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**MAUI PLANNING COMMISSION  
PORTION OF REGULAR MINUTES  
ITEM B.1  
DECEMBER 8, 2020**

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

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

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

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

Ms. Kim Willenbrink: Good morning.

Mr. Hopper: Mr. Chair?

Mr. Carnicelli: Yes.

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

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

Ms. Willenbrink: I promise, Chair.

Mr. Carnicelli: Okay, thank you.

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

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

Mr. Kading is requesting the STRH permit to operate on the Kaanapali Dream in the four-bedroom primary residence on the property. The property also has an accessory dwelling. This will not be

1 rented short-term pursuant to the provisions of Section 19.65.030.A of the Code which currently  
2 disallows STRHs in accessory dwellings. At this time, the Department is unclear of Mr. Kading's  
3 intentions for the accessory dwelling usage.

4  
5 The Department is in receipt of ten written protests within a 500-foot radius of the proposed STRH.  
6 This is two above the 15 percent requirement. The Department received a total of 18 letters in  
7 opposition to the rental and eight letters in support of the proposal. The applicant also submitted  
8 testimony on his own behalf. There are no permitted vacation rental operations within 500 feet of  
9 the property. There was previously one request for service filed with the County, this is in the  
10 past, it did not relate to the STRH, and there was no citation. It's filed and closed.

11  
12 The subject property is in the State Urban District and County R-3, Residential Zoning District.  
13 The proposed use is consistent with property designations and the Hawaii State Plan. The  
14 application is in compliance with restrictions and standards in Chapter 19.65 of the Code.

15  
16 Members of the Commission, in addition to the quantity of protest, the Department notes potential  
17 concerns related to this application for your consideration. The Maui Island Plan provides  
18 direction for future growth, the economy and social and environmental decisions. The plan looks  
19 broadly at many factors that influence the physical, social and economic development of the island  
20 and addresses key environmental, housing and economic development issues. The plan is  
21 intended by the County Council, the Planning Department and this body as a policy foundation  
22 for day to day decisions and is specifically intended to be used to assist in reviewing discretionary  
23 permits. This proposed project may contribute to the visitor industry and result in ancillary jobs  
24 associated with the industry and could also provide an opportunity for visitors to contribute to the  
25 local economy outside the hotel resort areas.

26  
27 However, there are potential adverse impacts anticipated as a result of short-term rental approval.  
28 The protest letters include concerns related to potential large gatherings in the home, excessive  
29 usage of the pool, guesthouse and other common areas of the existing gated subdivision rather  
30 than the many areas of the island dedicated for use by the general public. Numerous other  
31 vacation opportunities are available near the property. The Department notes that hotel demand  
32 an occupancy in West Maui is quite low due to the constraints of the current Covid19 pandemic.  
33 I'm sure we're all aware of this.

34  
35 The Department further notes the County's already seriously compromised demand for long-term  
36 rental opportunities are increased at this time as people teleworking seek to relocate to the island.  
37 As such, the Department has considered the following very clear Maui Island Plan policy  
38 statements during its review.

39  
40 Section 4.2.2.C - manage impacts from transient vacation rentals, hotels, bed and breakfast units,  
41 timeshares and resort condominiums on residential communities, public infrastructure and  
42 community facilities.

43  
44 Section 4.2.2.D - discourage supplanting of existing island housing to visitor accommodations  
45 that may have a negative impact on long-term rental housing, price of housing and price of land.

1  
2 No serious environmental impacts are anticipated as this application concerns visitor use in an  
3 existing dwelling. However, if the Commission approves the proposed STRH permit, the  
4 Department recommends a condition to read as follows, “that the applicant shall ensure that all  
5 guests are educated about Maui Nui’s history and culture, and about the potential detrimental  
6 impacts to natural and cultural resources, particularly to the coastal environment and the near  
7 shore waters. Evidence of such an educational program shall be provided to the Planning  
8 Department for approval prior to operation.”  
9

10 The Department calls out for your consideration the following relevant short-term rental ordinance  
11 restrictions and standards. Section 19.65.030.N states, short-term rental homes shall conform to  
12 the character of the existing neighborhood in which they are situated. Prior to issuing a permit  
13 the Department or applicable planning commission shall consider the following, and one states in  
14 part, the Director and the Planning Commission shall not be bound by any private conditions,  
15 covenants or restrictions upon the subject parcel, any such limitations may be enforced against  
16 the property owner through appropriate civil action. This particularly prop...particular property, is  
17 the subject to Lanikeha and Kaanapali Gold Estates CC&Rs, blah, blah, blah. Subsection N.4  
18 discusses community input and you have that testimony in front of you today, both in opposite  
19 opposition to and in favor of. Department notes for the record that this is a gated community.  
20

21 Section N.5 potential adverse impacts, including excessive noise, traffic and garbage. Potential  
22 adverse impacts, including noise, traffic and garbage were considered by the Department. Based  
23 on the revolving maximum occupancy in the short term, as well as the accessory dwelling uses,  
24 noise and traffic impacts may be increased as compared to those of either a home owner  
25 occupant or long-term rental occupant.  
26

27 And six the number of permitted short-term rental homes surrounding the proposed short-term  
28 rental home property and their distance to the property. As of November 17, 2020 there were no  
29 permitted short-term rental operations located within 500 feet of the subject property in this  
30 community.  
31

32 And seven, the number and substance of protest to the short-term rental home application and  
33 protests related to the cumulative short-term rental homes in the neighborhood or area. So, as  
34 previous mentioned, you have 18 letters in opposition, ten of which are within 500 feet, and also  
35 a number of letters in support of the operation.  
36

37 Finally, Section 19.65.030.S states, prior to issuing a permit, the Director or planning commission  
38 may impose conditions for a short-term rental home if the conditions are reasonably designed to  
39 mitigate adverse impacts to the neighborhood. Members, if you decide to approve the STRH  
40 permit, conditions that have been recommended by the Department are included in your staff  
41 report and we can go over those if you would like. The Commission may impose additional  
42 conditions as deemed fit designed to mitigate adverse impacts to the neighborhood today. And  
43 right now, if there are no objections, I will turn the screen over to Mr. Kading. Sean, are you  
44 there?  
45

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

10

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

12

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

15

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

18

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

20

21 Mr. Carnicelli: Thank you, guys.

22

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

25

26 Mr. Carnicelli: Yes, go ahead. Great.

27

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

29

30 Ms. Kading: Hi, yeah, we just wanted to start out by saying that, you know, we, we love Hawaii  
31 Island, the Islands of Hawaii and Maui specifically, and you know, we would not do anything to,  
32 to harm the island, and that's not our intention in any way. I've been coming to the island since I  
33 was a child. My grandparents instilled the love in the islands and in me and my family and my  
34 twin sister actually lives on Hawaii Island, as does another sister of mine. We were married and  
35 in West Maui, in Kapalua, in 2005. And it's our love of the islands that led us to buy a lot here  
36 and build a home here. Our intention is to ultimately retire here and spend as much time here in  
37 the meantime as we can. We did not build the home to be a hotel. We did not build as a spec  
38 home, it's never been listed for sale, it's not our intention to do that.

39

40 And when bought we were looking for a place where we could ultimately live, but also because  
41 we knew it was going to be a little bit of time before we were able to live here permanently, you  
42 know, we wanted to buy in a place where we could offset some of the cost of owning a home.  
43 And so, we looked at that many areas and many lots with that idea in mind. And when we bought  
44 here in Kaanapali Golf Estates, we were told that that was going to be permitted, that's in our  
45 CC&Rs, and so we bought with that in mind, and our intention, again, is not to do rent weekly.

1 Our intention is not to rent on a regular basis. Our intention is to lease a few times a year for two  
2 to four months at a time simply to offset the expenses of owning and operating our home.

3  
4 Our home, in order to own and operate this home, it cost us in excess of ten thousand dollars a  
5 month, and that's everything from utilities to landscape to exterminator to, you know, all of the  
6 different monthly expenses that go into owning home. Primarily, it will be used for us and our  
7 friends and our family and that's something that since 2013, when we built the house, we have  
8 offered our home to friends and family on a regular basis. If the home is regularly used by people  
9 here on vacation on a short-term basis because we operate to our friends and family. And in  
10 addition to friends and family, I mean, we've as an example, you know, we've offered it to  
11 someone, a friend of my sisters on Hawaii Island whose son goes to school here. So she didn't  
12 have to be in a hotel. She could be in a home and visit her son who goes to school here on a full-  
13 time basis. So, it's not...the, the allowing the permit would not change the character of the home,  
14 it would, it would essentially just mean that some of the people were writing a check whereas no  
15 one up until now has been doing that.

16  
17 We absolutely far in favor of sharing the aloha spirit, educating our guests, even with family and  
18 friends that's something that we do on a regular basis. We care very much about the reefs, using  
19 reef safe sunscreen is something that, you know, we have always made available to our guests,  
20 our family and friends. It's important to us to educate people about the culture, the language, the  
21 environment, protecting the environment and protecting the reef. We have for our family and  
22 friends books, information available to them to educate them about Hawaii now, and if the permit  
23 was granted, we would continue to do that.

24  
25 Mr. Kading: So just to summarize the application, what we're really requesting is simply the right  
26 to follow the County approved CC&Rs which allow a minimum rental term of 30 days. Most of  
27 our renters would likely be 60, 90, 120-day renters particularly post-Covid or during this pandemic.  
28 We've been hearing that there's increased demand. I think Hawaii is also aware that, you know,  
29 there are a lot of people that want to work remotely and so we've been getting offers, unsolicited  
30 offers from families of four or five people who want to rent our home so they can come here, work  
31 remotely, be part of the community, but we typically would not want to rent for six months or longer  
32 because we use the home, our family uses the home.

33  
34 We waited five years. We've never rented the home. We followed all the rules as the planner  
35 indicated, it's always been used part-time. Some of our neighbors that wrote letters were  
36 concerned about strangers. Ironically, I don't even know some of those folks. And therefore, if  
37 they saw me walking down the street, they would think that was a stranger.

38  
39 The Kaanapali Golf Estates and Lanikeha, both the associations sent in letters confirming that  
40 rentals of less than 180 days are allowed pursuant to the CC&Rs. CC&Rs are a binding contract  
41 between owners. We have to follow those provisions related to how our community operates,  
42 how it's funded, all aspects. It's 100 percent of the owners in the Golf Estates and Lanikeha  
43 agreed to follow those contracts, and we do. There's only one exception where this small group  
44 of owners say, well, we don't want to follow Section 27 of KGE CC&Rs which allows a minimum  
45 term of 30 days. They tried to impose a minimum term of 180 days. The Lanikeha CC&Rs,

1 Lanikeha is a sub association, and those these CC&Rs specifically say that, yes, it's a residential  
2 community, but residential is defined as both permanent and transient use, and Lanikeha allows  
3 short term-rentals and rental pools. Both HOAs again, sent letters affirming that information.  
4

5 Now, what is the character of KGE? I didn't see a lot in the report, but it's something we need to  
6 consider and Kaanapali Golf Estates is a planned community that was approved by both the state  
7 and the county back in the early 90s, late 80s, and it is part Kaanapali Beach Resort, South  
8 Mauka. I spent considerable time going through the County archives and, you know, it's clear  
9 that this was intended to be part of the resort and a location where both long-term and short-term  
10 housing would be provided. Short-term as an alternative to hotel rooms.  
11

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

26 This is one of the drawings that depicts the Kaanapali Beach Resort. The red arrow points  
27 approximately to where our home is. And there are a number of documents like this that confirm  
28 that we're part of the resort. You know, people routinely drive their golf carts on the private roads  
29 and go head down to the beach. You know, it's a pretty uniquely resort area.  
30

31 Here's an aerial view of the Kaanapali Golf Estates and the Kaanapali Resort area. This is  
32 really...I know that short-term rentals are disfavored, but this is where you want to put them. This  
33 is, in fact, where the County did place them and has approved them. I think it was Chair Carnicelli  
34 a couple of weeks ago that commented, you know, we need to put these somewhere, and it's  
35 really in the four resort areas where, you know, this use has always been, you know, favored to  
36 be in those areas and not in the established residential areas.  
37

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

1  
2 Lanikeha consists of 133 units. There are approximately 45 homes that have been built, but  
3 88 vacant lots. It's not yet an established neighborhood. It clearly allows residential and transient  
4 use. Very few of the Lanikeha homes have ever been leased long-term. I'm only aware of a few.  
5 One on my street was rented to a Russian family for six months. They may have extended to a  
6 year. You know, it's really foreign travelers that use or would rent these homes long-term and not  
7 the local Hawaii residents.

8  
9 Now, the short-term rental debate obviously has been alive and well and hotly contested in a lot  
10 of neighborhoods. We were told when we were buying land in 2011 to do so in the resort area in  
11 Kaanapali Golf Estates and to stay away from the agricultural areas, and that's what we did.

12  
13 During construction, you know, the debate sort of heated up and a small group of owners tried to  
14 change the CC&Rs to require six-month minimum rentals, and they did so using a process that  
15 was later determined in an arbitration to be illegal and unlawful. Because there was a dispute  
16 over the minimum rental term that could not be resolved in the community we had to take it and  
17 follow the dispute resolution procedures that are required by the CC&Rs. We went to mediation,  
18 we couldn't agree so we submitted to a binding arbitration. That binding arbitration concluded  
19 this year in 2020, and a panel of three arbitrators, including two retired judges that you may be  
20 familiar with and a condo specialist, and they ruled in our favor. We received an injunction against  
21 the KGB Board that prevents them from enforcing a rental term in excess of 30 days by any  
22 means or method. The arbitrators stated simply as between owners, the rule is 30 days. That  
23 ruling was affirmed recently by the Honorable Peter T. Cahill, Maui Second Circuit. Nonetheless,  
24 we have some owners that are, you know, undeterred, undaunted, and they now seek to use this  
25 process in order as a means of method to change and enforce a minimum term of 180 days.

26  
27 Now, the neighbor notice that goes out to owners requests only protest letters. It does not simply  
28 request letters. It asks for protest letters. Nonetheless, some owners in my neighborhood sent  
29 in letters supporting the application. Importantly, both neighbors on our left and on right sent in  
30 letters in support of the application. And you can see on the screen some of the comments they  
31 made. They wholeheartedly support granting the application. I've been a great neighbor, always  
32 willing to lend a hand, confident that we will continue to be respectful of our neighbors and ensure  
33 that their quiet enjoyment is maintained. We received those letters from the adjacent neighbors  
34 and the neighbor across the street. Obviously, these are the folks who would be most impacted,  
35 if at all, by this permit being granted.

36  
37 Now, the letters sent in opposition, the planner indicated that she had received 10 in opposition  
38 and that was two above the threshold. I asked that those letters be identified because I could not  
39 locate 10 letters from owners of record within 500 feet. I believe the threshold was not met. At  
40 least two of those letters were signed by individuals, but the owner of record is a trust or an LLC,  
41 and there is no indication what the relationship is. At least three of those letters were sent by  
42 owners who participated in the arbitration and found themselves on the losing end. One of those  
43 letters was sent by an owner who was held in contempt of court for violating the injunction.

1 Now, if you look at the substance of the objection letters, there's no substance. There's nothing  
2 particular about me and my wife as owners or our property in particular. They're all just general  
3 objections to the concept of short-term rentals. One of them, simply opposes leasing for less than  
4 30 days though stipulated. They also say that our...they're concerned about use of the clubhouse,  
5 as the planner indicated. But our house rules specifically tell all of our guests that the clubhouse  
6 is for owners only and that they won't have any access. So that objection doesn't state any basis  
7 because we agree with his concerns.

8  
9 Ms. Kading: We also have a pool in our yard, so there would be no reason for any of our guests  
10 or if the permit were granted, you know, people we would lease to, to ever use the clubhouse  
11 pool.

12  
13 Mr. Kading: You know, and a lot of these concerns it's you know, they're concerned about party  
14 houses, they're concerned that there are going to be eight or ten people with three or four rental  
15 cars coming and going, every week a different group. I wouldn't want that, that's not how our  
16 house has ever been used that's not how we would allow our house to be used. I simply request  
17 to rent...be able to rent my home and to receive payment for a rental that's three or four months  
18 long. This is...we're kind of looking at a middle lane, you know, there's, there's the fear over the  
19 weekly rentals and then there's the desire to have six-month and longer rentals, but we're kind of  
20 in the middle saying, well, what we were wanting to do is one-month, two-month, three-month,  
21 four-month rentals. It's really a longer term and it doesn't have you know, I don't know when the  
22 last time was anyone here took a three-month vacation or even a 30-day vacation. People don't  
23 come and blow off steam for 30 days.

24  
25 Again, just to reiterate, you know, short-term rentals are allowed in the Golf Estates. It was  
26 approved. The Department of Planning back in 2011 issued its recommendation and said that in  
27 the four resort areas short-term rentals should be an outright permitted use. The County of Maui  
28 has allocated 88 permits to the West Side. The Council and the Mayor determined that 88 homes,  
29 if used as short-term rentals, would not have an appreciable impact on housing availability. There  
30 are still 28 permits available.

31  
32 You know, we're required to follow our CC&Rs. Just as an example, the CC&Rs allow us to have  
33 two dogs and two cats. If ten owners decide that dogs make more noise than cats and they want  
34 to ban dogs, they wouldn't be able to because they agreed to follow the CC&Rs, and that's really  
35 where this comes down to is, is those covenants. So, all we're asking is to be able to rent for less  
36 than six months. As my wife indicated, the use of the property is unchanged. The only difference  
37 is that some of the folks who use our home would be able to write us a check, and in return, we  
38 would provide taxes to the State and County and those...denying the permit and having this tight  
39 restriction, you're really...it's causing a harm to the County of Maui and to the local residents  
40 because you're not receiving the tax revenue that was intended. You've got 28 permits that have  
41 not been issued, and if they were issued, it would double or triple our taxes, and you could use  
42 that money to provide affordable housing.

43  
44 When short-term rentals are, you know, prevented in the resort area it has a tendency to push  
45 people into the traditionally residential areas, and you're kind of creating illegal rentals by not

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

17  
18 This just reiterates what's in the planners report. We believe the application is consistent with  
19 decades of planning by Maui County officials and will benefit the local economy and increase tax  
20 payments. I couldn't find any reason to deny the application. As the planner indicated, there were  
21 some letters in opposition. They were non-specific and the concern of long-term housing was  
22 dealt with when the cap of 88 homes was put in place. To deny a permit based on unsubstantiated  
23 concerns would mean that you should deny every STRH permit because in every neighborhood  
24 you're gonna have a handful of neighbors opposed and you're going to have concerns over parties  
25 and you've still got your long-term housing problem. One house isn't going to fix your long-term  
26 housing problem.

27  
28 Now, what does the law say? Well, the law favors the free use of real property and vested real  
29 property rights are jealously protected by the courts. Courts from across the country have  
30 concluded that not recognizing the validity of vested rights would be fundamentally unfair and the  
31 same as pulling the rug out from under property owners. Quite simply, owners should be allowed  
32 to follow their vested covenants.

33  
34 I've reviewed the Maui County Code. There are several different ways that short-term rentals can  
35 be approved outside of the permit process. One of them is Section 19.32, which applies to  
36 planned developments like the Golf Estates and that's how, you know, our community was  
37 approved with these vested entitlements.

38  
39 There is an interesting decision by the U.S. Supreme Court. They have long held that refusing to  
40 grant a permit based on neighbor objections is a denial of due process because these neighbors  
41 are not bound by an official duty and they could withhold consent for selfish reasons or arbitrarily.  
42 Clearly here you've got a few owners, I think four out of the ten have been previous board  
43 members during the arbitration and they're upset that they didn't win and they're trying to win now  
44 through this process. And it really wouldn't be proper, you know respectfully, for the Commission

1 to try to overturn an arbitration decision. This issue was litigated in this community and it was  
2 resolved.

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

11  
12 Now, with the neighbor notice, we sent a personal letter. We included phone numbers and our  
13 email addresses. We invited our neighbors to reach out so we could discuss any concerns. We  
14 told them we love our home, we love our neighbors and we love the community. We will continue  
15 to not allow unruly or disruptive guests to use our home whether they stay for free or they pay for  
16 the privilege. We did not receive any phone calls or emails from any of the owners who later sent  
17 in those protest letters.

18  
19 So, in conclusion, we simply ask that the permit be granted. Thank you for your time. I will stop  
20 sharing and I would be happy to answer any questions.

21  
22 Mr. Carnicelli: Thank you, Mr. Kading, I appreciate it. At this point, we're gonna go and open up  
23 the floor for public testimony. So, Director, has anybody signed up that would like to testify on  
24 this particular item?

25  
26 Ms. McLean: Chair, right now, there's just one person who signed up to testify, and that is  
27 Jean Hardie or Jeannie Hardie. Ms. Hardie, you can unmute your audio and if you wish to, also  
28 in your video.

29  
30 Ms. Jeannie Hardie: Hello.

31  
32 Mr. Carnicelli: Hello, we can hear you.

33  
34 Ms. Hardie: Great, I don't, I don't know how to turn my video on, so I thought I'd just talk. We—

35  
36 Mr. Carnicelli: Okay, so wait, wait, before, before you get started, I just need you to say your  
37 name for the record, and then also—

38  
39 Ms. Hardie: Jean Hardy, H-A-R-D-I-E.

40  
41 Mr. Carnicelli: And Ms. Hardie, do you promise to be truthful?

42  
43 Ms. Hardie: Yes.

44  
45 Mr. Carnicelli: Great. You have up to three minutes.

1  
2 Ms. Hardie: Oh, okay, thank you. We are neighbors within the 500-foot limit. Our house, there's  
3 one empty lot between our house and Kading's house, and we're downwind and downhill from  
4 him. His, his picture of the Google Earth is very misleading there are many more houses in this  
5 neighborhood built. That's an old picture. And there are many more permanent residents than  
6 he is alluding to. Four of the seven houses on our street are full-time residents. We're full-time  
7 residents. Yes, the trust owns our home, our trust, our personal trust but we've lived in Maui for  
8 30 years and we...and when we lived in previous neighborhoods, we lived next door to short-term  
9 rentals, and it was really awful, the noise and disruption. We had to call the police numerous  
10 times because people didn't abide by the 10 o'clock time noise limits and various things like that.  
11 So, we really don't want this neighborhood to be turned into short-term rentals. Several of his  
12 neighbors who are supporting his application want to apply for short-term rental applications  
13 themselves, and we really don't want that in our neighborhoods. We don't have any short-term  
14 rentals here that have been permitted by the County and we don't want them, many of us who  
15 are permanent residents here. So, I just want to add my objection.

16  
17 Mr. Carnicelli: Thank you. Is that all?

18  
19 Ms. Hardie: Yeah, I think so. I mean, there have been a lot of long...he said there'd only been  
20 one long-term rental in the neighborhood, and I know many, and so I know that people want to  
21 do rent long-term rentals in here. And like he said, right now, more people are wanting them than  
22 ever before. And not just people from the mainland, but people from all over Hawaii not just  
23 Russians. So, I understand what he's saying, but once you give him a short-term rental permit,  
24 he can do whatever he wants. He can say he's only going to rent it for a month or two at a time,  
25 but he would have no limitations put on him. So, thank you.

26  
27 Mr. Carnicelli: Thank you, Ms. Hardie. Mr. Kading, do you have any questions for the testifier?

28  
29 Mr. Kading: No, I don't have any questions for her. Thank you.

30  
31 Mr. Carnicelli: Thank you. Commissioners, any questions for the testifier? Seeing none, thank  
32 you very much for your manao, I appreciate it.

33  
34 Ms. Hardie: You're welcome.

35  
36 Mr. David Murray: Chair?

37  
38 Mr. Carnicelli: Yes, who is this?

39  
40 Mr. David Murray: I'm sorry, this is David Murray, I'd like to testify if given the opportunity.

41  
42 Mr. Carnicelli: Okay, okay, hang on a second. Are you on the phone is that what it is?

43  
44 Mr. Murray: Yes, I'm only on audio. Sorry, I'm not on the chat.

45

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

2

3 Mr. Murray: David Murray.

4

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

8

9 Mr. Murray: Thank you.

10

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

12

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

15

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

17

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

19

20 Mr. Davane: It's Joe Davane.

21

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

23

24 Mr. Davane: Yes, sir.

25

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

27

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

43

44 On that note, I'll go to the last two months, we've had six vacant lot sales. One of my clients got  
45 a unsolicited offer on another one their lots up here. So things are moving up here. But I don't

1 really want to talk about the profit and loss statement, cause that's not what this is to me. This is  
2 my home and I'm against this 100 percent. Thank you.

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

5  
6 Mr. Kading: No, I don't have any questions for him. Thank you.

7  
8 Mr. Carnicelli: Thank you. Commissioners, any questions for the testifier? Commissioner Edlao.

9  
10 Mr. Edlao: Mr. Davane, you mentioned that you have properties that you manage where people  
11 do not follow the house rules. Where are these properties?

12  
13 Mr. Davane: They're at ...(inaudible)...Kai which short-term rentals, so like the Kaanapali Alii,  
14 The Whaler where vacation models are supposed to be.

15  
16 Mr. Edlao: Okay, and then when they do not follow the rules, what are your actions to that?

17  
18 Mr. Davane: Well, I...I either...usually I go down and handle them myself, but if I have to get  
19 security involved, they have to get security involved. But the fact of the matter, you know, if they  
20 don't stop themselves from like smoking on lanais, and really what they always come back to say  
21 is, oh, I didn't know, I didn't read those, you know, well what do you do?

22  
23 Mr. Edlao: Well, don't you feel that maybe when you did rent them out that you should have gone  
24 over the house rules with them prior to having them come in? I mean, as a property manager  
25 that's your responsibility, right?

26  
27 Mr. Davane: Oh, correct. So, they had to do—

28  
29 Mr. Edlao: Have you done that with these...did you do this with these renter or you just gave  
30 them the keys and go?

31  
32 Mr. Davane: No, sir, I'm very hands on. I run a one-man operation with the cleaning lady, so I  
33 usually check my guests in personally and go through everything with them. So, not only do they  
34 have it in their contract, but they also have it right there on the counter. The four pages that  
35 they're supposed to read, that I go over and tell them—

36  
37 Mr. Edlao: Okay, okay, supposed to read, supposed to read, but as the property manager do you  
38 make sure they read it?

39  
40 Mr. Davane: How would I do that? I mean, they sign the contract. It says that they read  
41 everything.

42  
43 Mr. Edlao: Well, it doesn't matter. You know, I'm asking you if you went over the rules with them  
44 or not, yes or no. Or you just tell, oh it's there and, you know, you just figured, well, they're going

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

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

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

11  
12 Mr. Davane: All four pages?

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

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

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

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

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

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

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

45

1 Mr. Carnicelli: Okay, thank you Commissioner.

2

3 Mr. Davane: I'd like to answer—

4

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

7

8 Mr. Davane: Thank you.

9

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

18

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

30

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

32

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

35

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

38

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

43

44 Mr. Davane: Thank you.

45

1 Mr. Carnicelli: Director.

2

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

4

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

6

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

8

9 Mr. Magee: I do promise.

10

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

12

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

26

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

28

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

30

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

32

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

34

35 Mr. Carnicelli: Thank you very much, Mr. Kading.

36

37 Mr. Hopper: Mr. Chair?

38

39 Mr. Carnicelli: Yes.

40

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

1 a presentation so that's, that's available too, but generally that should be allowed for everybody if  
2 the chance for rebuttal evidence and for questions.

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

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

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

11  
12 Mr. Kading: Thank you.

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

16  
17 Mr. Magee: Thank you.

18  
19 Mr. Carnicelli: Director.

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

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

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

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

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

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

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

35  
36 Mr. Tran: Okay, so I occupy the house next to Mr. Sean Kading, and I can tell you that when I  
37 bought the property, the CC&R they did say explicitly that we have 30 days rental or more, and  
38 that's one reason I bought the lot and I build my house. And the intent of myself is never to rent  
39 them on a short-term basis, but I do, just like Mr. Kading ability to be able to let friends, relative  
40 use it, and you know, and in case I can get some monthly rental that can help me expense that's  
41 the whole idea, but I do intend to use my house for most of the time, and I would like to tell  
42 everyone that anyone who bought in this property knows they have 30 days rental. And you when  
43 the people who live here full-time try to force people like us who bought the thing with the you  
44 know, with the CC&R allow us to do a rental and say, oh I'm scared of short-term rental and so  
45 on, but you bought the property knowing that that we as owner of this property are allowed to rent

1 for 30 days or more. So, I think the two things, if you scare of a renter that don't follow the rule.  
2 That's a separate thing. You should not...that should not be a reason to reject Mr. Kading permit.  
3 I think we can live peacefully in this thing where we respect each other rights. I mean, all here,  
4 this property are very high end property, three, four million dollar property. They not little dinky  
5 house that you worry about, the people who rent this property at a certain level of income. If we  
6 have house rules that everybody will follow, I think we both...people who live here full-time and  
7 people who use it as a second home can live peacefully.

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

19  
20 Mr. Takayama-Corden: Three minutes.

21  
22 Mr. Tran: --and I would highly recommend that you all should—

23  
24 Mr. Carnicelli: Thank you, Mr. Tran. Thank you very much, I appreciate it. Mr. Kading do you  
25 have any questions for the testifier?

26  
27 Mr. Kading: No, I don't have any questions. Thank you.

28  
29 Mr. Carnicelli: Great. Thank you. Commissioners, any questions for the testifier? Mr. Hipolito  
30 and then Ms. La Costa.

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

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

1 remind you, in Lanikeha CC&R, we don't even have 30 days limit on rental. The CCR in Lanikeha  
2 don't even have that provision, 30-days limit.

3  
4 Mr. Hipolito: Mr. Tran, I really wanted your answer regarding ghost town, that's it.

5  
6 Mr. Tran: I think I just answered that. Here's nobody there.

7  
8 Mr. Hipolito: Okay, thank you.

9  
10 Mr. Tran: ...(inaudible)...

11  
12 Mr. Carnicelli: Thank you. Commissioner La Costa.

13  
14 Ms. La Costa: Thank you, Chair. Mr. Tran, are you planning on applying for a short-term rental  
15 permit?

16  
17 Mr. Tran: I don't have any intent right now, but the I'd like to be able to rent my property out on  
18 30 day plus just like CC&R allow, you know. I mean, if, if the...whatever, the County require me  
19 to have permit, I may have to do that, but that's not my intent.

20  
21 Ms. La Costa: Thank you.

22  
23 Mr. Carnicelli: Thank you. Any other questions for the test for the testifier? Thank you, Mr. Tran.  
24 Appreciate it. Director.

25  
26 Ms. McLean: Chair, the next person signed up to testify is David Murray.

27  
28 Mr. David Murray: Good morning, Chair and Commission Members.

29  
30 Mr. Carnicelli: Good morning.

31  
32 Mr. Murray: Can you hear me okay?

33  
34 Mr. Carnicelli: I can. Please state your name for the record.

35  
36 Mr. Murray: Sure. My name is David Murray and I promise to be truthful.

37  
38 Mr. Carnicelli: Okay, thank you for allowing us to hear that you will be truthful. You have up to  
39 three minutes, Mr. Murray.

40  
41 Mr. Murray: Thank you, sir. I've been the owner of 990 Anapuni Place since 2006. I've been in  
42 the Lanikeha gated community for nearly 15 years, and I've been Sean's direct neighbor since  
43 2012. I'd like to testify that Sean has been an excellent neighbor and member of the community.  
44 We have often been on island at the same time and we've never had any issues with Sean or his  
45 friends or family. I'm confident that if granted this permit, Sean will respect our neighborhood and

1 my property and the community and therefore, I fully support this request. I can also attest to the  
2 fact that most of the lots are empty even after nearly 15 years with very few homes currently under  
3 construction and that most homeowners are second vacation home owners. While I understand  
4 the concern of those are permanent residents, I don't believe the opinions of the minority should  
5 affect the majority and when I bought in 2006, the CC&Rs clearly said I can rent for 30 days or  
6 more. I also think the term, short-term rental is misleading. No one wants weekend rentals, week  
7 long rentals, Airbnb, that's not what we're talking, we're talking about month-long rentals that's a  
8 different type of person who looks at renting one, two months long in a multi-million dollar house.  
9 Of course, regulations are important, I believe in those and I support any regulations to make sure  
10 that everyone is respected and the community is upheld. So, I do think this is appropriate and  
11 fully support Sean's request.

12  
13 Mr. Carnicelli: Thank you, Mr. Murray. Mr. Kading, do you have any questions for the testifier?

14  
15 Mr. Kading: No, I don't have any questions. Thank you.

16  
17 Mr. Carnicelli: Great. Thank you. Commissioners, any need to clarify the testimony? Seeing  
18 none, thank you very much, Mr. Murray. Director

19  
20 Mr. Murray: Thank you.

21  
22 Ms. McLean: Chair, the next person signed up to testify is Kai Nishiki. And so far, she's the last  
23 one who indicated on the chat function they wished that they wish to testify.

24  
25 Mr. Carnicelli: Great.

26  
27 Ms. Kai Nishiki: Hi, good morning Commissioners. Good morning, Chair.

28  
29 Mr. Carnicelli: Good morning, please identify yourself for the record.

30  
31 Ms. Nishiki: My name is Kai Nishiki.

32  
33 Mr. Carnicelli: And Ms. Nishiki, do you promise to be truthful?

34  
35 Ms. Nishiki: I do.

36  
37 Mr. Carnicelli: You have up to three minutes.

38  
39 Ms. Nishiki: Thank you. I believe in looking at the records that there are numerous objections by  
40 neighbors and members of the community and so I won't elaborate on all of the reasons, and I've  
41 also testified on many occasions to the objection to additional short-term rentals in West Maui. It  
42 is not just these, you know, less than one hundred permitted STRHs. There are thousands that  
43 you folks know about because of the Minatoya listing.

44

1 Anyway, I thought it was interesting. I was, I was so happy to hear that the applicant really loves  
2 his neighbors and his community, and I would just like to say that, you know, sometimes when  
3 you profess love that there's actual demonstrations that need to go along with that, and actual  
4 demonstrations of true love or aloha sometimes require sacrificing your personal desires to honor  
5 the wishes of those people that you profess to love which is the neighbors and the greater  
6 community, and then that that love should show that, you know, you care more about making sure  
7 that our community is happy and vibrant, and sometimes you have to sacrifice your personal  
8 desires. So, and anyone who's been married or in a relationship, they can understand that  
9 concept. And I really think that the community has spoken loud and clear that we don't really  
10 need or want any more STRHs in West Maui. There's enough already, and I am asking for the  
11 Commission to please deny this application. Mahalo.

12  
13 Mr. Carnicelli: Thank you, Ms. Nishiki. Mr. Kading, do you have any questions for the testifier?

14  
15 Mr. Kading: Are we allowed to make a comment?

16  
17 Mr. Carnicelli: You can do that in your rebut, but you have any questions for her?

18  
19 Mr. Kading: Okay. No, I don't.

20  
21 Mr. Carnicelli: Okay, thank you. Commissioners, any questions for the testifier? Seeing none,  
22 thank you Ms. Nishiki. I'm sure we'll see you later as well.

23  
24 Ms. Nishiki: Yes, see you later. Thank you. All day.

25  
26 Mr. Carnicelli: Director, anybody else signed up?

27  
28 Ms. McLean: Yes, Chair. We've had two more people signed up. First is Norm Kaufman and he  
29 will be followed by Bob Strickland.

30  
31 Mr. Carnicelli: Mr. Kaufman if you would unmute yourself and if you also wish unmute your video  
32 as well. We can see you but we can't hear just quite yet.

33  
34 Mr. Norm Kaufman: How's that? Does that work?

35  
36 Mr. Carnicelli: Gotcha, got ya now. Please state your name for the record.

37  
38 Mr. Kaufman: It is Norm Kaufman.

39  
40 Mr. Carnicelli: And Mr. Kaufman, do you promise to be truthful?

41  
42 Mr. Kaufman: I do, sir.

43  
44 Mr. Carnicelli: Great. You have up to three minutes.

45

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

10  
11 Mr. Kading made some comments which I think mischaracterized what the arbitration panel  
12 decided. The panel did decide to go by the CC&Rs, but they refused to hear anything regarding  
13 the County ordinance for rentals, and I think now the County is on the receiving end of a lawsuit  
14 from Mr. Tran to determine if KGE is, in fact, under the Maui County ordinance. So, for Mr. Kading  
15 to characterize and say this has been decided, the arbitrator strictly decided that we've got to  
16 adhere to our CC&Rs, but they never said anything and they actually refused to comment on Maui  
17 County ordinance leaving that up to the County of Maui. And, of course, you'll get to answer that  
18 now after being sued by Mr. Tran.

19  
20 Mr. Kading made a comment that the Lanikeha HOA supports his decision to short-term rent. I'd  
21 like to know where the evidence of that is. I have yet to see that. For a lot...for almost all of Mr.  
22 Kading supporters are people who, who want to short-term rent. They don't live here. None of  
23 them are full-time owners like myself, Mr. Davane, some of the other people that are in opposition.  
24 This is our home. This is where we live. Changing it up is not what we'd like, to like to see. And  
25 that's the end of what I've got to say. Thank you.

26  
27 Mr. Carnicelli: Great. Thank you, Mr. Kaufman. Mr. Kading, do you have any questions for the  
28 testifier?

29  
30 Mr. Kading: No, I don't have any questions. Thank you.

31  
32 Mr. Carnicelli: Thank you. Commissioners, do you have any questions from him? Commissioner  
33 La Costa.

34  
35 Ms. La Costa: Thank you, Chair. Thank you, Mr. Kaufman. So, you mentioned that you live in  
36 an area where there are other homes that have short-term rentals?

37  
38 Mr. Kaufman: Yes, ma'am.

39  
40 Ms. La Costa: Okay, so let me see, how do I ask this? How do you know that they're short-term  
41 rentals? And how often does the disruption occur? I mean, do you have someone in there every  
42 week or is there someone there every month? I mean, if you're right in the heart of all of this,  
43 then I'd like to know the disruption effects. Thank you.

1 Mr. Kaufman: So, I'm not sure what I'm allowed to say legally because of the ongoing litigation.  
2 The first thing, Mr. ...(inaudible)...Carnicelli, did I say that right, he asked me if I would tell the  
3 truth, and under penalty of perjury, I am telling you the truth, there's evidence of short-term renters  
4 on either side of me which can be produced. I don't know what else I can say because of litigation  
5 and, but if you want proof, we can get you proof.  
6

7 Ms. La Costa: So, Mr. Kaufman, are you a board member by chance?  
8

9 Mr. Kaufman: I am, but I'm speaking in my capacity as a homeowner, not as a board member.  
10

11 Ms. La Costa: Okay. You mentioned about the proof of the support from the HOA. Have you  
12 seen the letter from Kaanapali Golf Estates are on the stationery to the County of Maui discussing  
13 the information that's dated...well, received to April 27<sup>th</sup>, so it must have been somewhere around  
14 there? It is talking...it talks about the CC&Rs and the arbitration that you, that you mentioned  
15 hadn't been specifically quoted correctly as to paraphrase it.  
16

17 Mr. Kaufman: Well, maybe, maybe I said it incorrectly. The arbitrators did decide that we, that  
18 the CC&Rs were in effect for the 30 days, but they did not rule on the County ordinance. But I'm  
19 not, without seeing the letter, I'm not...I probably have seen the letter, but I'm not sure which one  
20 you're referring to without being...(inaudible)...  
21

22 Ms. La Costa: Okay. Thank you very much, appreciate it.  
23

24 Mr. Kaufman: Thank you.  
25

26 Mr. Carnicelli: Any other questions for the testifier? Quick question. Mr. Kaufman, how many  
27 lawsuits and/or arbitration or legal proceedings is the association in right now regarding short-term  
28 rentals?  
29

30 Mr. Kaufman: One, to my knowledge.  
31

32 Mr. Carnicelli: Okay, thank you. Any other questions? Seeing none, thank you, Mr. Kaufman,  
33 appreciate it.  
34

35 Mr. Kaufman: Thank you.  
36

37 Mr. Carnicelli: Director.  
38

39 Ms. McLean: Thank you, Chair. The next testifier is Bob Strickland.  
40

41 Mr. Bob Strickland: Hello, can you guys hear me, okay?  
42

43 Mr. Carnicelli: We can Mr. Strickland. Do you promise to be...or actually state your name for the  
44 record?  
45

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

2

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

4

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

14

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

23

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

32

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

34

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

37

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

41

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

44

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

4  
5 Mr. Kading: But did you see that the KGE, CC&Rs specifically allow 30-day plus rentals?  
6

7 Mr. Strickland: I, I did not.  
8

9 Mr. Kading: Thank you.  
10

11 Mr. Carnicelli: Is that all, Mr. Kading?  
12

13 Mr. Kading: Yeah, no further questions.  
14

15 Mr. Carnicelli: Thank you. Okay, Commissioners, any questions for the testifier? We'll go to  
16 Commissioner Edlao, and then Commissioner La Costa.  
17

18 Mr. Edlao: My question Mr. Strickland is, do you walk the neighborhood at all?  
19

20 Mr. Strickland: I do.  
21

22 Mr. Edlao: Okay, when you walk the neighborhood if you see that there's somebody that's you  
23 know, renting short-term rental there, do you interact with them or do you just ignore them?  
24

25 Mr. Strickland: I don't believe there are any short-term renters so I've never actually seen any in  
26 this neighborhood. I just see the full-time residents that live here and the folks that come in on a  
27 part-time basis that own second homes here.  
28

29 Mr. Edlao: Okay, so you really don't know if they were just renters as opposed to the owners  
30 then?  
31

32 Mr. Strickland: Yeah, the people that I see, I mostly know in the neighbor, I can say that, I can  
33 attest to that.  
34

35 Mr. Edlao: Okay, but if there's somebody that you do not recognize that's on property, do you  
36 say hi or interact with them at all as if you would if the owners were there?  
37

38 Mr. Strickland: Sure, up at the club house, you know, apparently they're only supposed to be  
39 owners but I interact with anyone that's up there, offer aloha, and warm welcome to anyone that  
40 is, is on the property.  
41

42 Mr. Edlao: Okay.  
43

44 Mr. Carnicelli: Thank you, Commissioner. Commissioner La Costa.  
45

1 Ms. La Costa: Thank you, Chair. Mr. Strickland, thank you for your testimony. When you  
2 purchased there at KGE was there a sign outside the main gate of the Golf Estates about  
3 short-term rental?  
4  
5 Mr. Strickland: Not that I'm aware of.  
6  
7 Ms. La Costa: Okay, 'cause at one point there was a sign describing what was allowed and not  
8 allowed. So, I just wondered if you saw that when you were in there because that talks about  
9 rentals. Thanks very much.  
10  
11 Mr. Carnicelli: Thank you. Any other questions for the testifier? Seeing none, thank you,  
12 Mr. Strickland, appreciate it.  
13  
14 Mr. Strickland: You're welcome.  
15  
16 Mr. Carnicelli: Director.  
17  
18 Ms. McLean: Chair, there's one more person who's indicated they wish to testify, and that is  
19 Cindy Lenzi.  
20  
21 Ms. Cindy Lenzi: Can you hear me...(audio feedback)...  
22  
23 Mr. Carnicelli: oh, we got feedback there. ...(audio feedback)...you may need to turn your volume  
24 down.  
25  
26 Ms. Lenzi: Is that better? ...(audio feedback)...  
27  
28 Ms. McLean: Chair, it looks like she has two devices on.  
29  
30 Ms. Lenzi: Turn the other one off.  
31  
32 Ms. McLean: Perfect.  
33  
34 Mr. Carnicelli: Please.  
35  
36 Ms. Lenzi: Okay, ...(audio feedback)...no, it's still doing it. ...(audio feedback)...should I try to  
37 call on the phone instead?  
38  
39 Mr. Carnicelli: Try turning your volume down.  
40  
41 Ms. Lenzi: It's down pretty low, I can hardly hear you.  
42  
43 Mr. Carnicelli: Oh, okay. Try it again.  
44  
45 Ms. Lenzi: The feedback stopped.

1  
2 Mr. Carnicelli: The feedback did stop.

3  
4 Ms. Lenzi: Okay, let's try that then.

5  
6 Mr. Carnicelli: Okay, so please say your name for the record.

7  
8 Ms. Lenzi: Okay, my name is Cindy Lenzi, and my husband Michael is here with me. We are—

9  
10 Mr. Carnicelli: Hang on, hang on, hang on, Ms. Lenzi, do you promise to be truthful?

11  
12 Ms. Lenzi: Absolutely.

13  
14 Mr. Carnicelli: Okay, you have up to three minutes.

15  
16 Ms. Lenzi: Okay, my husband and I live here full-time, year round and our lot is adjacent to a lot  
17 within the 500-foot radius of Mr. Kading's lot. I want to make it clear that on multiple occasions  
18 we have heard excessive noise, loud music and even profanity late into the evening, even after  
19 11:00. Now, not if, if my neighbors who are vacationing have, you know, a fun evening, I don't  
20 want to impinge on that. I wouldn't dream of calling them up, but if we're talking about somebody  
21 that is desiring to make money or offset the cost, now the potential for listening to this type of very  
22 real noise is, is real, it's significant, and it definitely impacts us. I have also...Mr. Kading said on  
23 Page 62, that he and his neighbors know that he follows the rules and then he will make all  
24 necessary steps to ensure quiet enjoyment is not disturbed. He's not even aware that this is  
25 going on and not that we should be, but the whole point is he's got this lofty view of the way things  
26 are when, in fact, it's, it's not true. The potential for greater disturbance is real, it is significant.  
27 We have been impacted and at night, everyone knows sound travels much further. I'm very  
28 concerned about his point, that he'd...in his...on Page 64, he attempts to diminish the weight of  
29 valid protest letters calling them irrelevant, saying, you know, that because they had a legal battle.  
30 Well, quite frankly, these legal battles are a direct result with people having a valid point of not  
31 wanting renters. Each lot represents a significant financial and often emotional investment. And  
32 it's very disturbing to think that a neighbor who professes to give an aloha spirit diminishes feelings  
33 and perspectives of neighbors and if issued a permit, he can't guarantee that people will be  
34 respectful. We have...I wanted to make it clear that the noise that we hear is not necessarily from  
35 Mr. Kading's home, but it's from the cul de sac which impacts all of us.

36  
37 Ms. Takayama-Corden: Three minutes.

38  
39 Ms. Lenzi: We have a right as members in Lanikeha—

40  
41 Mr. Carnicelli: Excuse me, Ms. Lenzi, Ms. Lenzi—

42  
43 Ms. Lenzi: To insist that—

44  
45 Ms. Carnicelli: Wait, hui, hui Ms. Lenzi, sorry, your three minutes is up.

1  
2 Ms. Lenzi: Okay, thank you.  
3  
4 Mr. Carnicelli: Not, not a problem. Is, anyways, thank you. Mr. Kading, do you have any  
5 questions for the testifier?  
6  
7 Mr. Kading: Just a couple quick questions. Thank you. Ms. Lenzi, you're...just to confirm, your  
8 home is outside the 500-foot radius is that correct?  
9  
10 Ms. Lenzi: That's true, that's correct, we're adjacent to the 500.  
11  
12 Mr. Kading: And is it also correct, you've not heard any noise or had any problems with anyone  
13 that's used my home have you?  
14  
15 Ms. Lenzi: It's from the cul de sac, I didn't go down to see exactly, it appeared it could have been  
16 there, but I can't factually say that, no. But the fact is the neighbors, it's coming from the cul de  
17 sac.  
18  
19 Mr. Kading: Okay, thank you. I don't have any further questions.  
20  
21 Mr. Carnicelli: Thank you. Any questions from the Commission? Thank you, Ms. Lenzi,  
22 appreciate it.  
23  
24 Ms. Lenzi: Thank you.  
25  
26 Mr. Carnicelli: Director.  
27  
28 Ms. McLean: Chair, no one has indicated on the chat function that they wish to testify.  
29  
30 Mr. Carnicelli: Okay, so if there's anybody out there that would like to testify, please unmute  
31 yourself, and identify yourself for the record please. Going once, going twice, speak now or  
32 forever hold your peace. Okay, so if there are no objections, we are going to go ahead and close  
33 public testimony. Seeing no objections public testimony is now closed. So, I believe what we will  
34 do, Mr. Hopper, confirm here, will go ahead and give Mr. Kading some time to rebut testimony  
35 and/or if he chooses the presentation by the Department.  
36  
37 Mr. Hopper: Yes, I think that that's correct.  
38  
39 Mr. Carnicelli: Okay, so is, is there a time limit to that Mr. Hopper?  
40  
41 Mr. Hopper: I think you can impose a time limit. I think you can maybe see how much time  
42 Mr. Kading would like, and, you know, if it's...and work within that, if it's not unreasonable, if  
43 there's timing issues, I think you can ask, you know, for it to be, to be a reasonable time, but I  
44 think you can start with that.  
45

1 Mr. Carnicelli: Okay, Mr. Kading, about how long you do you need?  
2

3 Mr. Kading: I would estimate we wouldn't need more than probably ten minutes.  
4

5 Mr. Carnicelli: Okay, we'll give you up to ten minutes then.  
6

7 Mr. Kading: Okay, thank you.  
8

9 Mr. Carnicelli: You have the floor.  
10

11 Mr. Kading: Thank you very much.  
12

13 Ms. Kading: I'm gonna, I'm gonna jump in first to specifically address the comments about aloha  
14 and completely understand that, you know, aloha does involve sacrifice and thinking about the  
15 interests of your neighbors. As Ms. Nishiki said, anyone who is married understands that, but  
16 what I think we're looking for is aloha being a two-way street. That we completely understand the  
17 interests of people who do live here full-time. We want them to understand the interests of the  
18 people who bought here to have vacation homes and, you know, ultimately to live here  
19 permanently.  
20

21 I think one of the best points that was made was that we're not talking about what's traditionally  
22 thought of as short-term rentals. We're not talking about a week, a weekend even two weeks. As  
23 everybody seemed to note here, the CC&Rs talk about 30 plus day rentals that's what we're  
24 talking about. And that is a compromise between the interests of people who live here full-time  
25 and those of us who don't live here full-time who, who do frankly, outnumber those who live here  
26 full-time. And so, we're just looking for it to be a two-way street. We completely understand the  
27 concerns. We will have house rules. We will go over them with anyone who is here and we're  
28 limited to 30 plus, 30 plus day rental. Our property will be professionally managed by someone  
29 who's on island. So, if there are any issues which we would never anticipate, there will be  
30 someone who are to address those issues.  
31

32 Mr. Kading: And the last point I would like to make is that both informally and formally, through  
33 the arbitration I requested that the association produce any records that they have showing that  
34 there are problems or have been historically problems with 30-day or more rentals. And the  
35 presidents of the association, former presidents testified under oath that they've never had any  
36 problems with a 30-day rental. Mr. Kaufman you know suggests that he may have evidence of  
37 problems with short-term rentals, but in the litigation, you know, he's been unable and it's often  
38 just the assumption, well, there's a family next door, they're unfamiliar, and then Mr. Kaufman or  
39 his wife will go knock on the door and meet a family member. Mr. Kaufman has made false  
40 reports to the County, including one against our family, suggesting that there was a short-term  
41 rental. He later had to retract that because it wasn't true.  
42

43 Ms. Kading: It was my father.  
44

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

5  
6 Mr. Carnicelli: Thank you, Mr. and Mrs. Kaufmann, appreciate that.

7  
8 Mr. Kading: That was Kading.

9  
10 Mr. Carnicelli: Mr. Kading sorry. I just heard you say Kaufman and I doubled it down. So thank  
11 you Mr. and Mrs. Kading, I appreciate that. I believe at this point in time, what we're going to do  
12 is open up the floor to the Commission for questions, comments, concerns to either the applicant  
13 or the Department or to Corporation Counsel. I will go ahead and start with Commissioner La  
14 Costa.

15  
16 Ms. La Costa: Thank you, Chair. Thank you, Mr. and Mrs. Kading. So, every time someone  
17 comes before the Commission and requests a short-term rental permit this is the question that I  
18 always ask, have you derived any income from any of the guests who have stayed at your home  
19 prior to today?

20  
21 Ms. Kading: Never.

22  
23 Mr. Kading: No.

24  
25 Ms. La Costa: Okay. You mentioned Mrs. Kading in your presentation that some people or guests  
26 and other people give you a check. Who are the people that give you the check, please? And  
27 for what is that check given?

28  
29 Ms. Kading, No, I'm sorry. You misunderstood what I said. What I said was currently no one  
30 gives us a check, but we allow many friends and family to use it for free. And so, my point was  
31 just that, and no one knows who these people are. My point was just that if going for we were to  
32 elect to rent it and get a check, the use would be no different. It's currently being used by our  
33 family and friends for free. We have...up until today, we never ...(inaudible)...renting our property  
34 or anything...(inaudible)...

35  
36 Ms. La Costa: Okay. The other thing that I just, this is a point of clarification, when the Chair said  
37 that he wanted or he thought that residential short-term rental homes should be in established  
38 neighborhoods understand he didn't speak for everyone on the Commission. That was his  
39 opinion. So, I want to make that very clear and I want that on the record. My last question is or  
40 my last, perhaps it's a question is in the letter that was part of the packet from the KGE General  
41 Manager, I've, I've read this four times, and it does not say anywhere that they are giving their  
42 approval for this. What it states is that they outlined the arbitration and they also said that the  
43 CC&Rs that you are not entitled. KGECA owners are not entitled to rent their units for an initial  
44 term of less than 30 days pursuant to the CC&Rs, and you've stated that before, but this is not an  
45 approval from KGE, what it is, is an outlining of what is required and what is in the CC&RS, so I

1 want to make that clear for the record that it is not an approval, according to the General Manager,  
2 Mr. Troy Katafias, so those are my comments. Thank you.

3  
4 Mr. Carnicelli: Thank you, Ms. La Costa. Commissioner Hipolito.

5  
6 Mr. Hipolito: Thank you, Chair. Mr. Kading, in your earlier comments, you mentioned that you  
7 have onsite security, and what is the reason for your onsite security?

8  
9 Mr. Kading: I didn't mean that I have on site, but our neighborhood association has a security  
10 guard that drives around the neighborhood. So, we do have a private security, not myself  
11 personally, but our community does.

12  
13 Mr. Hipolito: Okay, thank you. The next question I have, you mentioned you, you leave Maui for  
14 two to four months. What is the reason for you leaving the island?

15  
16 Mr. Kading: I work in California and I'm able to do that remotely sometimes, but other times I  
17 have obligations that require me to travel back to California.

18  
19 Mr. Hipolito: And usually this two to four months is an annual thing?

20  
21 Mr. Kading: It's...that's an average, I think last year I flew over here six times or so and usually  
22 I'll stay for you know, sometimes it's three weeks, I think, three weeks, four weeks. So, I go back  
23 and forth quite a bit. We use the home and our family uses the home fairly regularly and that's  
24 why we anticipate that we would only do, you know, a handful, you know, a few rentals, and we  
25 anticipate those would be, you know, 60 days in duration cause that's how long I'm usually gone.

26  
27 Mr. Hipolito: Okay, so this period when you're gone, that's when you're planning to rent, correct?

28  
29 Mr. Kading: That's correct. And that would just allow us to offset some of the maintenance costs  
30 and upkeep on the property.

31  
32 Mr. Hipolito: And you mentioned that it was about 10K per month for maintenance fees?

33  
34 Mr. Kading: Well, it's 10K, yes. To own the property, we have approximately ten thousand per  
35 month in expenses.

36  
37 Mr. Hipolito: Okay. Thank you, Chair.

38  
39 Mr. Carnicelli: Thank you. Commissioner Pali. Oh wait, she disappeared, never mind. You  
40 know, she's getting...anyways, Commissioner Castro.

41  
42 Mr. Castro: My questions already been answered through Commissioner La Costa's questions.  
43 Thank you.

44  
45 Mr. Carnicelli: Okay, thank you. Commissioner Pali.

1  
2 Ms. Pali: No questions, Chair.

3  
4 Mr. Carnicelli: Thank you. Commissioner Thompson.

5  
6 Mr. Thompson: Thank you, Chair. Kind of a tough one here. One, is and I'm sure maybe  
7 everybody watching ...(inaudible)...our Commission has no purview over your CC&Rs. That's  
8 between you guys and your own CC...or the association. We don't, we can't apply our rules to  
9 your association. I yield my time.

10  
11 Mr. Carnicelli: Thank you, Commissioner Thompson. Commissioner Edlao.

12  
13 Mr. Edlao: Mr. Kading, you said you have a property manager that was on the island and  
14 accessible when the property is rented out.

15  
16 Mr. Kading: Yes, we have a –

17  
18 Mr. Edlao: I thought I read that someplace.

19  
20 Mr. Kading: Yes, we've designated it property manager. He is a Hawaii realtor and he will be  
21 available at all times in the future when it is rented.

22  
23 Mr. Edlao: Rent, it is rented out. Will he bring, you know, be there when the renters come in and  
24 go over the house rules and whatever else that needs to be done?

25  
26 Mr. Kading: Yes, absolutely. He lives here on the West Side and my agreement is with him is  
27 that he will greet the guest, go over the house rules with them, have them initial them. Our house  
28 rules, stress that this is a residential community and that quiet hours will be enforced. So we've  
29 really taking every precaution that we can to, you know, protect our neighbors.

30  
31 Mr. Edlao: Are there any other rules from the association that has to be abide by the owners that  
32 you know of?

33  
34 Mr. Kading: Well, the rules in terms of I mean, there's the bylaws and CC&Rs, that's what we  
35 have to follow. The community has not adopted, as I know, its own house rules. They've declined  
36 to do that so far.

37  
38 Mr. Edlao: And the security you mentioned is the association pays for that security to have them  
39 roam, and if so, how often does they roam the neighborhood? Is it just once a night, twice a  
40 tonight, you know?

41  
42 Mr. Kading: I'm not privy to what their schedule is. I see them quite regularly. I know that they  
43 drive the neighborhood routinely, but I don't know what the scheduling is, you know, overnight or  
44 the specifics. I can't speak to that.

45

1 Mr. Edlao: Have you had any interaction with the security that roams the property?  
2

3 Mr. Kading: Just friendly hellos, aloha. They've never come on my property. They've never  
4 responded to any incident. They've got no security reports. We actually requested security  
5 reports regarding short-term rentals and they had nothing.  
6

7 Mr. Edlao: Okay, thank you, no more questions.  
8

9 Mr. Kading: Thank you.  
10

11 Mr. Carnicelli: Thank you. Vice-Chair Tackett.  
12

13 Mr. Tackett: I have no questions. Thank you.  
14

15 Mr. Carnicelli: Thank you. So, I have just a couple of questions. One is you said that you have  
16 house rules, do you currently, does your property manager, you know, even though you're not  
17 charging when your dad comes, does he get a copy? Does he get checked in? Does he get a  
18 copy of the house rules? Do we go over this stuff with the people like if you have friends visit for  
19 the first time, whatever it would be? Do you currently do that?  
20

21 Mr. Kading: We currently have the house rules posted on the wall. The irony, I guess, to the  
22 situation is that there's no requirement, we could give our house to anyone with no rules for a  
23 night, a week, whatever. It, it, the permit process actually provides the protection that our  
24 neighbors want. Without this permit, we're free to do whatever. I can take the house rules off the  
25 wall, I can rent it to a Harley gang who are gonna bring ten motorcycles, you know, and so, yes,  
26 there are house rules on the wall, and all my guests are incredibly respectful and always have  
27 been.  
28

29 Ms. Kading: And we do, what we do also, email quiet hours to anybody who's going to use the  
30 house.  
31

32 Mr. Carnicelli: Now, Mr. Kading, you could you could rent to that Harley gang as long as it was  
33 longer than 180 days.  
34

35 Mr. Kading: Well, I could give it to them for free.  
36

37 Mr. Carnicelli: You could give it to them for free. You're right, but you couldn't rent, you couldn't  
38 rent it to them.  
39

40 Mr. Kading: That's correct.  
41

42 Mr. Carnicelli: So, the aerial photograph that you, you used in your presentation, what's the date  
43 on that?  
44

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

5  
6 Mr. Carnicelli: If you pulled it five years ago, because Google Earth isn't and at least in Hawaii is  
7 not current. I mean, anyway, I was just curious what that is. So, essentially what you're trying to  
8 do is say, okay, we want to rent, we want to get a permit that is for over 30 days, but under 180  
9 because right now you could rent to somebody for a 180 and get money, nobody can say a thing,  
10 but you're saying, hey, listen, we're gonna abide by Golf Estate rules and we're not going to rent  
11 less than 30. So, you're basically you're trying to find a space in there where you want to rent  
12 more than 30 but less than a 180 for money.

13  
14 Mr. Kading: That's correct.

15  
16 Mr. Carnicelli: Okay. Director, I have a question for you. And then I'll get to you, Jerry. Sorry.  
17 Director, why is, why is Golf Estates not Minatoya?

18  
19 Ms. McLean: The Minatoya ordinance and just for everyone's recollection, those are these that  
20 are in general terms grandfathered for short-term rental use. So those are properties that were  
21 developed when short-term rental use was lawful, and so they are allowed to continue short-term  
22 rental use, even though the zoning restrictions for those properties have since changed. This is  
23 typically Apartment Districts, but there are some other properties that aren't Apartment zone that  
24 fall under this, those provisions. There are really specific criteria for falling under that. It's when  
25 certain approvals were granted, whether it's SMA approvals or building permits, and that the use  
26 was conducted before the law changed. And Kaanapali Golf Estates does not fall under those  
27 Minatoya criteria. So, it's not a matter of whether the owners or the board wishes to be on  
28 Minotoya. Properties are either on it or off it based on the criteria in the law.

29  
30 Mr. Carnicelli: Great. Thank you, Director. Commissioner Edlao.

31  
32 Mr. Edlao: Mr. Kading, just out of curiosity, regarding your house rules, if there was a case where  
33 you had a problem or a violation of your house rules, what repercussions or is there any kind of  
34 penalties that you may or may not imply on the renters?

35  
36 Mr. Kading: Renters would be required to provide a security deposit. Obviously, if, if it's an  
37 egregious violation, they would be removed from the property. My property manager would have  
38 the authority to make that decision. We could also withhold fines in order to get their attention.  
39 So, yes, I think there are, there are ways to address these issues.

40  
41 Mr. Edlao: Okay, thank you.

42  
43 Mr. Carnicelli: Commissioners, any other need for clarification from the applicant, Corporation  
44 Counsel or the Department? Commissioner La Costa.

45

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

4  
5 Mr. Kading: We are just applying now because of the five-year rule. We couldn't apply any earlier.  
6 We had wanted to get some income to offset the expenses over the years, but we've been  
7 repeatedly told by the neighbors in our community that we had to have a permit in order to do so.  
8 So here we are requesting that permit.

9  
10 Ms. La Costa: Thank you.

11  
12 Mr. Kading: Thank you.

13  
14 Mr. Carnicelli: Any other questions, Commissioners? Okay, seeing none, thank you Mr. and Mrs.  
15 Kading. Ms. Willenbrink if you would come back up and go over the Department's  
16 recommendation please or you kinda did that but if you could resummairize it for us.

17  
18 Ms. Willenbrink: Hello, thank you, Chair, Members of the Commission, members of the  
19 community. Let me just turn to the right page here. This is the County's recommendation. The  
20 County of Maui, Department of Planning recommends denial of the short-term rental home permit  
21 due to the potential socio economic impacts and the number and substance of protest letters,  
22 many from residents living in the neighbor stating concerns related to potential large gatherings  
23 in the home and excessive usage of the pool, guest house and other common areas in the  
24 subdivision rather than areas for use by the general public. However, in the event that the  
25 Commission chooses to grant the permit request, the Department recommends that the permit  
26 approval be subject to conditions stated in the staff report. In consideration of the foregoing, the  
27 Planning Department recommends that the Maui Planning Commission adopt the Planning  
28 Department's report and recommendation as the findings of fact, conclusions of law and decision  
29 and order and authorize the Director of Planning to transmit the written decision and order on  
30 behalf of the Commission. Thank you for your consideration.

31  
32 Mr. Carnicelli: Thank you, Ms. Willenbrink.

33  
34 Mr. Hopper: Mr. Chair?

35  
36 Mr. Carnicelli: Yes, Mr. Hopper.

37  
38 Mr. Hopper: Just a quick thing. One is that I think I'd give just last word to the applicant on this  
39 as far as rebuttal or questions. And then the other thing is that while I know the recommendation  
40 was for adoption of the staff report as the D&O, if it would be a denial, I think you would also want  
41 to give staff authority to draft the D&O. It could be based on the staff report and you  
42 recommendations, but I think if you're gonna go the way of denial, you would need to have  
43 numbered paragraph findings of fact, conclusions of law, and decision and order. Again, that's,  
44 that's...that would be part of the recommendation that I would have if you went that way, but for

1 now I think I would give the applicant on the last word on that...you know, if they have any rebuttal  
2 evidence, and then you can go into your deliberations.

3  
4 Mr. Carnicelli: Great. Thank you, Mr. Hopper, I appreciate it. Mr. and Mrs. Kading, you get the  
5 last word.

6  
7 Ms. Kading: Yeah, I think the only thing I would address is the issue about large gatherings, the  
8 concern about large gatherings at that house, you know, at 30 plus day rental, I don't think you're  
9 looking at large gatherings, but that being said, when I've had my brothers and sisters and nieces,  
10 you know, ten, twelve people here and there's been exactly zero issues, so I don't think that's a  
11 concern. And I, and I don't know that it was even referenced in the letters. That's the only thing  
12 I ...(inaudible)...

13  
14 Mr. Kading: And, and when we, if we were to rent to a family we would have a specific list of who  
15 was allowed to occupy the home. The house rules say they're not allowed to have any parties or  
16 any gatherings, and so that would be if they did, that would be grounds for them to be ejected  
17 from the property. So, we'll maintain a strict hold. You know, I just think that, you know, when  
18 you're granting these permits and you've got an applicant who bought based on the assumption  
19 we could follow these rules and we bought in the resort area, we then wait patiently for five years,  
20 you've got a couple in front of you who, you know, we follow the rules. We're both attorneys. We  
21 follow the law and we're bound by it. And so, you know, we respectfully just request, you know,  
22 if you want to limit the permit, but I think that we should...we deserve a right to show that this  
23 community can have a balance between the full-time residents and those of us who bought  
24 second homes. That's it. Thank you.

25  
26 Mr. Carnicelli: Thank you, Mr. and Mrs. Kading, appreciate that. Okay, Commissioners, I will, at  
27 this point in time, I guess, entertain a motion from the floor so we can kind of deliberate on which  
28 way the Commission would like to go. Would anybody like to make a motion? Commissioner La  
29 Costa.

30  
31 Ms. La Costa: Thank you, Chair. I would like to make a motion to deny the permit based upon  
32 the conclusions of law, Section 19.65 requires the Commission to approve or deny the permit  
33 because the Department received 18 letters of opposition. The community has spoken—

34  
35 Mr. Carnicelli: So, wait, wait, wait...let's just start with...I'll give you a chance to speak to the  
36 motion. So you just say...what is it...rather than you going to the reasoning, if you could just a  
37 make a motion, let's start there and see if we can get a second. So, why don't you make a motion?

38  
39 Ms. La Costa: I move to deny the permit based upon the conclusions of law that have been  
40 presented by the Department of Planning.

41  
42 Mr. Carnicelli: Okay, so how about is, is your motion is then to adopt the recommendation of the  
43 Department is that what your motion is?

44  
45 Ms. La Costa: That is correct. That is correct.

1  
2 Mr. Carnicelli: So your motion is adopt the recommendation of the Department. Do we have a  
3 second to that motion? Seconded by Commissioner Hipolito. So, let's just say, let's for the record  
4 say that the...Commissioner La Costa is the movant, Commissioner Hipolito is the seconder, so  
5 then now Commissioner La Costa I will give you the floor to speak to the motion.  
6

7 Ms. La Costa: Thank you, Chair. And I apologize for my rambling earlier. The, the community,  
8 irrespective of where they, where they stand personally, the fact that people live there full-time  
9 and have spoken loudly and clearly that they don't want to short-term rental in their neighborhood  
10 should be paid attention to. We have heard tens of these as long as I've been on the commission.  
11 And when the neighborhood speaks loudly and clearly, we as a planning commission tend to  
12 listen because that's our job, is to make sure that the laws are upheld and that the, that the people  
13 that, that we are representing on the commission be heard.  
14

15 The second thing is, I don't think that the applicant provided enough burden of persuasion  
16 pursuant to 91-10. We all want to do things sometimes that aren't specifically allowed, but if we  
17 make a good enough argument, we sometimes can do it, and I do not think that argument was  
18 met. And also, it really is not the Commission's kuleana that the Kadings brought in there hoping  
19 to have rental expectations. We're not the Real Estate Commission, we're the Planning  
20 Commission. So, I just think that after review of the Planning Department which is what they do  
21 all day long, if they think that it should be denied, then I concur with them based upon the items  
22 shown in the conclusions of law and the testimonies given today. Thank you.  
23

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

26 Mr. Hipolito: No further comments. Commissioner La Costa had stated exactly what I would have  
27 stated. Thank you.  
28

29 Mr. Carnicelli: Okay, thank you. P. D. mute yourself please. Would anybody else like to speak  
30 to the motion? Okay, seeing none, Director if you would restate the motion, take a vote.  
31

32 Ms. McLean: Chair, the motion is to deny the permit as recommended in the staff report and  
33 analysis.  
34

35 Mr. Carnicelli: Okay, all those in favor of the motion, please raise your hand. That is one, have  
36 one, two three, four, five. Opposed to the motion? One, two. Actually I didn't get Stephen's vote  
37 I don't think. Was that six-two. Stephen how did you vote? Did you vote in favor of the motion?  
38 Yes. So, six-two, dissenting was Commissioner Edlao and Commissioner Thompson, is that  
39 correct, guys. Okay, so the motion passes. Six-two with Commissioner Edlao and Commissioner  
40 Thompson dissenting.  
41

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

43  
44 **VOTED: To Deny the Short-Term Rental Home Permit as Recommended by the**  
45 **Department.**

