

MAUI PLANNING COMMISSION

COUNTY OF MAUI

AUGUST 26, 2008

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DEPT OF PLANNING
COUNTY OF MAUI
RECEIVED

REGULAR MEETING

ORIGINAL

Held at the Planning Department Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui, Hawaii, commencing at 8:31 a.m., on Tuesday, August 26, 2008.

Reported by: Tonya McDade
Hawaii Certified Shorthand Reporter #447
Registered Professional Reporter
Certified Realtime Reporter
Certified Broadcast Captioner

1 ATTENDANCE

2 COMMISSION MEMBERS PRESENT:

3 John Guard IV, Vice-Chairperson

4 William Iaconetti, Commissioner

5 Wayne Hedani, Commissioner

6 Bruce U'u, Commissioner

7 Kent Hiranaga, Commissioner

8 Ward Mardfin, Commissioner

9 Donna Domingo, Commissioner

10 STAFF PRESENT:

11 Jeffrey Hunt, Planning Director

12 James Giroux, Deputy Corporation Counsel

13 Michael Miyamoto, Public Works

14 Karolyn Takayama-Corden, Commission Secretary

15 Livit Callentine, Staff Planner

16 Jeffrey Dack, Staff Planner

17 Paul Fasi, Staff Planner

18 Joe Prutch, Staff Planner

19 Ann Cua, Staff Planner

20 Robin Loudermilk, Staff Planner

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1 AUGUST 26, 2008

2 TRANSCRIPT OF PROCEEDINGS

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4 VICE-CHAIRMAN GUARD: Good morning.

5 Planning Commission of August 26th is now in
6 session.

7 The majority of the Commission Members are here.
8 I am Vice-Chair Guard, so let's see what we got going
9 today.

10 PLANNING DIRECTOR HUNT: The Planning Commission
11 usually opens it up for public testimony for anybody who
12 can't make it for the actual individual items. So this
13 would be that opportunity.

14 VICE-CHAIRMAN GUARD: We will open it up for
15 public testimony, if any members of the public will not be
16 able to be here for their agenda item. If there's any
17 sign-up sheets now, or, if not, please come forward and
18 state your name for the record.

19 Do we have a Pam English?

20 MS. ENGLISH: I can wait until the agenda item.

21 VICE-CHAIRMAN GUARD: Okay. Any other members
22 of the public wish to speak now?

23 If not, we will move on to our agenda.

24 PLANNING DIRECTOR HUNT: Your first item
25 involves unfinished business. This was deferred from the

1 August 12th, 2008 meeting. This involves Ms. Tonaz Foadi
2 requesting a Type 2 Bed and Breakfast Permit for the Maui
3 Beach Bed and Breakfast, using three bedrooms for bed and
4 breakfast use in the R-3 Residential District at 4780
5 Lower Honoapiilani Highway. The TMK number is 4-3-015,
6 Lot 14, in Napili, with File Number BB22007/0003. And the
7 planner assigned to this is Livit Callentine.

8 MS. CALLENTINE: Good morning, Commissioners.

9 I am Livit Callentine.

10 And I have -- you have before you an application
11 which was handed to you on -- which was prepared for you
12 for the August 12th meeting, and has been continued, as
13 Mr. Hunt said.

14 I also put before you this morning a new letter
15 of testimony that I received yesterday. This is from
16 Mr. Frederick McCartney, who is within 500 feet of the
17 subject property. And this is the second letter that
18 Mr. McCartney submitted. So you've now received -- I
19 don't know what you do when you actually have two letters
20 from the same person.

21 But I guess it's three letters in support and
22 three letters in opposition. But one of those is from the
23 same person. So bear that in mind.

24 So this is an application for a Type 2 Bed and
25 Breakfast which allows up to four bedrooms in a

1 single-family dwelling to be used for bed and breakfast
2 use. And the application was filed last September. It
3 was filed pursuant to Chapter 19.64 of the Maui County
4 Code.

5 And this applicant would like to use -- sorry.
6 The applicant is actually Tonaz Foadi. And she is here
7 today, along with her partner and her baby.

8 She would like to use three bedrooms of her home
9 as a bed and breakfast operation.

10 Public -- further procedural matters, all
11 procedural matters have been satisfied by the Department.
12 I won't go through each and every one of them unless you
13 have a question.

14 The land description is that it is designated
15 Urban in the State Land Use District. West Maui Community
16 Plan is Single Family Residential. County zoning is R-3
17 Residential. And it's also located in Flood Hazard Area
18 A5, which is an area of 18 to 24-foot flooding. And the
19 property is located in the Special Management Area.

20 It's surrounded by single-family homes, vacant
21 land, some -- mostly zoned agriculture. And, also, on the
22 west side, by the Lower Honoapiilani Road and the Pacific
23 Ocean.

24 The home is just over 4,000 square feet. It's a
25 two-story, seven-bedroom single-family residence.

1 According to the real property tax records it was
2 constructed in 1949. And there is an attached accessory
3 dwelling which is on the property. And that's used for
4 long-term rental.

5 And I did receive a copy of the lease for that
6 property. And that's shown in your Exhibit 17 of your
7 report.

8 There's a four-car garage to the east of the
9 main dwelling, and a paved parking area to the west of the
10 main dwelling, which contains three parking stalls. So it
11 provides a total of seven on-site parking stalls.

12 The significant comments that were -- the
13 application was transmitted to agencies. And the
14 significant comments came from Public Works, from
15 Department of Water Supply and from the Police Department.

16 Those comments are shown, for Public Works, in
17 Exhibits 18 and 20. So let's go to those first.

18 Public Works had concerns about the drainage way
19 that is adjacent to the parcel. They -- they -- it -- it
20 gets overgrown. It was overgrown at the time this owner
21 purchased the property, and it had not been maintained.
22 So they were -- they -- they provided a comment that the
23 drainage way must be maintained by this -- by the owner
24 and to keep the culvert under Lower Honoapiilani Road
25 clear.

1 They need to have -- the Public Works needs to
2 have access provided to that culvert.

3 They want to make sure that all obstructions on
4 the Lower Honoapiilani Road fronting the property are kept
5 clear.

6 They had questions about the floor plan and
7 smoke detectors and the number of kitchens.

8 Those were just basic comments.

9 And the applicant responded in Exhibit 19 to
10 those -- to Public Works' first memo.

11 She replied that she would take care of the
12 debris, although she felt that debris coming from other
13 properties was not her responsibility and not under her
14 control. And the -- she has no plans to alter the
15 existing access to the road, so -- for access to the
16 culvert. And she didn't see that there were any
17 obstructions on the road in front of her home, in front of
18 her property, that were actually providing obstructions.

19 Public Works then replied to her letter with
20 another letter. And they reiterated that any debris that
21 is in the culvert alongside her property is her
22 responsibility.

23 And requested that the rooms on the floor plan
24 be clearly labeled.

25 Replied about smoke detectors, reminded about

1 smoke detectors, which we already cover as a standard
2 condition of bed and breakfast permits.

3 And they also noted that a suite that is on the
4 first floor of the home noted as the Bamboo Suite, which
5 is -- the floor plan is actually shown in Exhibit 3. So
6 the Bamboo Suite is a den and a bedroom, which Public
7 Works, I imagine, felt that it could be turned into two
8 rooms, two bedrooms. So they requested that the door
9 between the two rooms be removed.

10 And the applicant replied to Public Works, in
11 Exhibit 21, agreeing that she would maintain the culvert,
12 agreeing that she would remove the door between the den
13 and the bedroom in the Bamboo Suite, and regarding the
14 smoke detectors.

15 She now has a total of 19 smoke detectors in her
16 single-family home, which is probably more than I've ever
17 heard of before. And so she satisfied their comments.

18 As far as I know, I have not heard anything else
19 from Public Works.

20 The second agency to provide comments of
21 significance was the Water Department. And the Water
22 Department essentially requested that she submit an
23 approved -- submit and receive approval for domestic
24 irrigation and fire flow calculations.

25 This is an ongoing question with the Water

1 Department, whether a bed and breakfast is a commercial
2 use or whether it's a residential use.

3 And we have, among our various agencies,
4 differences of opinion. It's one of those questions that
5 has not been resolved.

6 But the applicant replied to the Water
7 Department comment, stating that she had submitted
8 residential and irrigation calculations in 2004, when she
9 upgraded her water meter. And she had questions about why
10 she was now being held to commercial standards by the
11 Water Department.

12 She said she would research the cost and
13 feasibility of providing these new calculations. And I
14 haven't been updated as to whether there has been any
15 movement on that.

16 Also -- also, the Water Department requested
17 that she show evidence of having installed an improved
18 reduced pressure backflow prevention device. She is
19 currently researching the cost and feasibility of that
20 installation as well.

21 And the last comment of significance is from the
22 Police Department. And that is shown in Exhibit 28. And
23 the Police Department felt that the stone pillars, which
24 you will see in the show that -- slide show that the
25 applicant's consultant, Will Spence, has prepared, you

1 will see them. They are on either side of the driveway.
2 And the Police Department felt that they were impeding
3 view, and asked that they research the possibility of
4 installing mirrors on those pillars.

5 It hasn't been cleared yet how -- if that would
6 really be a good solution or if it would be something that
7 would change the situation.

8 But I did a site visit to the property. And I
9 can say that when I pulled out to make my right -- my left
10 turn onto Lower Honoapiilani Road, I didn't have any
11 problem seeing any of the directions. So it's the
12 Planning Department's opinion that this is not a deal
13 breaker.

14 The Police Department also mentioned that the
15 original site plan that was transmitted with the
16 application showed four parking places in the front of the
17 house, in the parking area, paved parking area. They said
18 that one of those parking spaces was not -- was -- that it
19 shouldn't be a parking place because getting out of it
20 would require backing out onto the street, and requested
21 that the applicant remove that one from the site plan. So
22 she did.

23 It didn't change the fact that there's still a
24 parking pad there, but she is no longer calling that one
25 of the parking spaces. She does have adequate parking

1 without that fourth space.

2 So as far as the analysis of this project goes,
3 it was -- it was reviewed, looking at the Hawaii State
4 Plan, and it seems to be in concert with the Hawaii State
5 Plan to provide quality accommodations to visitors.

6 The State Urban District, it's consistent with
7 the Urban designation. It is consistent with the General
8 Plan in a number of ways, which are outlined in your
9 report on page eight, nine and part of -- eight and nine.
10 And -- eight, nine and 10. Sorry. Eight, nine and 10.

11 So as far as infrastructure and public -- okay.
12 Woops, I'm sorry. Community plan -- I've lost that. It
13 is consistent with community plan. I have lost that
14 portion of it.

15 Single Family Residential. And then zoning R-3
16 Residential. It is in conformance with permitted uses and
17 development standards in the R-3 Residential District.

18 The application wasn't transmitted to the
19 Department of Land and Natural Resources because the
20 proposed bed and breakfast establishment isn't -- it
21 doesn't involve any ground-altering activities. It's an
22 existing structure.

23 So I have gone over the significant comments. I
24 am not going to repeat those in terms of the
25 infrastructure analysis.

1 As far as socioeconomic impacts, the project has
2 already been developed. And it's not anticipated that
3 it's going to -- it's going to have any socioeconomic
4 impacts, of negative impacts. Likewise with
5 environmental, it's not going to.

6 Want me to --

7 VICE-CHAIRMAN GUARD: I am just wondering if --
8 it seemed like you were wrapping up -- Will's presentation
9 might cover a lot.

10 MS. CALLENTINE: I am. So just to say that my
11 review of the bed and breakfast ordinance, and reviewing
12 this application against each of the requirements in the
13 bed and breakfast ordinance -- I won't go through each
14 one -- but I see that it is in conformance with the
15 ordinance. And will be or will become compliant with the
16 ordinance through the enactment of the conditions of
17 approval, should you choose to approve it.

18 So I will now turn the podium over to Will
19 Spence, the applicant's consultant.

20 Thank you.

21 VICE-CHAIRMAN GUARD: Thank you.

22 MR. SPENCE: Good morning, Commissioners.

23 My name is William Spence. I am here with my
24 client, Tonaz Foadi, to give you a presentation and help
25 with her application for her Type 2 Bed and Breakfast.

1 So if the Commission pleases, I would like to go
2 into the Powerpoint.

3 Do we want lights?

4 As Livit described, Type 2 Bed and Breakfast,
5 she went over the particulars.

6 Again, you are looking at a lot of about 16,000
7 square feet. The house itself is 3,600, almost 3,700
8 square feet. That includes the ohana and the rooms where
9 the guests would stay.

10 The subject property is on Lower Honoapiilani
11 Highway -- or Road. Excuse me. And on the mauka side of
12 the road.

13 I included this slide because I want to point
14 out what improvements have been done to this property. I
15 think my client has been very responsible in what they
16 have done. And then what they are proposing to do will
17 actually have less of an impact on the property.

18 This is -- this is the property. I am going to
19 show you a few slides of what the property was when they
20 purchased it.

21 So essentially, this property was a flophouse.
22 As a long-term rental with the owner absent, you have --
23 this isn't showing -- you have five cars just as a
24 long-term rental as well as the -- there's a moped there.
25 Traffic came and went all the time. There were at least

1 unconfirmed rumors of drug dealing, that kind of thing.

2 You can see the bare wires.

3 This is what they purchased. And in a second, I
4 will show you what they turned it into.

5 You can see the bare wires. There's holes in
6 the wall. You can see where the roof is coming off.

7 This was an illegal construction on the
8 property.

9 Again, the holes in the wall. The exterior
10 plumbing. Certainly nothing was up to code on this
11 particular property, it was allowed to be run down and
12 used for a lot of purposes that -- that were not
13 consistent with the neighborhood.

14 A little interior shot.

15 See the cord hanging from the joist there? That
16 is how a lot of the power was run throughout this
17 property. Just, you know --

18 This was actually a complaint, probably from a
19 tenant there, noting lead pipes, roof leaks, the floors
20 are collapsing, sewers back up. There was drainage into
21 the yard and into the drainage culvert on one side of the
22 property. And it notes that rat and mouse infestations.

23 So this is what they turned it into. They
24 purchased the property, put a lot of money into it, and
25 turned it into a home for themselves.

1 The ohana is over on the right, on the bottom
2 floor. They occupy the upper floor.

3 This is the rear of the property. You can note
4 the fire escape staircase. This is a portion of the
5 rental that is downstairs. You can see they have cleaned
6 it up very nicely.

7 One of the rental rooms.

8 The floor plan. This is already in your
9 exhibit.

10 On the left is the second floor where the
11 applicants occupy.

12 This is the front parking area.

13 And, here, it's starting to work.

14 This is a stall right here that the Police
15 Department said is not -- shouldn't be available,
16 shouldn't be counted. But as you can see, there's a lot
17 of room to turn around, a lot of room to park cars.

18 And in the back, there's spaces in the garage
19 for three vehicles, and then even outside.

20 The driveway entrance. These are the pillars
21 that were discussed by the Police Department.

22 This is the visibility on the road.

23 That is my truck. I pulled it up far enough and
24 stopped where I could see up and down the road.

25 That is looking north. There is about 75 to 100

1 yards of visibility in that direction without even, you
2 know, really getting close to the road.

3 To the south side, looking south, way down here,
4 this is -- this is 100 yards or more.

5 This is, also, the drainage area that Public
6 Works commented on. This is on the south side of the
7 property. You know, you can see the haole koa and all
8 kinds of weeds, other trees actually growing in that
9 culvert.

10 This is looking at it from Lower Honoapiilani
11 Road. You know, you can see where they would have
12 comments about maintaining.

13 This is after it's been cleared out.

14 They go in and maintain. About every four
15 months, they go in and cut down the grass and make sure
16 it's clear of debris.

17 This is towards the tail end of like four
18 month's period of time.

19 So as you can see, this is significantly better
20 than what it was.

21 This, right here, is the grate. This is Public
22 Works', this is in the public right-of-way. And, really,
23 the maintenance of that should fall on Public Works. It's
24 not the applicant's property.

25 Thank you, Commissioners.

1 We will entertain any questions you may have.

2 VICE-CHAIRMAN GUARD: Any questions from the
3 Commission?

4 Commissioner Hiranaga.

5 COMMISSIONER HIRANAGA: I have a question that
6 may be for Staff, but, if they don't have the answer, I
7 wanted to bring it up now so they have time to figure it
8 out before we come to a vote.

9 I wanted to know what percentage of letters of
10 opposition in the 500-foot radius of residence? I am not
11 sure if you have that.

12 MS. CALLENTINE: I do. If more than 40 percent
13 of the neighbors within 500 feet protest, then it gets
14 bumped up to a type -- it gets it bumped up one type. In
15 this case it would be bumped up to a Type 3, which would
16 then require your recommendation to Council.

17 COMMISSIONER HIRANAGA: Do you know what the
18 actual percentage is for this application?

19 MS. CALLENTINE: I don't, but it's well under 40
20 percent. I did do a quick check.

21 COMMISSIONER HIRANAGA: I would like
22 confirmation of that information before we come to a vote.

23 MS. CALLENTINE: I have -- I can check that
24 right now.

25 MR. SPENCE: If I could offer to the Commission,

1 the letters in support and against -- my client knows
2 their neighbors. The first letter in support, from
3 Mr. Doug Pitzer, he is an immediate neighbor to the south.
4 And he, obviously, doesn't have any problems with it.

5 The second letter in support, from Mr. Mike and
6 Marsha Nelson, they are three doors to the north.

7 Mr. George Gordon lives around the corner. I am
8 not sure which direction.

9 The Emma Sharpe Trust, he comments -- he owns
10 property in the area, but it's not -- they are not
11 adjacent properties. You know, you would expect those
12 properties, if there was any problems with noise, they
13 would be the first ones to comment.

14 There was no letter from the property
15 immediately to the north.

16 Again, they were notified. And, you know, they
17 had no comments. So I just assume that there is no
18 problem.

19 The letter from Mr. -- or the letters from
20 Mr. McCartney, those are two doors up, and they complain
21 about noise and other things. But I am not -- if you
22 don't have noise comments from who is immediately adjacent
23 of that, I think that says a lot for the applicant.

24 MS. CALLENTINE: Mr. Chair, I have that number
25 now.

1 VICE-CHAIRMAN GUARD: Okay. What is that
2 number?

3 MS. CALLENTINE: Twenty-four properties that
4 were notified that are within 500 feet. And there were --

5 VICE-CHAIRMAN GUARD: Three oppositions?

6 MS. CALLENTINE: Yes.

7 VICE-CHAIRMAN GUARD: Director, general comment
8 or question?

9 MS. CALLENTINE: Yes, it was three.

10 PLANNING DIRECTOR HUNT: Will, could you clarify
11 the living situation there?

12 As I understand it, there's an ohana and the
13 owners live upstairs in the ohana, is that correct?

14 MR. SPENCE: No. The ohana -- and I can go back
15 to the slide, to a slide, if you would like. The house is
16 two-story. The owners live on the upper floor.

17 PLANNING DIRECTOR HUNT: Of the main dwelling?

18 MR. SPENCE: Yes.

19 PLANNING DIRECTOR HUNT: Is there an ohana
20 on-site?

21 MR. SPENCE: Yes, there is. That is on the
22 bottom floor on -- if you were facing from the roadway, it
23 would be on the right-hand side. I can easily show that,
24 if you would like.

25 PLANNING DIRECTOR HUNT: Yeah. Could you pull

1 up the slide and help me out?

2 MR. SPENCE: Okay.

3 VICE-CHAIRMAN GUARD: That is an attached ohana?

4 MR. SPENCE: Yes, it is.

5 Okay. The upper floor -- I will step away. And
6 I know it's going to be inaudible for the --

7 MS. CALLENTINE: Here you go.

8 MR. SPENCE: Okay. This right here, this is
9 where the bed and breakfast is. This upper floor here is
10 where the client resides. It's a little bit unusual
11 configuration, but they didn't -- you know, they didn't
12 build the house. This is what they got. The ohana is
13 right here on the lower floor.

14 PLANNING DIRECTOR HUNT: So the ohana is
15 attached to the main dwelling?

16 MR. SPENCE: Yes, it is.

17 PLANNING DIRECTOR HUNT: Who lives in the ohana?

18 MR. SPENCE: They have a long-term tenant. I am
19 not -- I don't know their name. That's -- that was really
20 something between the owners and the renters.

21 PLANNING DIRECTOR HUNT: But, technically, the
22 owners live in the ohana?

23 MR. SPENCE: No. The owners live in the upper
24 floor.

25 PLANNING DIRECTOR HUNT: Of the main house?

1 MR. SPENCE: Of the main house.

2 PLANNING DIRECTOR HUNT: Okay.

3 MR. SPENCE: That is all one house that you are
4 looking at.

5 PLANNING DIRECTOR HUNT: Okay. Thank you for
6 the clarification.

7 VICE-CHAIRMAN GUARD: So that is all one unit,
8 with the one kitchen being upstairs, correct?

9 MR. SPENCE: That is correct.

10 VICE-CHAIRMAN GUARD: And just the bedrooms?

11 MR. SPENCE: Yeah.

12 VICE-CHAIRMAN GUARD: This may be for Staff.
13 There were all these photos showed up with microwaves and
14 then no microwaves. Was that a condition, to have all the
15 microwaves removed from the downstairs bedrooms?

16 MR. SPENCE: Yeah. My -- and Livit can maybe
17 clarify. My client was unaware that you couldn't have any
18 cooking facilities as a part of the bed and breakfast.
19 And when Livit did her site visit, she said, "You know you
20 can't have this." She said, "Oh, okay. I didn't know."
21 And it was removed.

22 VICE-CHAIRMAN GUARD: Commissioner Iaconetti.

23 COMMISSIONER IACONETTI: The long-term rental,
24 have they complained about the noise?

25 MR. SPENCE: No, they have not.

1 COMMISSIONER IACONETTI: Do they occupy the
2 rental all the time, or are they there just periodically
3 or what?

4 MR. SPENCE: They -- yeah, they are full-time.
5 They live there all the time.

6 COMMISSIONER IACONETTI: How many people are in
7 the long-term rental?

8 MR. SPENCE: There's two.

9 COMMISSIONER IACONETTI: Adults?

10 MR. SPENCE: Yes.

11 COMMISSIONER IACONETTI: Thank you.

12 VICE-CHAIRMAN GUARD: Commissioner Mardfin.

13 COMMISSIONER MARDFIN: I've got a couple
14 questions.

15 One of the conditions, I think -- it's been a
16 while since I read this. One of the conditions was the
17 Fire Department is supposed to inspect this regularly.
18 And then the Fire Department says they can't -- they don't
19 have the manpower to inspect regularly.

20 MS. CALLENTINE: Yes. Yes, Commissioner
21 Mardfin.

22 The Fire Department has -- in fact, I believe we
23 -- we had someone here from the Fire Department earlier.
24 I don't think he is still here. But I have had
25 conversations with them about bed and breakfasts. And we

1 do have a letter from them, which I did include in your
2 exhibits.

3 They are unable, they don't have the manpower to
4 do it. So they actually rely on the Department of
5 Planning to do the -- to check and see if the smoke
6 detectors are still in working order, if there's still a
7 fire extinguisher within 75 feet of any of the rented
8 rooms.

9 And so the Planning Department does that as part
10 of our annual inspection of bed and breakfasts.

11 COMMISSIONER MARDFIN: Oh, you do, do it
12 annually?

13 MS. CALLENTINE: We do. Because at this point
14 in time the Code requires that they be renewed annually.
15 So we do the inspections annually.

16 COMMISSIONER MARDFIN: Another question I had
17 from this was, it's a little unclear to me whether it was
18 operated as a bed and breakfast since 2004. The applicant
19 says no, but is there any way to verify that?

20 MS. CALLENTINE: Let's see.

21 MR. SPENCE: My clients are telling me that they
22 weren't even completely done with remodeling the house in
23 2004.

24 COMMISSIONER MARDFIN: Okay.

25 MR. SPENCE: So, no, it wasn't rented out at

1 that time.

2 COMMISSIONER MARDFIN: When they bought it, it
3 had a long-term rental tenant in there?

4 MR. SPENCE: Well, yeah. The photographs, you
5 know, showed it was -- it was definitely a long-term
6 rental. And it was an undesirable one for the
7 neighborhood.

8 COMMISSIONER MARDFIN: So they essentially got
9 rid of the long-term tenant, remodeled the building?

10 MR. SPENCE: And tore down the illegal ohana.
11 And completely rebuilt the property.

12 COMMISSIONER MARDFIN: And when they went in for
13 a building permit on that, they said it was going to be
14 used as?

15 MR. SPENCE: I don't think they had any plans at
16 that time.

17 COMMISSIONER MARDFIN: But, presumably, the
18 Building Department would have treated this as a
19 single-family dwelling? Is that more or less --

20 MR. SPENCE: That's correct.

21 COMMISSIONER MARDFIN: When did -- now, are they
22 using it as a bed and breakfast currently?

23 MR. SPENCE: No, they are not. That is why they
24 are here, for their permit.

25 COMMISSIONER MARDFIN: Have they at any time,

1 between 2004 and today, used it as a bed and breakfast?

2 MR. SPENCE: That, I can't say.

3 Okay. They -- I know they had a website, and
4 did use it as such.

5 But, you know, when it comes to your attention
6 you need permits to do this kind of thing, you go file
7 your applications and, you know, come before the
8 Commission.

9 COMMISSIONER MARDFIN: What have they have been
10 doing for real property homeowner's exemption? Have they
11 been claiming the real property -- the homeowner's
12 exemption for real property tax purposes?

13 MS. CALLENTINE: Yes, they have.

14 MR. SPENCE: Yes. Okay. Livit is correct.

15 And, you know, with the granting of a permit,
16 that homeowner's exemption disappears. So they will be
17 paying full taxes on it as well as their GET, as well as
18 their TAT.

19 VICE-CHAIRMAN GUARD: Commissioner Hiranaga.

20 COMMISSIONER HIRANAGA: Could you again please
21 identify the location of the three letters of opposition?

22 We have this Exhibit 2, I guess, that shows the
23 500-foot radius.

24 MR. SPENCE: Okay. On this map -- back to the
25 Powerpoint, for the minutes -- you can see the applicant's

1 property right there. The letters of opposition -- okay.
2 This is the applicant's property right here.

3 The letters in opposition come from two doors
4 down here.

5 This landowner did not comment.

6 This landowner here is in support.

7 VICE-CHAIRMAN GUARD: You don't have Exhibit 2
8 anywhere, do you, that is quite a bit clearer? Maybe you
9 could just name off the TMKs for everyone who has Exhibit
10 2. It's quite a bit larger to see and it has the boundary
11 circled.

12 MS. CALLENTINE: Mr. Chair, if I could help out.

13 VICE-CHAIRMAN GUARD: If you guys have the TMKs,
14 that might be the easiest way.

15 MS. CALLENTINE: Well, I'm sorry, but the folks
16 that did write didn't identify their TMKs, they identified
17 their addresses.

18 The other letter -- the other letter writer --
19 so there were two letter writers, yeah. And one of them
20 was -- and then there was a second letter by one of those
21 letter writers. One of them lives at 4800 Lower
22 Honoapiilani Road. And the other one, Bastil Robert F.
23 Bechert (phonetic) -- I'm sorry if I am not pronouncing
24 that correctly -- but they live at 4710 Lower Honoapiilani
25 Roadway.

1 And this subject property is located at --

2 VICE-CHAIRMAN GUARD: 4780.

3 MS. CALLENTINE: -- 4780. So it would be --

4 COMMISSIONER HIRANAGA: Mr. Vice-Chair, maybe

5 Will can just point it out on the map.

6 VICE-CHAIRMAN GUARD: Okay.

7 COMMISSIONER HIRANAGA: Go ahead.

8 VICE-CHAIRMAN GUARD: Back to the original

9 method.

10 MS. CALLENTINE: Okay.

11 MR. SPENCE: Okay. Again, this is the subject
12 property right here. The 500-foot radius extends out to
13 here and over here.

14 The letters in opposition come from two doors
15 down. That is from Mr. McCartney.

16 This property here had no comment, didn't send
17 any letters.

18 Their adjoining neighbor to the south wrote in
19 support.

20 And I am not -- I know the Emma Sharpe Trust
21 properties are in this little subdivision that is even --
22 you know, to access it is even further down.

23 I am not sure of the owner of this parcel here.

24 VICE-CHAIRMAN GUARD: Commissioner Hiranaga.

25 COMMISSIONER HIRANAGA: So there is just two

1 property owners in opposition?

2 MS. CALLENTINE: That's correct. Three letters,
3 but two property owners.

4 COMMISSIONER HIRANAGA: Thank you.

5 VICE-CHAIRMAN GUARD: Commissioner Iaconetti.

6 COMMISSIONER IACONETTI: Are either of the
7 property owners that were in opposition present?

8 MR. SPENCE: I have no idea.

9 VICE-CHAIRMAN GUARD: We can open that up for
10 public testimony.

11 Livit?

12 MS. CALLENTINE: I don't see any indication.

13 COMMISSIONER IACONETTI: My question is, if they
14 lived -- do they live there permanently -- the people that
15 are in opposition, do they live there permanently, were
16 they living there when the previous building and occupants
17 were there, or are they newcomers since?

18 MR. SPENCE: I know the Emma Sharpe Trust, they
19 are -- I know there are family members living on a couple
20 of the properties further down, further to the south of
21 the subject property.

22 The McCartneys, two doors up to the north, they
23 do live on the property, on their property.

24 COMMISSIONER IACONETTI: And were living there
25 when that previous building was there?

1 MR. SPENCE: That, I can't say. I don't think
2 -- my clients can't say, either, because it's been -- you
3 know, they have owned it for -- since 2003.

4 COMMISSIONER IACONETTI: Thank you.

5 VICE-CHAIRMAN GUARD: Commissioner Hiranaga.

6 COMMISSIONER HIRANAGA: One last question.

7 All the improvements to the dwellings were done
8 with County permits and, also, meet all existing Code
9 requirements?

10 MR. SPENCE: Yes, they do.

11 MS. CALLENTINE: Commissioner, if I could
12 please. Deputy Director of Public Works is -- has just
13 gone over to his office to pull those records, just to --
14 for your information, should you need them. He will be
15 back momentarily.

16 MR. SPENCE: I do have a (inaudible) printout of
17 all the list of permits that are pulled.

18 VICE-CHAIRMAN GUARD: Director.

19 PLANNING DIRECTOR HUNT: Will, do the applicants
20 have a Conditional Use Permit pending, also?

21 MR. SPENCE: They filed for several permits.
22 This is -- the B&B Type 2 is really the desired permit.

23 As you know, our permitting processes for the
24 layperson are rather confusing. So they went ahead and
25 they filed for a Conditional and they also filed for a B&B

1 Type 1.

2 I am not exactly sure of the -- you know, what
3 miscommunication took place or anything, but this is the
4 application that they are desiring.

5 PLANNING DIRECTOR HUNT: So if this B&B 2 permit
6 is granted, what would happen to their application for the
7 Conditional Permit?

8 MR. SPENCE: I've recommended to them that they
9 just withdraw the other two applications.

10 PLANNING DIRECTOR HUNT: And the application for
11 the Conditional Permit would be to rent out other rooms, I
12 assume.

13 MS. CALLENTINE: Yes. I have actually --
14 Commissioners, actually seen the -- and Director -- the
15 Conditional Permit application as well. It came in before
16 the Bed and Breakfast 2 application came in. It actually
17 is assigned to another planner, and currently is being
18 held in abeyance at the request of the applicant.

19 Then after they submitted the Bed and Breakfast
20 Type 2 application, they also submitted a Type 1
21 application.

22 PLANNING DIRECTOR HUNT: And, Will, do you know
23 if the Conditional Permit would be to rent out the ohana?

24 MR. SPENCE: My client has informed me that that
25 was the -- you know, that was the thought, is to rent out

1 the ohana as well.

2 PLANNING DIRECTOR HUNT: Thank you.

3 VICE-CHAIRMAN GUARD: Commissioner Mardfin.

4 COMMISSIONER MARDFIN: I want some clarification
5 on that. Is the -- is the ohana -- right now, you said
6 the ohana is a long-term rental?

7 MR. SPENCE: Yes, it is.

8 COMMISSIONER MARDFIN: Now you're saying that --
9 I am not sure I understand. Is the intent to remove that
10 from long-term rental and put it into short-term rental of
11 some sort?

12 MR. SPENCE: Okay. They filed an application --
13 right now, it's in long-term rental.

14 COMMISSIONER MARDFIN: Yes.

15 MR. SPENCE: But there is a -- you know, and the
16 tenants are there.

17 They did file an application for a Conditional
18 Permit which would come back to this body, and then up to
19 the County Council, if -- if they decide to proceed with
20 that. The intent was to rent out the ohana for -- also,
21 for vacation rental purposes.

22 COMMISSIONER MARDFIN: If they were granted the
23 Bed and Breakfast for what they have proposed here, would
24 they object to a condition that the ohana remain in
25 long-term rental?

1 MR. SPENCE: Yeah. They would -- they would --
2 they would keep it in a long-term situation, either for
3 family or for --

4 Is that correct?

5 VICE-CHAIRMAN GUARD: Maybe they can talk about
6 that when we come up with our conditions.

7 MR. SPENCE: Okay. We will comment on it at
8 that time.

9 VICE-CHAIRMAN GUARD: Commissioner U'u.

10 COMMISSIONER U'U: I know this question was
11 asked before. Is it currently being used as a B&B?

12 MR. SPENCE: No, it is not.

13 COMMISSIONER U'U: It is not?

14 MR. SPENCE: No.

15 COMMISSIONER U'U: So the downstairs sits empty?

16 MR. SPENCE: The -- no. The downstairs -- as we
17 showed on the thing, the downstairs -- there's an ohana
18 that is currently under long-term lease, and then the bed
19 and breakfast rooms as well on the bottom floor. The
20 applicant lives on the top floor.

21 COMMISSIONER U'U: The applicant lives on the
22 top floor?

23 MR. SPENCE: Yes.

24 COMMISSIONER U'U: The total top floor, even
25 with the ohana dwelling --

1 MR. SPENCE: The ohana dwelling is on the bottom
2 floor.

3 COMMISSIONER U'U: Where is the B&B?

4 MR. SPENCE: It's also on the bottom floor.

5 COMMISSIONER U'U: Directly under that deck that
6 you guys showed?

7 MR. SPENCE: Yes.

8 COMMISSIONER U'U: Is it currently being used as
9 a B&B, or what is it being used as?

10 MR. SPENCE: Right now, they are not.

11 COMMISSIONER U'U: So it sits empty?

12 MR. SPENCE: Yeah.

13 VICE-CHAIRMAN GUARD: Commissioner Mardfin?
14 Okay.

15 I have a question for Public Works.

16 I guess -- shoot, it was a while ago now, last
17 time we were out in Kapalua, I went down Lower
18 Honoapiilani Highway. And the photos we have looks like
19 different timing on the photos from the applicant's photo
20 presentation. And then Livit's presentation shows that
21 drainage way and that road has become a problem. And if
22 memory serves me correctly, the County was trying to
23 rectify the problem, but we were having issues with some
24 of the owners on either access or being able to move the
25 road inland. And what is the state of it now? We had two

1 different photos.

2 MR. MIYAMOTO: Testing, okay.

3 Thank you.

4 Mr. Chair, the status of the culvert repairs
5 that has been completed, we've had final inspection with
6 the contractor at this point. The guardrail has been
7 restored. So pretty much, it's a little bit better than
8 what it was before, actually, because we've done
9 resurfacing in that area.

10 And drainage maintenance. Yes, we are working
11 on that graded area. But our comment pretty much referred
12 to lands that we don't have control over, that the
13 applicant owns part of.

14 VICE-CHAIRMAN GUARD: So from a safety
15 standpoint, it's easier to get in and out and along that
16 stretch of frontage on the highway?

17 MR. MIYAMOTO: Yes. Yes. We removed all our
18 temporary traffic control and those water barriers that we
19 had. It's all back to its original condition now.

20 VICE-CHAIRMAN GUARD: It's safer for pedestrians
21 now?

22 MR. MIYAMOTO: That part of the project has not
23 been executed. We are still trying -- the actual
24 improvements for that area, we're still working with the
25 various landowners that are adjacent to the corridor to

1 try and get the land rights so we can do that part.

2 VICE-CHAIRMAN GUARD: Was the subject property
3 one of those landowners, or is there enough of a buffer?

4 MR. MIYAMOTO: No. Actually, I think -- if I
5 recall correctly, I think this applicant was willing to
6 work with us in that aspect. It's other owners that we're
7 having difficulties with.

8 VICE-CHAIRMAN GUARD: Great. Thank you.

9 MR. SPENCE: And the slide I included in the
10 Powerpoint, Commissioners, is -- this is the current
11 condition. This was taken last month. So in -- I know --
12 I am not sure when Livit's site visit was.

13 MS. CALLENTINE: I haven't been there since it's
14 been repaired.

15 MR. SPENCE: So this is current.

16 VICE-CHAIRMAN GUARD: Great.

17 Commissioner Mardfin.

18 COMMISSIONER MARDFIN: I don't know how to ask
19 this because it's not particular to this property, but let
20 me just ask it. I think maybe it's to the Director.

21 We're going to -- on the agenda today is a number of bed
22 and breakfasts, some of which -- okay. Let me ask the
23 question, anyway -- the bed and breakfast and/or vacation
24 rentals. And what I want to know is where the

25 distinctions are being made. You know, when I am focusing

1 on one, it's a little hard to remember what the others
2 were. And what kind of rationales are we doing? Because
3 the Department has recommended against some of them and
4 for some of the others. They are recommending for this.
5 And I want to get clear in my mind what the criterion are
6 so -- at least that the Department is applying so I can be
7 as consistent as I can reasonably be.

8 PLANNING DIRECTOR HUNT: This application is for
9 a bed and breakfast. The Code defines a bed and breakfast
10 as the owner or lessee living in the same unit as the
11 rooms that are rented out short-term.

12 Once you get outside that definition of a B&B,
13 everything else becomes a TVR. Now, if you have an
14 on-site manager in the house and renting out the ohana,
15 that is a TVR. If you have the owners living in the
16 house, you're renting out the ohana or vice versa, that is
17 a TVR. If you have no one on-site at all, that is a TVR.

18 COMMISSIONER MARDFIN: And the Department --

19 PLANNING DIRECTOR HUNT: And the Planning
20 Department believes that because the Code provides for
21 B&Bs, if they meet that criteria, we should recommend
22 approval for them.

23 When you get into the TVRs, you have a code that
24 actually prohibits TVRs outside of the Hotel districts.
25 And that will be gone over in these reports in the future

1 today.

2 The gray area comes into, okay, what about an
3 owner in the house, renting out the ohana. It's not quite
4 a pure TVR, it's not quite a B&B. That is the gray area.
5 And depending on the circumstances, the Planning
6 Department can recommend support for those, and sometimes
7 we don't.

8 The pure TVRs, it's very difficult for us to
9 overcome the prohibition. Your Code is not silent. Your
10 Code actually -- the Council took actions to prohibit
11 them. So it's hard for us to recommend against that.

12 COMMISSIONER MARDFIN: Okay. And B&Bs, is part
13 of the issue which district it's in, like the Hotel
14 District. I presume Lahaina and Kihei are Hotel
15 districts. Do you know --

16 PLANNING DIRECTOR HUNT: B&Bs are allowed by
17 different districts. For instance, in the Residential
18 District, they are allowed.

19 They are not allowed outright in the Farm
20 District or the Rural District. That is the bills that
21 we're proposing before Council right now, to include those
22 districts.

23 So there, you would have to go to a Conditional
24 Permit, even though it's a B&B.

25 COMMISSIONER MARDFIN: Okay. When you use

1 district, you are not referring to Hana District or
2 Lahaina District, you're referring to how it's zoned?

3 PLANNING DIRECTOR HUNT: Zoning districts.

4 COMMISSIONER MARDFIN: Zoning districts?

5 PLANNING DIRECTOR HUNT: Yes.

6 COMMISSIONER MARDFIN: Thank you very much for
7 clarifying that.

8 VICE-CHAIRMAN GUARD: Corp Counsel.

9 MR. GIROUX: I know, Ward, you like to know what
10 criterias to use because you're very analytical. So I am
11 going to point you to where we got to look here.

12 I am looking at the B&B Ordinance 19.64.050
13 Permit Processing. I am going to go to -- it's Section
14 (b)(2). And I am just going to read this into the record.
15 "The appropriate planning commission shall review and
16 either approve or deny the application pursuant to the
17 requirements of this chapter" -- it's 19 -- "the effects
18 the proposed use would have on surrounding residential
19 uses, and the cumulative impacts within the region and
20 island. The commission may also require mitigation to
21 reduce any impacts the use may have on surrounding
22 residential uses."

23 So that will zero you in on what you need to do
24 for this permit, so you don't get confused between --
25 because if we look at Conditional Permits, I will read to

1 you what your analysis would be.

2 COMMISSIONER MARDFIN: I got one question about
3 this project.

4 On that map, are there any other B&Bs within --
5 on that map?

6 MS. CALLENTINE: No. There are no other bed and
7 breakfasts within 500 feet.

8 COMMISSIONER MARDFIN: What if you went out to
9 1,000 feet, any idea?

10 MS. CALLENTINE: We were -- I didn't go out to
11 1,000.

12 COMMISSIONER MARDFIN: Okay.

13 MS. CALLENTINE: We're required to check within
14 the 500-foot radius.

15 COMMISSIONER MARDFIN: Had there been one, would
16 that have made a difference?

17 MS. CALLENTINE: That would be one of the other
18 criteria that would bump it up to a more -- more -- more
19 higher level scrutiny. So that would go to Council.

20 VICE-CHAIRMAN GUARD: Thank you.

21 Commissioner U'u.

22 COMMISSIONER U'U: So anybody, after this, if
23 given approval, will be bumped up to a different B&B?

24 PLANNING DIRECTOR HUNT: If it's within the 500
25 feet.

1 Is that correct, Livit, it's the second one
2 within 500 feet?

3 MS. CALLENTINE: Yes. If there is another one
4 within 500 feet -- there's three things. If the
5 Commission receives more than 40 percent -- 40 percent or
6 more of the owners or lessees of record within 500 feet
7 protest, if the Commission approves a Type 2 application
8 for which a variance had been obtained, and, three, if an
9 existing bed and breakfast is operating on a lot within
10 500 feet from the lot on which the bed and breakfast home
11 is proposed.

12 VICE-CHAIRMAN GUARD: Any other questions?

13 I would like to open it up for public testimony.
14 Commissioner Iaconetti.

15 COMMISSIONER IACONETTI: I wonder, can you tell
16 us, mauka of this property, who owns the property between
17 that and the highway?

18 MR. SPENCE: I am not sure of the property
19 owner. I know that it's -- it's designated on the
20 Community Plan for Single Family Residential, and it's
21 also zoned for Residential.

22 There was a project six years ago, eight years
23 ago for a subdivision there. But it just never went
24 anywhere.

25 COMMISSIONER IACONETTI: It is independently

1 owned, though?

2 MR. SPENCE: Yes, it is.

3 COMMISSIONER IACONETTI: And zoned Residential?

4 MR. SPENCE: Yes, it is.

5 MS. CALLENTINE: I'm sorry. Did I just hear you
6 ask was that -- is that zoned residential, mauka? Is the
7 mauka property zoned Residential? No. It's zoned Ag.

8 MR. SPENCE: Oh, my apologies. I had worked for
9 the --

10 VICE-CHAIRMAN GUARD: Above that rail easement
11 is Ag?

12 MS. CALLENTINE: To the east is vacant land,
13 zoned Agriculture, most recently planted in pineapple.

14 COMMISSIONER IACONETTI: Does that mean it's
15 owned by Maui Land and Pineapple?

16 MS. CALLENTINE: I should be able to check that
17 for you in just a moment.

18 VICE-CHAIRMAN GUARD: Commissioner U'u.

19 COMMISSIONER U'U: Question for the Director.

20 At what process is the Council at in tackling
21 with the TVR and B&Bs, and when can we expect something,
22 for possibilities? I know they are looking at caps and
23 who knows.

24 PLANNING DIRECTOR HUNT: Right now, they are
25 reviewing the proposed revisions to the B&B bill which

1 would streamline this whole procedure. If the bills that
2 we proposed are adopted, this wouldn't even come before
3 you, unless there was a trigger, which is what Livit just
4 referred to, either property owners in opposition or a
5 variance or another one within a certain area.

6 Otherwise, it would be done administratively.
7 And this whole process would be done administratively.

8 COMMISSIONER U'U: Having said that, I know
9 at -- when you coming for the SMA Permit, and it is Single
10 Family, it doesn't fall under the criteria as coming
11 before the Planning Commission. But after the fact, you
12 go in before the B&B, does that trigger SMA approval that
13 comes before the Planning Commission?

14 PLANNING DIRECTOR HUNT: I don't --

15 COMMISSIONER U'U: It's different now because
16 it's not intended for residential use. It is now a small
17 hotel. Would that trigger something to come before us?

18 PLANNING DIRECTOR HUNT: Not usually.

19 COMMISSIONER U'U: Why is that?

20 PLANNING DIRECTOR HUNT: It's hard to speak in
21 absolutes.

22 The SMA ordinance is designed to protect coastal
23 resources.

24 If a B&B application, that would be subject to
25 administrative approval, was in the SMA and there was some

1 proposal along with it that would trigger or impact --
2 potentially impact coastal resources, then there's a
3 potential we would bring it to the Commission for an SMA.

4 COMMISSIONER U'U: Because this is now
5 development, and development comes before the Planning
6 Commission.

7 PLANNING DIRECTOR HUNT: I think that's a
8 different argument for a different day.

9 COMMISSIONER U'U: Why is that?

10 PLANNING DIRECTOR HUNT: We believe that it's
11 not development.

12 COMMISSIONER U'U: Why a different day? It's
13 here before us now. What day are we looking at?

14 PLANNING DIRECTOR HUNT: I will stand corrected.

15 You can make that argument that you believe this
16 should trigger some SMA Permit. We believe it's not
17 development because there's no physical alteration of the
18 land, there is no physical construction going on. It's
19 simply a use. So it's hard for us to understand how that
20 use would impact the coastal resources.

21 If they were proposing to, hypothetically, grade
22 a lot, a large area, to put in parking that was required
23 by the -- by the B&B, that could potentially trigger it.
24 If they were proposing to add bedrooms or something that
25 would be ground-disturbing, then that could trigger it.

1 COMMISSIONER U'U: So, in a sense, this is
2 almost like after the fact? You adding bedrooms, you just
3 said that.

4 MR. SPENCE: If I could clarify.

5 COMMISSIONER U'U: Hang on one second.

6 MR. SPENCE: My apologies.

7 PLANNING DIRECTOR HUNT: The SMA is looking for
8 impacts to the coastal resources. Any activity within the
9 SMA that could potentially, either individually or
10 cumulatively, impact coastal resources is regulated by the
11 SMA Permit. We don't believe that changing the use of a
12 building that is already existing has an impact to the
13 coastal resources.

14 COMMISSIONER U'U: So you saying by adding -- by
15 them adding three bedrooms for short-term rentals will not
16 impact? I mean, if everyone did it on that shoreline, it
17 would definitely be an impact.

18 PLANNING DIRECTOR HUNT: I think you could argue
19 that if the -- yeah, if everyone along that street started
20 short-terming rental, there could be an impact to the
21 coast. There would be more visitors going down to the
22 coast, et cetera. You could hypothetically make that
23 argument.

24 We are not making that argument at this time.
25 We are saying that the short-term rental of these

1 properties has some policy impacts, community impacts that
2 we need to analyze, particularly in housing, impacts to
3 the neighborhood, et cetera. We don't believe that there
4 is an issue of impacts to coastal resources with this
5 application.

6 COMMISSIONER U'U: Just for clarification. Are
7 you saying when the SMA comes before us, and is deemed
8 development, does that trigger an SMA by the Commission?

9 PLANNING DIRECTOR HUNT: If a proposed -- when a
10 proposal comes in, we do an analysis as to whether it is
11 development or not.

12 COMMISSIONER U'U: Okay.

13 PLANNING DIRECTOR HUNT: And then there's
14 certain types of developments that come before the
15 Commission, a major SMA application. If it's a minor or
16 an exemption, then that is handled administratively by
17 Staff.

18 COMMISSIONER U'U: Can you clarify -- I know
19 what a minor is, but could you clarify, what is a minor?
20 What would be considered a minor?

21 PLANNING DIRECTOR HUNT: Any kind of
22 development --

23 COMMISSIONER U'U: Under --

24 PLANNING DIRECTOR HUNT: -- that's not exempt,
25 that is less than \$125,000 of value.

1 COMMISSIONER U'U: So not even a garage. All
2 right.

3 PLANNING DIRECTOR HUNT: That's the way the laws
4 are written.

5 COMMISSIONER U'U: No. I know.

6 VICE-CHAIRMAN GUARD: Commissioner Hedani.

7 COMMISSIONER HEDANI: Jeff, in this particular
8 case, the SMA wasn't triggered because it was an
9 application for a residential use in Residential, when
10 they went for building permit for the construction?

11 PLANNING DIRECTOR HUNT: The SMA defines
12 single-family residences that are not part of a larger
13 development, i.e. perhaps a subdivision with several of
14 them, that defines a single single-family residence as not
15 development.

16 COMMISSIONER HEDANI: So that's why they were
17 exempt from the SMA provisions, was because it was an
18 application for --

19 PLANNING DIRECTOR HUNT: I would assume that. I
20 don't know that application off the top of my head.

21 VICE-CHAIRMAN GUARD: It looks like it was a
22 four-bedroom house when it came through, and Public Works
23 went to get that record, if that is what everyone is
24 interested in. It looks like on the map it was a
25 four-bedroom home. So if they pulled a permit for that, I

1 don't think it would trigger an SMA. Especially in 2004.

2 The laws have changed since then, right?

3 What do you have over there, Public Works,
4 four-bedroom home?

5 MR. MIYAMOTO: Chair, in checking with Staff,
6 the renovation was for, you know, residential renovation.
7 And the number of bedrooms, right offhand, I don't have
8 that. I didn't ask them specifically as to number of
9 bedrooms. But there was just a residential renovation for
10 the entire project, and including the garages, were also
11 as a separate permit.

12 MR. SPENCE: Mr. Chairman, could I address --

13 VICE-CHAIRMAN GUARD: Sure.

14 MR. SPENCE: -- one thing?

15 The applicant, when they went to -- virtually
16 everything that you build in the Special Management Area
17 requires some kind of SMA review. Whether you are
18 reroofing your house, whether you're adding an ohana or a
19 garage, those things have to be reviewed by the Planning
20 Department.

21 When my applicant went in to renovate this house
22 that you saw was extremely delapidated, they did submit an
23 SMA application. It was within the scope of a -- either a
24 minor permit or an exemption. So that was all -- their
25 renovation, with the parking, with the garage in the back,

1 that was all reviewed by the Planning Department already.

2 So, you know, I tend to agree with the Planning
3 Director that you are not -- since this application that
4 is before you is they are not building anything, they are
5 not increasing runoff, they are not doing anything that is
6 going to increase any impact to nearshore resources, then
7 it's not -- SMA is not applicable.

8 It was to the reconstruction and the adding of
9 impervious surfaces, et cetera, but for the -- for just
10 the use of the property as bed and breakfast, it would not
11 be applicable.

12 VICE-CHAIRMAN GUARD: I think, for Commissioner
13 U'u, it would probably look like a feat of engineering to
14 do a renovation on that house.

15 MR. SPENCE: It was.

16 VICE-CHAIRMAN GUARD: Livit.

17 MS. CALLENTINE: Getting back to an earlier
18 question about who was the owner of the mauka parcel, and
19 the owner is Pineapple Ridge, LLC.

20 VICE-CHAIRMAN GUARD: Any other questions?

21 Can we open it up for public testimony?

22 Seeing none, we will open this up for public
23 testimony on this item at this time, if there is any
24 members of the public.

25 We only had one person sign up previously, so at

1 this point I am going to be first come, first serve on
2 this agenda item.

3 All right. Seeing none, we might move forward.

4 So we will look at the Staff Recommendation at
5 this time and then see what the Commission wants to do.

6 MS. CALLENTINE: Mr. Chair, pursuant to Section
7 1964.030 and the Chapter 19.64, the application does
8 comply with the criteria established for a Bed and
9 Breakfast Type 2 Permit.

10 The Recommendation of the Planning Department is
11 to approve this application subject to standard and
12 project specific conditions.

13 The project specific conditions were generated
14 by our agency comments.

15 And with your permission, I will not read the
16 standard comments unless you wish. The standard
17 conditions, rather. Do you want me to read the project
18 specific --

19 VICE-CHAIRMAN GUARD: I don't think we need
20 them.

21 MS. CALLENTINE: Okay. In consideration of the
22 foregoing, then, the Planning Department -- well, let me
23 say, first of all, that there are 23 conditions, just for
24 the record. Eighteen of those are standard conditions and
25 five of those are project specific conditions.

1 In consideration of the foregoing, the Planning
2 Department recommends that the Maui Planning Commission
3 adopt the Planning Department's Report and Recommendation
4 prepared for the August 12th, 2008 meeting, as its finding
5 of fact, conclusion of law, and decision and order, and to
6 authorize the Director of Planning to transmit said
7 written decision and order on behalf of the Planning
8 Commission.

9 VICE-CHAIRMAN GUARD: Commission, any thoughts?
10 Director.

11 PLANNING DIRECTOR HUNT: Livit, could you, for
12 the record, explain the notification process --

13 MS. CALLENTINE: Sure.

14 PLANNING DIRECTOR HUNT: -- and be up front
15 about issue with Mr. McCartney?

16 MS. CALLENTINE: I would be happy to.

17 Let me just bring the Code up to the podium with
18 me.

19 The notification process that has been codified
20 in Chapter 19.64 requires that the applicant mail a notice
21 of application to owners and lessees within 500 feet. It
22 is not specific -- it is silent on whether to actually
23 notify the owners and lessees of record within 500 feet of
24 the public hearing.

25 In this case -- and in most cases -- what the

1 Department has been doing for -- I haven't determined yet
2 for how many years, but there has been a practice that the
3 Department does require the applicant to mail in notice of
4 public hearing and then supply an affidavit of mailing of
5 that public hearing notice.

6 In this particular case, this applicant did
7 that, but she did not notify an owner at 4800 Lower
8 Honoapiilani Highway because -- because of a prior
9 mediated agreement between the two parties that they would
10 not contact each other under any circumstances. And she
11 was under the -- she is under the belief that -- that --
12 that agreement is still in effect and would -- would --
13 prohibited her from providing notice to that owner.

14 Subsequently, that owner discovered -- that 4800
15 address discovered from another neighbor that -- about
16 this application. And called me and asked me why he
17 wasn't notified. And I asked him to submit a letter.

18 And this was actually prior to your last
19 hearing.

20 And so he did submit a letter.

21 I did provide him with a copy of the notice that
22 had been provided to the other neighbors.

23 He -- he -- he, in turn, interpreted the
24 agreement that was actually between his wife and this
25 applicant. He said that he didn't believe that applied to

1 him, nor did he believe that it was still in effect.

2 And he asked to be notified of any future public
3 hearing on the item. So I did notify him. The Planning
4 Department notified him of this upcoming hearing.

5 And he did submit a second letter once he
6 received that notification.

7 So our application for bed and breakfast, right
8 now, actually does have a form for providing a notice of
9 public hearing and an affidavit of notice of public
10 hearing, but the Code at this point in time does not.

11 We seek to rectify that in the future by
12 amending the Code to require a notice of public hearing.

13 VICE-CHAIRMAN GUARD: Thank you for that
14 explanation.

15 Commissioner Hedani.

16 COMMISSIONER HEDANI: Did the mediated agreement
17 have anything to do with the use of the property?

18 MS. CALLENTINE: I don't know what it had to do
19 with. It was not -- it didn't actually spell out what the
20 cause of the dispute was. It -- it merely spelled out
21 what the remedies were, which is that they were to refrain
22 from having any contact at all.

23 COMMISSIONER HEDANI: Does the applicant have an
24 answer?

25 MR. SPENCE: Hi. Will Spence for the applicant.

1 There was a dispute with -- this is one of the
2 neighbors two doors down, two doors to the north, the
3 McCartneys, who did -- you know, they have written you two
4 letters in opposition. The dispute was between my
5 applicant and Mrs. McCartney. And I don't know all the
6 details, and I don't really want to know, but the court
7 ordered them to mediation.

8 And looking at the mediation papers, there is no
9 expiration date on it, there is no -- there is no reason
10 to expect that anything has expired. So it's still in
11 place as far as my applicant is concerned.

12 VICE-CHAIRMAN GUARD: Commissioner Hedani.

13 COMMISSIONER HEDANI: Will, I need a straight
14 answer.

15 Did the mediation -- well, there's, apparently,
16 either litigation or mediation that went on between these
17 two neighbors.

18 MR. SPENCE: Yes.

19 COMMISSIONER HEDANI: And I need to know if that
20 had anything to do with the use of the property.

21 MR. SPENCE: Gosh. I'm sorry.

22 No, it has nothing to do with the use of the
23 property as a bed and breakfast. It was totally between
24 two neighbors.

25 COMMISSIONER HEDANI: Okay.

1 VICE-CHAIRMAN GUARD: Commissioner Hedani.

2 COMMISSIONER HEDANI: While you're up there,
3 Commissioner Hiranaga and Commissioner Mardfin, I think,
4 asked the question -- and I don't know that they actually
5 got an answer to it, because it was kind of fuzzy to me --
6 where is the location of the second person that is in
7 opposition to the property?

8 MR. SPENCE: The --

9 COMMISSIONER HEDANI: Somewhere on a map, I need
10 to know where that property is.

11 MS. CALLENTINE: Commissioner Hedani, are you
12 asking about the person that has this mediated agreement,
13 you are asking for that location?

14 The other person?

15 COMMISSIONER HEDANI: You're pointing to the
16 Emma Sharpe parcel?

17 MS. CALLENTINE: Yes, I am.

18 MR. SPENCE: So you can see, it is -- it's even
19 further away than the first letter of opposition.

20 COMMISSIONER HEDANI: That would be one house
21 away, right? That would be one house away to the north
22 and one house away to the south?

23 MR. SPENCE: No. The neighbors on either side
24 either have no comment or are in support.

25 COMMISSIONER HEDANI: Right.

1 MR. SPENCE: The neighbors who have expressed
2 concerns and opposition are even further away.

3 COMMISSIONER HEDANI: They are next to them?

4 MS. CALLENTINE: Yes.

5 VICE-CHAIRMAN GUARD: What are you saying there,
6 Commissioner Hedani?

7 COMMISSIONER HEDANI: I am just asking for the
8 copy of the letter, because I -- I didn't have my copy
9 with me.

10 VICE-CHAIRMAN GUARD: Oh, from the previous
11 meeting.

12 COMMISSIONER HEDANI: Yes. The person in
13 opposition.

14 VICE-CHAIRMAN GUARD: That is the one to the
15 south of it?

16 COMMISSIONER HEDANI: Right.

17 VICE-CHAIRMAN GUARD: Two doors to the south.

18 MS. CALLENTINE: Yes, two doors to the south.

19 COMMISSIONER MARDFIN: May I ask a question
20 while we're waiting?

21 VICE-CHAIRMAN GUARD: Perfect.

22 COMMISSIONER MARDFIN: I would like to ask you a
23 question.

24 The comment -- I asked earlier whether it had
25 been used for -- had been used as a bed and breakfast.

1 And I got sort of -- it sounded like the answer was, well,
2 we did, but, when we found out we shouldn't, we stopped.
3 Is that -- you went out and site visited. Is that your
4 impression, also, that they had, but they sort of stopped?

5 MS. CALLENTINE: I was not able to determine
6 whether -- I mean, the rooms were clean, they were made
7 up, they were spotless, and there was no one occupying
8 them at the time. So it was impossible for me to
9 determine whether they had been used in the past.

10 COMMISSIONER MARDFIN: Okay. And at this point,
11 do they have a homeowner's property exemption?

12 MS. CALLENTINE: So far as I know, they still
13 have that exemption.

14 And, you know, the comment that had been made
15 that was submitted by real property tax did make note that
16 they had had their business license since, I believe,
17 2004. And I did ask the applicant to explain the
18 difference there. And she said, "We just went ahead and
19 applied for the business license early."

20 Now, what I haven't seen is any of the tax
21 records that might have been submitted to the State for
22 the GET and -- the General Excise Tax and Transient
23 Accommodation Tax.

24 COMMISSIONER MARDFIN: Did you ask for them?

25 MS. CALLENTINE: I asked for verification that

1 she had the licenses. And she did give me the
2 verification.

3 VICE-CHAIRMAN GUARD: Maybe we should just
4 assume they have done it. I think it's happening in other
5 places, so let's just assume it has been a bed and
6 breakfast without a permit, if we want to move forward
7 with that knowledge, if that helps. It's going to be
8 difficult to prove anything at this point.

9 What is our desire?

10 COMMISSIONER IACONETTI: I would like to move
11 acceptance for the permit.

12 VICE-CHAIRMAN GUARD: Okay. We have a motion on
13 the floor.

14 COMMISSIONER HEDANI: Second.

15 VICE-CHAIRMAN GUARD: And a second.

16 Any discussion?

17 COMMISSIONER IACONETTI: I have --

18 VICE-CHAIRMAN GUARD: Maker of the motion.

19 COMMISSIONER IACONETTI: The property was
20 inhabited by some very undesirable -- very undesirable
21 situation. There were apparent rodents on the property.
22 The people that occupied it had to overlook an awful lot
23 in order to pay rent to stay there.

24 The improvement has been remarkable. The
25 property -- I've personally gone by it, and it's a

1 beautiful piece of property, beautiful business. It --
2 no, it's not my business. It -- it's a great improvement.

3 And the people that are complaining about having
4 this because of noise, you would think that the people
5 immediately next door or the long-term resident would
6 complain before people two doors down would complain.

7 I find it difficult to see any reason for not
8 approving this.

9 VICE-CHAIRMAN GUARD: Commissioner Mardfin.

10 COMMISSIONER MARDFIN: I would like to move to
11 amend the motion to add a condition, a project specific
12 condition, that they withdraw -- if -- if it's granted,
13 that they withdraw their Conditional Use Permit for the
14 ohana property, ohana building, and that they agree to not
15 use the ohana for any short-term rental, including bed and
16 breakfast.

17 COMMISSIONER U'U: Second.

18 VICE-CHAIRMAN GUARD: We have a second.

19 Any discussion on the amendment?

20 MS. CALLENTINE: Could I make sure I understand
21 your --

22 VICE-CHAIRMAN GUARD: Sure.

23 MS. CALLENTINE: -- language?

24 That the applicant shall withdraw the
25 Conditional Use Permit currently under -- I can name the

1 actual application number. I can't name it right now, but
2 I can name that in the condition. Shall withdraw CP
3 number blah, blah, blah, and shall refrain from using the
4 ohana for short-term rental.

5 Do you want that --

6 COMMISSIONER MARDFIN: Including bed and
7 breakfast.

8 MS. CALLENTINE: Including bed and breakfast.

9 VICE-CHAIRMAN GUARD: Does that sound correct?

10 COMMISSIONER MARDFIN: Yeah.

11 MS. CALLENTINE: Do you want that to be a
12 recorded condition?

13 Sometimes it's helpful -- in fact, most times
14 it's helpful to actually have some way of tracking that in
15 the future. Whether it be that the applicant submit a
16 recorded document that has been recorded with the Bureau
17 of Conveyances or that -- and that they recertify that --
18 they recertify that with each compliance report.

19 COMMISSIONER MARDFIN: Yes, that should be a
20 written request.

21 VICE-CHAIRMAN GUARD: That will be Item Number
22 24 on the Project Specific Conditions?

23 Commissioner Hiranaga.

24 COMMISSIONER HIRANAGA: I guess I have a concern
25 about the proposed amendment because I believe the Council

1 is leaning towards allowing a detached dwelling to be
2 permitted if there is an on-site owner or manager.

3 So I can see -- I can agree with your withdrawal
4 of the Conditional Use Permit, but putting the
5 restriction -- because if in the future it becomes a legal
6 -- a legalized use, I hate to see this restriction come
7 back to them.

8 So I would be agreeable to the request -- or
9 requirement to withdraw the Conditional Use Permit, but I
10 would not be agreeable to the second part of the
11 amendment.

12 VICE-CHAIRMAN GUARD: Livit.

13 MS. CALLENTINE: The applicant does have to come
14 back for administrative approval of -- in each renewal.
15 So every year, they will have to come back in. Should the
16 Council make such a change, they could come back in and
17 ask for an amendment to remove that condition, at one of
18 their -- if they were willing to have that condition
19 imposed.

20 VICE-CHAIRMAN GUARD: Will.

21 MR. SPENCE: Yes. Thank you, Mr. Chairman.

22 The -- I will offer you an opinion that the
23 condition is not necessary simply because, what Livit is
24 saying, if they wanted to amend the conditions of their
25 permit, it's going to come back before you, anyway.

1 If they continue with the application for a
2 Conditional Permit, this is the first body that hears that
3 application. And then you make a recommendation to the
4 County Council. So if, you know, at that time you say, we
5 don't like it, you know, you have that option, anyway.

6 One way or another, if they want to use that
7 ohana, it's coming before this body.

8 VICE-CHAIRMAN GUARD: Commissioner Mardfin.

9 COMMISSIONER MARDFIN: I understand that.

10 On the other hand, we have short institutional
11 memories. And if it's in writing, it's a lot easier for
12 future bodies to take care of it.

13 MR. SPENCE: But the Staff has memory of an
14 elephant. It will be -- it will be in the project file.

15 VICE-CHAIRMAN GUARD: Livit.

16 MS. CALLENTINE: Condition Number 2, condition
17 of the standard conditions that the subject bed and
18 breakfast permit is limited to three guest rooms.

19 MR. SPENCE: There you go.

20 VICE-CHAIRMAN GUARD: It sounds like the
21 Commission just doesn't want to see it come back as a
22 conditional use permit. It doesn't need to be recorded.
23 And within the year, if the law changes, at that point we
24 can move on from there.

25 So I don't know if we want to change that

1 amendment to the motion or vote on it.

2 COMMISSIONER MARDFIN: That was a motion to
3 amend.

4 VICE-CHAIRMAN GUARD: I know. Well, to either
5 change -- you want it recorded with the Bureau of
6 Conveyances.

7 COMMISSIONER MARDFIN: Yeah, I did want that
8 included. Not with the Bureau of Conveyances. With the
9 Department.

10 MS. CALLENTINE: With the -- I'm sorry. Could
11 someone repeat the amended motion at this point for me so
12 I can get it down?

13 COMMISSIONER MARDFIN: You had it right the way
14 you wrote it. You had suggested that we have it recorded
15 somewhere.

16 MS. CALLENTINE: The Bureau of Conveyances is
17 what we typically do. A unilateral agreement with Bureau
18 of Conveyances.

19 COMMISSIONER MARDFIN: I thought that should be
20 added to my motion.

21 MR. GIROUX: Can I just chime in there as County
22 attorney?

23 MS. CALLENTINE: Yes.

24 MR. GIROUX: This is a one-year permit. I would
25 hate to see something filed in the Bureau for a one-year

1 because it does go on this permanent type of record where
2 it's hard to -- it's hard to get in there and expunge it
3 out. I think when you're doing title searches on
4 properties, it might add confusion.

5 I would rather, if it's just a one-year permit,
6 have it recorded with the Department and tracked in that
7 manner.

8 MR. SPENCE: Yes.

9 COMMISSIONER MARDFIN: As the maker of the
10 amendment, I will concur with our learned counsel and
11 withdraw that portion of it. But the part about
12 withdrawing the Conditional Permit and agreeing not to use
13 it for short-term rental would remain.

14 MS. CALLENTINE: So the wording of the
15 condition, then, is that the applicant shall withdraw
16 Conditional Permit Number X, and that the accessory unit
17 will not be used for short-term rental or for bed and
18 breakfast use -- actually, you don't really need that in
19 there -- or for bed and breakfast use, and that a
20 unilateral agreement shall be recorded with the
21 Department.

22 COMMISSIONER MARDFIN: Yes.

23 MS. CALLENTINE: So the question, do you still
24 want it to call out for short-term rental or bed and
25 breakfast use?

1 COMMISSIONER MARDFIN: I prefer, just because it
2 highlights what we were thinking of at the time. It may
3 be redundant, but that is for (inaudible).

4 VICE-CHAIRMAN GUARD: Commissioner Iaconetti.

5 COMMISSIONER IACONETTI: I have a hard time
6 understanding why we need this amendment, personally.

7 Number two, under the standard conditions,
8 limits it to three guestrooms.

9 So what are we adding by putting on this
10 amendment?

11 VICE-CHAIRMAN GUARD: I am listening to Corp
12 Counsel behind me.

13 I think if they remove the conditional use
14 permit, it's only a one-year thing, we don't need to
15 record it anywhere.

16 Within one year, I will still be on the
17 Commission, a few other people will be, I think we can
18 handle it, that Commissioner Mardfin --

19 COMMISSIONER MARDFIN: So the portion about the
20 recording, we can delete that?

21 VICE-CHAIRMAN GUARD: I think we're starting to
22 stumble. Yeah.

23 COMMISSIONER MARDFIN: But in -- did you get
24 that?

25 MS. CALLENTINE: No.

1 VICE-CHAIRMAN GUARD: It sounds --

2 COMMISSIONER MARDFIN: You can remove the
3 portion about the recording, even with the Planning
4 Department, in response to Dr. Iaconetti's concern, even
5 though an earlier condition two restricts the number of
6 rooms. And so it may be a redundant condition, I would
7 still -- I am still going to vote in favor of it because I
8 think it highlights our concerns. And it didn't deal with
9 removing the conditional use application. So I am still
10 going to vote in favor of the amendment.

11 VICE-CHAIRMAN GUARD: Commissioner U'u, are you
12 okay with that?

13 COMMISSIONER U'U: Yeah, I am okay.

14 Just for some clarification. If you are going
15 to use a ohana unit as an added part of the B&B, would the
16 type change?

17 PLANNING DIRECTOR HUNT: Under the existing
18 laws, you would have to apply for a Conditional Permit
19 because it's in a different dwelling unit.

20 Now, Commissioner Hiranaga pointed out correctly
21 that the Council is considering right now a bill that
22 would expand the definition of a B&B to include the ohana.
23 But they are just considering it at this point. It hasn't
24 been adopted.

25 COMMISSIONER U'U: When they come back before

1 the Planning, after the one-year time limit is up, does it
2 go straight to the Director or to the Planning Commission?

3 MS. CALLENTINE: The renewals are done
4 administratively. So it would come to the Director for
5 assignment.

6 VICE-CHAIRMAN GUARD: Will.

7 MR. SPENCE: But that -- what Livit is saying is
8 true, but if there is an amendment to the application, if
9 they wanted to use the ohana at that time, it would come
10 back before this Commission.

11 VICE-CHAIRMAN GUARD: Mr. Hedani.

12 COMMISSIONER HEDANI: Will, your applicant has
13 three different things that is happening at the same time,
14 yeah, a Conditional Permit Application, a Type 1, Type 2.
15 The question that I have is, you know, if this is approved
16 as a Bed and Breakfast Type 2, are they willing to drop
17 both of the other applications applicable to this
18 property?

19 MR. SPENCE: They would like to continue with
20 the Conditional. And, you know, which this -- this body
21 would hear.

22 The Type 1 would actually reduce the rooms to
23 two. So I am going to imagine they would drop that one.

24 COMMISSIONER HEDANI: But they would still like
25 to pursue the Conditional?

1 MR. SPENCE: Yes.

2 VICE-CHAIRMAN GUARD: Let's see what our amended
3 condition does to that.

4 Are we ready to vote on the amendment to the
5 main motion?

6 Livit.

7 MS. CALLENTINE: Did you -- did you -- did you
8 commissioners specifically not want to include requesting
9 that they drop the Bed and Breakfast Type 1 application at
10 this time with this condition?

11 VICE-CHAIRMAN GUARD: That's probably redundant.
12 I mean, that is -- you're asking for one to two bedrooms
13 versus asking for three. So if they want to go with the
14 Type 1 --

15 COMMISSIONER MARDFIN: The intention of my
16 motion was -- when I actually said it, I said withdraw all
17 the applications, other applications. So my intent was
18 that everything goes and we're only left with this one.

19 VICE-CHAIRMAN GUARD: Director.

20 PLANNING DIRECTOR HUNT: That may have been your
21 intent, but I think, technically, your wording was
22 withdraw the Conditional Permit for the ohana.

23 Again, the Bed and Breakfast 1 Permit is moot.
24 Why would they apply for one to two bedrooms when they
25 have got approval for three?

1 COMMISSIONER MARDFIN: That is fine. I am okay
2 with that.

3 VICE-CHAIRMAN GUARD: Any other questions?

4 Okay. Let's call -- Commissioner Hedani.

5 COMMISSIONER HEDANI: Just a question for the
6 applicant.

7 The conditions that were attached to the
8 recommendation regarding fire flow and regarding the
9 mirrors and the other requirements that were brought up by
10 the Department of Water Supply, is that something that is
11 acceptable to the applicant? The response that I got, you
12 know, initially was that they are thinking about whether
13 or not it's too expensive.

14 VICE-CHAIRMAN GUARD: Applicant.

15 MR. SPENCE: I think more than -- yes, there is
16 considerable expense involved with doing the fire flow
17 calculations, because you have to pay a licensed engineer
18 to do them.

19 I think, perhaps, more importantly, there's a
20 bill with the County Council right now to remove that to
21 actually consider B&Bs as a residential use with regards
22 to fire flow.

23 VICE-CHAIRMAN GUARD: Excuse me, Will.

24 Before we confuse it, let's get rid of the
25 amended motion. And then once we're back to the main

1 motion, we can take care of that.

2 Any questions on the amendment to the main
3 motion?

4 Seeing none, all those in favor of the amendment
5 to the motion signify with a raise of the hand.

6 All opposed? Okay.

7 Director.

8 PLANNING DIRECTOR HUNT: I will mark that as
9 four against and two in favor.

10 VICE-CHAIRMAN GUARD: Okay. Amendment to the
11 main motion dies.

12 Any further discussion?

13 Commissioner Hedani, your previous question?

14 COMMISSIONER HEDANI: The question was the
15 Commission is imposing conditions on the approval that
16 they comply with the Department of Water Supply's
17 requirements relative to fire flow, relative to a backflow
18 preventer, basically, and the Police Department is
19 requiring mirrors. And I need to know that those will be
20 complied with by the applicant.

21 So the question is, are they going to comply
22 with those conditions, if imposed?

23 MR. SPENCE: Thank you, Commissioner Hedani.

24 The -- I was mentioning that -- and part of your
25 previous question was, is there expense involved. Yes,

1 there is. But there is a bill before the County Council
2 right now to remove the thought that these are commercial
3 uses and it would just go with domestic fire flow
4 calculations.

5 The applicant will comply with these.

6 We would like to add some language to the
7 conditions that if the Water -- Department of Water Supply
8 rules change or the County Code changes that these would
9 no longer apply.

10 Because if the Code changes, there's a -- you
11 know, there's no reason to impose these conditions.

12 But at this point, yes, the applicant is
13 intending to apply with -- comply with them.

14 VICE-CHAIRMAN GUARD: Commissioner Hiranaga.

15 COMMISSIONER HIRANAGA: I guess, as a point of
16 order, the motion on the floor should be more specific
17 than previously stated. Maybe it should be to adopt the
18 Staff's Recommendation with conditions. I think
19 Dr. Iaconetti just said he would move to accept to be a
20 little bit more formal --

21 VICE-CHAIRMAN GUARD: Thank you for that.

22 COMMISSIONER HIRANAGA: -- than the actual
23 motion.

24 And, also, when we -- if we approve this with
25 conditions, I think, isn't it inferred that, in order to

1 receive the permit, these conditions must be complied with
2 prior to the issuance of the permit?

3 I guess this is a question for the Director.

4 MS. CALLENTINE: No.

5 VICE-CHAIRMAN GUARD: Director.

6 MS. CALLENTINE: Sorry. I will answer for the
7 Director.

8 The compliance -- they submit a compliance
9 report 90 days prior to the first expiration. And they
10 must go through each one of the conditions and demonstrate
11 compliance with it.

12 Some of the things that we would -- we would
13 want, we would hope to receive prior to that nine-month
14 period, would be the certificate of insurance, evidence
15 that they are no longer receiving the homeowner's
16 exemption, anything that they can -- they can submit in
17 advance of that expiration we would like to see. But we
18 don't require that until the first compliance report is
19 submitted.

20 COMMISSIONER HIRANAGA: One more question.

21 It's my understanding -- and you can correct me
22 if I am wrong -- but I guess as this process continues and
23 the applicant finds that certain conditions are
24 unattainable or unreasonable, they can meet with the
25 Department and try to have the condition removed, or does

1 it have to come back to the Commission to have a condition
2 removed?

3 MS. CALLENTINE: It would have to come back to
4 the Commission if they wanted to change any of the
5 conditions.

6 COMMISSIONER HIRANAGA: Okay. Thank you.

7 VICE-CHAIRMAN GUARD: Commissioner Iaconetti.

8 COMMISSIONER IACONETTI: I would like to thank
9 Commissioner Hiranaga for correcting the motion. And as
10 he stated, it should be approval of the Recommendation of
11 the Planning Department with conditions.

12 VICE-CHAIRMAN GUARD: You agree with that second
13 to the motion?

14 COMMISSIONER HEDANI: Concur.

15 VICE-CHAIRMAN GUARD: Okay. Director.

16 PLANNING DIRECTOR HUNT: And just for the
17 record, Livit added some information at the podium
18 regarding notification. So we will include that as part
19 of the record and as part of the recommendation.

20 VICE-CHAIRMAN GUARD: Commissioner Hedani.

21 COMMISSIONER HEDANI: I want clarification, it's
22 for the Director.

23 Bed and Breakfast is allowed in R-3 Residential
24 zone, basically, as the law currently reads, but it's not
25 allowed in Rural and Agricultural, as the Council has

1 amended the bills that were advanced to them?

2 I am just kind of reconciling in my head how
3 that is happening. Because one is bigger than the other,
4 generally. And this is more dense, but allowable. And
5 they are disallowing something that is less dense and
6 farther apart.

7 PLANNING DIRECTOR HUNT: The B&B ordinance --
8 actually, the Residential ordinance specifically allows
9 for B&Bs. The Rural and the Agricultural zoning do not.
10 So they would -- somebody would have to apply for a
11 Conditional Permit because they are not specifically
12 listed in the Rural or the Agricultural zone.

13 The Council, in the bills that are being
14 considered right now, has voted to allow B&Bs in the Rural
15 zone. So they would be added as a permitted use.

16 COMMISSIONER HEDANI: I see.

17 PLANNING DIRECTOR HUNT: They are still
18 discussing the Agricultural zone.

19 COMMISSIONER HEDANI: The intent there was just
20 to protect agricultural.

21 PLANNING DIRECTOR HUNT: In the Agricultural
22 District?

23 COMMISSIONER HEDANI: Recommendation.

24 PLANNING DIRECTOR HUNT: The concern there is,
25 yeah, to protect agricultural zoning. It's a complex

1 argument. I don't want to abbreviate it, but --

2 VICE-CHAIRMAN GUARD: Part of that did all come
3 through the Commission, so they are also looking at our
4 recommendations to do that.

5 Livit.

6 MS. CALLENTINE: Just for clarity, at this time,
7 in the Agricultural and Rural zones, they would also have
8 to come in for a State Land Use Commission Special Use
9 Permit in addition to the Conditional Permit.

10 VICE-CHAIRMAN GUARD: Commissioner Mardfin.

11 COMMISSIONER MARDFIN: I would just like to say
12 that, in general, I support B&Bs, but because the
13 amendment to withdraw the Conditional Use application
14 failed, I am going to vote against this one.

15 VICE-CHAIRMAN GUARD: Fair enough.

16 Commissioner Hedani.

17 COMMISSIONER HEDANI: You know, my other concern
18 that I heard from the applicant was that they seem to be
19 less aware of the effect that the property has on
20 surrounding properties, the drainage way being a concern.

21 I was approached by an individual that had
22 property adjoining a drainage way in this vicinity, where
23 they had allowed the drainage way to be overgrown to the
24 point where, when the flood came, it became catastrophic,
25 and it wiped out a whole bunch of his property, and took

1 sediment from his property and topsoil and tossed it into
2 the ocean, which is an SMA concern at that point.

3 So from my perspective, I think if they
4 understand that proper maintenance of the drainage way is
5 important from that perspective, you know, that goes a
6 long way for me to getting them to understand that all
7 things are connected.

8 The other concerns I had was that when you get
9 into the hotel business, which they are getting into the
10 hotel business, the protection of life and property on the
11 property should be paramount, and you are held to a higher
12 standard than a residential person because you are the
13 hotel operator at that point. And so fire flow
14 calculations, make sure your guests are properly
15 protected. It shouldn't be something of debate. It
16 should be something that is acceptable.

17 VICE-CHAIRMAN GUARD: Thank you for that.

18 Ready for the vote, to approve the
19 Recommendation for the Type 2 Bed and Breakfast with the
20 Staff Recommendations.

21 COMMISSIONER U'U: Comment.

22 VICE-CHAIRMAN GUARD: Okay. Through Item 23 on
23 the project specific conditions.

24 Commissioner U'u.

25 COMMISSIONER U'U: I would like to add a

1 comment.

2 I know we do this case by case. I like B&Bs.
3 And I think they did a great job of upgrading the property
4 and maintaining the property. It looks awesome. I wish
5 my yard was that nice, put it that way.

6 VICE-CHAIRMAN GUARD: Commissioner Hiranaga.

7 COMMISSIONER HIRANAGA: Yeah. I guess I am a
8 little confused with the objection to the motion based
9 upon the need to withdraw a Conditional Use Permit, that,
10 if it continues, would eventually end up before us and
11 could be denied at that time. So I am a little confused
12 about that objection.

13 So I will be voting for the motion on the floor.

14 VICE-CHAIRMAN GUARD: Hopefully, the applicant
15 heard our comments and makes the right decision.

16 Ready for the question?

17 All those in favor, recommendation to approve,
18 hands.

19 Any opposed?

20 Okay. Director.

21 PLANNING DIRECTOR HUNT: I will mark that five
22 in favor; and one against, Commissioner Mardfin.

23 MR. GIROUX: Mr. Chair, can I just -- this is
24 Corp Counsel. Maybe we can deal with this on consensus.

25 I am just looking at the report. You've adopted this

1 report as your findings of facts and conclusions of law,
2 so I would like Livit to, just as a housecleaning, under
3 procedural matters, add a few paragraphs about the notice
4 that took place after this report was made and the
5 attempts to notify the neighbors, and, also, that under
6 19.64.040(b), that the Planning Director did find -- make
7 a finding of good faith attempt to make service.

8 MS. CALLENTINE: Okay.

9 VICE-CHAIRMAN GUARD: Okay. With that, why
10 don't we take a ten-minute break? Reconvene at 10:20.

11 MR. SPENCE: Thank you, Commissioners.

12 (Recess, 10:10 a.m. to 10:26 a.m.)

13 VICE-CHAIRMAN GUARD: Planning Commission of
14 August 26th is now back in session.

15 During the recess, there has been some
16 discussion of trying to reopen public testimony for any
17 agenda item, same as the 8:30 start, for members of the
18 public wishing to speak now on a later agenda item.

19 If there's any problem with that? Any
20 objections? Is that okay?

21 Okay. At this time we will reopen public
22 testimony on any agenda item.

23 And I have a list. We will start with that.

24 If there's any other members that did not get to
25 sign up, they can hop in line.