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**MAUI PLANNING COMMISSION
PORTION OF REGULAR MINUTES
ITEM C.1
SEPTEMBER 8, 2020**

Ms. McLean: Thank you, Chair. There is one public hearing item on the agenda today, and that is a request from Ian Hollingsworth for a Land Use Commission Special Use Permit in order to operate Pau`Ole Makai, a two-bedroom short-term rental home in one dwelling in the State Agriculture and County Agricultural Districts on 2.36 acres of land located at 95 Awiku Street in Lahaina at TMK: 4-7-009: 067-0002 and Kim Willenbrink is the project planner.

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

1. **MR. IAN HOLLINGSWORTH, requesting a Land Use Commission Special Use Permit in order to operate Pau`Ole Makai, a two-bedroom short-term rental home in one dwelling in the State Agricultural and County Agricultural Districts on 2.36 acres of land located at 95 Awiku Street, Lahaina, Island of Maui, TMK: (2) 4-7-009: 067-0002. (SUP2 2020/0004) (K. Willenbrink)**

Ms. Kim Willenbrink: Good morning Mr. Chair. I hope everyone can hear me. Good to see you, Members of the Planning Commission. Welcome, Commissioner Edlao and Commissioner Hippolito. My name is Kim Willenbrink, Kimberly Willenbrink, and I just want to say I am so happy to be back before this body. I had some time off on the mainland for a family matter, and I am just so pleased to be back, and I just want to say, this Department has stepped up to the plate with all of these things going on and the technology may be sketchy at times but I just, I'm just so impressed and I just want to say that to everyone.

The applicant, Mr. Ian Hollingsworth, built his home in 2006 where he and his wife and three children resided. They now live just two short blocks away. Today, Ian is seeking a State Special Permit in order to operate a short-term rental home. This permit is being brought to you today because you are the deciding body for State Special Permit requests. Ian has also applied for an STRH permit, but there were no triggers to bring that permit before this body, so it will be approved administratively dependent upon your decision today.

Ian previously held permits for this property, but he forgot to submit his renewal application. He contacted the Department when he found this out and we started working with him immediately on this, and that is why he is here today.

There are two requests for services recorded for this property. One was in 2018 and one was in 2020, and both of these have been closed with no violations. The property has an implemented farm plan. It was first approved in 2005 and has since been approved again, and a site inspection to verify the existing agricultural operation was conducted by myself and another ag Current planner. on June 25th. Mr. Hollingsworth, I believe is here, and I do know his consultant, Denise Tjarks is here today, and they will talk more about the Ag operation during their presentation.

Previously, the entire area was used for sugar cane cultivation and grazing. You probably know the area, its land classifications of B and E and E being the worst, and without proper irrigation,

1 the entire area would likely be pasture due to its arid and dry nature. However, it has been
2 developed and supplemental irrigation is mandatory which the applicant has.

3
4 In the area within 500 feet there is one STRH in operation currently and has been for several
5 years. This body approved that. There were no comments submitted by State and County, and
6 there've been no complaints by the Police Department. The Department did receive one letter of
7 opposition from a neighboring property. And that's what I have to say in my opening remarks. If
8 there are no objections, I will invite Denise, the consultant, to take the screen for the presentation.

9
10 Mr. Carnicelli: Thank you, Kimberly.

11
12 Ms. Willenbrink: Okay, Denise, are you there?

13
14 Mr. Carnicelli: Go ahead, and unmute yourself, Denise and if so, if you wish, also unmute your
15 video.

16
17 Mr. Hopper: Chair, you should...I'm not sure if we swore in the Planner also, just as a reminder.

18
19 Mr. Carnicelli: Oh, okay. Ms. Willenbrink was your presentation truthful?

20
21 Ms. Willenbrink: My presentation was truthful. Thank you.

22
23 Mr. Carnicelli: And do you promise everything you say going forward will be truthful?

24
25 Ms. Willenbrink: I do promise that. Thank you.

26
27 Mr. Carnicelli: Great. Thank you. Ms. Tjarks.

28
29 Ms. Willenbrink: Do I mute myself during this time?

30
31 Mr. Carnicelli: Yes, please. So, Ms. Tjarks, I can see that your audio is muted. You're going to
32 need to unmute yourself, please. Unmute yourself in the BlueJeans app maybe not necessarily
33 on your device.

34
35 Ms. Willenbrink: I know we had a practice run not this morning, but a couple of days ago. I could
36 call Denise if you would like?

37
38 Mr. Carnicelli: See, now I see that her video and our audio is muted. Carolyn, can you, can you
39 control that, can you unmute her please?

40
41 Ms. Denise Tjarks: Hello.

42
43 Ms. Takayama-Corden: There you go. It's on.

44
45 Ms. Tjarks: Can you hear us? Okay, we called in on a phone line.

1
2 Mr. Carnicelli: Okay.
3
4 Ms. Tjarks: Okay and then I'm going to switch over to our PowerPoint.
5
6 Mr. Carnicelli: Okay, see if you can do a share screen.
7
8 Ms. Tjarks: Yeah.
9
10 Mr. Carnicelli: But your video is, your video is, is muted in the system as I'm looking at it.
11
12 Ms. Tjarks: Okay.
13
14 Mr. Carnicelli: So, you're going to unmute your video I'm assuming unless you can do a share
15 screen with your video on mute, try.
16
17 Ms. Tjarks: Okay. Any luck?
18
19 Mr. Carnicelli: No.
20
21 Ms. Tjarks: Yes?
22
23 Mr. Carnicelli: No.
24
25 Ms. Tjarks: Okay.
26
27 Ms. Willenbrink: Chair?
28
29 Mr. Carnicelli: Yeah.
30
31 Ms. Willenbrink: I'm not sure how this would work, but I do have the presentation minimized right
32 here on my desktop. If we need, I can pull that up. I'm not just sure how that would work.
33
34 Mr. Carnicelli: That's fine. And then she can just tell you how to do...when to advance the screen
35 if we can get it up.
36
37 Ms. Willenbrink: Do you want me to want me to try the share screen?
38
39 Mr. Carnicelli: Yes, please.
40
41 Ms. Willenbrink: Okay. What do you see?
42
43 Mr. Carnicelli: We see the full thing. If you want to go to presentation mode that might be a little
44 bit better...I mean, this is enough, but if you want to go presentation mode it might do a little bit
45 better. Ms. Tjarks, can you see the screen? Can you see the presentation?

1
2 Ms. Tjarks: Not right now, I'm getting there shortly.
3
4 Mr. Carnicelli: No, can you see our screen, our screen share 'cause Ms. Willenbrink has brought
5 up your presentation on our screen.
6
7 Ms. Tjarks: Okay.
8
9 Ms. Willenbrink: When I go to from beginning it switches over to my other screen, let's try this
10 'cause I have the dual monitors.
11
12 Mr. Ian Hollingsworth: Sorry guys, we lost everything.
13
14 Ms. Tjarks: We did. It's coming.
15
16 Ms. Willenbrink: This is the best I have.
17
18 Mr. Carnicelli: Ms. Willenbrink you're no longer sharing.
19
20 Ms. Willenbrink: Oh.
21
22 Mr. Carnicelli: I don't know if it's up, but your screen share stopped.
23
24 Ms. Willenbrink: Okay.
25
26 Mr. Carnicelli: Unless it was Ms. Tjarks trying to do the screen share.
27
28 Ms. Willenbrink: Now where's the presentation. Sorry about this. Can you see it now?
29
30 Mr. Carnicelli: Yes.
31
32 Ms. Willenbrink: Okay, that's about the best I can do from this end.
33
34 Mr. Carnicelli: There we go. No, okay so that's good. So, let's just start there. Ms. Tjarks, can
35 you see our screen?
36
37 Ms. Tjarks: Yes, we can.
38
39 Mr. Carnicelli: On BlueJeans, and you can see Ms. Willenbrink is sharing your slideshow
40 presentation?
41
42 Ms. Tjarks: Okay, so this just our launch page here. This is a view of...wait a minute, I have two
43 audios. Am I echoing?
44
45 Mr. Carnicelli: Yes. So mute one of them please.

1
2 Ms. Tjarks: Going to disconnect from the phone. No, wait how's that? ...(audio feedback)...
3 Can you hear me now?
4
5 Mr. Carnicelli: Yes.
6
7 Ms. Tjarks: Yes, you can hear me?
8
9 Mr. Carnicelli: Now we can hear you. All right. Let's go—
10
11 Ms. Tjarks: Okay, great. I apologize for that. And we can't hear you, of course, trying to turn you
12 up. Okay, so here you can see this is a view from Pau`Ole Makai and we'd like to share with you
13 the beauty of Launiupoko as we have done with guests in the past two and a half years, three.
14 Okay, Kim can click on the next. This is our project team. These are all the people, well the
15 majority of them that help make it work. We have Ian and his family, and we have a property
16 manager, which is Ian. He lives in the community and he's available 24/7. We have a guest
17 relations manager, Katrina Segovia, and she helps with our reservations, any issues that might
18 come up. She's available 24/7 as well. We have additional support teams for Go Pro Cleaning
19 who provide a clean environment for our guests. We have Eco Blue which they provide all the
20 landscaping services on our property. And then we have Aquapuko which is our pool service
21 company that comes in and cleans the pool on a monthly basis, weekly, I'm sorry. Weekly. Okay,
22 next slide, please.
23
24 As you know, we were previously permitted for a short-term rental back in August of 2016, and
25 we received both permits, short-term rental and the special use permit. During that during the
26 operation, we have paid approximately \$30,000 at least in real estate taxes. I think when I looked
27 at it, I'm sorry, the screen is not updated, it's over 30,000. Actually, each year we pay \$20,000 in
28 property taxes, ten each half, and we've continued to pay the short-term rental property tax rate,
29 even though right now we are not operating at that classification for our property. We have
30 contracted with service providers and contributed \$28,000 to our local economy last year. That's
31 what we've paid to Aquapuko, the cleaning service. This would be our prior year, I'm sorry, Eco
32 Blue. Actions that we took once we realized the permit had expired. All advertisements were
33 taken down and existing reservations were contacted and suspended. Next slide, please.
34
35 This shows the property, location and the details. Next slide, please. As you can see on the left-
36 hand side, you can see the tax map key and the green arrow is pointing to the neighborhood of
37 Launiupoko. On the right-hand side, you can see a plat map which shows that we have a flag
38 pole lot where the short-term rental is located. It is a condominiumized lot. Awiku Street runs at
39 the tip of the flag pole. And next, you can see this is an aerial view of Pau`Ole Makai, and below
40 it is the condominium main house. Mauka side which would be to the right of your screen is the
41 other short-term rental. It is a cottage that sits on Awiku, and then there is also a main house on
42 that condominiumized lot. Okay, next screen please.
43

1 Here are the property details, we again are located at 95 Awiku. You heard our TMK, and that
2 was previously permitted in 2016, and you can see this is the front entrance. As the guests arrive
3 at the property this would be the house. Next slide please.
4

5 Here is the site plan. It's kind of a...it's a blue print from when the property was developed, and
6 you can see I have outlined in gold, the rectangular box of the short-term rental, and then when
7 you see flag pole drawing down below coming off Awiku, that's just a long driveway. I just wanted
8 you to see the site plan, and this was submitted in our application. Next you see the entry to the
9 lot and the home, and again you have a parking plan on your left-hand side. Next, we have an
10 interior of the home and you can see the pictures of the living room on your left. We have a
11 kitchen, we have that...a master bath that's actually shared with the house, and at the bottom of
12 your screen, you'll see there is a couch here. Here's the interior of the home, these are the
13 bedrooms. Next, please. Here's our actual floor plan of the home. Next slide, please.
14

15 Now we're getting to the agricultural use of the property. Here is the farm plan that was approved
16 and has been implemented. As you can see, there's hatch marks and delineations for the different
17 plantings throughout the property, there we go. Bring it a little more into focus. Okay, next slide,
18 please. Here's an example of some of the agricultural uses. We had a family, coconut harvest,
19 and here's Ian's children learning how to garden. It's showing the gardening area. The neighbors
20 who do stay in the property have access to all of this fruit. You see there's limes here on the left-
21 hand, there's lemons on the right, and there are banana trees on the border of the property, and
22 this produce is shared with, again, the short-term renters as well as neighbors and the community.
23 Here's an example of some of the foliage, the palms, and plumeria. And again, on the left-hand
24 side shows your square footage of all the different varieties of ag plants that we have. We have
25 sweet potatoes and Areca palms, palm varieties, citrus, we have hens which I think you'll see
26 shortly, coconuts, citrus as well as flowers that we use in the property to decorate the short-term
27 rental when guests come in as well as we also have a truck garden with rosemary, sage, basil,
28 chives, oregano, dill, cherry tomatoes, cucumbers, zucchini, squash, and watermelon. Next slide,
29 please. Here's an example of our chicken operation. Next slide, please. Here's Ian and his
30 family. Next slide, please. You can see we have laying boxes. We also have our own little
31 cartons with a little sign with aloha from the hens from the Hollingsworth's.
32

33 Next, we have a letter testimony...ag use of the land. This was just a friend of the family who has
34 exhibited their thanks for the produce that she's received from them. Next slide, please. Here is
35 additional letters of testimony about the ag use of the property. I'm not going to read these, I think
36 we could probably go through them and you could read them at your leisure, but you can see
37 Mark and Steve. Here's Wendy and Hayden Pogni and ...(inaudible)...have known them for over
38 13 years. Okay, this is a letter from Helen Hunt, who has the short-term rental at the front of the
39 property that joins ours, okay, and Cindy and Ray Cook.
40

41 One of the things I thought I wanted to share with you today, but it doesn't seem...Kim could
42 you...I had some guestbook comments. I think one of the things I really would want to share and
43 I can send them to...the slides to you is that we've had returning guests come to the property and
44 share their experiences and how much it meant to them. One was a family who came spent time
45 in a more intimate setting where they could enjoy spending time with the family and not be in a
46 commercialized setting. I think it was really important that to share that with you and how much

1 we're appreciated by the guests, and I will go ahead and send those slides to you separately or if
2 you want to see them, I can pull them up and maybe Kim can share them later. You can go ahead
3 and go on, please.

4
5 Next, Kim's already addressed the resolved issues, the unfounded complaint in 2020, as well as
6 ...(inaudible)...so those were closed issues, and this is all we have for you to hear today.

7
8 Mr. Carnicelli: Thank you, Ms. Tjarks. Ms. Willenbrink or Director, do you have anything you
9 want to add before we open it up for public testimony?

10
11 Ms. McLean: No, I don't have anything to add.

12
13 Ms. Tjarks: Kim, can you pull the...we can't hear. There we go. Can you hear?

14
15 Mr. Carnicelli: Yes, we can hear you.

16
17 Ms. Tjarks: Okay. Sorry Lawrence.

18
19 Mr. Carnicelli: Do you have something else...Did you have something else you wanted to add?

20
21 Ms. Tjarks: No, we're fine. I just...we can't hear you very well. I apologize.

22
23 Mr. Carnicelli: Oh, okay. Okay. Am I soft again because I know before I was soft, so okay. Ms.
24 Willenbrink, I think that it's only fair before we take up public testimony because it's normally part
25 of our packet and it's not, can you please tell us what the two RFSs were for before we open it up
26 for public testimony in 2018 and 2020, we had two RFS, what were they for?

27
28 Ms. Willenbrink: Yes, let's see.

29
30 Mr. Carnicelli: I know, I know you said there was no violations, but I just want to know what they're
31 for before we take public testimony, because I think—

32
33 Ms. Willenbrink: Okay.

34
35 Mr. Carnicelli: --it's relevant.

36
37 Ms. Willenbrink: On Page 2 here, there was one in 2018, RFS 181051 and discovered online
38 advertising for a three-bedroom rental related to the STRH, and then there was a site inspection
39 and the garage had been converted to a bedroom, subsequently the owner returned the garage
40 to its original state according what the inspector requested and the owner was not cited with a
41 violation.

42
43 Mr. Carnicelli: Next.

44
45 Ms. Willenbrink: The second was, sorry, the second one was more recently, this
46 happened...came in July, RFS 201110, there was anonymous complaint that the owner held a

1 three-day party resulting in multiple COVID-19 cases. Upon inspection the inspector went out
2 and I also did some verifications myself, the Department verified the property was not associated
3 with that COVID-19 cluster. There may have been a gathering on the property, as suggested in
4 the inspector's report, however, the circumstances were unsubstantiated and so that permit was
5 closed. And I just I don't know what any intended...any further action would be on that, except
6 that it was shown that that was not the party that was reported, and I think a lot of us heard about
7 that in the newspaper in such. That's what I have on those.

8
9 Mr. Carnicelli: Okay, thank you. And I will give either Ms. Tjarks or Mr. Hollingsworth a chance
10 to address those after public testimony if they so choose.

11
12 Ms. Willenbrink: Right, okay.

13
14 Mr. Carnicelli: Thank you, Ms. Willenbrink. Director, did anybody sign up to testify on this
15 particular item?

16
17 Ms. McLean: No Chair, no one has signed up through the chat function.

18
19 Mr. Carnicelli: Okay, so if anybody would like to testify on this particular item, please unmute
20 yourself, and if you so choose unmute your video as well.

21
22 Ms. Kai Nishiki: I'd like to testify.

23
24 Mr. Carnicelli: Okay, please identify yourself for the record.

25
26 Ms. Nishiki: Good morning, Chair Commissioners. My name is Kai Nishiki. I'm testifying against
27 –

28
29 Mr. Carnicelli: Ms. Nishiki...hang on, hang on, hang on, Ms. Nishiki do you promise to be truthful?
30

31
32 Ms. Nishiki: I do.

33
34 Mr. Carnicelli: Okay, you have up to three minutes to testify on this particular item.

35
36 Ms. Nishiki: Thank you. I'm testifying against approval of any further short-term rentals in West
37 Maui. I believe that the CPAC sent a letter dated October 1, 2019 asking the Planning
38 Commission to not approve any new visitor accommodations. In the applicant's submittal there
39 are numerous references to the visitor industry in West Maui from the previous or from it's the
40 current plan. However, the draft plan has strong language against short term rentals and the
41 references made to the visitor industry in the submittal the visitor industry does not support short,
42 short-term rentals, and when it says, in the CPAC plan, we have policies 2.4.3, that no additional
43 visitor units except for B&Bs shall be permitted in West Maui until an equal number of workforce
44 housing units are concurrently developed in the same sub area. And there are two action items,
45 2.5.08 to phase out short-term rental use, and 5.09 to proposed revisions to incentivize long-term
46 rentals and discourage short-term rentals. The West Maui community has spoken loud and clear
that we don't want any more short-term rentals. They are detrimental to our residential

1 neighborhoods, and it's a lovely home, and there are lots of residents who would, and need
2 housing. So, please don't approve any more short-term rentals. Mahalo.

3
4 Mr. Carnicelli: Thank you, Ms. Nishiki. Is there any need to clarify her testimony? Seeing none,
5 thank you very much.

6
7 Ms. Nishiki: Thank you.

8
9 Mr. Carnicelli: Director, has anybody signed up?

10
11 Ms. McLean: ...(inaudible)..., Chair.

12
13 Mr. Clint Hansen: I'll testify.

14
15 Mr. Carnicelli: I'm sorry who is this is that said, I will testify?

16
17 Mr. Hansen: This is Clint Jansen. I'm here actually to testify on D.1, but I can also testify on this.

18
19 Mr. Carnicelli: Okay, Mr. Hansen, do you promise to be truthful?

20
21 Mr. Hansen: Absolutely.

22
23 Mr. Carnicelli: Okay, you have up to three minutes.

24
25 Mr. Hansen: This is Clint Hansen, Maui Luxury Real Estate. I've sold and helped people
26 purchase multiple properties up in the Launiupoko area. From my understanding, this particular
27 property had a lapse in their license associated with vacation rentals. I think because of the lack
28 of notification processes that are in place that it shouldn't necessarily be just a cancellation of the
29 system. They should...unless they have a major violation in place, they should be allowed to
30 maintain their status. And I don't see any violations, they have continued to pay their taxes on
31 the property at the accelerated rate. And unless there is a noted severe impact on the
32 neighborhood or a complaint, I don't see any reason for it not to go forward. That's it.

33
34 Mr. Carnicelli: Great. Thank you, Mr. Hansen. Is there any need to clarify the testimony? Thank
35 you very much, Mr. Hanson, I appreciate it. Would anybody else like to step forward and testify
36 on this particular item?

37
38 Ms. Roxanna Smith: I would like to testify.

39
40 Mr. Carnicelli: Okay, please identify yourself.

41
42 Ms. Smith: My name is Roxanna Smith.

43
44 Mr. Carnicelli: Hi Ms. Smith, do you promise to be truthful?

45
46 Ms. Smith: I promise to be truthful.

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Mr. Carnicelli: Great, you have up to three minutes on this particular item.

Ms. Smith: I've lived on Maui for 50 years. All my children and grandchildren are born and raised and currently reside here on Maui. I'm very much against any more development of short-term rentals. The residents of Maui need to have housing, affordable housing before we can take in more tourists, wealthy tourist that drive up the cost of living for all of us who are maybe struggling day today to keep a roof over our head, especially in these Covid times and food on the table. I have been keeping an eye on the rentals just out of interest because I am a renter. I have never owned any property, and it seems like there's a lot of furnished apartments and houses and condos that are up for rent now, and I can only assume those are the short-term rentals or vacation rentals that aren't being occupied because of the restrictions.

And the rents are still kind of high on most of them, but it is opening up housing to the residents that need housing so desperately and therefore, I am against any more short-term rentals. I think tourists belong in hotels and it's my opinion that if they can't afford to stay in a hotel, maybe they shouldn't be coming here, and that's all I have to say. Thank you.

Mr. Carnicelli: Thank you, Ms. Smith is there any...Commissioners is there any need to clarify the testimony? Seeing none, thank you very much, Ms. Smith, appreciate you stepping forward and giving your manao. Is there anybody else who would like to step forward and testify on this particular item? Please unmute yourself, if you also wish unmute your video. Going once, going twice, okay so, if there are no objections, we're going to go ahead and close public testimony on this particular item. Seeing no objections public testimony is now closed.

First item of business is Ms. Tjarks if you would please unmute yourself again.

Ms. Tjarks: Okay, can you hear us?

Mr. Carnicelli: I can hear you. First thing I need to do is ask was your presentation and everything you said truthful?

Ms. Tjarks: Yes.

Mr. Carnicelli: Do you promise to be truthful moving forward?

Ms. Tjarks: Yes.

Mr. Carnicelli: Do you have any questions for any of the testifiers?

Ms. Tjarks: Ian?

Mr. Hollingsworth: No.

Mr. Carnicelli: Okay.

1 Mr. Hollingsworth: I mean I understand where everybody's point of view.

2
3 Mr. Carnicelli: Yeah, I guess is, is the problem here is I actually kind of messed up a little bit. I
4 should have to sworn everybody in and then asked you if you wanted to cross-examine them
5 because this is actually a contested case, technically a contested case, and so I kind of didn't
6 follow the bouncing ball as perfectly as I might have. So, but if you have no questions for anybody
7 and you were truthful, then I guess we're gonna go ahead and move forward.

8
9 At this point, I've since I got you guys on, I will allow you to address the two RFS of 2018 and
10 2020.

11
12 Mr. Hollingsworth: Okay, I can address those. Yeah, in 2018, we have our garage built out as a
13 bedroom. Of course, that wasn't allowed and I tore everything out, and that was that. They came
14 and inspected it, and it's just one big garage now, and I understand you gotta play by the rules,
15 and so we straightened that out, and then the other RFS from June about some party where
16 people contracted Covid and all this stuff that was just the wrong address, that just was not us
17 and that was proven by our neighbors and everybody else. So that was just wrong.

18
19 Mr. Carnicelli: Okay, thank you. I appreciate that. Commissioners, let's go ahead and open it up
20 for questions, and/or, or I guess questions from the Commission. We'll start with you,
21 Commissioner La Costa. And since we're back to nine, let's limit it to two questions at a time,
22 okay, and then if we need to do another round and come back to people, we will, but let's go
23 ahead and, is you know when we had limited, we kind of just went for it, but if you've got more
24 than two questions then just let me know and we'll come back around after we give other people
25 opportunity. So, Commissioner La Costa, go ahead.

26
27 Ms. La Costa: Thank you, Chair. First of all, I do know, Mr. Hollingsworth, I live in the
28 neighborhood with him, but I believe that my questions and my decision will be unbiased. So, if
29 anyone feels that I should recuse myself, please let me know and I shall do that.

30
31 So, my first question which I ask everyone who comes before us for STR is your permit lapsed
32 and I understand that people don't always calendar it and the County does not send out
33 notifications. When did you realize that your permit had expired?

34
35 Mr. Hollingsworth: Oh, it was great while we were on Christmas vacation last year in Utah, I had
36 ran into a friend of mine who had a permit and he was telling me his troubles, and he was saying,
37 you know, I didn't renew my permit, I lost my permit, and now I'm afraid I'm going to lose this
38 house, and his whole life kind of got turned upside down, he goes you better check on yours
39 because we got ours kind of the same time, and so, I was just worried. So literally, I think our
40 plane landed back from Utah 1:00 or 2:00 in the afternoon on like a Thursday and came home
41 and I got online, and sure enough, I found out that it had lapsed, so I called the County immediately
42 and they looked into it and I missed it by five days and I was almost in tears. It was one of the
43 biggest flub ups of my life so far, a yeah, I just totally blew it, and it was done. I'll have big reminder
44 now.

45
46 Ms. La Costa: My second question, and again, this is what I ask everyone. Have you derived

1 any income from the time your permit lapsed until today's hearing?

2

3 Mr. Hollingsworth: No, absolutely not, unfortunately.

4

5 Ms. La Costa: Thank you, Ian. We appreciate you being truthful.

6

7 Mr. Hollingsworth: You're welcome.

8

9 Mr. Carnicelli: Thank you. Commissioners, anybody else have a question for either the applicant
10 and/or staff?

11

12 Mr. Edlao: I have a question.

13

14 Mr. Carnicelli: Okay, go ahead.

15

16 Mr. Edlao: Yeah, question is for Ian. When you converted the garage to a bedroom were you
17 aware that that would have been illegal?

18

19 Mr. Hollingsworth: Yes. Well, I wouldn't say illegal. I would use the term nonconforming.

20

21 Mr. Edlao: Okay, nonconforming. If you knew it was nonconforming, why did you go ahead and
22 do it as opposed to approaching the County to question, if it can be done or not?

23

24 Mr. Hollingsworth: Well, you know, when I, when I did that a long time ago, back in 2006 or 2007,
25 and we had kids and, you know, this was going to be kind of our forever home and it was small,
26 you know, I've got three kids and two bedrooms so I did it for that, you know, and some and to be
27 honest, you know, when you own a home and you pay all kinds of taxes and have a big giant
28 mortgage and it's hard to be told that you can't put an addition on your home. It's...that's not an
29 easy, easy one to follow, but we play by the rules now.

30

31 Mr. Edlao: Yeah, and I appreciate that, but I think, I think if you had approached it, you know,
32 knowing that it is nonconforming and discussed it. I understand when you need to make more
33 room and all that, but what bothers me is that you knew it was nonconforming and you just went
34 ahead and did it. I guess not—

35

36 Mr. Hollingsworth: Well, because—

37

38 Mr. Edlao: ...(inaudible)...as opposed to fight the system.

39

40 Mr. Hollingsworth: Well, you know, it's not like they were going, you know, but it's not like they
41 were going to say, yeah okay, you can build a bedroom and make your house 1,400 square feet
42 now of living space, you know.

43

44 Mr. Edlao: I understand that, I understand that Ian, but if you had made an effort, I mean, I would
45 have feel a lot better.

46

1 Mr. Hollingsworth: Well, I've made an effort. I've been speaking up about it for a long time. I
2 think it's I don't agree with the rule, so I think we should be allowed to...you know, zoning up here,
3 quite frankly, should change. There's not a whole lot of farming, that's a whole different subject,
4 you know, but reality is, is I'm just an honest man, you asked me a question and I'll answer it
5 honestly.

6
7 Mr. Edlao: I appreciate that. Thank you very much.

8
9 Mr. Hollingsworth: You're welcome. Thank you.

10
11 Mr. Carnicelli: Commissioners anybody else have a question? I'll go ahead and ask a question
12 then, so Mr. Hollingsworth who owns Unit A of the condominium.

13
14 Mr. Hollingsworth: Kim and Josh Bezoni.

15
16 Mr. Carnicelli: And the house is not built yet, it says proposed house in the application, correct?
17 So, it's a vacant lot right now where they're building on it.

18
19 Mr. Hollingsworth: No, it's built and I built them the home and they live here part time.

20
21 Mr. Carnicelli: Okay.

22
23 Mr. Hollingsworth: I built a home for them about five years ago.

24
25 Mr. Carnicelli: Okay, and they, they owned it when you were legal?

26
27 Mr. Hollingsworth: Oh yeah.

28
29 Mr. Carnicelli: Okay.

30
31 Mr. Hollingsworth: Yeah, they bought the house from me.

32
33 Mr. Carnicelli: Okay, I'm just...is 'cause in these situations where you have a CPR, you guys are
34 married to the unit—

35
36 Mr. Hollingsworth: Right.

37
38 Mr. Carnicelli: --...The A Unit, you mess up, they're in violation too. So that's why you this—

39
40 Mr. Hollingsworth: That's right.

41
42 Mr. Carnicelli: So that's why I just want to make sure that the...the other condominium owner is
43 well aware of this because I don't see anything from them in the application.

44
45 Mr. Hollingsworth: Right, no they—

46

1 Mr. Carnicelli: ...(inaudible)...being on board or not.

2
3 Mr. Hollingsworth: Yeah, they're on board.

4
5 Mr. Carnicelli: I get it, but it's just like, but if they were on board previously then I'm just going to
6 make the assumption that they're on board now.

7
8 Mr. Hollingsworth: Yes.

9
10 Mr. Carnicelli: Director, quick clarification, ohanas in the Ag are allowed to be STRHs but not in
11 residential, is that correct? Because they're secondary farm dwellings.

12
13 Ms. McLean: That's correct, they're in the Ag District they're not considered accessory dwellings.
14 They are another farm dwelling.

15
16 Mr. Carnicelli: Okay, thank you for the clarification, Ms. Willenbrink, I guess I'm breaking my own
17 rule here, I'm asking you three questions. Does anybody else have another question before I ask
18 my third? Anybody else have anything? Okay, so Ms. Willenbrink, did you inspect the barn?

19
20 Ms. Willenbrink: Yes.

21
22 Mr. Carnicelli: Is it a barn?

23
24 Ms. Willenbrink: It's an egg structure. I inspected that the very first time I went there and I sat,
25 that's like where I sat with Ian. It was a messy, messy room with all kinds of paperwork. Yeah,
26 no kitchen.

27
28 Mr. Carnicelli: I just...yeah, it's we've got, you know, yeah okay, that's fine. I just wanted to make
29 sure the barn was a barn. Any other questions from the Commission? Okay, seeing none, Ms.
30 Willenbrink if you would give us the Department's recommendation then?

31
32 Ms. Willenbrink: Yes, thank you, Chair. The application for a Land Use Commission Permit
33 complies with the applicable standards for an unusual and reasonable use within the State
34 Agricultural District for reasons stated in the Maui Planning Department's report. The Department
35 recommends that the Commission approve the State Land Commission Special Permit with the
36 seven standard conditions outlined in the Department's report and recommendation. No other
37 conditions were added. If the Commission chooses to approve the permit, the Planning
38 Department recommends that the Maui Planning Commission adopt the Planning Department's
39 report and recommendation as its findings of fact, conclusions of law, and decision and order,
40 and to authorize the Planning Director to transmit the written decision and order on behalf of the
41 Planning Commission. Thank you for your consideration.

42
43 Mr. Carnicelli: Thank you, Ms. Willenbrink. So, at this point in time, I'll go ahead and entertain a
44 motion from the floor. So, I guess at this point, at this point time, is Ms. Tjarks if you would please
45 mute yourself again that would be fantastic. So basically, we can have a motion to accept of the

1 recommendation, we can a motion to deny or we can have a motion to amend the
2 recommendation.

3

4 Ms. Tjarks: Okay, so we're not unmuted.

5 Mr. Carnicelli: No, you're not unmuted, is you need to mute yourself, please, thank you. At this
6 point where at deliberations. We're looking for a motion from the floor. Commissioners?
7 Commissioner Freitas, thank you.

8

9 Mr. Freitas: I'd like to make a motion to deny the application.

10

11 Mr. Carnicelli: Okay, is we'll get to the reason, then so the motion on the floor to deny the
12 application. Do I have a second? Okay, motion...seconded...so moved by
13 Commissioner Freitas as a motion to deny the Special Use Permit, seconded by Commissioner La
14 Costa. Commissioner Freitas go ahead and speak to the motion.

15

16 Mr. Freitas: Thank you, Chair. In the applicant's first approval dated 2016, from the Department
17 of Planning. There are conditions, I believe there's seven conditions. Number 4 condition says,
18 that full compliance with all applicable governmental requirements shall be rendered. Number 6,
19 that the applicant shall develop the property in substantial compliance with the representations
20 made to the State Land Use Commission in obtaining the State Land Use SUP. Failure to so
21 develop the property may in the revocation of the permit. I believe that because the garage was
22 built into a room, it broke this condition...it broke this condition. At a time that, by the way, there's
23 three testifiers and letters that were against this application, the two that they had stated that were
24 four were dated 2016 if you notice when they put it up on the screen that was for the original
25 application. At a time that short-term rental has been coming through the Maui Planning
26 Department we sort of agreed that we would be the watchdogs for those that go through, and
27 what we need to do is allow people to apply, I can't say you don't apply just because others don't
28 want to have short-term rentals, but let them apply and make sure that they bring their game on
29 with their application. This application was missing a few things, I agree with you Chair. The
30 RFSs were left out although it was noted on the second page, those two, and it was kind of put in
31 to hope maybe we wouldn't notice it, but that was my biggest question, and Commissioner Edlao
32 it up about them knowing that they were breaking the rules. And for Mr. Ian to...Hollingsworth to
33 say, I guess I have to follow the rules now, it's not a new rule. You were given that SUP, it's you
34 need to comply to what the conditions are totally, and because of that, I, I'm sorry, I have to...I'm
35 leaning towards or I should say, I move to the deny this application. Thank you.

36

37 Mr. Carnicelli: Thank you, Commissioner Freitas. Commissioner La Costa as the second, I'll let
38 you speak since you second.

39

40 Ms. La Costa: Thank you, Chair. I seconded so that we could open it for discussion primarily,
41 but I was noticing on the letter from the Planning Department that the expiration was
42 August 31, 2019, yet Mr. Hollingsworth said that he realized it on Christmas vacation and that it
43 was only five days difference between when the permit expired and when he called the County.
44 I'm not really good at math, but I think it's a little more than five days, and so because of that, it
45 appears that it was operating illegally when it did not have a permit and we have turned down

1 other applicants because they've been operating without a permit. So that is my two cents. Thank
2 you.

3
4 Mr. Carnicelli: Okay, before I open it up for further conversation to the motion, I would actually
5 ask everybody to go to Page 4 of the report, which is the applicable regulations for the SUP, and
6 there's five guidelines, and so if, in fact this motion were to carry, we have to base our decision
7 on those five guidelines with which a Special Use Permit is granted and/or denied. So, I would
8 ask that we speak to the motion in that regard or not—

9
10 Mr. Hopper: Mr. Chair?

11
12 Mr. Carnicelli: --I mean, you can—yeah, Mr. Hopper.

13
14 Mr. Hopper: Just, if we're going to rely on the statements that Commissioner La Costa made as
15 far as timing, I think it would be important to get clarification as to what the timeline is. There does
16 appear to be a dispute there. I don't know if the Department can verify what the timing was as far
17 as the lapsing of the permit, and how that, how that happened, but I think clarifying that would be
18 important if, if that's going to be put in a decision in order that should all be verified.

19
20 Mr. Carnicelli: Great. Thank you, Mr. Hopper. Ms. Willenbrink, you could either—

21
22 Ms. Willenbrink: Yes.

23
24 Mr. Carnicelli: If you could confirm the date with which the permit expired.

25
26 Ms. Willenbrink: The permit expired August 31st. I originally got the telephone call in early
27 January. It was just a call that came through the office, and then it was assigned to me in early
28 March. When I spoke to the applicant originally, I said, well, you gotta submit a new application,
29 and I got that in early March. I could look up the date, I would need a few minutes to do that
30 actual date.

31
32 Mr. Carnicelli: But is, is if I could just clarify?

33
34 Ms. Willenbrink: Yes.

35
36 Mr. Carnicelli: The permit, permit expired August 31, 2019.

37
38 Ms. Willenbrink: 2019, yes.

39
40 Mr. Carnicelli: I'm not worried about like when it was assigned to you.

41
42 Ms. Willenbrink: Okay.

43
44 Mr. Carnicelli: But the original call was January.

45
46 Mr. Hollingsworth: That's three months. We needed three months.

1
2 Ms. Willenbrink: Yes, it was early. I don't have the date of the telephone call. I mean, I...we may
3 have those records, but—

4
5 Mr. Carnicelli: Okay. I mean, but, but roughly, roughly when, when the applicant reached back
6 out to renew their permit.

7
8 Mr. Hollingsworth: ...(inaudible)...chance to.

9
10 Mr. Carnicelli: Okay, okay, Ms. Tjarks, I need for you guys to mute your audio.

11
12 Ms. Tjarks: Pardon me?

13
14 Mr. Carnicelli: I need for you guys to mute your audio please?

15
16 Ms. Tjarks: Okay.

17
18 Mr. Carnicelli: Thank you. So, Mr. Hopper, is that clear enough?

19
20 Mr. Hopper: Well, there was also a discussion that the...an allegation that they had operated
21 during the period during which they were not allowed to operate. That should also be clarified
22 with the Department, and you can ask the applicant for clarification on this as well because that
23 does appear to be something, again, that's up to you, but it may be a good idea to ask the
24 applicant. I'm not doing it, but it's something that since you're basing this on their, their statements
25 as well as the Department's statements, you may want to investigate that further just to get that
26 clarified.

27
28 Mr. Carnicelli: Okay, Ms. La Costa I will open up the floor for you to make that clear with the
29 applicant.

30
31 Ms. La Costa: Thank you, Chair. So, Mr. Hollingsworth, please.

32
33 Mr. Hollingsworth: Yes, can you hear me?

34
35 Ms. La Costa: I can, thank you. So, you mentioned that you found out that your permit expired
36 when you got home from a ski vacation in –

37
38 Mr. Hollingsworth: Yes.

39
40 Ms. La Costa: --Christmas time, so January.

41
42 Mr. Hollingsworth: Yes.

43
44 Ms. La Costa: So, from August 31st through January, whatever date that was that you called in
45 did you rent out the home or did you get any income from it during that period?

46

- 1 Mr. Hollingsworth: No, and I'd like to clarify if my...I thought it was a few days, but they give you
2 a three month, I believe, grace period, right, is that true?
3
- 4 Ms. La Costa: Ninety days before your permit expires, you're supposed to renew it, and now it's
5 60 days, but it was 90 days.
6
- 7 Mr. Hollingsworth: Well, okay, I thought it said if it was August, whatever, the 31st or something
8 and then there's a three-month, 90-day grace period after that or something, right, so I've flubbed
9 the whole grace period. I missed it by three months and a few days, I guess, right. Anyway, I'm
10 not exactly sure. But no, when we found out that we had no permit, we shut down our operations
11 because this is very important for our family's financial well-being here, you know, but I'd like to
12 just say I'm a local vacation rental owner, I'm not, you know, somebody who lives on the mainland
13 and has their second or third home here vacationing.
14
- 15 Ms. La Costa: Ian, could you please answer my question? I asked if you got any income from
16 September 1 through January whenever, whenever you closed it down.
17
- 18 Mr. Hollingsworth: No.
19
- 20 Ms. La Costa: Okay, so nothing over Christmas, nothing over Thanksgiving.
21
- 22 Mr. Hollingsworth: Well, I didn't even know that I had no permit until I came back. So, we probably
23 had a couple of bookings there, yes. But I had no idea I had no, I had no license until January. I
24 did not know.
25
- 26 Ms. La Costa: Okay, but there was—
27
- 28 Mr. Hollingsworth: As soon as I knew we shut down the operation.
29
- 30 Ms. La Costa: Okay, so you didn't get income during the time you did not have a permit even
31 though you didn't know that your permit was not current?
32
- 33 Mr. Hollingsworth: I would, yes, probably, yeah.
34
- 35 Ms. La Costa: Okay, thank you. That's all I needed clarification. Thank you, Chair.
36
- 37 Mr. Hollingsworth: No, problem, you're welcome.
38
- 39 Ms. McLean: Chair, may I make a clarifying comment?
40
- 41 Mr. Carnicelli: Yes, please, Director.
42
- 43 Ms. McLean: Thank you, Chair. Once a permit expires, it expires. There is no grace period after
44 the permit expires. That's very important to establish on the record.
45
- 46 Mr. Hollingsworth: Oh, thank you, it is, I, I don't really understand it. Thank you.

1
2 Mr. Carnicelli: Okay, is, is Mr. Hollingsworth I need for your guys to go ahead and go on mute
3 again, is 'cause—

4
5 Mr. Hollingsworth: Okay.

6
7 Mr. Carnicelli: --we're actually back to there's a, there's a motion on the floor, so thank you.

8
9 Mr. Hollingsworth: No problem.

10
11 Ms. McLean: The grace period that the Department allows is that if a permit is set to expire and
12 the applicant submits their renewal request before the permit expires, but that renewal request
13 isn't approved until after the expiration date, then we allow that grace period because the applicant
14 has submitted the renewal request in time. It's just that we haven't been able to process it for
15 whatever those reasons may be. So that's the grace period that's allowed when that renewal
16 request is submitted prior to expiration, but if there is no renewal request and the permit expires,
17 then it's expired. Thank you, Chair.

18
19 Mr. Carnicelli: Thank you for that clarification, Director, I appreciate that. So, what I'd like to do
20 then is we'll go back to since we got the clarification on, on Commissioner La Costa's speaking
21 to the motion, I would, I would like to hear from anyone else on the Commission that would like to
22 speak to the motion whether it's in favor or against, and if we go down this, you know, if this motion
23 passes, we have to make a decision on order, right, and it has to be based on what it is that we
24 put on the record. So, if we look at the applicable regulations if somebody else would like to
25 further, I guess, state on the record what it is they'd like to do. So, Commissioner Pali.

26
27 Ms. Pali: I just have a few questions, maybe this is for the Department, Planning, now that we
28 have a little bit more information about the 95 days, the expiration of the ability to apply, and
29 because there was no knowledge, there was rental, does that automatically trigger something
30 that might be different from the recommendation proposal, from the Planning Department that
31 we're given prior to today's meeting? That's question number one.

32
33 Mr. Carnicelli: Director.

34
35 Ms. McLean: I don't quite understand the question, I'm sorry.

36
37 Ms. Pali: Okay, so we currently, I believe, have a code that if somebody was operating illegally,
38 then it would automatically disqualify them for a permit. Now that we've had more testimony
39 today, potentially, you guys hearing things that maybe weren't part of the application, are we now
40 mandated to an automatic trigger? That would be my first question.

41
42 Ms. McLean: That's a great question. I, I don't know that we were aware before that there was
43 operation without a permit. I was reminded that when an operation is told to stop operating, we
44 do sometimes allow existing reservations to be honored just because we don't want the visitors
45 to get the short end of the stick, which is probably what Mr. Hollingsworth was referring to in terms
46 of the grace period. But that, that's a good point, I'd have to give that a little bit of thought, but

1 you could be correct, Commissioner Pali that they may be disqualified for operating without a
2 permit. The Code right now doesn't make any sort of exception for someone who had been a
3 permit holder, whose permit expires and they don't renew it. And so, if they continue to operate,
4 believing that they have a permit, I would have to think about that, and I'd probably want to confer
5 with Mr. Hopper, so...

6
7 Ms. Pali: Okay, thank you. I just, um, I have some other things—

8
9 Mr. Carnicelli: Is, let's have Mr. Hopper, let's have, let's have Mr. Hopper weigh in on it, is I mean,
10 since we're here.

11
12 Mr. Hopper: Ready Mr. Chair?

13
14 Mr. Carnicelli: Yeah, yeah, go ahead, sorry.

15
16 Mr. Hopper: Okay. Yeah, that, that requirement is part of the County Code but it only applies to
17 STRH permits. You're looking at a State Land Use Commission Special Permit so that, that
18 wouldn't automatically disqualify the granting of that permit. It may affect whether or not the
19 Planning Department, if you do approve this, can grant an STRH permit. I'm not saying it's
20 irrelevant to your considerations, but I don't see that as a flat-out bar to granting the permit as it
21 would be potentially with an STRH permit, which, as you know, is a different permit. I don't
22 believe, I believe that's an administrative approval, but again, if, if that's that may prevent the
23 Department from, from providing that, that permit, but for your, for your review, I believe you would
24 concentrate on the criteria and HRS 205-6 and those rules, the Land Use Commission Rules that
25 you have in your staff report, so I don't see that as an automatic bar that would prevent you from
26 approving this today assuming that you would otherwise approve it.

27
28 Mr. Carnicelli: Commissioner Pali.

29
30 Ms. Pali: Okay well, I'll continue then. So, when I look at the five criteria, it's a little difficult for
31 me to be able to assess at this point that one, two, three, four and five would have any issues
32 because of the fact that we had addressed these previously and we had allowed the permit, and
33 so I'm not finding fault with those items.

34
35 I also would like to just state on record, that I actually disagree with the statement...this is for
36 discussion and am I allowed to Chair, I disagree that a balanced amount of short-term rentals
37 hurts our community. I would say that I think in the past there could have been valid reasons why
38 people may have believed that. I think now that we've been impacted by Covid and our economy
39 has taken a huge hit, I think that we have to sometimes remain flexible and pivot, and I think that
40 considering attacking our number one source, which is tourism, that's going to really hurt us trying
41 to jump start our economy, and I think that sometimes you, you might want to consider putting
42 ideas or desired things on hold when something happens. And right now, we're in a situation
43 where we have to get really creative to continue to be able to make...put our people back to work,
44 make sure they have income so attacking tourism is the last thing we should be doing right now.
45 People may not realize, but short-term vacation rentals provides a different model for the traveler,
46 the traveler that's been traveling for 50 years, they've evolved. It used to just be the elite.

1 Traveling now is more affordable And now families, large families are traveling, and the model of
2 a bed and a toilet, not to be offensive to hotel, but you get a bed and you get a toilet, you don't
3 get kitchenettes, you don't get a lot of the amenities that family use, the families need today's...in
4 today's traveler and so many, many research shows that destinations providing a different model
5 for these travelers keep us premier, as a premier destination. And so, we shouldn't be attacking
6 the quickest way to make money in our economy right now. This is a little off topic, but it's speaks
7 to the short-term rentals, Chair. And so, I would just say, I don't disagree that we want to
8 eventually move away from some of these and we want to limit them, but is today the right time?
9 So that's just my two cents.

10
11 The other thing that I just wanted to point out as well is that this is a tough case because for me,
12 I own a mortgage company, and if I don't get relicensed by December 31st, every year, I will be
13 immediately shut down, and I will not be able to continue on with my income. I know how crucial
14 and important that is for my business, so I start the process October 1st. I am very discouraged
15 that the family didn't have it on their calendar. It wasn't something that was on their radar, and
16 they got the notice and they didn't even, you know, it just...life was too exciting and it wasn't a
17 priority. So, it's difficult for me to think that, well, if this is so such towards your livelihood and a
18 potential detriment then why wasn't it on the calendar? Why was it a priority? So those things
19 with this particular case do bother me, and I just wanted for discussion purposes, those are just
20 my comments. Thank you.

21
22 Mr. Carnicelli: Thank you, Commissioner Pali. Would anybody else like to speak to the motion?
23 Anyone else got anything to add?

24
25 Mr. Edlao: Can I, can I ask the Director a question please?

26
27 Mr. Carnicelli: Yeah, go ahead Commissioner.

28
29 Mr. Edlao: Yeah, you know, I want to move back to that garage situation. Was there any, any
30 process that he could have come back to the County to alter that one condition as opposed to...it
31 was just a flat-out, no. It would have been a flat-out no.

32
33 Ms. McLean: Which condition the...

34
35 Mr. Edlao: The...as far as additional, the addition of the room in the garage. You know, it says, it
36 was gonna be two bedrooms, but then he converted that garage to the third bedroom.

37
38 Ms. McLean: Right.

39
40 Mr. Edlao: My question is that...would was...would have there been any process for him to come
41 back to the County on that one particular condition say, hey, I need more room, can we talk about,
42 you know, converting the garage to a bedroom or it would have been no, no process at all?

43
44 Ms. McLean: There would have been process. It isn't...from time to time we have permit holders
45 come in and ask at to add another bedroom, and we have allowed that in certain circumstances.
46 In this particular case, there would be more of a building permit issue with using the garage

1 because in the Ag District, the second farm dwelling is limited to a thousand square feet, and I'm
2 assuming that the second farm dwelling is at about that square footage so adding more farm
3 dwelling area, even if it's in a separate building would probably exceed that square footage. So,
4 I, I can't say for sure because I don't know how much square footage we're talking about but if
5 they had wanted to do that, then they would have had to have gotten a building permit to change
6 the occupancy of the garage to part garage, part dwelling and then that square footage would
7 have been added on to the ohana and structurally, we'd need to figure out how to do that. So,
8 it's not impossible, but I'm not sure that that process would have worked out in this case.

9
10 Mr. Edlao: Okay, thank you very much.

11
12 Mr. Carnicelli: Director is while we're out of here, I just also need some clarification here before
13 we bring the motion to a vote, and that is, you know, we've spoken to violations of the STRH...the
14 previous STRH permit, but not necessarily to the SUP, I guess my question is, is if there is an
15 RFS, and this is speaking to kind of what Commissioner Freitas was saying, this is like, okay, so
16 there's RFS on a property that holds this permit, they're now in violation their permit. Now, I get
17 that if somebody says, okay, they've been...you know, they've added a bedroom it's not supposed
18 to be there, and they correct it, and say like okay, sorry it's...I'm gonna make my garage back to
19 a garage. But in the process of an RFS, if you have a permit, you're now in violation of the permit.
20 Does the permit get booted because you're now in violation of that? And again, I get that I'm, I'm
21 a little, we're a little bit out of bounds here 'cause we're talking about the STRH permit and not
22 the SUP, but how does that exactly does that work?

23
24 Ms. McLean: Usually we will revoke a permit. There have been many occasions where we have
25 found unpermitted structures or areas being used for dwellings. We would revoke the permit and
26 that would mean they would be banned from applying. I don't know why that didn't happen in this
27 case. So, I can't, I can't explain that, but typically, if there is something like that, we will revoke
28 because we expect all the conditions to be complied with, and we don't really say that one
29 condition is more important than another. And this could have a bearing on the State Special
30 Permit because one of the conditions is that full compliance with all governmental requirements
31 be rendered, and so, if they failed to do that in the past, it's, this isn't a renewal of the permit, it's
32 a new permit, but for the same use so...yeah, but typically, we would have revoked the STRH
33 permit for that.

34
35 Mr. Carnicelli: Okay, great. Thank you for the clarification. I appreciate that. Would anybody
36 else like to speak the motion before we call for a vote? Okay, Director.

37
38 Ms. McLean: Chair, if I could ask if Mike Hopper, if he believes the Commission considered the
39 five criteria sufficiently to consider a motion for denial?

40
41 Mr. Hopper: I think anything you can add on the record would be beneficial to the staff planner
42 preparing the decision in order and myself. I mean, which of these would you have a concern
43 with? Do you believe there's an adverse effect on adjacent properties? Do you believe that HRS
44 205-6 requires that the...or one of the requirements is the use shall not be contrary to the
45 objectives sought to be accomplished by Chapter 205 and 205A, HRS and the rules of, this says
46 the Land Use Commission, but I think in your case they could be your rules or if there's gonna be

1 adverse effect on surrounding properties. I believe evidence, evidence of past noncompliance, I
2 think could be relevant to your, your decision if you're going to consider that as if the permit
3 conditions aren't followed, that could potentially have an adverse effect on, on surrounding
4 properties, be inconsistent with the district and of course, because this is a request for a State
5 Land Use Commission Special Permit for a use that's not allowed in the district, the applicant has
6 the burden of showing that they're entitled to the permit. So those, those would be the, the ...,
7 but again, I still think you need to go back to the criteria set forth in the rules, as well as Hawaii
8 Revised Statutes 205-6, which states that the, I believe the statement, and I can find the specific
9 one, is that the, is that the, the use being sought is...will further the objectives of HRS 205 of this
10 chapter, it says. So again, those objectives are generally to promote the agricultural use in the
11 Agricultural District, and you know, adding any use that's inconsistent with that for as a short-term
12 rental home could or could arguably be inconsistent with furthering the purpose of the State
13 Agricultural District, but again, you know, I would leave it up to the Commission to look at that
14 criteria and determine whether the permit meets the requirements or has not met the requirements
15 based on the information you have in the record, which includes your staff report, the application
16 and the testimony you've heard today.

17
18 Mr. Carnicelli: Thank you, Mr. Hopper. Would anybody else like to put something further on the
19 record?

20
21 Mr. Hansen: Is this a public or deliberation?

22
23 Mr. Carnicelli: No, no. Public testimony has been closed. Okay, everybody is good with what
24 we have on the record then? Commissioner Freitas.

25
26 Mr. Freitas: If there's a way to incorporate what the Counsel had said by using one unusual and
27 reasonable use, number one, ...(inaudible)...to 205, 205A.

28
29 Mr. Carnicelli: Okay, how so?

30
31 Mr. Freitas: By adding a room without approval, which violated the permit.

32
33 Mr. Carnicelli: Okay, anybody else like to speak to the motion? Going once—

34
35 Mr. Hopper: Again, just, just to clarify what will happen, and this will happen with some other
36 STRHs as well is that staff will prepare a draft decision and order, when that is sent to you, you
37 would review that and be clear if it states the, the reasons in the record for your denial. You have
38 the ability to alter that when it would come to you or change it in some way, and if you adopt it,
39 that's the, that's going to be the more formal statement of the basis. So you're not required orally
40 to go over every each and every single basis that you'd have in the record for your decision it's
41 just that staff wants guidance on preparing that document, and when that document is if, if there
42 is a denial and that document is sent forward and you approve it, that document is going to set
43 forth your more specific reasoning for your decision. But again, in drafting that, the staff doesn't
44 want to try to guess, you know, for the reasoning, so that's why at this point, it's good to ask for
45 that if there's a potential motion for denial.

46

1 Mr. Carnicelli: Okay, thank you, Mr. Hopper. I mean, I've asked three times, so I think we're
2 gonna move forward with what we have on the record at this point, unless somebody wants to
3 add more.

4
5 Mr. Hollingsworth: May I speak?

6
7 Mr. Carnicelli: Seeing none. No, is, is this isn't open for discussion at this point. You had time
8 to make a presentation. So, Director, if you would, please. We'll make...call the motion to a vote.

9
10 Ms. McLean: Chair, the motion on the floor is to deny the State Special Permit.

11
12 Mr. Carnicelli: All those in favor, please raise your hand, and Director, if you could unmute your
13 video so I can see everybody. So that is one, two, three, four, five, I see six. Six in favor of the
14 motion. Opposed? I see none, opposed. Let the record show that Commissioner Pali and
15 Commissioner La Costa abstained. So that's actually an 8-0, motion passes. So, Ms. Willenbrink
16 if you would please prepare the decision and order for us to go ahead and process.

17
18 **It was moved by Mr. Freitas, seconded by Ms. La Costa, then**

19
20 **VOTED: To Deny the Land Use Commission Special Use Permit.**
21 **(Assenting – K. Freitas, P. D. La Costa - abstained, S. Castro,**
22 **J. Edlao, M. Hipolito, K. Pali – abstained, C. Tackett,**
23 **D. Thompson)**

24
25 Mr. Carnicelli: I think at this point it's 10:40, let's just take a quick break before we move on to
26 the next item on the agenda. I forgot to bring water and put it on my desk so this is actually a, you
27 know it's potty break and a water break, so it's 10:40 right now, let's come back at 10:50

28
29 Mr. Hollingsworth: Thanks you guys. Hope you, hope you sleep well. Really hope you sleep
30 good tonight.

31
32 Mr. Carnicelli: You know what, that's unacceptable right now, meeting's in recess.

33
34
35 Respectfully Submitted by,
36
37
38 CAROLYN TAKAYAMA-CORDEN
39 Secretary to Boards and Commissions II