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**MAUI PLANNING COMMISSION  
PORTION OF REGULAR MINUTES  
ITEM E  
FEBRUARY 9, 2021**

Ms. McLean: Thank you. Chair. The next item is a Motion for Reconsideration, and this is from Mr. Gregory Koch regarding the Commission's Final Decision and Order denying the State Land Use Commission Special Permit to operate the Hana Panoramic Retreat, the two-bedroom short-term rental home on property located in the State Agricultural District at 630 Kapia Road in Hana at TMK: 1-4-011: 041. The Commission held a public hearing on the subject application on May 26, 2020 at the conclusion of which the Commission voted to deny the subject application then 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.

Ann Cua is representing the Department in this matter. I know she will say this in her comments, but I did want to let the Commission know on the advice of Mr. Hopper, testimony cannot be taken on this item as the record is closed. So, there will be no public testimony on this item today. The agenda also notes that the Commission may call an executive session if it needs to.

**E. MOTION FOR RECONSIDERATION**

**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)**

**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 E begins at approximately 01:26:13 of Chapter 1 of the audio recording.)*

Ms. La Costa: Thank you, Director. At this time, Mr. Hopper, should I ask Ms. Cua to present or should we have a motion to go into executive session?

Mr. Hopper: I don't know if executive session would be necessary. I can, I can give you a bit of an overview over what you're doing today and then maybe Ms. Cua can go on as well, but I think, I think most of you, other than Commissioner Edlao, were present at the, at the, the hearing were this just happened. There was a vote to deny a short-term...a State Special Permit for a short-term rental home, and you adopted that Decision and Order. Ms. Cua can go over the, I think, details, but I think important for this meeting today is that you're being asked to reconsider that decision. You're not going to be taking new evidence today or hearing new evidence. What the

1 applicant is asking, is that based on the record that you already have, which would be the hearings  
2 that you already have and the Decision and Order that was adopted, and all the evidence that  
3 you got in that proceeding based on that, they're, they're going to make a case to you that you  
4 should reconsider your decision and I can go over the criteria for a reconsideration, but just before  
5 Ms. Cua went on, I just wanted to make clear the purpose of today is not to take on new evidence  
6 and hear new evidence on this. It's to look at the existing record and decide, based on the  
7 arguments made to you by the applicant who has submitted a letter to you, whether you want to  
8 reconsider that decision.

9  
10 Now, I think all of you are familiar with the record. If Commissioner Edlao has reviewed all of the  
11 materials, read all the minutes and things which are available then he can participate if not, then  
12 he shouldn't participate because this is a contested case...a continuation of a contested case  
13 hearing or at least a, a requested motion as part of a contested case hearing. So, if he has read  
14 the record in this case, then he can participate. If he hasn't had the opportunity to catch up, then  
15 he should not participate. That's what I have for you now. I can go over the criteria for  
16 reconsideration later, if you would, if you'd like, it's in your rules. Again, this was a State Special  
17 Permit which is for a use that's not allowed in the State Agricultural District rather than an STRH  
18 permit. So, it's a little different, but again, you have, you have had the record before you, you  
19 adopted the Decision and Order and are going to be asked to reconsider that decision by an  
20 applicant, so that's what, that's what will be before you today. And if you have questions to me, I  
21 can answer them, if not, you can go on to Ms. Cua with her presentation.

22  
23 Ms. La Costa: Thank you, Mr. Hopper. Commissioner Edlao, before Ms. Cua, go ahead.

24  
25 Mr. Edlao: True, I've only read what was sent to me in the packet. I did not see any other minutes  
26 or the further discussion, so based on that, I'd rather not participate and just be an observer in  
27 this matter.

28  
29 Ms. La Costa: Thank you, Commissioner Edlao. Ms. Cua, would you like to proceed please?

30  
31 Ms. Cua: Yes, thank you, Chair. In addition to what the Director mentioned about when the  
32 Commission conducted the public hearing and adopted your written Findings of Fact, I just wanted  
33 to point out two things. Your Decision and Order was served on the applicant on December 30,  
34 2020, and the Department on January 11, 2021, received the applicant's a timely request for  
35 reconsideration of the Final Decision and Order.

36  
37 The Department did receive written testimony which we will retain. However, because the  
38 evidentiary portion of the hearing is closed, the written testimony was not provided to you. That  
39 is all I have to add.

40  
41 Ms. La Costa: Thank you, Ms. Cua and what you presented to us was the truth?

42  
43 Ms. Cua: Yes, yes, Chair.

44  
45 Ms. La Costa: Thank you, very much. Mr. Hopper.

1 Mr. Hopper: You can ask the applicant then to present the Motion for Reconsideration if you'd  
2 like if the Department's done.

3  
4 Ms. La Costa: Thank you so much. Mr. Koch are you on the call, if so, please unmute your video  
5 and audio. Director, do you happen to see Mr. Koch?

6  
7 Mr. Hopper: Madam Chair?

8  
9 Ms. La Costa: Yes, sir, Mr. Hopper?

10  
11 Mr. Hopper: Why don't I go over the criteria for reconsideration? I actually forgot to say that, but  
12 I should probably address that to you.

13  
14 Ms. La Costa: Please, go ahead Mr. Hopper.

15  
16 Mr. Hopper: Under your rules, Rule 12-201-84, it deals with reconsideration. Here's what it says  
17 in Subsection B, the petition for reconsideration must demonstrate some reason why the  
18 commission should reconsider its prior decision and must set forth facts or law of a strongly  
19 convincing nature, such, such as would induce the commission to reverse its prior decision.

20  
21 Reconsideration may be justified if, one, there has been an intervening change in the controlling  
22 law; two, new evidence is available; or three, there is need to correct clear error. And then it says,  
23 where the petitioner seeks reconsideration based on the availability of new evidence, that  
24 evidence, one, must be previously undiscovered, even though due diligence was exercised; two,  
25 it must be admissible and credible; and three, it must be of such material and controlling nature  
26 as will probably change the outcome and is not merely cumulative or attending only to impeach  
27 or contradict prior evidence. So again, those are your bases that you could reconsider. There  
28 has to be an intervening change in the law and new evidence is available or there is need to  
29 correct a clear error. And again, you generally be going based on the record that you already  
30 have before you, which are the minutes of the meeting and, and the other documents that you  
31 had for your Decision and Order. So, the applicant will have to make that case that they're entitled  
32 to reconsideration.

33  
34 Ms. La Costa: Thank you, Mr. Hopper. Mr. Koch, are you on the call, please? If so, please  
35 unmute video and your audio. Director, do you happen to see Mr. Koch on the call? I don't see  
36 him on the call.

37  
38 Ms. McLean: Chair, I do not. There are a couple of consultants on the call, but I would imagine  
39 if they were representing him they would be speaking up right now. I asked Ann Cua in a direct  
40 chat if she could confirm that he had been notified about the hearing today. I can't imagine that  
41 he wasn't, but just to confirm that. So, if anyone has information in that regard, please, please let  
42 us know.

43  
44 Ms. Cua: Madam Chair, yes, we, we not a written letter to them, but we did notify them by email  
45 that it was going to be scheduled today.

46

1 Ms. La Costa: So, we have confirming that he received it? Was there a receipt or any kind of  
2 acknowledgement by him, her?

3  
4 Ms. Cua: I'd have to check.

5  
6 Ms. La Costa: Thank you, Ms. Cua

7  
8 Ms. McLean: Chair, would you like to in the meantime, move onto just the final matters on the  
9 agenda to wrap that up?

10  
11 Ms. La Costa: Yes, please Director.

12  
13 Ms. McLean: Okay.

14  
15 Ms. La Costa: While we're waiting for Ms. Cua, please proceed. Thank you.

16  
17 **Matter was tabled while the consultant and applicant was contacted as they were not on**  
18 **the line.**

19  
20 Ms. Cua: Yes, I was able to get in touch with Lisa Starr, who's the consultant. She confirmed  
21 that they were both notified. Mr. Koch did not feel that he needed to be here because he  
22 understood that there was going to be no testimony taken, so he didn't think he could really say  
23 anything. So, they're, they're trying to jump on right now.

24  
25 Ms. La Costa: Thank you, Ms. Cua. Commissioner Freitas?

26  
27 Mr. Freitas: Chair, how about we take a break, five-minutes or something while we wait.

28  
29 Ms. La Costa: That sounds like a fabulous idea. It is 10:44 and we will reconvene at 10:55, we'll  
30 give you a nine-minute break or eleven-minute break, sorry, my math's not good, so at 10:55 we'll  
31 see you all back here. Thank you. Thank you, Carolyn.

32  
33 A recess was called at 10:44 p.m., and the meeting was reconvened at 10:55 a.m.

34  
35 Ms. La Costa: We now reconvene the Maui Planning Commission meeting of February 9, 2021.  
36 Ms. Cua will you please proceed for us.

37  
38 **E. MOTION FOR RECONSIDERATION**

39  
40 **MR. GREGORY KOCH submitting a Motion for Reconsideration regarding the**  
41 **Commission's final Decision and Order, denying the State Land Use**  
42 **Commission Special Permit to operate the Hana Panoramic Retreat, a two-**  
43 **bedroom short-term rental home, on property located in the State**  
44 **Agricultural District, at 630 Kapia Road, Hana, Island of Maui, TMK: (2) 1-4-**  
45 **011:041 (SUP2 2018/0006) (A. Cua)**

46

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

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

10  
11 Ms. Cua: Yes. Chair. Elizabeth Starr, who was the contact consultant that we dealt with is on  
12 the call. The applicant, Greg Koch, is trying to get on. I don't see that he is on yet.

13  
14 Ms. La Costa: Ms. Starr would you feel comfortable proceeding without Mr. Koch on the call?

15  
16 Ms. Elizabeth Starr: He's on, he's...hi, good morning everybody. Sorry, for this last minute  
17 misunderstanding. He said, I'm on and hearing them chat. Can't download the app, internet too  
18 slow. He says he's on. Do you see him on, Greg Koch?

19  
20 Ms. McLean: Lisa, he might be calling in. So, there are a couple of phone numbers calling.

21  
22 Ms. Starr: He says, he thinks he's on. He's telling me he's on. I'm on and hearing them chat.  
23 You don't see him. Maybe I need to tell him...he can hear me, okay, so maybe I have to tell him  
24 to unmute maybe that will help. He's not muted. Is, is, have you...is the moderator...do you have  
25 him muted? He says he's not muted and he can hear us.

26  
27 Ms. McLean: He's not listed in the people who've joined the meeting unless he's H. I don't know,  
28 let's try.

29  
30 Ms. Starr: Look for my number, he says, he's got...the number 706-612.

31  
32 Ms. McLean: Okay, yep. Okay, he should be able to talk now.

33  
34 Mr. Greg Koch: Okay, can you hear me?

35  
36 Ms. Starr: Have the technology working for us?

37  
38 Mr. Koch: The system just told me I was unmuted. Hello, everybody.

39  
40 Ms. La Costa: Aloha, Mr. Koch, yes, please proceed.

41  
42 Mr. Koch: Okay, I was—

43  
44 Ms. La Costa: I'm sorry, let me jump in, do you promise everything you say will be truthful?

45  
46 Mr. Koch: Yes, always.

1  
2 Ms. La Costa: Thank you, sir. Go ahead please.

3  
4 Mr. Hopper: Madam Chair? Madam Chair?

5  
6 Ms. La Costa: Excuse me, Mr. Hopper. Yes, please.

7  
8 Mr. Hopper: Yeah, just to be clear for...if Mr. Koch was not on before, the purpose of allowing  
9 the applicant to address is basically for oral argument in favor of the motion. There's no new  
10 evidence being taken which is why there's no testimony allowed, but as the applicant who has  
11 made the motion generally they're allowed some time to present the motion orally and respond to  
12 commissioner questions about the motion. Again, the record's going to be based on what the  
13 hearing that already happened and the Decision and Order that's already been adopted by the  
14 Commission. So there's not going to be new evidence taken, so everything should be addressed  
15 on what's already in the record. I guess part of the reconsideration there can be a request if there  
16 is new evidence that would be relevant although I don't think the actual written motion addressed  
17 that much. I think it was mostly based on saying there was an error that the commission made,  
18 but anyway, the purpose of this is not to take new evidence. It's to hear oral argument from the  
19 applicant on the motion that they've submitted to you.

20  
21 Ms. La Costa: Thank you, Mr. Hopper. Mr. Koch, do you understand what our Corp. Counsel  
22 has just said?

23  
24 Mr. Koch: Yes, I took it to understand that the approximately 20 letters in support of this motion  
25 are not going to be considered including ten from my street itself.

26  
27 Mr. Hopper: Yeah, you will be disregarding any reference to other evidence that's not in the  
28 record right now. That's pretty important at this point.

29  
30 Mr. Koch: Okay, so I apologize to everybody. I was completely unaware that there was a space  
31 and a desire for me to have a testimony, so I'm unprepared to add additional testimony, although  
32 I'm happy to answer questions. But there was nothing in that in the agenda that was sent to me  
33 to suggest that I was going to be calling in for testimony. I'm in a restaurant right now. I'm, I'm  
34 traveling, I flew just over on Mokulele to...I'm in Wailuku as a matter of fact at the moment,  
35 but...and calling in. So, I'm available. I appreciate the reconsideration that may happen, and I  
36 think the evidence speaks pretty well for itself. I'm available for any questions.

37  
38 Ms. La Costa: Commissioners, do you have any questions of Mr. Koch? Commissioner Pali.

39  
40 Ms. Pali: Hi, just to restate it, just in case you...I don't know if you can hear, if you have a good  
41 connection or not, but we are tasked not to look at new evidence, only to see if there was  
42 something that has changed in regards to what was originally denied. And I just don't know, I  
43 have your letter here, but aside from your letter, did you have anything else to add that you feel  
44 was a dramatic change from the evidence presented at the time of the original hearing?  
45

1 Mr. Koch: Okay, thank you for that question. So, I think probably the thing that has changed the  
2 most dramatically would be the amount of time that I and my wife spent on the property. We're  
3 now spending by far the vast majority of our time there and expect to do so going forward because  
4 of the change in the reality of the way the world works with...(inaudible)...or  
5 BlueJean...(inaudible)...and such and I'm required to be traveling a lot less and my property  
6 would be...you know, as I said in my Motion for Reconsideration, I was caught off guard by the  
7 initial question of how much of the year the property would be available for the short-term rental  
8 housing because I was unaware that that one of the criteria that was even being considered one  
9 way or the other but in response to that, you know, I know expect to spend a minimum of 276  
10 days a year on the property. I still don't understand or don't believe that that's actually a criteria,  
11 the number of days per year for short-term rental houses. Maybe specifically because the one  
12 that was approved immediately before me in the meeting that was in in last May which is also a  
13 Hana property that would be ...(inaudible)...for 365, so perhaps that's not actually an issue, but  
14 that would be one thing that has changed.

15  
16 Ms. Pali: Okay, thank you so much. No further questions.

17  
18 Ms. La Costa: Thank you, Commissioner Pali. Commissioners, anyone else have a question for  
19 Mr. Koch? Commissioner Freitas.

20  
21 Mr. Freitas: Okay, thank you, Chair. Sir, can you please say, let us know how to pronounce your  
22 last name? I don't want to mess it up.

23  
24 Mr. Koch: No problem. Many pronunciations for it around the world. My family pronounces it  
25 Koch (Cook), but there really is no wrong answer.

26  
27 Mr. Freitas: Okay, thank you. I didn't want to offend you. Mr. Koch, I do notice that in your letter  
28 to...for us to reconsider, there was a lot of comparison to another application the same day as  
29 yours, and I just want to say that for me, I look at each one individually and I cannot say that you  
30 can compare yours with someone else. I am trying to put myself in your shoes. You have done  
31 great work on, on, on comparing, but I tend to not see the original presentation to see if there  
32 were things that was actually the reason why we chose not to in detail. So, that part was not  
33 given to us. So, I'm just trying to find something outside of a comparison to someone else to base  
34 your reason for us to reconsider, and I can't really find that it's all in comparison with what  
35 someone else had done. Is there anything that you can think of that makes your request stand  
36 out, that you're not comparing yourself to the other property?

37  
38 Mr. Koch: Well, if you're not going to compare to the other property then we can just say that the  
39 responsibility for COVID, you know, basically part of the reason for denial was based upon the  
40 idea that there would be people, and I think I can quote roughly from all over that would come to  
41 Hana and spread COVID around Hana as a result of my short-term rental application. I suppose  
42 new information would be that I, I didn't have an opportunity to express this during the original  
43 thing because I was muted post, you know, there was a lot of conversation post with the Q&A that  
44 I did not have an opportunity to respond to when it was suggested about COVID being an issue.  
45 I would have been glad to respond, but I had no intention whatsoever of renting our house during  
46 COVID. We've been there the entire time so there's no opportunity, and don't plan to rent the

1 house if approved until COVID is concluded successfully with vaccines and you know, the world  
2 opens back up again. So, that that would be potentially a nonissue.

3  
4 Mr. Freitas: Thank you, Chair.

5  
6 Ms. La Costa: Thank you, Commissioner Freitas. Commissioners, any other questions for  
7 Mr. Koch. And thank you again for your pronunciation because I slaughtered your name I think I  
8 said it four different times, four different ways. Commissioner Pali.

9  
10 Ms. Pali: Hi, I just have one more question. It looks like based on the HRS 205-6 and 91-10 it  
11 says that the applicant, which is you, for a special permit bears the burden of showing by  
12 preponderance of evidence that he should be granted a permit to conduct a use not permitted in  
13 the State Agricultural District. Just in a few short sentences, do you feel like your presentation to  
14 us last year did that?

15  
16 Mr. Koch: Thank you. Yes, I very much do believe that I did that was a clear preponderance of  
17 evidence. I very carefully followed every one of the rules and the outlines and crossed all t's and  
18 dotted all the i's and been very thorough with everything. And we also got of course, a  
19 recommendation for approval from County staff. Thank you.

20  
21 Ms. La Costa: Thank you, Mr. Koch. If I might, you mentioned the comparison of yourself to your  
22 neighbors in, in a lot of the narration that you sent to us. And when you specifically said about  
23 number of days if you weren't on the call previously, but we ask every person who applies for a  
24 short-term permit or special use permit how often they are going to be in the home and how often  
25 they anticipate renting it to get a sense of what kind of effect it will have on the neighborhood. So,  
26 while it's not specifically that I can find either the criteria, we, as the Planning Commission are  
27 charged with protecting the county following the laws and hearing what people have to say. So,  
28 that's my two cents, about a number of days that you're there. Thank you. Commissioner Freitas.

29  
30 Mr. Freitas: Question for the Director or Miss Cua. One of the things that Mr. Koch mentioned  
31 was having the Hana Advisory Council hear their case, and can someone share if that was ever  
32 heard by the Hana Advisory Council, and what did they come up with?

33  
34 Ms. Cua: I can comment on that Director, if you'd like? Yeah, so in the staff report that we, we  
35 sent you, we mentioned that we did go, try to go to the Hana Advisory Committee several times  
36 and they either were not able to get quorum or we got, we...COVID happened, and all of those  
37 times the applicant had to do notice, public hearing notice. So, it got to a point where, you know,  
38 we were in COVID and the decision was made by the Department that, you know, we had tried  
39 multiple times to go to the Hana Advisory Committee to no avail, and that, that is why it was  
40 scheduled directly with the Planning Commission. For both, I just want to point out, for both this  
41 application and the other application that was on the agenda at this at the same time.

42  
43 Mr. Freitas: Mr. Koch uses several reasons why it was denied. And there is one that says number  
44 twenty, so there's almost 20 reasons that we gave him that it was denied. Am I reading that  
45 correctly? On the first page, the paragraph that starts in the Planning Commission confirmation



1 of the denial, “20” period, the commission finds. So, does that mean that there are 20 or more  
2 reasons for denial?

3  
4 Individual by the Mary Ann had her audio on and speaking over the Mr. Freitas.

5  
6 Ms. La Costa: Excuse me, whomever has their phone on, please mute yourselves. Mr. Hopper.

7  
8 Mr. Hopper: Oh yes, just for Commissioner Freitas. The document that you adopted as your  
9 Findings of Fact, Conclusions of Law and Decision and Order has number paragraphs, so I don't  
10 know if there were 20 reasons. There were multiple reasons and you can read them in the order.  
11 I don't think they were up to 20 that you had adopted, but there's a variety of reasons in the  
12 Decision and Order that go over the justification for the denial and that was based on the record  
13 and on your, and on your discussion prior to taking the vote. So, you can go over the order. I  
14 don't think there were 20 reasons total. There were several different reasons. They're based on  
15 the criteria and the Commission finding that the permit didn't meet the criteria so you can read  
16 over that Decision and Order. It was adopted on December 8<sup>th</sup>, and so that's something you can  
17 reference, but at the time, you had reviewed that and adopted that as your Decision and Order.  
18

19 Ms. Cua: Chair, could I—

20  
21 Mr. Freitas: Thank you, Mr. Hopper. I was wondering maybe it would have been helpful for us  
22 making this decision to see that. I mean, I have no recollection of what this property looks like,  
23 what was the circumstances for our vote. All we're taking is Mr. Koch's all of his reasons why he  
24 thought it was unfair that he was denied and yet, I can't see a thing from the County. I mean, was  
25 that my responsibility to go dig that back up and go research. It should have been part of this  
26 packet that said, these are the reasons why, and then we can reference back his, his asking us  
27 to reconsider. It's hard for us to make this decision only taking his word. There may have been  
28 ten really good reasons and he gave us three or four that wasn't and we're gonna go based on  
29 this, kinda doesn't make sense.  
30

31 Ms. La Costa: Ms. Cua, did you have something to add too?

32  
33 Ms. Cua: I was going to just respond to the, the question about the number 20. In the applicant's  
34 letter, when he referred to number 20, he's referring to the Decision and Order on Page 5 which  
35 Item Number 20 reads, the Commission finds that because the proposed STRH is located outside  
36 of the Hana Town area and is not located in the Hana urban area, the proposed STRH use is not  
37 consistent with the Hana Community Plan's, Goals and Objectives, and it goes on. You didn't  
38 have 20 reasons. Your reasons were on Page 7. Item number seven, if you want me to read that  
39 to you?  
40

41 Ms. La Costa: Yes, please do.

42  
43 Ms. Cua: The Commission determines that because use of the property as a short-term rental  
44 home would be inconsistent with the agricultural and long term residential character of the area,  
45 would adversely affect the surrounding property, may unreasonably burden public agencies to  
46 provide roads and streets, sewers, water, drainage, and school improvements, and police and

1 fire protection, and would not promote the effectiveness and objectives of Chapter 206, Hawaii  
2 Revised Statutes, the applicant has not met his burden to show that his request meets the criteria  
3 for approval of a State Special Use Permit.

4  
5 Ms. La Costa: Thank you, Ms. Cua.

6  
7 Mr. Freitas: Thank you, Chair.

8  
9 Mr. Koch: I would recommend reading the entire proceedings from the prior meeting, and—

10  
11 Ms. La Costa: I'm sorry Mr. Koch I don't know if that is possible at this time. Mr. Hopper could  
12 you please weigh in on that?

13  
14 Mr. Hopper: The Decision and Order you've already adopted. It's part of the record. I mean, it's  
15 available on line, you can go to your December 8<sup>th</sup> meeting and find, it but I mean, if you want  
16 time to read it, you could defer action on this, on this reconsideration as well. I mean, that's  
17 another option for you, but that's something you already read and adopted as commissioners. I  
18 understand if you don't necessarily remember everything in it, but it's available on your December  
19 8<sup>th</sup> meeting agenda online or it can be emailed to you, but it something that you previously  
20 reviewed and adopted as your Decision and Order. Sp. it's understandable if you don't remember  
21 all of it, but you know, it's up to you if want to take additional time to review that before voting on  
22 this motion. That's your decision.

23  
24 Ms. La Costa: Thank you, Mr. Hopper. Commissioner Pali.

25  
26 Ms. Pali: Chair, are we still in discussion mode at this moment? Are we, are we gonna close  
27 questions to the applicant? I just want to know what part we're at because I have some thoughts  
28 on the matter I'd like to share.

29  
30 Ms. La Costa: Thank you, Commissioner Pali. Mr. Koch, do have anything further to add at this  
31 time?

32  
33 Mr. Koch: Thank you. Yes, I would think that it would be very important to read the full materials,  
34 and your past decision so that you can understand the full context of the Motion for  
35 Reconsideration I had submitted. So, I appreciate your consideration and will await your decision  
36 however long it takes.

37  
38 Ms. La Costa: Thank you very much Mr. Koch. Just FYI, I did read the packet because I keep  
39 everything which is why my office looks like it does, but I thank you very much, and at this juncture  
40 then, Commissioners, questions, comments, thank you. Commissioner Pali.

41  
42 Ms. Pali: So, if we're at discussion, is this, is this, right, discussion period.

43  
44 Ms. La Costa: Yes.

45

1 Ms. Pali: I would just like to share that it would be helpful for the planners moving forward that  
2 when we have something like this come up that they go ahead and reattach any supporting  
3 documents to Commissioner Freitas' point. I just think as volunteers, it's unfair to make us go  
4 and dig through all that stuff. And it's a, it's a real life struggle as a mom to cook, clean, get my  
5 kids online for school, run a business, and then try to dig through paperwork to volunteer. So,  
6 please hook us up and make it easy for us.  
7

8 And having said that, I feel like if there are commissioners that haven't spoken up and don't have  
9 that access to the documents, I don't necessarily feel like we should deal with this today because  
10 I feel like it would be unfair for them to make decisions without adequate information. But even  
11 having said that, I was there at that meeting, I remember it vividly because we were all kind of  
12 just starting to feel the effects of COVID, so it was a really weird meeting, and I remember a lot of  
13 the discussions. I, I, also, and just for discussion purposes, I am hearing and reading his  
14 arguments, but I'm not taking those facts. I'm going back to the meeting minutes and I'm going  
15 back to the decision in order, and I'm taking that as factual, and then just trying to incorporate his  
16 opinion of what he believes facts, and that's a pivotal piece when we're making decisions.  
17

18 So, you know, Commissioner Freitas, you've got great questions, and I thank you for the courage  
19 to ask them, because I think many others are thinking it, but maybe we're not asking it. So, you  
20 help tease that out. But, yeah, I would definitely go back to the record for the facts based off of  
21 someone's hearsay of the facts. Even if we table this, I personally don't know that I would have  
22 any different opinion than what I already displayed that day. And so those are my topics and  
23 discussion points I just would like to express.  
24

25 Ms. La Costa: Thank you, Commissioner Pali. Commissioner Thompson, Commissioner Castro,  
26 any additional comments? Seeing none, may I have a motion from the floor please on an action  
27 on this item? Commissioner Freitas.  
28

29 Mr. Freitas: I move to defer and get more information prior to us making this decision.  
30

31 Ms. La Costa: Do I have a second? Commissioner Pali second. Thank you. All those in favor  
32 of deferring the action on this time, please signify by saying aye...oh, excuse me, Mr. Hopper.  
33

34 Mr. Freitas: Can we discuss?  
35

36 Mr. Hopper: You just may want to clarify to the Department what specifically you're looking for. I  
37 mean, I assume it's the Decision and Order with the attached exhibits, but if there's anything else  
38 that you want it be a good idea to, to let them know. I'd also note that if there Commissioners that  
39 didn't vote on this the first time around, they can go through the whole record and get up to speed  
40 and vote on this item if they would like. Since they weren't part of it, if they want to decline to do  
41 that, they can, but under the rules they would be able to do that if they wanted to, but I think for  
42 now you can ask for what specific information you want. I assume it's the D&O from the past  
43 meeting which had I think everything attached to it, but you can clarify from the Department if  
44 there's anything that's not in there that you would need as part of the record to review.  
45

1 Ms. La Costa: Thank you, Mr. Hopper. So, I presume that that is part of your motion, a friendly  
2 amendment.

3  
4 Mr. Freitas: Yes, Chair.

5  
6 Ms. La Costa: And second, is that acceptable to you Commissioner Pali? Thank you. Before we  
7 vote, discussion on the motion, please. Mr. Freitas.

8  
9 Mr. Freitas: Let my fellow commissioners go first, thank you.

10  
11 Ms. La Costa: Thank you. Commissioner Castro.

12  
13 Mr. Castro: Yes, thank you, Chair. So, if we're going to review this, we won't be reviewing any  
14 new testimony is that correct?

15  
16 Ms. La Costa: That is correct. Only what we have already on the record.

17  
18 Mr. Castro: Thank you.

19  
20 Ms. La Costa: Commissioner Edlao.

21  
22 Mr. Edlao: I will continue to not get involved or review any documents regarding this matter and  
23 making any decision on this matter and just be an observer. Thank you.

24  
25 Ms. La Costa: Thank you for that. Commissioner Freitas.

26  
27 Mr. Freitas: Chair, you know, after reading a lot of document that was turned in, I see a lot of  
28 things that probably would have made me lean toward voting and to be honest at my age, I don't  
29 remember what I voted on this in the first round. But what happens is again, I am not sure what  
30 was presented and I want to make sure that we kinda look at, I mean, it's just going to be what  
31 our reasonings were and what we are here for is to, to reconfirm that the reasons given do fit and  
32 that we still stand by it, and I think without having that document to go with this is not fair to the  
33 County, to the residents as well as Mr. Koch. Thank you.

34  
35 Ms. La Costa: Thank you, Commissioner Freitas. Commissioner Pali.

36  
37 Ms. Pali: May I just ask a question for Corp. Counsel? Just because I think I might understand it  
38 different from what you just said Commissioner Freitas, so I just wanna make sure we're on the  
39 same. I'm not looking at that we're reconfirming a decision. I'm looking at it that was there any  
40 evidence that missed initially that we didn't consider which would cause us to overturn it but I  
41 don't think that we're reconfirming what we're already confirmed. Can you just help dial that in  
42 for me Corp. Counsel?

43  
44 Mr. Hopper: Well, I think, I read the criteria earlier and I mean it was lengthy so I understand if  
45 you don't have...remember all of that, but it's in rule and I had cited the rule, but basically you're  
46 looking at the same record and deciding if either there's new evidence being brought to you that

1 would result...that was not discoverable at the time and that is, that is new to you that's being  
2 presented as part of the Motion for Reconsideration.

3  
4 Additionally, there would be the other criteria was, let me just get that quoted in the rules, there is  
5 need to correct a clear error. So, if you look at your decision and believe that you made a clear  
6 error in the decision based on the record, that's another basis for reconsideration. So, that's,  
7 that's something I think that was discussed in the motion for reconsideration.

8  
9 And then there's been an intervening change in controlling law. I don't think that one is necessarily  
10 applicable, but if you...if there is a change in the law that happens between the time of the decision  
11 and the motion, then you know, someone can ask for reconsideration if the law changed, but I  
12 don't think that was alleged here.

13  
14 So, I think you're, you're mainly looking at new evidence is available that, that would change the  
15 outcome or that, and I think this is probably the clearest one that was in the motion, if there's need  
16 to correct a clear error. So, if you believe that there was a clear error made in the decision, that's  
17 a basis for reconsidering the decision.

18  
19 Ms. Pali: Okay, thank you for that. So, to repeat what I think I heard, we can take based off of  
20 the applicant's testimony, new evidence, but not new testimony outside of what was already  
21 presented, and we are going to be reconfirming what was already done.

22  
23 Mr. Hopper: If the applicant as part of their motion, says, here's new evidence for you and you  
24 believe that you want to accept that evidence, I think that's something you can do. As far as  
25 taking new testimony, the proceedings are closed here, so that's generally something you  
26 wouldn't be doing.

27  
28 As far as the, the clear error, you're looking at what's already in the record, and I mean, they have  
29 the opportunity to go through that record and show to you things that they believe that the  
30 commission decided that was in error and give you the opportunity, if you believe it was an error,  
31 to, to vote differently or correct that error. So, those are your considerations.

32  
33 And I think that if you, if you do vote to reconsider, then you're basically put back in the same  
34 position that you would be just prior to the vote on the motion so you could decide if you want to  
35 allow new public testimony, you decide if you want to take additional evidence or hear additional  
36 things or you could just decide to vote because brings you back to the place that you were just  
37 prior to the decision.

38  
39 So, I think those would be your bases to look over that, and in the rule, again, is in your  
40 commission rules, it's 12-201-84, and so that's a...and it's generally not just giving them a second  
41 crack at a decision, it's mainly to see if there's error, there are errors that were made or that there's  
42 some new evidence that they've brought forward. But I think for now you can decide if, you know,  
43 what specific information you want as part of your deferral, and at the next time this is heard, you  
44 can, you can make a decision.

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46 Ms. Pali: Okay, thank you. And last question, Chair, if I may?

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Ms. La Costa: Go ahead.

Ms. Pali: In the testimony that he provided for the reconsideration, he does have a lot of language about COVID, COVID, COVID, but when we actually, when the planner, staff planner read the actual reason there wasn't mention of COVID, and so, am I accurate in defaulting to the facts, although there might have been discussion during the meeting about COVID, ultimately what was read into the record on the Decision of Order...in Order, it didn't specifically name COVID, so we would defer to the Decision and Order and minutes for factual information as to why it was denied, yes or no?

Mr. Hopper: Yes, the Decision and Order that you adopted, that's the document that sets forth the basis for your decision. So, there may have been other things discussed orally. Those are sort of condensed into the Decision and Order. That's what your decision is. And if there is an appeal at some point, that's, that's something that's going to be looked at. I mean, the rest of the record may be considered, but your Decision and Orders is really what's your basis is for the decision that you made. Now, again, if you want to look at reconsideration and adding something to that or correcting something in there that you, you believe was incorrect, that's a that's another thing you can do, but your Decision and Order is going to be your basis for making your decision rather than necessarily comments that you made orally.

Ms. La Costa: Thank you, Mr. Hopper. May I call for the question please? Director.

Ms. Cua: Can I make a comment?

Ms. McLean: Ann Cua wanted to make a comment.

Ms. La Costa: Thank you, I'm sorry, Ms. Cua.

Ms. Cua: Just, just really quick. So, the Decision and Order that you signed, which will be sent to you, also has attached as Exhibit A, the Department's staff report and recommendation, Exhibit B was the power point that the applicant presented to you at the meeting, and Exhibit C is the minutes. So, I think that's gonna give you everything that you would everything that you would need and that was all attached to the Decision and Order. So, we'll send all of that to you again.

Ms. La Costa: Thank you, very much. Director.

Ms. McLean: And we will also include the rules, the excerpt that Mr. Hopper noted, the criteria for reconsideration so that you have that in front of you.

Ms. La Costa: Thank you so much. Commissioner Freitas.

Ms. McLean: The motion on the floor is to defer taking action on the Motion for Reconsideration.

Ms. La Costa: So, till everything that you are gonna send us has been received, right and then you'll agendize it?

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Ms. McLean: Correct.

Ms. La Costa: Thank you. So, motion on the floor to defer the item before us. All those in favor, please say, aye or raise your hand. There will four, I will add mine as five, so we have a majority. So, the item has been deferred to the future.

**It was moved by Mr. Freitas, seconded by Ms. Pali, then**

**VOTED: To Defer Action on the Motion for Reconsideration and Provide the Members the Decision and Order with the Attached Exhibits which includes Exhibit A, the Department’s staff report and recommendation; Exhibit B, the Power Point from the Applicant which was presented at the meeting; and Exhibit C, the minutes of the meeting when it is rescheduled. Section 12-210-84 of the Commission’s Rules will also be provided to the Members.  
(Assenting – K. Freitas, K. Pali, S. Castro, D. Thompson,  
P D. La Costa)  
(Recused – J. Edlao)  
(Excused – M. Hipolito, C. Tackett)**

Respectfully Submitted by,

CAROLYN TAKAYAMA-CORDEN  
Secretary to Boards and Commissions II