

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50

**MAUI PLANNING COMMISSION
PORTION OF REGULAR MINUTES
ITEM C.1
MARCH 9, 2021**

Ms. McLean: And the first item that will be heard today, Item C.1, under Unfinished Business is a Motion for Reconsideration submitted by Mr. Gregory Koch, or Koch, regarding the commission's final Decision and Order denying the State Land Use Commission Special Permit to operate the Hana Panoramic Retreat, a two-bedroom short-term rental home on property located in the State Ag District at 630 Kapia Road in Hana at TMK: 1-4-011: 041. And I think Ann Cua is covering this item, and between Ann and Mr. Hopper, they can guide the commission through this process.

Mr. Tackett: Outstanding. Thank you, Director. Thank you, Ann for helping us along the way.

C. UNFINISHED BUSINESS

Pursuant to Chapter 91, Hawaii Revised Statutes, and Maui Planning Commission Rule 12-201-119, no public testimony will be taken.

- 1. MR. GREGORY KOCH submitting a Motion for Reconsideration regarding the Commission's final Decision and Order, denying the State Land Use Commission Special Permit to operate the Hana Panoramic Retreat, a two-bedroom short-term rental home, on property located in the State Agricultural District, at 630 Kapia Road, Hana, Island of Maui, TMK: (2) 1-4-011:041 (SUP2 2018/0006) (A. Cua) (Deferred from the 2/9/21 meeting)**

The Maui Planning Commission held a public hearing regarding the subject application on May 26, 2020, at the conclusion of which the Commission voted to deny the subject application. The Commission adopted its written Findings of Fact, Conclusions of Law and Decision and Order denying the application at its regular meeting on December 8, 2020.

***An Executive Session may be called on this item in order for the Commission to consult with its attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.**

(Item C begins at approximately 00:2:58 of Chapter 1 of the audio recording.)

Ms. Cua: Good morning, Mr. Chair, Members. You last heard this item at your February 9th meeting and we pointed out at that time that the public hearing on this matter was conducted on May 26, 2020. At the conclusion, the commission voted to deny the application. You, you adopted your written Findings of Fact, Conclusion of Law, Decision and Order denying the application at your December 8, 2020 meeting. The Decision and Order was served on the applicant on December 30, 2020. And on January 11, 2021, the Department received the applicant's timely request for reconsideration of the Decision and Order. You met on February 9th and because you did not have the Decision and Order and the attached exhibits you requested or you voted to defer action to allow the Department to send those out to you, which we did, and that brings us to

1 today's meeting. And I did see that Mr. Koch is on the, on the meeting, so that's all the Department
2 has. Thank you.

3
4 Mr. Tackett: All right, Director, what is the, what is the process for Motions of Reconsideration?
5 What is first?

6
7 Ms. McLean: Chair, I could ask Mike Hopper to guide you through this?

8
9 Mr. Tackett: Outstanding. Thanks, Mike.

10
11 Mr. Hopper: Well, at your last meeting I think you did hear from the applicant and they gave their
12 reasons for asking a reconsideration. You have them in writing too. I think the Commission asked
13 to have the Decision and Order and the Rules provided with the record, and I think that was done
14 by link. You had previously voted to adopt a Decision and Order denying the permit. Under your
15 rules, you do have the ability to reconsider that decision if you would like. It's up to you I guess if
16 you want to hear more from, from the applicant, but you did you hear from that the last, last go
17 around. If members...if there are members that did not participate in the original hearing, if you
18 have read the full record, you can participate in this vote. If you have not, I'd advise not
19 participating in this vote and just having the, the other members present...the other members that
20 were present participate, and then a motion for reconsideration if I member would make that, they
21 would, they would say, you know, motion for reconsideration, have a second and then if you do
22 vote to reconsider that would essentially place the application in the same position as it was just
23 before your vote to deny. Again, this is something that under your rules, you would only do under
24 certain limited circumstances because again, you've already made a decision to adopt a decision
25 and order. It says, your rules say, say that the petition for reconsideration must demonstrate
26 some reason why the commission should reconsider its prior decision and must set forth facts or
27 law of a strongly convincing nature, such as would induce the commission to reverse its prior
28 decision. Reconsideration may be justified if, one, there has been an intervening change in the
29 controlling law. Two, new evidence is available, or three, there is need to correct a clear error.
30 And then it says, where the petitioner seeks reconsideration based on the availability of new
31 evidence, that evidence must be, one, previously undiscovered even though due diligence was
32 exercised, two, it must be admissible and credible, and three, it must be of as such a material and
33 controlling nature as will probably change the outcome and is not merely cumulative or tending
34 only to impeach or contradict prior evidence. So, those are your rules. So, you've been asked
35 by the applicant to, to reconsider the decision, and it's up to you if you would like to, to reconsider
36 that. You can vote to deny the motion as well, in which case your decision and order will be...is
37 already the final order on this matter, but that would remain unchanged.

38
39 Mr. Tackett: Go ahead, Jerry. What you got?

40
41 Mr. Edlao: You know, I think I was not party to the original D&O on this matter or even participated
42 originally, and haven't had time even with what was provided for me to review, I didn't have time
43 to see it all, so based on that, I will just not participate in any decisions going forward and just
44 listen to what's going on, and that's it. Thank you.

45

1 Mr. Tackett: Go ahead, Mel.

2

3 Mr. Hipolito: Same as Commissioner Edlao, I feel the same that not being a participant though
4 I've read, what I've read, I do not feel comfortable at this point to be a participant in the decision-
5 making court for today for this topic.

6

7 Mr. Tackett: Thank you, Mel. All right, for the rest of the commissioners, do we...does anyone
8 have more questions about what we have in front of us today? Anybody read anything that seems
9 different or changes your stance on what we have in front of us? Okay, I don't hear anything that
10 needs to be addressed. As far as that seems like most everything was in the record and that not
11 much has changed. Mr. Hopper, is it okay if I call for a motion?

12

13 Mr. Hopper: You...because the last time the applicant was...there was a little confusion as to
14 whether they were able to participate, you may want to ask the applicant if they have anything to
15 add briefly. Other than that, because you've got two members not participating, if my count is
16 correct, you have six members that would participate in this, so you would need five votes in order
17 to grant a motion for reconsideration, and you would need five votes to deny it, so you can...I
18 think you may want to ask the applicant if they have anything to add briefly, just, you know, for
19 the record, but I think you have...you do have a pretty substantial record before you with the past
20 hearing and at the last meeting, they did talk, but you know, if you want to give them an opportunity
21 to add anything, I think that you can.

22

23 Mr. Tackett: Absolutely, I think they put forth this amount of effort, I would, I would like to do that.
24 So, let's go ahead and, and let Greg, Mr. Koch go ahead and let us know whatever you think has
25 come up that's new and or weighs in on this that we may not have considered.

26

27 Mr. Greg Koch: Okay, thank you, Commission Members, and thank you, Staff. Good morning.
28 Yeah, I do hope that everybody has had the opportunity, actually everybody has had the
29 opportunity to fully review the full original presentation, the transcript from the May 2020 meeting,
30 the full letter Motion of Reconsideration, as well as the transcripts from the February meeting.
31 And I, I must admit that I am disappointed, given the opportunity that, that hasn't been done by
32 all Commission Members.

33

34 This is something that I have taken extraordinarily seriously from day one, having started the
35 process more than three and a half years ago. Forgive me, I'm going to refer to some notes. The
36 original Hana Advisory Council that was meeting number one after three visits from County staff
37 to tour the property, to review it, to make sure that it met the qualifications for an ag property and
38 to make sure that it met the qualifications and all the check...the boxes were checked for this
39 application in the first place, then was scheduled, the original Hana Advisory Council meeting and
40 all the neighbor notices were sent by me and that was then canceled in person with me sitting
41 there and people willing to testify on my behalf, including a member of the County who drove all
42 the way from the other side to Hana to participate in that meeting. It was canceled due to lack of
43 quorum. It was then rescheduled, and we sent out neighbor notices once again, and once again,
44 there were no letters of, of discontent for that. However, it was again canceled just a couple of
45 days before that meeting due to lack of quorum. It was then rescheduled again, and this time it

1 was canceled last March because of COVID reasons. And then it was scheduled once again with
2 this body, the Maui Planning Commission last May. It was during that, that same hearing as you
3 will have read in the Motion for Reconsideration that another applicant that had, had two meetings
4 cancelled versus my three was approved and his application was functionally similar to mine in
5 many ways, in fact, pretty much every way. Then there was another...you've had a meeting for
6 the confirmation of the denial in December, as was already mentioned by your counsel. And then
7 we had the meeting in February, in which case that decision was delayed until this meeting. We
8 have this meeting, and then depending on your answer, we will have potentially another meeting.
9

10 So, I have been with a high level of diligence and care and thoughtful consideration, carefully
11 been following every single rule and outline in order to do my best to make sure that I qualify with
12 the property. Sarah and I are well respected in our community for the simple reason that we do
13 things the right way and we treat others with respect. I hope that you did spend the time to read
14 the letters of support that were included in the original application. I know that you were not able
15 to consider the additional 20 letters that were sent in support of this Motion of Reconsideration
16 because of procedures. You're not considering public testimony, even though most of them were
17 for people on our road, our neighbors. I do hope that you were able to read and review the links
18 that I sent in my Motion of Reconsideration so you can understand a little bit about me, and not
19 come to what felt like rather knee-jerk reaction, saying that I wasn't connected to our community.
20

21 As a matter of fact, I'm extraordinarily connected to the community and very careful about being
22 a highly engaged and responsible and interactive community member as we have where I've
23 been in the past, and in Hana. Frankly, I couldn't accomplish the things that I've accomplished if
24 that wasn't the case and I couldn't be recognized for the things that I've been recognized for if that
25 wasn't the case. I do hope that you actually read the materials and understand who it is that is
26 behind this application and how carefully I have made sure to follow everything.
27

28 The owner-occupied tax rate is \$.261 per one thousand. For my property, that's a pretty high
29 number, it's about \$7,000 that I have to pay annually for tax rate. The short-term rental housing
30 tax rate for that same property, for my property is nearly \$30,000. So, so far because of delay
31 I've been saved \$23,000. If it's delayed further, and I need to go through further legal action, then
32 I suppose I may have another \$23,000 worth of annual savings for, you know, a legal defense
33 fund of \$46,000 so far.
34

35 It is a fact, and we know that Maui is hurting badly. Hana is hurting badly. We have an economy
36 that is not well-balanced with the tourism trade. Maui, excused me, and Hawaii are actively trying
37 to encourage people to come for remote working, remote working, can you imagine somebody
38 because, because short-term rental housing is 180 days minimum of rental or otherwise you are
39 in short-term rental housing, can you imagine somebody coming for just three months say, and
40 remote working in a hotel room? That's a little difficult to imagine.
41

42 So, you know, it's been a challenging process, one that I have been willing to go through very
43 carefully, one that I am continuing to be willing to go through, and to make sure that we can come
44 to the right conclusion. So once again, I hope that I can hear from each of you that you have

1 carefully read all and...read and reviewed all of the materials and understand the full depth and
2 perspective of my original application, and of my Motion for Reconsideration. Thank you.

3
4 Mr. Tackett: Thank you, Mr. Koch. Commissioners, anybody have any questions? Yeah, go
5 ahead Dale, and then I'll get you after P D.

6
7 Mr. Thompson: Hey, Greg, are they ever planning on doing the Advisory Committee is that gonna
8 meet quorum ever and be able to hear you? You ever met with them?

9
10 Mr. Koch: That's a great question. That was not something that was asked of the applicant that
11 only had two meetings canceled on him, that same two meetings as me. I had one more canceled
12 on me, that applicant was approved. It is not under my control whether the Hana Advisory Council
13 meets and meets quorum. I can only send a neighbor notices as I have done three times for that
14 meeting, and be scheduled to show up. So, I don't have that control. It was asked post my
15 commentary period, it was openly discussed, well why doesn't the Hana Advisory Council have a
16 chance to ring on this, and of course, with your decision that was prevented. So essentially a
17 decision for Hana in this denial was made by a Commission from the other side that was your
18 purview of course, but the Hana Commission has not had a chance to ring on this. I would
19 welcome that opportunity of course, but that's not the procedure we've been going through, and
20 the reason it has landed to the Maui Planning Commission is because the Hana Commission
21 simply didn't show up.

22
23 Mr. Thompson: ...(inaudible)...Thank you.

24
25 Mr. Tackett: P D., go ahead.

26
27 Ms. La Costa: Thank you, Chair. My commission...my question actually was for Mr. Hopper.

28
29 Mr. Tackett: Sure. Question for you Mr. Hopper.

30
31 Mr. Hopper: Do we want to finish with questions from the...do we want to finish with questions
32 from the applicant first, just from the—

33
34 Ms. La Costa: It is about that, it is about that, Mr. Hopper. My question is, can we defer this back
35 to the Hana Commission and then when we get their input, we re-review this, and ask him if he is
36 amenable to that if we can make that happen?

37
38 Mr. Hopper: I guess you'd have to grant the Motion for Reconsideration, and then you would
39 have to reopen the application and you'd have to send it back to the Hana Advisory Committee.
40 I think we would need a stipulation from the, from the applicant that they...I guess it be a new
41 public hearing is what you'd be doing, and a new notice, and then you would need to...you would
42 need to renote that and that would reset the clock on the automatic approval deadlines which
43 again are stayed because of COVID anyway, but I think your first step would be to grant the
44 motion for reconsideration, and then order that it be set for hearing before the Hana Advisory
45 Committee. So, I mean, the other issue is I don't know if they have quorum, so you'd need to

1 look into that, that issue, but it's a possibility I suppose that you could, you could do that, and I
2 think as part of that, you would need agreement from the applicant based on that, that the
3 maximum time period would start from when the commission rehears it, I think you would want to
4 have that clear, I think that's how it would work as well, but I think you would need that, that clear.
5 Again, that's, that's if you believe that, that's a basis for reconsidering the application.

6
7 Mr. Tackett: Thank you, thank you Mr. Hopper for humoring us on that one. P D, you got anything
8 else?

9
10 Mr. Koch: May I respond to that?

11
12 Mr. Tackett: Right now, we're currently having questions for her? So, let's, let's kind of stick to
13 the process. I've already got one scolding this morning, so, let's just, let's just pull through, but
14 you will get a chance.

15
16 Mr. Koch: Thank you.

17
18 Ms. La Costa: That's where you get the big bucks there Christian.

19
20 Mr. Tackett: Right, thanks P D.

21
22 Ms. La Costa: Mr. Koch, yeah, my question was going to be to you after Mr. Hopper's remarks,
23 is that something in which you are interested? All of us read everything that is submitted to us.
24 We spend hours and this is the latest, and our testimony is highlighted. My concerns still stand.
25 And so, I was trying to find a way to, to open up the process because you feel like you have been
26 wronged. I personally don't feel that way, but you feel as though you have been wronged, and so
27 I was trying to find a way to reach an amenable solution. So, that's my question to you, would
28 you be amenable to that or are you planning to move forward based on what has happened to
29 date?

30
31 Mr. Koch: I would be very amenable as I originally have been and have been all along to, to do
32 it with the Hana Advisory Commission. It's not a problem at all. I will have 30 people show up
33 and testify, give testimony in favor of us. I'd be happy to do it.

34
35 Mr. Tackett: P D., do you have any other questions?

36
37 Ms. La Costa: No, thank you very much, Chair. Thank you, Mr. Koch.

38
39 Mr. Tackett: Thank you, P D. Thank you, Mr. Koch. Commissioners, anybody else got any
40 questions for Mr. Koch? Kellie, go ahead.

41
42 Ms. Pali: Hi, I've got one. Mr....is it Koch or do you say, Koch (Couch) or Koch?

43
44 Mr. Koch: Actually, my family says, Koch (Cook).

45

1 Ms. Pali: Koch, Koch, okay.

2

3 Mr. Koch: We pretty much answer to anything so it's--

4

5 Ms. Pali: All right, well, Mr. Koch, did you find as an applicant that having an advisory committee
6 initially to go through potentially before you reached us, do you find in what you experienced if
7 that was helpful or not helpful as of right now?

8

9 Mr. Koch: The answer is I do not know the...I don't know the answer to that question because
10 the advisory committee never met, so it was that's neither one way or another. We did, you know,
11 have successive scheduling over from I think the original one was set for August, I'm, I'm going
12 by memory August of 2019, then early 2020, then March 2020, which eventually then it got kicked
13 to your body.

14

15 Ms. Pali: So, you don't feel the delays were inconvenient to you or were they convenient?

16

17 Mr. Koch: Well, in retrospect the reality is that they saved me a great deal of money because if I
18 had been approved, I would have had to be paying the STRH tax rate for 2020, even though I
19 would have had, as I stated in my Motion for Reconsideration, my wife and I have been spending
20 full-time at the property. We wouldn't have rented it out or tried nor would we have been
21 successful I think in this environment.

22

23 Ms. Pali: So, you are grateful that they didn't meet and that you got approved because you would,
24 you saved property taxes?

25

26 Mr. Koch: That's...I don't, I wouldn't make any statement one way or the other with you, to be
27 honest with you, because that's all in hindsight.

28

29 Ms. Pali: I'm just trying to clarify what, what you went through, if you found it helpful or not. But I
30 guess you're not, you'd rather not comment, that's okay. All right, last question.

31

32 Mr. Koch: Yeah.

33

34 Ms. Pali: Do you believe that...because you...what I'm, what I'm struggling with, what I'm
35 struggling, I was there at the original meeting and I did really appreciate your thoroughness in
36 your application. And I did sit through a very long discussion, I remember this was a very long
37 discussion, and I feel like the part that I'm struggling with, I also want to say that it's really not fair
38 that the advisory committee made you do a process three times and canceled all three times, I
39 think that's a waste of your time. I think that's a waste of money. I don't know the circumstances,
40 but when you commit to a volunteer position, that's just completely unacceptable. And I will tell
41 you that County Council has made higher expectations for people who serve on boards like us.
42 So, I'm hoping that no other applicant would have to go through what you went through, and so
43 that is not fair, and I'm sorry that you had to go through that.

44

1 But having said that, I also feel like the way you present and I'm struggling because we
2 also...there's rules, there's following rules, and then there's people who just feel like if they do
3 these things, that it's an automatic right to getting it, and if that was the case, we wouldn't have
4 this board because then you would just automatically be granted the permit. And so, I'm just
5 trying to find a way to hearing new evidence that you might have presented this past time that
6 maybe we didn't hear from last year and trying to see if we missed a beat. And just in less than
7 60 seconds, can you just help me and confirm if there was any additional evidence that we may
8 have missed last year because I didn't see that you presented anything new the last time we met
9 for the reconsideration.

10

11 Mr. Koch: So, I would say that I would have to rely on my Motion for Reconsideration and the
12 letter and the details that lay within for everything from the ADTs on the road, which is, of course,
13 Planning Department's speak for average daily trips, the number of cars that are on the road. Let
14 me refer to my notes here, we have approximately 24 parcels on Kapia Road. There are about
15 30 homes, and there's at my best count, approximately 60 adults that means if there's a coming
16 and going average of two times a day, that's a 120 ADTs between the hours of between the hours
17 of 7:00 a.m. and 10:00 p.m. That's an average car every maybe eight minutes on the road. Now,
18 one of the things that was considered in the denial, surmised, openly discussed, and, and I feel
19 honestly to be straightforward imagined is that having somebody at the house would create an
20 undue burden on infrastructure and the roads. I can tell you that I run the road very often for
21 exercise. I have an application called Strava, the counts, you know that tracks all of it, so I can see
22 how I'm doing. I've on the road 67 times, and I encountered an average, takes about 30 minutes,
23 and I encountered an average of between zero and five cars each time I run the road. More
24 typically it's, you know, it's almost never zero, it's almost never five, it's usually two to three, two
25 to three cars in a 30-minute period. It's just a bit of an imagination to think that there is going to,
26 and forgive my straightforward language here, but there is no other way to, to review it that the
27 ADTs are impactful on any level, similarly on the impact on the Hana Highway. And, you know,
28 we have to look at statistics and math, not just, you know, so it felt like it was...and I understand,
29 look it may or may not like me or may or may not like my presentation. Why? I wouldn't
30 understand, except that I do have a characteristic of being a very straightforward person and
31 delivering it that way, but you know, we are well-liked and well-respected by our community, and
32 it's...so, it's been a bit of a mystery to go through this process. I again, I welcome having it go
33 back to the Hana Advisory Committee, so they can actually participate in the decision that directly
34 affects the community of Hana.

35

36 Ms. Pali: Okay, thank you.

37

38 Mr. Koch: Thank you.

39

40 Mr. Tackett: Thank you, Kellie. Thank you, Mr. Koch. Commissioners, do we have any other
41 questions for Mr. Koch? All right, so I believe, I believe what we have in front of us is, is a motion.
42 So, do we have a motion from any of our Commissioners? Yeah, Dale, go ahead.

43

1 Mr. Thompson: Okay, I'd like to make a motion that we defer it to the Hana Advisory Committee.
2 I'm a west side Haole. I've been to Hana plenty of times, but I really don't know, you know, the
3 people, the situation there. Yes, Mr. Hopper?

4
5 Mr. Tackett: I think Dale, we going to have get the proper verbiage from Mr. Hopper. Go ahead.

6
7 Mr. Hopper: I think the first step is you need...you have a Decision and Order that has been
8 adopted in this case. You've made a final decision. What you need to do first is grant a Motion
9 for Reconsideration and state the reasons why you're granting the reconsideration. That would
10 then wipe out your Decision and Order and then you would be in the position before you voted to
11 deny the application. Then I think you could proceed to, to make a decision to send this to the
12 Hana Advisory Committee. I think you should consult with Planning Staff on that as far as the
13 logistics, but I think the first order of business is to determine what in your...in the Motion for
14 Reconsideration you believe was, is the basis to reconsider your decision and essentially cancel
15 the Decision and Order and your previous vote what you can do under rules, but I think that's step
16 one before sending it back to Hana because right now you've, you've got a final decision that
17 you've made. You'd need to undo that decision first and state the basis for, for undoing it, and
18 then, and then go from there, I think.

19
20 Mr. Tackett: Understood Michael. Dale, you understand that? So, you need to motion to, to, to
21 I forgot how he said it, to—

22
23 Ms. McLean: To grant the reconsideration.

24
25 Mr. Tackett: To grant the, yeah, to grant the reconsideration. So, you need, you need to motion
26 to grant the reconsideration and then a second on that for that to move down the road.

27
28 Mr. Thompson: All right, I'll throw that one out there, and see how it sticks. I'd like to make a
29 motion to grant reconsideration.

30
31 Mr. Tackett: And, and what was your reasons for that motion?

32
33 Mr. Thompson: On the evidence that he gave here from letters, et cetera, ...(inaudible)...a hard
34 time...(inaudible)...to the one that we did approve, and again, we didn't hear from Hana. Hana
35 is a very special place. I'm sure they, you know, either the community is going to embrace it there
36 or they're gonna spit out pieces...I just don't have the purview to ...(inaudible)...so, that was my
37 reason.

38
39 Mr. Tackett: Thank you, Dale. Do we have a second for that motion? Stephen, is that the
40 second? All right, we got a, we got the second from Stephen Castro. Care to speak, care to
41 speak to the motion?

42
43 Mr. Castro: Yeah, the reason I'm seconded it, I do feel that in one way it's kind of unfair. You
44 know, having been turned down a couple of times from the Hana Advisory Committee, you know,
45 they should hear Mr. Koch's presentation as to why he wants to proceed with his, his project here.

1 But I think they should meet and somehow, we need to make sure they're able to meet in all
2 fairness to him, you know, and then they can submit their, their decision over to the planning
3 commission for us to make a decision. But I think he needs to be heard and to be canceled out,
4 it's, it's kind of unfair for those reasons that's why I'm seconding.

5
6 Mr. Tackett: Thank you, Stephen. Go ahead Kawika.

7
8 Mr. Freitas: Thank you, Chair. I just wanted to say thanks to the Department for sending us the
9 additional information that I requested and after looking at it, it reconfirmed my original decision.
10 However, I do hear that in today's presentation Mr. Koch shared and wasn't shared with us for
11 some reason that there are a lot of people that are in support. In all of it from the very beginning
12 there's never been one letter or testimony against his project. I agree with Commissioner Castro
13 that he has been treated unfairly again going three times and having his Hana Advisory meeting
14 canceled due to quorum or for whatever reason, I think it's quite unfair. I've been put on a fence
15 on this one so I'd like to hear other Commissioner's thoughts on it because I could change my
16 vote today on this one. Thanks.

17
18 Mr. Tackett: Thank you, Kawika. Go ahead Kellie.

19
20 Ms. Pali: So, there's a lot of things we have to consider, and if I could, I know it's discussion but
21 if I could have Mr. Hopper ask...answer a question. Is it in our legal laws that states advisory
22 committee in Hana has to weigh in before we are capable of making a decision? That's a question
23 that's really important. I get that he was treated unfairly, I acknowledge that and actually internally
24 as a governing body we've made adjustments to make sure people don't get treated this way
25 because everyone's time and money is valuable. There's not one person's time or money that's
26 more valuable than another and it made my stomach sick to think that he wasted so much time
27 and effort and to having to do multiple mailouts just to meet an advisory committee's schedule
28 only to be canceled last minute.

29
30 However, I don't think that that was needed for us to make a decision. I feel like we were
31 presented with all the information that we need, there was transparency there, and we made a
32 decision as a body, and I, unusually so, was not the loudest voice in the original meeting. There
33 were others that were loud on this particular subject. I actually remained quite quiet and listened
34 more on this one that's why I remember it so much. So, you people defend what you put together
35 because here's the issue. I feel the bigger issue if there's new information then let's look at the
36 new information, but if there's not new information then we should be defending what we put on
37 paper, and so like Commissioner Freitas, I'm...I hear him, I get it, but is he entitled to one because
38 he followed all of the rules, maybe, maybe not, Hana is a very special place and the community
39 has already spoken loud, they don't want this kind of activity in Hana. Let it be in Lahaina, let it
40 be in Wailea, let the tourist, I don't want to be offensive here, but let the tourists enjoy parts of, of
41 Hawaii, but let's keep some for, for us and let's mitigate and manage how much go in and out.
42 So, is Hana the best place for this kind of stuff? I think that's what we were all looking at when
43 the vote was a no. And so, I don't think that we would be reconsidering because ultimately,
44 although he did follow all the rules wonderfully, does it automatically grant him that right? No, no,
45 it doesn't. And that's what the law show, unless Mr. Hopper wants to correct me. So, be diligent,

1 be careful, and I don't think the advisory committee is a requirement. I think it's there as sort of a
2 ...it's a representation of the local community on the ground, but if they fail to get it together, we
3 are the governing body. So, we come in and we make the big decisions, but we don't...they're
4 not the scapegoat. We don't pawn it off to them and then use them and say, oh, they said so, so
5 we'll say so. That's not how we operate people. So, anyway, that's just my two cents.

6
7 Mr. Tackett: Thank you, Kellie, I appreciate that. Go ahead, P D.

8
9 Ms. La Costa: Thank you, Chair. I do remember also and concur with Commissioner Pali. That
10 was a long, very detailed and very thoughtful both deliberations and presentation. We talked
11 about a lot of things. And I will reiterate, everybody on this board that is volunteer reads what
12 they're presented so we can make the best decisions. I stand by my decision of denial and I will
13 also do so today. Thank you.

14
15 Mr. Tackett: All right. If there's no more questions, anybody else got any well, anybody else want
16 to speak to the motion? If not, I'm going to, I'm going to call for a vote. All right. All those in favor
17 of, of Dale's motion, please raise your hand. One, two, and thank you. And all those opposed.
18 One, two, three. Thank you. Director, do you have those numbers?

19
20 Ms. McLean: Yes, Chair that was Commissioners Thompson and Castro in favor and
21 Commissioners Freitas, La Costa, and Pali against.

22
23 Mr. Tackett: Correct. Thank you.

24
25 Ms. McLean: Thank you, Chair.

26
27 Mr. Tackett: So that, that motions fails.

28
29 **It was moved by Mr. Thompson, seconded by Mr. Castro, and**

30
31 **The Motion to Grant the Motion for Reconsideration, FAILED.**
32 **(Assenting – S. Castro, D. Thompson)**
33 **(Dissenting – P D. La Costa, K. Freitas, K. Pali)**
34 **(Recused - J. Edlao, M. Hipolito)**

35
36 Mr. Tackett: Could somebody give us another motion please? Go ahead, P D.

37
38 Ms. La Costa: Thank you, Chair. I move to accept the established Decision and Order as
39 presented and signed by the Commission.

40
41 Mr. Tackett: Okay, do I have a second for that?

42
43 Mr. Hopper: Mr. Chair?

44
45 Mr. Tackett: Yeah, Mike, yeah, Mr. Hopper go ahead.

1
2 Mr. Hopper: Just I think the motion may be to deny the Motion for Reconsideration. That will
3 automatically keep your Decision and Order in place 'cause that's already been adopted, but I
4 just wanted to, to note that, maybe that's the appropriate motion here because again, you've
5 already, you've already adopted that Decision and Order.

6
7 Mr. Tackett: Okay, so P D. was that the, the language that you would like to use?

8
9 Ms. La Costa: I will restate my motion to deny the Motion for Reconsideration.

10
11 Mr. Tackett: Thank you. And can I have a second please or do I have a second? Kawika. Okay,
12 we have a motion and a second. Kawika, you care to speak to the motion?

13
14 Mr. Freitas: Sure. I think one thing that Mr. Koch presented in his request for reconsideration
15 was so much about a comparison to another application or applicant that was approved and that
16 kind of bothered me because it is cannot be similar in any way, every single one has its own,
17 should be treated case by case and therefore, it kind of swayed me in the very first time and that's
18 why I asked for this document that we received 'cause then it kinda brought back a lot of what the
19 discussions were and again, I was still in favor of our original vote, but again, I'm kinda concerned
20 about no, no letters of opposition. But in all of that, I agree with Commissioner Pali and that what
21 we ruled on at that time was much clearer, we were in the zone, we knew this presentation inside
22 and out and made that decision and I think we should, we should withhold that decision and not
23 allow this to be reconsidered. Thank you.

24
25 Mr. Tackett: Thank you, Kawika. Anybody else want to speak to this. Okay, hearing none, I'm
26 gonna, I'm gonna call for a vote. All those in favor? One, two, three. Okay, looks like that, looks
27 like that failed as well.

28
29 Ms. McLean: Chair, you should call for the no votes.

30
31 Mr. Tackett: Okay, calling, calling for the no votes please. Oh, okay, oh, two, okay. So, we're
32 three-two again, Michele.

33
34 **It was moved by Ms. La Costa, seconded by Mr. Freitas, and**

35
36 **The Motion to Deny the Motion for Reconsideration, FAILED.**

37 **(Assenting – P D. La Costa, K. Freitas, K. Pali)**

38 **(Dissenting – S. Castro, D. Thompson)**

39 **(Recused - J. Edlao, M. Hipolito)**

40
41 Mr. Tackett: Motion fails.

42
43 Mr. Hopper: In, in this situation, you have no action. So, the Motion for Reconsideration is still
44 there. Again, your Decision and Order that you've already adopted is, is in place. So, that's been
45 your decision, and if there's no action to reverse it, that that stays there, although I would, I would

1 think at some time you would want to address this Motion for Reconsideration. Another option is
2 for the commissioners that did not participate in the, in the proceedings in the past to have the
3 opportunity to review the full record, read it, and then, and decide on the reconsideration. That's
4 legally permitted as long as they have read the whole record and are familiar with everything that
5 would give you a couple of extra members if they're able to do that. The other option would be
6 for the members to deliberate further and decide on a motion that you could get five votes to, to
7 approve. But as it stands, if you don't have five votes to take an action, there's no action on the
8 reconsideration and your final decision in order will stay in place.

9
10 Mr. Tackett: So, I'm not sure if I understood that correctly. So, if, if, if no action is taken, then,
11 then the final the, the final decision from last time stays in place. Is that correct?

12
13 Mr. Hopper: Yes, that's correct. You'd have this bit of an odd situation where you have a Motion
14 for Reconsideration that's been made that you've taken no action on. So, I think the, the advice
15 would be to find a way to take action on that. And if you're several members short, that that's the
16 challenge there that's why you have nine members is so that if you've got all members
17 participating, you'll get a decision. So, that's an option.

18
19 Mr. Tackett: So, what it sounds like to me is that this is something that needs to be rescheduled
20 for another date when we have better participation. Is that you—

21
22 Mr. Hopper: If the other members are able to review the full record and the transcripts and be
23 prepared to deliberate on the, on that, on the item they can vote.

24
25 Mr. Tackett: Are you talking about as we speak or are you talking about in the future?

26
27 Mr. Hopper: Well, today they said they have not been able to do that, so it has to be in the future.

28
29 Mr. Tackett: Correct.

30
31 Mr. Hopper: That's right. That's an option.

32
33 Ms. Pali: Actually, I may chime in? They said that they just opted not to participate. I don't believe
34 I heard them confirming that they didn't read the record.

35
36 Mr. Tackett: All right. Well, let's, let's, let's pose that question to them. Do either of you gentlemen
37 feel comfortable weighing in on this decision at this time? Go ahead, Jerry.

38
39 Mr. Edlao: There's a lotta, lotta material. I tried to get through as much as possible. I didn't,
40 honestly, I didn't even get through one-third of it. You know, I have other things, you know, at
41 work and things like that, and personal stuff, and just didn't find enough time to go through the
42 whole thing. And there's, there's some issues that I wish I was at the original meeting. But I
43 honestly, I just don't feel comfortable doing this because it was just too much—

44
45 Mr. Tackett: That's fine, Jerry.

1
2 Mr. Edlao: --too much.
3
4 Mr. Tackett: Yep, that's, that's a good answer, you know what I mean? That's, that's the right
5 answer, you know. It's good. Everything that, that is done here is, is very important to a lot of
6 people, you know, especially the people that take the time to go through the process. So, I think,
7 I think that's the right, the right answer if that's the case. Mel, Mel, what's your, what's your
8 position?
9
10 Mr. Hipolito: I've read the documents completely, not just once, not just twice, but three times. I
11 am comfortable to vote on it.
12
13 Mr. Tackett: Okay, that being said, let's go ahead and let's go call for a vote one more time, then
14 if that's...Mike, Mr. Hopper, is that, is that, is that something that, that can be done? We have...or
15 do we need a new motion, a new second and then, and then call for a vote.
16
17 Mr. Hopper: I think you need a new motion. Yeah, I wasn't aware that Commissioner Hipolito was
18 prepared to vote. I had assumed that both of those members were, were going to sit out because
19 they hadn't had the chance to review the whole record. If he has, and he's confirming that at this
20 meeting, then I guess you could take another vote on either of those motions to see, to see where
21 you're at. Again, you still need five votes. So, you could attempt that if you like.
22
23 Ms. Pali: Sorry, excuse me, Chair, but Chair didn't vote either. So, if Chair drops his vote in, that
24 could confirm a five either way.
25
26 Mr. Tackett: Okay, so we're open to a motion on the floor. Go ahead, P D.
27
28 Ms. La Costa: I move to deny the Motion for Reconsideration.
29
30 Mr. Tackett: Okay, motion to deny. I need a second? Mr. Freitas has a second.
31
32 Mr. Freitas: Chair, before I say my second, can I say one thing?
33
34 Mr. Tackett: Absolutely, absolutely Kawika, go ahead.
35
36 Mr. Freitas: Because originally, Chairman, I mean, Commissioner Hipolito said he wouldn't, but
37 now that he is gonna vote, I think it's fair to give him a chance to ask a question of Mr. Koch
38 because kind of didn't because he wasn't thinking he was gonna vote. Is that fair to give him at
39 least an opportunity if he has any last questions for the applicant that may make him decide either
40 way?
41
42 Mr. Tackett: I don't have a problem with that if Mel feels he has that need? Go ahead, Mel.
43
44 Mr. Hipolito: I do not have a question for Mr. Koch, but I just to state the reason why I chose to
45 not to participate is because though I've read everything, I felt that the original commissioners

1 who weighed in on the decision and for me to come in from a point that I wasn't part of the original
2 decision, made me feel like I could not participate. But as I listened to my fellow commissioners
3 speak and Mr. Koch, it, it just solidified my...where I was feeling about this whole situation. So,
4 that's where as Mr. Hopper said, that I could weigh in and that's the reason why by law I can come
5 back, and that's the reason why I'm choosing to vote at this, this point.

6
7 Mr. Tackett: Thank you for, for clarification. Appreciate that. Go ahead, Kawika.

8
9 Mr. Freitas: Can I, can I just say thank you to Mr. Hipolito and just to let you know that we were
10 short on commissioners when we made that vote, so by you joining us in this vote it really helps,
11 and I appreciate you stepping up to the plate. I'll second the, P D. La Costa's motion.

12
13 Mr. Tackett: All right, commissioners, we have a motion to deny on the floor and a second. Can
14 I have all those in favor, please raise your hand. One, two, three, four. And can I have all those
15 opposed raise your hand. Two. And I guess, I guess it falls on me. I'm, I'm actually in favor of,
16 of upholding what we originally, what we originally set forth and the reason why I'm, I'm taking
17 that stance is because with, with, without a huge outpouring from the community and I know that
18 there was letters, you know what I mean? ...(inaudible...audio difficulties)...how is that, is that
19 better? Thank you. So, left to what we have to consider, which was the letters and, and what
20 was submitted, just like Kellie said, the majority of what we get from Hana is, is they don't want to
21 be part of, of that sort of thing. So, unless there's something that makes me feel like Hana is
22 together and for it, it, it is difficult for me to, to allow that kind of thing in that kind of small rural
23 community with a good conscience. So, that's, that's, that's my reason for, for voting in favor of,
24 of P D's motion. So, I'm in as well. So, Director, you got that?

25
26 Ms. McLean: Yes, Chair, we have it. Thank you.

27
28 Mr. Tackett: Thank you.

29
30 **It was moved by Ms. La Costa, seconded by Mr. Freitas, then**

31
32 **VOTED: To Deny the Motion for Reconsideration.**
33 **(Assenting – P D. La Costa, K. Freitas, K. Pali, M. Hipolito,**
34 **C. Tackett)**
35 **(Dissenting – S. Castro, D. Thompson)**
36 **(Recused - J. Edlao)**

37
38 Mr. Tackett: All right, thank you everybody, thank you, Mr. Koch.

39
40
41 Respectfully Submitted by,

42
43 CAROLYN TAKAYAMA-CORDEN
44 Secretary to Boards and Commissions II