitas isn't here, so either
22 Ms. La Costa, Mr. Tackett or Mr. Thompson, you guys have a presentation, you want to speak
23 to where you're at with the TIG. Commissioner La Costa.
24

25 Ms. La Costa: Thank you, Chair. After several attempts, we were not able to have all four of us
26 available at the same time. So at this juncture, the TIG has not met, but we have been striving
27 to find a time that is convenient for everyone.
28

29 Mr. Carnicelli: Okay. So we basically there's nothing to report because we've yet to convene is
30 the, is that's the report.
31

32 Ms. La Costa: That is correct.
33

34 Mr. Carnicelli: Okay. Is there anybody that would like to then testify on the fact that we haven't
35 met yet? If you'd like to testify, you could unmute yourself. Going once, going twice. Okay,
36 public testimony is now closed on that, and I guess we will go on to the balance of the Director's
37 Report.
38

- 39 **2. SMA Minor Permit Report**

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

- 41
42
43 **3. SMA Exemptions Report**

44 **This is for notification and review purposes. No action is anticipated.**
45
46

1 Ms. McLean: Chair, next we have the SMA Minor and Exemptions Reports. Are there any
2 questions on any items there? It does not appear as if there are any questions.

3
4 **4. Discussion of Future Maui Planning Commission Agendas**

5
6 **a. January 12, 2021 agenda items**

7
8 Ms. McLean: Then yesterday you were emailed the memorandum from Mr. Yoshida with items
9 for your next agenda, which is January 12th. Consideration of a final EA prepared for the
10 Kahului Harbor Project, then hearing the appeals for the Hololani Sandbag Replacement
11 Project. There might be communication items, but those would certainly be the most
12 substantive items for January 12th.

13
14 Mr. Carnicelli: And that meeting we don't have a second meeting.

15
16 Ms. McLean: And that meeting you do not have...well knock wood—

17
18 Mr. Carnicelli: Well, knock on wood.

19
20 Ms. McLean: Oh, you totally just jinxed yourself.

21
22 Mr. Carnicelli: Whoopsie, good bye.

23
24 Mr. Castro: The hat's on too tight.

25
26 Mr. Carnicelli: That is for sure. Is that all for your report, Director?

27
28 Ms. McLean: Yeah.

29
30 Mr. Carnicelli: So, yeah and regular next meeting January 12th. So before we adjourn, I just
31 want to talk about the 4 o'clock meeting is...so actually let me just grab the agenda real quick,
32 and so you guys can kinda get an idea of what my intention is, is--

33
34 Mr. Hopper: Mr. Chair, I don't think you can be discussing your plans for the agenda at
35 4 o'clock today.

36
37 Mr. Carnicelli: Okay.

38
39 Mr. Hopper: Before the 4 o'clock. I mean, you can be general I suppose, but I mean—I think
40 you want to be careful.

41
42 Mr. Carnicelli: In general, if you've got changes bring them specifically that's what I'll just say. If
43 you want changes, you got changes, bring them specifically so we're not sitting there editing
44 and wordsmithing and everything like that all night, you know, bring it, whatever you got, bring it,
45 be able to screen share it or something like, so that's...we'll just leave at that. Is that broad
46 enough Mr. Hopper? Too late now, I've already said.

47

1 Mr. Hopper: You said it, just that's a caution again.

2
3 Mr. Carnicelli: Right, okay. Okay, so at 11:44 a.m., the Maui Planning Commission of what is it,
4 December 8th is now adjourned. We will see you all at 4 o'clock. Thank you very much.

5
6 **F. NEXT REGULAR MEETING DATE: January 12, 2021**

7
8 **G. ADJOURNMENT**

9
10 The meeting was adjourned at approximately 11:44 a.m.

11
12 Respectfully Submitted by,

13
14
15 CAROLYN TAKAYAMA-CORDEN
16 Secretary to Boards and Commissions II
17

18
19 **RECORD OF ATTENDANCE**

20 **Present**

21 Lawrence Carnicelli, Chair
22 Stephen Castro
23 Jerry Edlao
24 Mel Hipolito
25 Kellie Pali
26 P Denise La Costa
27 Christian Tackett, Vice Chair
28 Dale Thompson

29
30 **Excused**

31 Kawika Freitas

32
33 **Others**

34 Michele McLean, Director, Department of Planning
35 Michael Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel
36 Jordan Molina, Deputy Director, Department of Public Works