

**MAUI PLANNING COMMISSION  
PORTION OF REGULAR MINUTES  
ITEM D.2  
APRIL 13, 2021**

Ms. McLean: Next is another Findings of Fact, Conclusions of Law and Decision and Order denying the request for a Short-Term Rental Home Permit by Mr. Sean Kading, requesting 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 again, the Commission can take action to adopt, adopt with modification or take some other action regarding the proposed Findings of Fact, Conclusions of Law and Decision and Order.

**D. CONSIDERATION AND ADOPTION OF PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER**

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

- 2. Proposed Findings of Fact, Conclusions of Law and Decision and Order denying the request for a Short-Term Rental Home Permit by MR. SEAN KADING requesting 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) (Action was taken on the application by the Commission following public hearing at the December 8, 2020 meeting)**

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

Ms. McLean: I don't know if Mr. Kading is on. I do know that he did submit a document yesterday. So if he is on the call, he would also be given an opportunity to speak.

Mr. Tackett: Sure. Mr. Kading, are you, are you on the call today or this afternoon? I don't, I don't hear him. Do you see him, Carolyn?

Ms. Takayama-Corden: No, I don't see his name.

Mr. Tackett: Okay, it doesn't sound, it doesn't sound like we have him, Director.

Ms. McLean: Yes, I don't see him either, Chair. So, the planner on the project, Kim Willenbrink is on the call, so if you have any questions for the Department, we are available to you.

Mr. Tackett: Okay, and I think since we do have new commissioners, again, I would like to just have the verbal...that everybody has read all the documentation and feels comfortable about voting on this matter? Does anybody—

Ms. Lindsey: Member Lindsey here, I have read and understand, so I feel comfortable voting. Thank you.

Mr. Tackett: Outstanding. Thank you.

Mr. Edlao: I'm okay.

Mr. Tackett: Okay. Is anybody not comfortable at this time, let's do it that way. Okay, sounds like everybody is comfortable at this time Director and Corp. Counsel. So, any questions or discussions on this before we, before I ask for a motion? Mr. Hopper?

Mr. Hopper: Just like the last one, the applicant had proposed their own Findings, Conclusions and Decision and Order, so if you do make a motion to adopt this, I think you would also include a motion to reject the applicant's proposal.

Mr. Tackett: Understood. Thank you, Mr. Hopper. Any, any other discussions? If not, I'll entertain a motion. Mr. Freitas.

Mr. Freitas: Chair, I actually have a question for Mr. Hopper.

Mr. Tackett: Sure.

Mr. Freitas: Mr. Hopper, when I read through the document it did state that a previous Maui Planning Commission long time ago, had given sort of the CC&R, do whatever they want, and that was one of the reasons they felt that they could have 30-day...between 30 days and 180-day rentals. Would the County rules overrule that or is that above the County rules?

Mr. Hopper: Thank you, Chair. The issue of the CC&Rs is actually the subject of a lawsuit right now. The applicant among others in that area are claiming that they have the right to do this use as outright. They obviously wouldn't need a permit if they would prevail on those claims. So, that's not directly...in this situation this is a Short-Term Rental Home Permit which assumes that, that they don't have the right to do that. The County's position is that in this area short-term rental homes are not allowed as a matter of right, so we would disagree with that reasoning. For, for, I don't want to go into all of the reasons because again, this is a subject of a lawsuit.

Generally speaking CC&Rs are private covenants that, that...it's basically a contract between homeowners. The County is not limited by them. In the case of Short-Term Rental Home Permits you are required to get a letter from the homeowner's association stating what their position is on whether a short-term rental home use can happen, but the County is not restricted from approving short-term rental homes even in cases where CC&Rs may prohibit them. On the other hand, CC&Rs can be more restrictive than County requirements. For instance, the County could allow short-term rental homes in that area, but CC&Rs could be more restrictive and not allow them, but those CC&Rs wouldn't be enforced by the County.

Mr. Freitas: Thank you.

Mr. Tackett: All right, Commissioners, is there any other needs for clarifications or questions? If not, we're still looking for a motion. I can see everyone except for P D., P D. is the only person I don't have on my screen. Dale, go ahead.

Mr. Thompson: Sorry. Like to make a motion to approve the Decision and Order.

Mr. Tackett: Okay, motion to approve. Do I have a second? The second from Ashley. Dale, would you like to speak your motion?

Mr. Thompson: Yeah, this one was, was kind of interesting case because this was up in the Golf Estates I believe in Kaanapali if that's correct, and both, the owner and his wife, both attorneys, they'll see it further down the road here, but the neighbors were against apparently in there, the Hillside, you can't have those anyway. It didn't suit the neighborhood, and I think our D&O was correct in identifying that.

Mr. Tackett: Thank you, Dale. Ashley, would—

Ms. McLean: Chair, if we can clarify again that Commissioner Thompson's motion to adopt the Findings of Fact presented by the Department would also include rejecting the proposed Finding of Fact submitted by the applicant.

Mr. Tackett: Understood.

Mr. Thompson: Roger that.

Mr. Tackett: Thanks, Michele. Ashley, would you like to speak to your second?

Ms. Lindsey: I think Mel did the second. I'm just gonna let him do that for this one if that's okay?

Mr. Tackett: Yep, that's fine. Would, would anybody else like to speak to the motion before the vote? Go ahead, Kawika.

Mr. Freitas: Thank you, Chair. As I read through this, I was kind of bothered by one of the letters of opposition that said that when the letter went out to neighbor...people in the 500-foot radius that there was some, some language that was kind of strong, kind of bullish and that wasn't...they didn't appreciate it, and so do I, so I do support the motion. Thank you.

Mr. Tackett: Any, anybody else...thank you, Kawika. Anybody else want to speak to the motion? Okay, we have a motion on the floor. All those in favor, please raise your hand. Okay, all those opposed. I couldn't see P D. I believe Mel was an abstention. Can we get a...could I get a count with P D. included please?

Mr. Hipolito: Chair?

Ms. McLean: Commissioner La Costa just sent a chat saying she is voting in favor, I don't think you can see me.

Mr. Tackett: Okay, outstanding.

Mr. Hipolito: Chair, this is Commissioner Hipolito. Chair Tackett?

Mr. Tackett: Yeah, go ahead Mel.

Mr. Hipolito: I voted in favor.

Mr. Tackett: In favor. Okay, thank you so much. I think you're a little frozen, yeah.

Ms. Lindsey: Just clarifying he's the second, so Thompson was the first and Hipolito was the second.

Mr. Tackett: Oh, okay. Okay, yeah. I think he was frozen. Mel is still frozen on my screen. Is that a problem Mr. Hopper?

Mr. Hopper: Just I want to make sure Commissioner La Costa is connected, audio and video, and I know that you might be able to see her, but I'm just concerned about voting through chat. I just want to make sure that she's on the line and here.

Mr. Tackett: Okay, I'll let you work through that. I did get a chat as well from her, but she said her computer was going down.

Mr. Hopper: Yeah, she can't. I don't think she could vote if she's off the meeting like that, but if you got enough votes otherwise that's fine or you could wait for her to get back on, but yeah, that's, that's the problem.

Mr. Tackett: Well, I believe she can hear us, so maybe she can, maybe she can message us whether or not she thinks she can be back relatively quickly. P D., is that something, is that something that can happen because we have enough votes either way for it to carry. But if, if you can get back relatively quickly. No, we cannot hear you at all. Yeah, so Corp. Counsel, P D., keeps messaging me that she can hear us and see us, but we can't hear or see her, so that's where we're, that's where we're at, at that...at this point.

Mr. Hopper: Yeah, I mean, certainly going forward onto the next item, but I mean, for item if you've got, if you've got sufficient votes otherwise, I think you can proceed without her vote counting, but for the next item, I think...I'm just concerned about someone participating in a meeting without audio and video and just sending in chat messages. In general, I know the Sunshine Law is suspended, but I'm just a little concerned about that, that process particularly for the next item because in this one, you know, you've already...if you've already got five votes then I think you can proceed.

Mr. Tackett: Okay, well let's proceed, let's proceed through with this one. So, we'll, we'll –

Mr. Hopper: Did you have the vote total?

Mr. Tackett: Yeah, we'll go with vote total minus P D. And I believe that was...could we have, could we have a recount of, of what that vote was please?

Ms. McLean: Yes, Chair. It was Commissioners Pali, Lindsey, Hipolito, Edlao, Freitas, and Thompson in favor.

Mr. Tackett: Outstanding. And no opposed?

Ms. McLean: No opposed.

Mr. Tackett: Okay, so motion carries.

**It was moved by Mr. Thompson, seconded by Mr. Hipolito, then**

**VOTED: To Adopt Proposed Findings of Fact, Conclusions of Law, and Decision and Order prepared by the Department and to Reject the Proposed Findings of Fact, Conclusions of Law, and Decision and Order Submitted by the Applicant.  
(Assenting – D. Thompson, M. Hipolito, J. Edlao, K. Freitas,  
A. Lindsey, K. Pali)  
(Excused – P D. La Costa)**

Respectfully Submitted by,

CAROLYN TAKAYAMA-CORDEN  
Secretary to Boards and Commissions II