

**MAUI PLANNING COMMISSION
REGULAR MEETING
SEPTEMBER 9, 2008**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Jonathan Starr at approximately 8:32 a.m., Tuesday, September 9, 2008, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

A quorum of the Commission was present. (See Record of Attendance.)

Mr. Jonathan Starr: Okay, good morning, everyone. I'd like to thank everyone for joining us today. This is the Maui Planning Commission. This is the September 8th meeting – September 9th meeting. I ask everyone to bear with us. I guess we have a very full agenda today and we really are gonna try our best to move things along and get through it. We will be finishing at 5:00 p.m. today. And just to introduce so far we have with us Commissioner Bruce U'u. I'm Jonathan Starr. Commissioner Donna Domingo, Commissioner Doctor William Iaconetti, Commissioner Wayne Hedani. We'll have several more I believe before too long. We also have Corporation Counsel, James Giroux. We have our Director of Planning, Jeff Hunt. We have Carolyn Takayama-Corden. And I'm gonna make a special announcement is that it's her birthday today. And we wish her a happy and successful year, though, I wouldn't have wished her having to spend this way for her birthday. Mike Miyamoto, Deputy Director of Public Works. Clayton Yoshida from the Planning Department who does our agendas and a lot of behind-the-scene planning and makes all this stuff work. We have Planner, Livit Callentine, and several other members of staff with us as well.

Our first item is we do allow public testimony on any agenda item. And members of the public wishing to testify have either a choice of one of two options. And either they can testify before the entire agenda which would mean now or they could wait and testify before their particular agenda item. We ask that testimony be kept as short as possible. Please try to help save us time 'cause we have a lot of important items and a lot of people here waiting on them and in no case more than three minutes. We will remind you if you get that far and ask you to finish up. So you can choose to testify either before or – the meeting or before each individual item goes to decision-making. With that in mind, I'll start with a list. We will have a necessity probably to amend the agenda and I'll take that up as soon as we've gone through initial public testimony. Is that good?

Mr. Starr: And once again, any members of the public wishing to testify on any item, please raise your hand or step forward. Seeing none, public testimony for the initial portion of this meeting is closed. Members of the public, we'll give an opportunity to testify before decision-making on various items.

The following persons testified at the beginning of the meeting:

Ms. Georgina Kawamura - Item C-3, Reso. No. 08-48, Kaanapali Golf Course Properties, CIZ
Ms. Mary DeCosta - Item C-4, Robin and Judie Vivian, Vivian Vacation Rental, CP
Ms. Mary Ann Oda - Item C-4, Robin and Judie Vivian, Vivian Vacation Rental, CP
Mr. Alton Watanabe - Item C-3, Reso. No. 08-48, Kaanapali Golf Course Properties, CIZ
Ms. Barbara Woods - Item B-1, Peter Martin, Hoomoana Campground, SUP2
Ms. Donna McCleary - Item B-1, Peter Martin, Hoomoana Campground, SUP2
Mr. Billy Jalbert - Item B-1, Peter Martin, Hoomoana Campground, SUP2

Ms. Carla Jalbert -Item B-1, Peter Martin, Hoomoana Campground, SUP2
Mr. Howard Hanzawa - Item C-3, Reso. No. 08-48, Kaanapali Golf Course Properties, CIZ
Ms. Karen Gallagher - Item B-1, Peter Martin, Hoomoana Campground, SUP2
Ms. Cindy Kline - Item C-1, Family Life Center, CUP
Ms. Joyce Finze Wallenberg - Item C-4, Robin and Judie Vivian, Vivian Vacation Rental, CP

Their testimony can be found under the item on which they testified on.

Mr. Starr: Now, before we proceed through our agenda, we have two areas where it may be good practice to amend the agenda. And I'll leave that to Members, but to give an explanation because specifically, in relation to Item B-1, the first item, there has been a filing made to us now I'll turn it over to our Corp. Counsel, James Giroux, our counsel for our Commission to explain what we might do regarding this filing and our agenda.

Mr. James Giroux: Thank you, Chair. We have received a petition to intervene and an amended petition to intervene, and it's not noticed on our agenda. However, this is appearing to be a contested case matter, so what I would advise is that you just amend your agenda. Get a two-thirds vote to get this matter on so we can dispose of the issue of intervention. It's imperative by your rules that you have to act on these issues prior to getting to final action. So I just advise you that the simplest thing would be to amend your agenda, get these two: the petition and the amended petition on. And then the issues that need to be disposed of is the issue for good case of timeliness, if you're going to allow the intervention to be heard, the petition to be heard. And then if you are going to allow it to be heard, whether or not you're gonna to dispose of the intervention matter and to clarify who is going to be allowed to intervene. And also the last thing you need to dispose of how is how you're gonna proceed with the intervention: if the Body as a whole is going to take care of this, or are you going to try to get a hearings officer involved.

Mr. Starr: Okay. And my understanding is that if we are to deal with that, we should do that before we take up the actual item. If any of the Members would like to make a motion, I would welcome that. Commissioner Hedani?

Mr. Wayne Hedani: Move to amend the motion to add the items of intervention as recommended by Council.

Mr. Bruce U`u: Second.

Mr. Starr: Okay, so we have a motion by Commissioner Hedani, seconded by Commissioner U`u. And the motion is—?

Mr. Jeffrey Hunt: To amend your agenda to address the intervention petition and other issues as addressed by the Corporation Counsel.

Mr. Starr: Okay, any discussion? Seeing none, all in favor, please raise your hand. Any opposed?

It was moved by Mr. Hedani, seconded by Mr. U`u, then unanimously

**VOTED: To Amend the Agenda to Address the Petition to Intervene and Other Issues as Raised by Corporation Counsel.
(Assenting - W. Hedani, B. U`u, K. Hiranaga, J. Guard, W. Mardfin, D. Domingo, W. Iaconetti, J. Starr)**

Mr. Starr: Let the record show that that was unanimous. Did I get that right? Good. I'm one for one. With that in mind, I'll pass it back to— Oh, there is a second agenda item which is more of a housekeeping item. If we can be helpful here, our Planner extraordinary, Livit Callentine, has three items on the agenda, and she's also working on the conference tomorrow. And two of them are the first two items and then one is — falls later on the agenda, and I was wondering if we might be willing to move her item, which is the adoption of the order and consent, F-1—

Ms. Livit Callentine: Excuse me. Excuse me, Mr. Chair?

Mr. Starr: Yeah?

Ms. Callentine: No, it's Item G-1.

Mr. Starr: Oh, G-1. Okay. Sorry about that. Item G-1 up behind the first two items. If there's a desire to do that, that would free her up to go work on the conference which starts tomorrow. So if anyone wishes to make that—

Mr. John Guard: So moved.

Mr. U`u: Second.

Mr. Starr: Okay, so we have a motion by Commissioner Guard, seconded by Mr. U`u to move Item G-1 up to immediately after Item C-1. Any discussion? All in favor, please raise your hand. Any opposed? Okay, looks— Ward, was that—?

Mr. Ward Mardfin: No, I was still getting my hand down.

Mr. Starr: Oh, okay.

It was moved by Mr. Guard, seconded by Mr. U`u, then unanimously,

**VOTED: To Move Item G-1 to Follow Immediately After Item C-1.
(Assenting - J. Guard, B. U`u, K. Hiranaga, W. Mardfin, D. Domingo, W. Iaconetti, J. Pawsat, W. Hedani, J. Starr)**

Mr. Starr: So it looked like unanimously, we have amended our agenda for the second time. I pass it back to Corp. Counsel to put us on the right track here regarding the petition before us.

Mr. Giroux: I guess my suggestion would be that we have the attorney for the petitioner to

intervene. And I guess the first matter to dispose is the issue of timeliness. And as our rules say that petitions to intervene will be freely granted in light that they are timely. If they're not timely, there should be an issue of good cause that needs to be shown.

Mr. Starr: Okay, so we'll first allow an opportunity to the counsel for the signers of the petition to intervene and that is Isaac – Attorney Isaac Hall. And just to clarify, this is in relation to the application for – by Mr. Peter Martin for a special use permit for the Hoomoana Campground in Spreckelsville. And this is a petition by I believe primarily property owners in the area to intervene. Please go ahead, Mr. Hall.

MR. ISAAC HALL, attorney for Ed and Patty Angulo, Barkley Batian, Martin Brass, Naomi A. Brundage Revocable Trust, Suzan Cengiz, Beirne & Jayne Chisholm, Gregg Chisholm & Karen McHugh, Karen Gallagher, Mark and Julie Gilliland, Philip & Lauran Golm, Holly Hammond, Michael and Martha Hecker, Ian Horswill, Jeannette W. Iwado, Billy and Carla Jalbert, Robert and Margaret Kaplan, Janice and Allan King, Greg and Marily Knecht, Cort & Liz Larned, Martin and Paula Lenny, Jeffrey and Suzanne Lundahl, Raphael & Vivienne Masters, Robert & Donna McCleary, Adama and Lenna Miller, Cyrus and Jill Monroe, Uli Montague, Scott Newman, April Nims, Point Triump L.P., Kathy Ross, Michael Ruben, Louise and John Severson, Tricia Shoemaker, Peter and Judy Siracusa, Elizabeth and Mathew Smith, Gayln Sweet, Denis, Anne, Robby and David Swift, Roger and Sheri Thorston, Jane and Jack Thompson, Alice Tremble, Dane Ward, Roger and Elsa Wark, Linda and Gene Wasson, John Yeoman submitting a Petition to Intervene Received on September 4, 2008 on the request by MR. PETER KLINT MARTIN requesting a State Land Use Commission Special Use Permit for the proposed Hoomoana Campground in the State Agricultural District at TMK: 3-8-001: 003(por.), Spreckelsville, Island of Maui. (SUP2 2007/0007) (L. Callentine) (Public hearing conducted on August 26, 2008.)

Mr. Isaac Hall: Yes, good morning, Chairperson Starr, and Members of the Maui Planning Commission. My name is Isaac Hall. I represent 70 – the 77 intervenors that are listed on the petition to intervene and the amended petition to intervene. They are Spreckelsville residents that live in close proximity to this project. They live either along Stable Road that's closer to the ocean and then the project, or the live in the Henry Spencer Subdivision that's very close to it on another side, or the live in the Kaunoa Center area around there.

In the petition to intervene, I've argued that they have a right to intervene because they live in the same proximity as the Hawai'i Supreme Court has recognized in a number of cases. And I cite the Life of the Land vs. LUC 61 Hawai'i 3 where if you live – you don't have to be an adjacent property owner. You don't have to live within 500 feet, but if you live within a half mile or even within one and a half miles or up to two miles, you still have standing to intervene. I've also argued that they have permissive intervention in any event. And Hawai'i's laws of intervention have always been liberally construed to allow intervention.

Now, what you've asked me to address first is the issue of why this intervention petition was not filed ten days before your first hearing. This intervention petition was filed before you took final action on your petition. So the only time that you are not allowed to grant or that you would not grant intervention is if you had taken final action on this matter and a petition to intervene came in after that. If that had happened, then you could deny this petition to intervene. But what your rules say is if the petition comes in at any time before you've taken final action and good cause is demonstrated for why it came in after the ten days prior to the first hearing, but before you took final action, then you should grant that petition to intervene. We've cited a number of reasons why this good cause exist in this situation.

The first reason that we give you for good cause existing is I know this Commission insists that the applicant meet with community before they come before you. And in this instance, you've already heard testimony about it. And I don't think there's a denial by the applicant that it's true. This applicant did not meet with the community before he came before you. He filed his application 11 months – oh, I don't the number of months. I shouldn't say that. But many, many months before he came before you, and he only met with the community before they were able to file a timely to petition to intervene. So because this applicant did not meet with the community the way you want applicants to meet with the community, he deprived this community of an ability to file a timely petition to intervene. That's good cause no.1.

The other good cause is a legal argument. And it's a real problem here because I think the notice that was given in this case is defective. Any notice that was given by the applicant in this case is defective and cannot be held against my client. What the subdivision rules say in the County of Maui is that this 5.4-acre parcel did not exist until final subdivision approval was granted for this subdivision. Mr. Martin could not become the owner of this parcel until final subdivision approval was granted. Final subdivision approval for this subdivision wasn't granted until July 18th 2008. When that application was filed– Actually, I don't know why the Planning Department processed this application. There was no 5.4-acre parcel when this application was filed because there was no final subdivision approval. There was a 27-acre parcel because there was no final subdivision approval. Mr. Martin could not own any 5.4-acre parcel at the time this application was filed because by our subdivision law, there was no 5.4-acre parcel. All there was a 27-acre parcel. And if you read the – some of the comments particularly by the Land Use Commission and other agencies, and if you even look at the application that was submitted by Mr. Martin, some of the maps show a 27-acre parcel. So there were some people that correctly knew that this was a 27-acre parcel all the way up 'til July 18th 2008. Some of my clients– At the time notice went out on July 14th, this was a 27-acre parcel. If notice had been give based on the 27-acre parcel, some of my clients, particularly the ones that live in the Henry Spencer Subdivision, were entitled notice by certified mail. They never received that notice by certified mail because that isn't the surrounding area that was used. The surrounding area that was used was a non parcel. The non parcel is the 5.4-acre parcel. That isn't even a parcel at the time notice was given. And your processing rules in the Planning Department are very clear and I cited them in the amendment petition to intervene to say that notice has to be given from the boundary of the parcel, and the only parcel that existed at the time notice was given was the 27-acre parcel. That was four days before. I know it's a timing problem, but notice is very important, and it's important to be accurate about how notice is given and what parcel existed at the time notice is given. That's a legal argument about why there's good cause for the filing of this petition to intervene.

The final argument is given that intervention is to be liberally granted, that's always good cause. And I cited this earlier case that you folks had where – it was that Kihei case where you said, oh, good cause is no good cause. We're just gonna deny it. It ended up in an appeal to the Second Circuit Court. And Judge August said, hey, wait a second here. Petitions to intervenes are supposed to be liberally granted. He caused the reversal of the permit you granted. It came back down and said, grant the petition to intervene. So that's the third major reason. It is my view that if you were to deny it under these circumstances, it's simply gonna lead – and you were to grant the permit, it would lead to a reversal of the permit, and the reversal of the denial of the petition to intervene. So I – and that we've had that precedent before. So those are the three major reasons that I think good cause exist in this instance.

Actually, there's a fourth reason. The fourth reason is that this application I think there's been so much demonstration of community concern and so much demonstration of number one, I think it showed in the petition that that issues that that beyond whether it'll have an impact on residents had just have simply not been addressed and deserve to be addressed in a contested case. The applicant and the applicant's consultant works – is the major consultant for DOT as you know because Munekiyo and Hiraga are always coming with DOT's application. If anybody knows that this parcel is in the 77 L – above 75 LDN contour, it's them. I – our community plan says we shouldn't be building dwellings in LDN contours about 60 LDN. I don't think the County wants to go on record– It's one thing for the homeless to go wherever they can, but it's another for the County to put its stamp of approval on a homeless campground within the 75 LDN contour. I don't think the County, or the Planning Commission, or the Planning Department wants to say as a matter of policy that it's okay to have a homeless campground within the 75 LDN contour. So for all those reasons, I think there's good cause because that issue was never addressed when it should've been addressed, and it deserves to be addressed in a contested case proceeding. So for all those of reasons, I'd ask that you find that there's good case for the filing of the petition to intervene and that you grant the petition to intervene.

Mr. Starr: Okay, thank you, Mr. Hall. And now we'll call on the representative of the applicant, and that would be Mike Munekiyo. Mike, do you have counsel here, today?

Mr. Mike Munekiyo: We do, Mr. Chair.

Mr. Starr: Who's–?

Mr. Munekiyo: Mr. Welch is here, but if I may explain why I'm here this morning?

Mr. Starr: Okay, first before you do that, I just wanna clarify. Have you filed a motion in opposition to the petition?

Mr. Munekiyo: We have not.

Mr. Starr: Okay, thank you. Please proceed.

Mr. Munekiyo: Thank you, Mr. Chair, Commission Members. My name is Mike–

Mr. Starr: Wait. Wait. Before you– I forget your name. The gentleman sitting on the floor in the aisle, I wanna ask you to take one of the chairs because people need to move in or out. There's another chair over here if you need to take one. Okay, please go ahead, Mr. Munekiyo. I'm sorry.

Mr. Munekiyo: Thank you, Mr. Chair. We appreciate, first of all, the comments offered by Mr. Hall and his clients. With respect to the petition to intervene, I think all of you have received Mr. Martin's letter of September 9th. And what I'd like to do is just point out a couple of things, and then I'll speak to some of the issues that Mr. Hall raised. First of all, Mr. Martin has indicated in his letter his desire to proceed, of course, with the application today. He also notes, however, that if the petition to intervene is granted, he would be willing to withdraw his application. So in that regard, he's – he just does not want to get into any drawn out contested case proceedings with his neighbors and so forth. So in that regard, he's asked me to just give some perspective rather than his attorney.

Before I do that, however, I'd just like to note that with respect to noticing which Mr. Hall did mention, we did complete noticing of the State Land Use Commission special use permit notice of hearing pursuant to the Planning Commission procedures for State Land Use Commission special use permits. And the State Land Use Commission – the Planning Department's State Land Use Commission special use permit noticing requirements provide that owners and lessees abutting and adjacent to the property shall be served notice, which we did. And the parcel which was defined as the subject parcel was Parcel 03, which is the larger parcel which included the 27 acres. So really, we did not – we assumed that the largest parcel available would be defined as the parcel and notice from that point in terms of identifying abutting and owners and across the street. So I just wanted to make that point clear. We believe that we've noticed – or noticing protocols were done correctly.

Now, what we wanted to just point out and I'm just speaking strictly to the intervention matter is that it is an untimely filing. And again, Mr. Martin does not wanna engage in any prolonged contested case proceedings, and that if the petition is granted, he would be willing to withdraw his application. And that's all I would like to say at this point, Mr. Chairman.

Mr. Starr: Okay, yeah, thank you, Mr. Munekiyo. Okay. We'll allow questions to the – to either Mr. Munekiyo or to Mr. Hall at this time. Dr. Iaconetti?

Mr. Iaconetti: Mr. Munekiyo, I wanna be clear. Mr. Martin will withdraw the entire to develop the campground in the event that this group grants the intervention, is that correct?

Mr. Munekiyo: That's correct.

Mr. Iaconetti: Well, I would like to go into executive session so that we can get some information from our attorney as to how we should act at this point. So moved.

Mr. Giroux: Just to clarify, my roles is– Okay, if you're gonna go into executive session, it's to consult with your attorney about your rights, duties, and liabilities.

Mr. Iaconetti: Right.

Mr. Starr: Okay, so we have a motion to go into executive session to consult with our attorney. And I've not yet seen a second.

Mr. U`u: Second.

Mr. Starr: Okay, we have a second by Commissioner U`u—he beat you to it—to go into executive session to consult with our attorney on the – as per the relevant wording in our Charter. We cannot go really go back to – without dealing with that motion, we can't really go back and hear comments, but I do see a number of hands up from Mr. Martin and Mr. Hall. However, let me just ask the maker. Doc, you wanna proceed with the motion, or you wanna hear what they—?

Mr. Guard: There's discussion first.

Mr. Iaconetti: I would like to get some information from our attorney.

Mr. Starr: Okay, so unless there's discussion on that. Commissioner Hiranaga?

Mr. Kent Hiranaga: At this point, I'm gonna go against the motion because I think it's premature. We need to hear from the applicant's attorney. And I think— I have some questions. I think it's a little premature to go into executive session at this time. So I would be voting against the motion.

Mr. Starr: Commissioner Mardfin?

Mr. Mardfin: I'm gonna vote for it because there's information on what the legal requirements of timeliness are that I'd like to ask our attorney so I'm gonna vote for it.

Mr. Starr: Commissioner Guard?

Mr. Guard: I agree with Commissioner Mardfin, but I don't think that's an executive question – executive session question. I think that could be asked in the public right now. It's a valid point that everyone wants to hear about.

Mr. Starr: Members, ready to vote on the motion? Okay, so we have a motion by Commissioner Iaconetti, seconded by – who seconded it? Commissioner U`u. That we go into executive session to consult with counsel. All those in favor, please raise your hand. All those opposed, please raise your hands.

Mr. Starr: Our Director, what is the vote?

Mr. Hunt: I have it as three in favor and five against.

Mr. Starr: Okay, is – are there any abstentions? No, I voted. Let's take a vote again because we seem to be missing one. Once again, please, all those in favor, please raise your hand. All those against, please raise your hand. Six, yeah, six.

Mr. Hunt: I have it three in favor, six against, including the Chair's vote.

It was moved by Mr. Iaconetti, seconded by Mr. U`u, and

**The Motion to Go Into Executive Session to Consult With Corporation Counsel,
Failed.**

(Assenting - W. Iaconetti, W. Mardfin, W. Hedani)

(Dissenting - K. Hiranaga, J. Guard, B. U`u, D. Domingo J. Pawsat, Starr)

Mr. Starr: Okay, so the motion fails. Commissioner Guard?

Mr. Guard: I have a question for Mike. I guess the 75 LDN contour, if you can maybe explain that to us either from a DOT standpoint, if that's actually a factor? Just in the past, I think we've had some – some of these petitions to intervene seemed – can be far from the truth here and there on certain points. So I'm just clarifying some of the points that seem to be a concern of mine.

Mr. Starr: Okay, I'm going to rule that out of order at this time. We will get to that, though. We want to stick to timeliness and the petition itself.

Mr. Guard: So this may be for staff or for the applicant regarding the ability to file. I don't know if you needed the owner's consent when it was the original 27-acre parcel. Would that be an issue of timeliness when they're saying the filed an application before they should've been able to? That's part of the issue, correct?

Mr. Starr: So I rule that germane, and I'll let Mr. Munekiyo answer, and then also we'll hear from staff.

Mr. Munekiyo: Thank you, Mr. Chair. In response to the question, the larger 27-acre parcel from which this 5.5-acre parcel was created is owned by Mr. Martin as well. So there was no authorization letter included because he actually owned the larger parcel at the time of filing and at the time of noticing.

Mr. Starr: Okay, Commissioner Hedani?

Mr. Hedani: There's a claim that proper notice was not given within the 500 feet radius. Can you explain that?

Mr. Munekiyo: Right. Chapter 19-510 requires that notice be provided to owners and lessees within 500 feet of the subject property and that is for a County special use permit. What we are seeking is a State Land Use Commission special use permit. And under the protocols of the Planning Department for a State Land Use Commission special use permit, the owners and lessees abutting and across the street from the subject parcel would be notified and that is what we did for the larger parcel. Using the larger parcel as the boundaries, we – I did notify all of those abutting and across the street owners.

Mr. Starr: Commissioner Hiranaga?

Mr. Hiranaga: Just for clarification, when you say "across the street," you mean landowners across

Stable Road?

Mr. Munekiyo: Across Stable Road, across Hana Highway, that's correct.

Mr. Hiranaga: So I guess there's two lots in that Spencer Subdivision that you provided notice to since they are across the street?

Mr. Munekiyo: What we did, Commissioner, is as required by the Planning Department rules, we went to the County Real Property Finance Department's records and identified all of the parcels which were across the street and bordering the subject Parcel 3-8-01, Parcel 3. The Real Property Finance Department records did not include at the time noticing was done, any record of Mr. Spencer's subdivision. And I think that's more perhaps a timing issue, but what we did was follow the rules of the Department in terms of notification.

Mr. Starr: Okay, please proceed. I just want to be sure that we're staying on to the merits of the petition to intervene because that is the first item. Please go ahead, Commissioner Hiranaga.

Mr. Hiranaga: So whoever was the previous owner before the subdivision was granted for the Spencer Subdivision, you provided notice to them because then you're saying Real Property Tax records were not updated; therefore, it just showed one large parcel?

Mr. Munekiyo: That's correct.

Mr. Hiranaga: So you provided notice to that person of record?

Mr. Munekiyo: Actually, the Real Property Tax records at the time we verified the listing included Parcel 3 as encompassing the Spencer Subdivision as well. So the entire parcel was both the Spencer Subdivision and the seven-lot subdivision that Mr. Martin is participating in were not reflected in the Real Property records. And so we notified all those owners abutting and across the street from the larger Parcel 3.

Mr. Hiranaga: Just to continue, so you're saying that the Spencer Subdivision is not – is part of the ag subdivision, the seven-lot ag subdivision. That Stable Road does not provide some type of functional subdivision. As far as Real Property Tax records indicate, they are one parcel.

Mr. Munekiyo: That's correct.

Mr. Hiranaga: So therefore, you provided notice to Kaunoa Senior Center, and all other parcels abutting that.

Mr. Munekiyo: That's correct.

Mr. Starr: Okay, Commissioner Pawsat?

Mr. Hiranaga: Thank you.

Mr. Hall: (Inaudible)

Mr. Starr: Okay, I was gonna finish questions, and give it to you, but if you wanna go now, Mr. Hall, please come.

Mr. Hall: Howdy.

Mr. Hiranaga: Mr. Chair?

Mr. Starr: Yeah, hold on.

Mr. Hiranaga: Just a point of order.

Mr. Starr: Yeah, go ahead, Commissioner Hiranaga.

Mr. Hiranaga: I would like to suggest you allow the Commission to complete their questioning of Mr. Munekiyo and Mr. Welch.

Mr. Hall: I don't mind, but I would like to correct some of Mr. Munekiyo's—

Mr. Starr: You'll certainly have your chance.

Mr. Hall: Thank you. As long as I get that opportunity.

Mr. Starr: Oh, no, you will. You will. I'll be bringing you back whether you like it or not. Okay. Commissioner Pawsat.

Ms. Joan Pawsat: Yeah, I just wanted to get a few highlights of this project here. So when it talks about the number of campsites and the letter Peter Martin talks about within the first year except the condition that the number of campsites developed and operated be limited to six, and then how many people maxes at per campsite—

Mr. Hall: No, I'd like to object. Mr. Martin has submitted an ex parte letter to the Commission after I filed—

Mr. Starr: Please go to the mike.

Ms. Pawsat: I think this is pertinent as far as they're talking about this interrupting the nature of the neighborhood.

Mr. Starr: I will be calling the question out of order because we have to stick to the specifics, but go ahead, Mr. Hall.

Mr. Hall: Yeah, no, she is a reading a letter that after I filed a petition to intervene that was not served on me. I have no idea what you Commissioners are reading. He's evidently offered to do something to change his application if you deny my petition to intervene. And I think we have a

right to have a copy of that letter. All of us do. You're all now party to a letter that we have no idea what he's offered to you. She's reading from it. That's not fair to the intervenors.

Mr. Starr: Okay, well, first of all, that's not germane because the question is out of order. However, I am asking staff to make sure that everything that's been filed with us is also made available to Mr. Hall before we discuss any of it.

Mr. Hall: This is a more serious issue. There was a letter referred to as dated September 9th. It's Mr. Martin's response to my petition to intervene that was not served on me as the attorney for the intervenors. That's an ex parte communication to you and I object to that. And it seems to have – it's being read from now. You folks are all aware of it. We're not aware of it. I object to that procedurally. We need to have a copy of that immediately before anything further happens.

Mr. Starr: Okay, I would say that that certainly is germane.

Mr. Hall: Mr. Munekiyo seems to have a whole bunch of copies here. He's only now decided it's okay to give a copy to me.

Mr. Starr: Okay, let the record reflect that a copy has been served to Mr. Hall.

Mr. Hiranaga: Let's have some order. Mr. Isaac – Mr. Hall– Have him speak into the mike, please.

Mr. Starr: Yeah, Mr. Hall, please address the Chair and the Body. As I've not allowed discussion to take place on that up 'til now. And now you do have a copy of it. However, if you wish to digest it–

Mr. Hall: I'd appreciate that. This is the first time I've known that he has made an offer to you, if you deny the petition he'll modify his application. So I think that's something that this whole room had a right to know about way before this that what you're actually considering is that if what you would go into executive session–

Ms. Pawsat: Point of order–I just read this myself five minutes ago or asked the question. I just wanted to state for the record I wanted a list for the public how many campsites are available through this. And you've gone and . . . (inaudible) . . . and I don't appreciate it.

Mr. Starr: We're not discussing this specific item, Mr. Hall, and we will not be discussing it in executive session.

Mr. Hall: What needs to be known by the public is, and what Mr. Martin is actually offering is, that if you deny the petition to intervene, he'll modify his application.

Ms. Pawsat: No, I want to know how many campsites, period. I want the public to know how many campsites are proposed.

Mr. Mardfin: Are we discussing timeliness?

Mr. Starr: Yeah, Commissioner Pawsat, let's stick to the petition to intervene and that filing, and that filing only.

Ms. Pawsat: Well, I have a question, then.

Mr. Starr: Yes, please, Commissioner Pawsat.

Ms. Pawsat: Well, then I'm trying to – they're saying that all the people who are intervening and testified kept on saying about how this would be a great impact on the neighborhood as a point of intervention. So I am trying to get a – so how is six campsites or whatever the – that was the new proposal – trying to get it stated what are the number of campsites so we can ascertain what that effect would be, just highlight that.

Mr. Starr: I'm not objecting to your ability to ask that question. Just that it's not timely right now. Right now we need to stick to a very specific legal issue which is that a petition to intervene has been filed. And we need to do – proceed on a specific path with that, which is we need to decide whether we will allow the petition to intervene to be heard. And if so, then we will – we can decide on the merits of that petition. And until we do that, we really do not want to be discussing any of the merits of the actual plan, you know, whether – how large it is or anything like that. Commissioner Hedani?

Mr. Hedani: Let me ask for another clarification. Mike, your position is that the 500-foot rule applies to SMA permits and not SUP applications?

Mr. Munekiyo: No, it does apply to SUP applications. It applies– If I may just clarify that? The County SUP applications are subject to noticing pursuant to 19-510. And County SUP applications require 500 feet noticing. The Department's State Land Use Commission SUP noticing requirements state that owners abutting and across the street would need to be notified as opposed to 500-foot owners.

Mr. Hedani: Okay, so there's two different interpretations of who should be noticed?

Mr. Munekiyo: That's correct–two different protocols. And if I may, Mr. Chair?

Mr. Starr: Yes, please.

Mr. Munekiyo: If it's appropriate, and I think it's pertinent to the intervention question, if I may ask Mr. Martin to explain what his position is with respect to intervention, if that's appropriate?

Mr. Starr: Yeah, but only with respect to the intervention, not to the merits of the project itself. Please, Mr. Martin, and I apologize for not getting to you earlier.

Mr. Peter Martin: Thank you, Commissioners. I understand the frustration with protocol, and I hope to clarify. My goal here was to create a win-win situation with this campground. And hopefully, that's what will happen in the end. And there is a compromise. And that's why– I've been through a contested case before. It took years. It was very expensive and I would– On this particular

issue— And I have to defend myself. I talked to Kyle Ginoza in from Colorado. And he said, you know, we've discussed it. And we said it's one year permit. That's why everybody's not, you know, making a big deal. It's one year. Not that much will happen in a one-year. You can look at it again in that time. So I wanna put that really clearly on the agenda. And that's what I discussed at my Tuesday's meeting. So I really hope you'll bear with me before you go into executive session and understand why I think intervention might not be the appropriate approach.

We received a copy— I'm just gonna read this letter and I brought plenty of copies for everybody to have. And I was gonna pass them out, but just one thing got ahead of another, and that's just what happened.

We received a copy of Isaac Hall's petition to intervene in the above matter filed by several people in Spreckelsville. I'm frankly surprised and disappointed that so many people are so personally and adamantly opposed to a proposal which we sincerely felt would be no harm to the neighborhood and would provide direct help to some people truly in need and would distinguish the entire Spreckelsville community as supporting a bold, charitable initiative. I firmly believe that given a chance, our idea will succeed, and that my neighbors and their properties would be enhanced, not threatened. After all, major homelessness exist on our doorstep today with all the existing problems of trespass and security that they have raised. It is up to the Commission whether you want to grant intervention or not based on the merits of Isaac's arguments. However, it is not my intention to engage in a prolonged and acrimonious litigation with my neighbors. If you grant the intervention, I will withdraw this application. If, however, you will consider denying the intervention and approving our application, I'd like to put before you the following the proposition:

You can tell I didn't write this, but it's my beliefs.

We would accept a condition that the number of campsites developed and operated in the first year be limited to six or any other number of your pick. If after one year the results of our operation show our concept to be successful, and the feared consequences our neighbors have not materialized, then the Commission might consider extending our permit and permit the expansion of the campsites, but never more than 30. If, however, the Commission feels in a year from now that the neighbors' fears have been realized, then we'll gladly withdraw our application for renewal and accept your denial. Subsequent annual renewals will be subject to the same notice and review procedure. We'll provide ample advance notice to the Spreckelsville community before each hearing.

Again, we're not willing to engage in a prolonged litigation in a contested with my neighbors. If you grant the neighbors' petition, my application will be withdrawn. If, however, the Commission sees the merit of our proposal and denies the intervention, we'll gladly accept conditions and any other conditions you feel are appropriate.

In fact, my 30-year-old daughter that lives – you know, born and raised here, she goes, how about one? And I go one, one campsite's okay. If – but anyway, I mean, I'd go to one.

We will welcome the opportunity. Try this experiment. Prove to the neighbors that their fears are unfounded, and proceed with the concept which will help people in need, establish a successful model for privately funded programs to succeed where government has either been unable or unwilling to act.

Thank you.

Mr. Starr: Okay. You know, once again, I do not feel this is really germane to the discussion of the petition. And I'm curious why you or your counsel did not object to the – file a timely objection to the petition to intervene which would've been the proper way to go about objecting to it rather than this letter.

Mr. Martin: Okay, I met yesterday with my attorney and . . . (inaudible) . . . and they said, get this to these guys tonight, you know, last night. They said it won't be in their docket 'til today. Bring 50 copies, pass it out. We thought that would be the first thing. I believe this is an objection to it. This is – we believe we've objected to it within the legal five-day requirement.

Mr. Starr: Could I ask your attorney who's certainly very able to come because at the beginning of this discussion I specifically asked whether you had an objection to the filing to intervene? And I was told by Mr. Munekiyo the answer was no. So I want to be sure that we're sticking on legal rather than folksy grounds, so I'd like to call Mr. Welch before us.

Mr. Martin: You're welcome to. I'm back there. I can't just say I object.

Mr. Starr: Okay, Mr. Welch, please.

Mr. Tom Welch: Mr. Chairman, Tom Welch, for Pete Martin. Mr. Munekiyo did not say that Pete Martin was not objecting. I don't believe he said that. And this letter is the objection and is within the five-year – the five-day period for submittal. And the amended petition to intervene was filed on the – was filed – was served more recently, so I think we have another two days to file a formal motion to object.

Mr. Starr: Okay, so what you are saying is that this letter, which is just being served upon us now is the objection to the petition to intervene?

Mr. Welch: Yes.

Mr. Starr: Okay. Thank you. That changes things a little bit. Commissioner Mardfin?

Mr. Mardfin: I've been going through our big, black folder. I found Subchapter 201, Maui Planning Commission Rules, Subchapter 3, this is on page 201-20. It has – the second paragraph says, Paragraph 12-201-40, Petition filing, "A. Petitions to intervene shall be in conformity with Section 12-201-20 herein and shall be filed with the commission, served upon the applicant no less than ten days before the first public hearing date. Untimely petitions will not be permitted except for

good cause,” except for good cause, “but in no event will intervention be permitted after the commission has taken the final vote on the matter before it.” When we started this discussion a while back, Isaac Hall said that we hadn’t – correctly said that we hadn’t taken a final vote on the matter. So it is permissible for us to allow intervention. It’s debatable whether or not this was filed less than ten days before the first public hearing, probably not, but we are permitted to allow the petition with what we perceive to be good cause is. I have two questions to ask of our counsel. The one question is, sort of am I reading this right about the timing? And secondly, what the legal definition of good cause is.

Mr. Giroux: First off, you are reading it right. Second of all is, you really have to take good cause in its totality, which means that you have to look at all of the arguments, the situation, the circumstances, and issues of justice, fairness, and equality, and lend that into a decision. So you really have to look at the facts on hand in order to come up to a standard of good cause. It’s not – there’s no – you know, if you’re gonna define good cause, you’re just gonna use another word. You know, did they purposely miss this? Are they sandbagging us? You know, look at the totality of the circumstances—what a reasonable person that the situation that the public’s in, find themselves in this situation, and missing a deadline of a ten days before a public hearing.

Mr. Starr: Commissioner Mardfin?

Mr. Mardfin: As a follow up to that, when we last met, we, as a Commission, we were very concerned, and we expressed our concern that public hearings had not been held in deciding whether there was good cause to allow a petition.

Mr. Giroux: Yeah, I’m sure that there are elements in your analysis.

Mr. Mardfin: Thank you.

Mr. Starr: Okay, Members—

Mr. Mardfin: May I say one more thing?

Mr. Starr: Yeah, go ahead, Commissioner Mardfin.

Mr. Mardfin: I think I’m ready to vote on this anyway, but whether it’s one campsite or 30, I suspect if it were one campsite, the intervenors would still want to intervene. So whether it’s one or 30, to me is sort of an irrelevant issue. People want to intervene on the issue. And I think we need to decide whether the intervention was in a timely manner.

Mr. Starr: Okay. Just to try to restate where we’re at here, we are on the matter on the intervention. A petition to intervene has been served and I just want to ask Corp. Counsel whether this other document is – can we consider that an objection to the petition to intervene because it was filed in a somewhat unusual manner?

Mr. Giroux: That does raise an interesting question. I think both parties have made their

arguments. I think playing the numbers game at this stage is kind of hard for us to do because we're kind of caught between a rock and a hard place. You're looking at a petition to intervene that I guess the initial question is, was it timely? You have an amendment that's within the ten days of this public hearing. And then you have the right of the objector to put in opposition within five days and those five days haven't run. The petitioner's attorney has raised the issue of that he did not receive service of the opposition which, you know, if you're asking if their motion to – you know, intervene opposed the intervention. So there's multiple levels of missing deadlines. And you know what? You can use all of this in your analysis if there's good cause because you can see that we're playing the numbers game down to the hour. So I think you just need to make a decision. Base it on the totality of the circumstances if you're finding good cause whether or not you're willing to hear the merits of the petition to intervene and take it from there.

Mr. Starr: Commissioner Hedani?

Mr. Hedani: I guess this is a question for staff, or the Department, or Corp. Counsel as to whether or not proper notice to all the people that needed to be notified had been issued.

Mr. Starr: This is on the petition to—? This is—?

Mr. Hedani: On the application.

Mr. Starr: On the application itself. Go ahead, Director?

Mr. Hunt: Clayton Yoshida, our Division Head for the Planning Department, for the Current Division, will explain the notification process, and then I'll have some comments after that.

Mr. Clayton Yoshida: Thank you, Mr. Chair, Members of the Commission. If I can refer you to page 3 of the staff report, it does talk about the following uses and structures shall be permitted in the ag district if a special use permit pursuant to 19.510.070, Maui County Code, has been obtained:

Except that if a use described in this section also requires a special permit pursuant to Chapter 205, Hawai'i Revised Statute, and if the land area of the subject parcel is 15 acres or less, the State special use permit shall fulfill the requirements of this section.

One of the special uses listed in 19.30A.060 is open land recreational uses, structures, or facilities, which do not meet the criteria of Section 19.30A .050.B including commercial camping. So because this is a special use in the County ag district and also a special use in the State ag district, and because the land area of the subject parcel is 15 acres or less, then that State special use permit fulfills the requirements of the section. The notification for the State special use permit is notifying the adjoining landowners and recorded lessees of the – to the project area in question.

Mr. Starr: Mr. Director?

Mr. Hunt: Clayton, where's the language that determines that the notification is for adjacent property

owners rather than 500 feet?

Mr. Yoshida: It's in the application form for the State Land Use Commission special use permit.

Mr. Hunt: So is that based on State language or is that a policy requirement that was promulgated by the Department or—?

Mr. Yoshida: That's been the practice of the Department.

Mr. Hunt: For how many years?

Mr. Yoshida: As long as I've been in the Department—23 years.

Mr. Hunt: Okay. And was the notification—did it describe it as a campground? Is that correct?

Mr. Yoshida: I believe the Planner has the — a copy of the notification that was sent out to the adjacent landowners and recorded lessees — establishment of a commercial campground.

Mr. Hunt: The concern that I had with the notification is—and I think we have to be careful with our notification requirements—as has been noted, the law says these petitions should be granted freely. At the same time, you folks need to have an orderly procedure so you can conduct your business and be efficient. And the petition was clearly — didn't come in ten days before. However, the notification to the neighbors described it as a commercial campground, and I question whether — I have concerns as to whether this meets that definition or if that is a good notice. I would hope you'd take that into consideration when you consider whether there was good cause or not.

Mr. Starr: Commissioner Guard?

Mr. Guard: So would there be the petition to intervene or sending it out for proper notice—a re-notice issue?

Mr. Hunt: You're asking whether you could ask for a re-notification?

Mr. Guard: Well, that seems to be what you're saying that it was improper notice.

Mr. Hunt: I didn't say improper. I said that I have concerns with the way it was described and that you should — and that I would hope you would take that into consideration in your deliberations on whether to grant the timeliness of the petition or not.

Mr. Starr: Okay, Mr. Hall, I know you had some comments. I'm gonna allow you to make some comments. I'm also gonna allow Mr. Welch to make some comments, if he chooses.

Mr. Hall: Yeah, very briefly. The objection that came in did not — objections are supposed to state grounds for objections why there wasn't good cause. The objection that came in from the applicant doesn't state any grounds for why there's no good cause or why they are objection — why they're

objecting. So I don't think that's a valid basis.

As far as good cause, actually I agree with the Planning Director. The notice is also deficient because it doesn't really notify the neighbors what the project is. It's not really a commercial campground. It's for a homeless shelter and the neighbors weren't notified what the project was. So that's another reason why there's good cause for this.

Going back to the notice that was given, I don't – I think there is – was confusion throughout the application process about whether we were dealing with a 5.5-acre parcel that is within the jurisdiction of the Maui Planning Commission and its rules, or we were dealing with the 27-acre parcel which was greater than 15 acres and subject to the LUC rules. Mr. Munekiyo is admitting that he gave notice from the 27-acre boundaries. Whether that's true or not– Let's just assume that's true. What he's saying is, he only notified the owner of the whole of the Spencer Subdivision. So he's admitting that the Spencer Subdivision as subdivided– And we all know that subdivision's been subdivided and has had owners for a while now. And that Mr. – if anybody knows that, it's Mr. Martin himself that there are owners of lots within that subdivision that he knew of that he did not notify. I don't care whether you rely on the technicality in those rules that they weren't owners of record down at the Maui County Tax Office. Mr. Martin himself knew there were owners in there of those lots and he didn't notify them. He had a duty to do that if he knew about it. So I don't think proper notice was given because of the description and because he just didn't notify people that he knew existed.

But the basic issue I think comes down to what Mr. Martin said and that is you had testimony from people who came in last week said I didn't know about this project until two days ago, until three days ago. That's truthful, honest statements. You can – they can say, well, we provided the only notice that was required by law, but these people are telling you we didn't know about this project. They didn't know about it. They didn't have time to intervene. That's good cause. And a large part– That was because nobody– Mr. Martin chose not to hold the meetings in the community that you want him to do. And he didn't do it. They didn't know about it. So they had good cause not to file a petition.

The petition itself on the merits has merit. The petitioners have a right to intervene. The issues they've raised, and I agree, whether it's one campground or 30 campgrounds, these issues need to be resolved in a contested case. And they have a right to intervene either as a matter of right or permissively. And these issues should be decided in a contested case. So I'd ask that you grant the petition.

Mr. Starr: Okay, thank you. Mr. Welch? And once again, I ask you to keep the discussion germane to the petition to intervene and your objections thereto.

Mr. Welch. Thank you, Mr. Chairman. The question of granting intervention is a largely discretionary matter with this Board. With regard to the technicalities of notice, I think Mr. Munekiyo and Mr. Yoshida have stated what they believe to be the technical aspects of it. As to whether the notice is adequate or not, whether the term "campground" without who you're going to rent campsites to is an insufficient notice is a matter of judgement. The law – the definition of campground certainly encompasses this proposal. And the social aspects of it, and the manner

of managing it, and the social class, and economic class of the people you're renting to while obviously a matter of enormous concern to the neighbors doesn't really come under, or isn't really required under the notice of the provisions of the rules. And I don't think Pete Martin felt that when he gave that notice that it was being sneaky or anything. I said before this Commission last time that Mr. Martin honestly in his heart believed that everybody would be in total support of this.

With regard to the letter, it is an objection. And while Mr. Hall is not happy that the letter did not address his – go head-to-head and address his technical legal concerns, the letter does lay out what is really relevant to this Commission with respect to this Commission's exercise of its broad discretionary authority to accept or reject the petition. The letter stands on its own. It's clear. This is a complicated matter. It involves a lot of problematic relationships within the community. And the last thing that Mr. Martin wants to do is litigate the matter or be bogged down in a long and protracted proceeding against his neighbors. Thank you.

Mr. Starr: Okay. Thank you. Members, questions on the intervention matter for Mr. Hall and Mr. Welch? Commissioner Guard?

Mr. Guard: Thank you. Thanks, Tom. I guess my only issue with the intervention is the number of frivolous things we've seen come out of every other one of them from day spa packages at different condominiums to just straight out money. And so for a one-year permit versus a 12-story, timeshare building, it seems like this process would take longer than the permit was gonna be, and cause even more hardship amongst the community, whereas no one really seems to come up ever and testify against a 500-unit timeshare building like that doesn't have any negative impacts on the community. I guess I'd just like your comments on that part of – maybe a lot of these people don't understand what happens in an intervention that a lot of times the outcome just can be somewhat ridiculous.

Mr. Welch: I'll yield to Mr. Hall.

Mr. Hall: You know, the notion that intervention is frivolous and it leads to money, I don't know where you're coming from, Mr. Guard. I mean, if you have something about that– There are five tests for a special use permit. And the applicant has the burden of proving that those five tests are met. In my view, they can't prove that any of those five tests are met. You, as a Commissioner, can't grant a special use permit 'til those five tests are met. One of the five tests is that this land is unsuited for agricultural uses. You couldn't grant this special use permit today based on the record before you because all the evidence is that this land is well suited for agricultural purposes. It's been leased to HC&S for the last 20 or so years for sugarcane. It's prime agricultural land. And it's in the Land Study Bureau A. You couldn't find the fifth test is met. You couldn't find the second test is met because all the testimony is that will have adverse impacts on the surrounding land owners. So what we're here to do is to make sure that this Commission applies the tests and the law, and that's the point of an intervention. The fact of the matter is the applicant's supposed to come forward and the Planning Department is come forward with information relevant to you. I – you – somebody raised all the frivolous things? Why wouldn't it be important for you to know what LDN contour this is within? Do you know?

Mr. Guard: I asked that question and I was told to wait for the application. Thank you, sir.

Mr. Hall: Okay, now's the time because it's within the 75 LDN contour. And by--

Mr. Starr: We're gonna stick to the intervention petition.

Mr. Hall: Yes. And -- and the community plan says you can't build a house when the LDN is 60 or higher. Mr. Martin says I have to have a manager's house and I have to have another house. If you can't build a house within 60 LDN or higher, you can't build those houses and he can't go forward with his application. Now, isn't it important to know what the LDN contour is? Wouldn't that be an important aspect of the application? Isn't it -- do you wanna put the stamp of approval of the County on a homeless shelter in a 75 LDN contour? Is this an issue that needs to be flushed out? So when you say it's just not worth to go through a contested case, it is worth to go through an contested case and get the facts correct.

Mr. Starr: Okay. Commissioner U`u had his hand up.

Mr. U`u: I think you ran around the question. That's my point of view.

Mr. Hall: How do you think I ran around it?

Mr. U`u: It's obvious you did.

Mr. Hall: (Inaudible)

Mr. U`u: Can we stop it right now?

Mr. Hall: (Inaudible)

Mr. U`u: Can I finish? Can I finish?

Mr. Starr: Mr. Hall, you're out of order.

Mr. Hall: Okay.

Mr. Starr: Thank you. Commissioner U`u, please proceed.

Mr. U`u: It's incredible. I think you dodged around the question a few times, but that's typical of you. That is typical of you.

Mr. Hall: Let me answer.

Mr. Starr: Mr. Hall, please be quiet. Thank you. Commissioner U`u, go ahead and phrase your question.

Mr. U`u: That was my question.

Mr. Starr: Okay, rephrase it, and then I'll let him answer it.

Mr. U`u: I'm done.

Mr. Starr: Okay, Mr. Hall, go ahead.

Mr. Hall: I don't know. There's no question.

Mr. Starr: Okay. Commissioner Guard?

Mr. Guard: Thank you. I didn't say this one was frivolous. I asked Tom Welch if there were any instances in the past that he had seen some outcomes that don't seem to go along with the project, and they appeared to be frivolous in the past. If you— The LDN was a very valid question and it raises a concern for me. So I would actually appreciate if you would give us the benefit of the doubt to say that we are also here to ask the important questions and not assume that you're the only one in the room that has the ability to do so.

Mr. Hall: I don't assume.

Mr. Guard: And then I don't like having to go through your whole petition to intervene saying that you can't build a farm dwelling on ag land when we can. We could go through here and I see some discrepancies from what I know of the County Code. I can go through here— You're telling me it's classed as A. The staff report says E-3. That raises a concern.

Mr. Hall: Right. And the way to resolve those is in a contested case.

Mr. Guard: Okay. Or in — I believe we can do it here today as well, not over a two-year period. So that was my main concern. If there's — at the end of the day, if there's still questions, that's what we're here for. And you're not the only one in the room that has the ability to do it.

Mr. Hall: I never said I was. What I am saying—

Mr. Starr: Thank you both. Commissioner Hedani?

Mr. Hedani: Isaac, do you know where the 75 decibel lines run relative to the parcel? And the question would also relate to the residencies that are in that area as well.

Mr. Hiranaga: Mr. Chair, are we wandering off into—?

Mr. Starr: Yeah, I agree with you, Commissioner Hiranaga. I do wanna stay away from the merits of the actual application, and stick to the timeliness and whether we're going to grant the petition to intervene, and I want to stick specifically to that, and limit our discussion regarding items as interesting as the decibel contours are. So with that, before we get a potential motion on the petition to allow the petition or deny it, I will one more time allow Members to specifically ask questions that regard only the petition to intervene to the counsels. Dr. laconetti?

Mr. Iaconetti: I wonder if we can have a short break in a while?

Mr. Starr: Sure. We're gonna take a ten-minute recess. We'll be back at 20 minutes to 11:00.

A recess was taken at 10:27 a.m., and the meeting reconvened at 10:41 a.m.

Mr. Starr: We're still on our first item today. And we are looking to get our first hurdle here. And this is a decision on whether we will allow the petition to intervene to be heard. Okay? We're not even on whether we're going to grant the petition or not. We're simply on the matter and solely on the matter of whether we will allow the petition to intervene to be heard. And if we have relevant questions to that and that item only, we can ask them. If not, I would really look to one of the Members to possibly make a motion as to whether we will allow the petition to intervene to be heard. Doctor?

Mr. Iaconetti: Yes, I'd like to move that we have the intervention--

Mr. Hiranaga: Point of order. Did you not say we're gonna have discussion prior to a motion?

Mr. Starr: I had allowed discussion, but I had also -- we will also allow a motion, and we do have a motion that's being made, and we're waiting for a second on the motion.

Mr. Mardfin: I second.

Mr. Starr: So we have a motion by Dr. Iaconetti, seconded by Commissioner Mardfin. And the motion is that the Maui Planning Commission allow the petition to intervene to be heard. Commissioner Hiranaga?

Mr. Hiranaga: I guess since the motion has been second, at this time, I will be voting against the motion, but I would like to have a question answered. The staff provided us an amended staff report. There are some comments from DOT and I guess there's some recommendations that DOT consulted regarding the noise level. So it's my contention that the staff report is still incomplete. And I would prefer to defer this matter until we get a completed staff report after DOT has provided their comments. And I'd like to avoid the intervention process, if possible, because the other question I have is, when did this five-acre parcel come into existence? And the argument is, if it was not in existence at the time that notice was given, there was still a 27-acre parcel. It's really not in our jurisdiction. It's under the Land Use Commission's jurisdiction. And I want the staff to make that determination for us before we make a decision on whether to grant the motion to intervene. I would like to know exactly the position of the staff or Planning Department. Is this a five-acre lot or is this a 27-acre lot? Make that determination and determine whose jurisdiction is this because, you know, there's -- and I don't know if this is true or not, they're saying notice was delivered on July 14th, '08. Final subdivision was granted on the property on July 18th. That means if that's true, this five-acre lot did not -- was not created until July 18th. And so in fact, it is -- was still a 27-acre lot. So in fact, this application, to me, is defective. So I would like those questions answered before we make a determination as to whether to grant the motion to intervene because I hate to go down this intervention process if it's totally unnecessary because-- So that's the argument I'm gonna make.

Mr. Starr: Well, in that case, you would want to – you would probably vote against the motion because you don't feel it should be heard. But anyway, Members, any other discussion on the motion that's on the floor? And Commissioner Hedani?

Mr. Hedani: I'm confused. What are we doing right now?

Mr. Starr: Okay. We have a motion on the floor. And the motion on the floor is that the Commission allow the petition to intervene to be heard. Wait, wait. Corp. Counsel feels that there's two more words that should be–

Mr. Giroux: Yeah, there should be upon the finding of good cause by the Commission–something to that effect. You're gonna allow the petition to be filed and heard upon finding of good cause that – about the timeliness issue.

Mr. Starr: And if that motion passes, then we would be – then we would be going into a discussion – possible motion regarding the merits of the petition to intervene. In other words, whether we allow–

Mr. Hedani: So the question – so the question on the floor is not whether or not to grant intervention.

Mr. Starr: Right, it's only whether we will allow it to be heard.

Mr. Hedani: If we don't allow it to be heard, then we're not granting intervention.

Mr. Starr: Right, it's a moot point.

Mr. Hedani: Isn't that what we're – isn't that we're doing all morning was discussing the motion to intervene?

Mr. Starr: Well, now we get to vote on first, whether it'll be heard. And if it will be heard, then to grant it or not. Commissioner Mardfin?

Mr. Mardfin: This is in – in – also answer this: this is a very narrow motion. The narrow motion is, to determine whether or not it was filed in a timely manner, or if not, whether it was – there's good cause for it not to have been filed in a timely manner. If there is good cause for it not to be filed in a timely manner, then we vote in favor of Doc's motion. And then, the next thing we do is discuss whether they – we should allow them to intervene based on the merits of their argument. So we're dealing with two things. The first thing we're dealing within the narrow motion is whether it was in the right time or good cause for it not to be in the right time.

Mr. Starr: Okay, let's try to move this along, Commissioners. Commissioner Hiranaga, please.

Mr. Hiranaga: Thank you for your indulgence. What I'm trying to do is even – is to avoid the question of intervention because I feel the staff report is incomplete because they may change their recommendation based upon comments from DOT. And shouldn't we get a completed staff report

before we even determine if there's merit to intervene because if the staff changes their recommendation, and they recommend to deny based upon what's been provided that it's a homeless shelter versus a commercial campground, the intervenor may withdraw his request to intervene because once you go down that intervention process, you kinda let – you lose control of the process? It's gonna take its own momentum.

Mr. Starr: Okay, thank you, Commissioner Hiranaga. Now, what is before us once again is a decision on whether we will allow the petition to intervene to be heard for good cause. Now, are we ready for the question on it? It looks like we are. All in favor of allowing the petition to intervene to be heard for good cause, please raise your hand. All opposed, please raise your hand. Okay, Director?

Mr. Hunt: I noted four in favor of the motion and five against.

It was moved by Mr. Iaconetti, seconded by Mr. Mardfin, then

**VOTED: To Allow the Petition to Intervene to be Heard for Good Cause.
(Assenting - W. Iaconetti, W. Mardfin, W. Hedani, J. Starr)
(Dissenting - B. U'u, D. Domingo, K. Hiranaga, J. Guard, J. Pawsat)**

Mr. Starr: Okay, so the motion fails in which case the petition to intervene will not be heard.

Mr. Giroux: I guess the result is that at this point, the Board is not finding good cause. Commissioner Hiranaga?

Mr. Hiranaga: Just for information, at some point, as we proceed down this process, can we revisit that issue, or is it already decided?

Mr. Starr: That boat has sailed.

Mr. Hiranaga: That boat has sailed. Well, unfortunately, I thought that motion was premature. I would like to then, and you can tell me if I'm out of order, I would like to make a motion to defer. Once again, my argument that I feel that the staff report is incomplete based upon additional request by DOT. And I would like them to – I think there's some comments about–

Mr. Starr: Hold on a second.

Mr. Hiranaga: Okay, motion to defer.

Mr. Starr: Motion to defer on what? We have not introduced the–

Mr. Hiranaga: The agenda item.

Mr. Starr: Yeah, the agenda item, the next agenda item. So let's introduce the agenda item, and then that motion would at that point become in order, but I just want to clarify what just happened.

Mr. Giroux: I guess procedurally what I need to clarify is that I'm gonna ask Tom Welch being the attorney for the applicant to produce the findings of facts, conclusions of law, and serve it upon Mr. Hall, the attorney for the petitioner at this point. He would have—

Mr. Starr: Hold on one second, Isaac.

Mr. Hall: There aren't any findings of fact.

Mr. Starr: Hold on a second, Mr. Hall.

Mr. Giroux: We need to present you with our findings of why we denied your—

Mr. Hall: Nobody placed any findings on the record.

Mr. Giroux: So, Mr. Welch, I'm gonna ask you to produce that document. And Mr. Hall will have 30 days or he will have the right to appeal that to the Circuit Court.

Mr. Hall: That's fine, but let the record be clear that nobody put any findings on the record. So he can't create findings of his own.

Mr. Giroux: Mr. Hall, I'm gonna have to remind you as being that burden was on you to show good cause that that's your burden.

Mr. Starr: Please, I don't have the—

Mr. Hall: . . . (inaudible) . . . had to place some findings on the record. It didn't do so.

Mr. Starr: Okay, Mr. Hall, you're out of order. I don't want to be having this discussion here, but I'm sure if you wish, you can make that comment. Mr. Welch, please address the mike, because Corp. Counsel has asked you to provide a findings. We want to know if you're prepared to do so.

Mr. Welch: Yes, we will, Mr. Chairman.

Mr. Starr: Okay, thank you. And, Mr. Hall, if you wanna make — if you wish to make a comment, now would be a good time.

Mr. Hall: Yes, the law is absolutely clear that if nobody put any findings on the record from the Commission, Mr. Welch cannot create findings out of his own head. So I would object to that.

Mr. Starr: Well, he will create findings and you're certainly welcome to make comments to them, or say that . . . (inaudible) . . .

Mr. Hall: He can't create findings that some Commissioner didn't place on the record.

Mr. Starr: Thank you, Mr. Hall. Commissioner Pawsat?

Ms. Pawsat: Wouldn't the finding be we found no good cause? They offered no good cause and we found no good cause.

Mr. Starr: Okay, we're going to move – move along now to the next agenda item unless– Commissioner Hiranaga– I mean, Commission– Go ahead, I'll allow you the floor.

Mr. Hiranaga: Yeah, I'm trying to understand. The motion was to grant, I guess, standing of the intervenor which was denied.

Mr. Starr: It was to just hear the petition to intervene. And whether there's, you know, good cause to hear it, not to allow it or to deny it.

Mr. Hiranaga: So we're unable to defer that because of the previous motion?

Mr. Starr: Well, we just denied it. The only other action that possibly could be done would be a motion to reconsider.

Mr. Hiranaga: Well, actually the motion was to – yeah, the motion failed because it was a positive action which failed to be adopted. So there is no action. There wasn't a motion to deny. It was a motion to approve. So I'm wondering – so if we can make a motion to defer. Mr. Mardfin, I see your hand, but I'm still talking to the Chair.

Mr. Mardfin: Go ahead.

Mr. Starr: I would allow a motion to– Is there a time issue, Mr. Counsel, as to whether the timeliness of hearing this or can it be deferred? And this is solely the issue of whether it can be heard?

Mr. Giroux: Chair, I wanna address Member Hiranaga's point. He brings up an interesting issue about – and it really is not that clear in our rule about – but the way that this reads it says, "untimely petitions will not be permitted except for good cause." Now, the finding of good cause is something that I would say a – it would take a vote of the majority to find. Now, failure to find good cause now is kind of in your object reasoning is something that's happened because of non action, and that worries me. I would rather have an affirmative finding that there was not good cause shown, and have a second vote in the affirmative to allow the people who voted who did against the motion to actually affirmatively put their vote as an action. I think that would clear up that section of the proceedings. After that is done, yes, there is room for motions to defer hearing the application in and of itself if issues of incompleteness or as such are raised.

Mr. Starr: Okay, so before we move on to the next agenda item, the Chair is open to any other motions. The Chair would just like to state that he would prefer not to defer items in general because we are creating a very large backlog at this time, and it's not necessarily great to have to start . . . (inaudible) . . . Commissioner Mardfin?

Mr. Mardfin: I'd just like to say I keep getting what I consider misinterpretations of what that vote was. That vote was merely to determine whether it – we should listen to the petition and allow it

on the narrow grounds that it was filed – either filed in a timely manner or it was not filed in a timely manner but due to good cause. That, somehow got defeated, which is fine. There can be a motion to reconsider, but I'm not sure anything would change so I'm not gonna make that motion at this point. Our Corp. Counsel has suggested that the people that voted in the negative on the last motion introduce a motion to affirmatively state that it was not filed in a timely manner and/or that if it wasn't filed in a timely manner, there was no good cause for it to not fail to be filed in a timely manner. And that's what I believe our Corp. Counsel is asking for.

Mr. Starr: And that would also be the Chair's preference that we deal with this in an affirmative fashion. Commissioner Hiranaga?

Mr. Hiranaga: I guess what I'm saying is, I think we're putting the cart before the horse. And again, I'm repeating myself. I would like based upon the additional comments that were received in the amended report from staff that they complete their analysis of the application because if determined that proper notice was not given, that it's not – it's the 27-acre lot not a five, we don't have to spend any time even voting on the right to intervene because it's gonna go before the Land Use Commission. That's what I'm trying to avoid. It seems like we're putting the cart before the horse. And so I guess if I'm – and you can tell me if I'm out of order, if I make a motion to defer this matter in order to provide the opportunity for staff to complete their report based upon the additional comments especially, from DOT, you know, they're asking—and I don't even know what this is—to file a 7460-1 aeronautical evaluation. You know, they want the application to HDOT Airport Planning Section and FAA SSC Field Office. I mean, all these things have to be done.

Mr. Starr: You're welcome to make a motion to defer, but to my understanding what that will do is that we will once again come back and have another meeting, and that meeting will not be based on the staff report, but it will be a very narrow decision once again on the – whether we can allow the petition to intervene to be heard and nothing more than that until we get beyond that hurdle so that all you're doing is putting off what we're doing right now for another day, and not changing the issue regarding staff report or anything else unless say the application were pulled or some other change were made. Commissioner Hedani?

Mr. Hedani: I think in this particular case, if you don't grant the petition to intervene, it's gonna end up in Circuit Court. It's gonna get tied up for the next couple of years anyway. And given the applicant's position that if intervention is granted, the petition will be withdrawn, I think it's already dead on arrival either way. So I think we're spending a lot of time . . . (inaudible) . . . going over this, but the end result is gonna be the same.

Mr. Starr: Okay, what action would you like to take? Any action is fine, please. Commissioner Hiranaga?

Mr. Hiranaga: Just a follow-up statement: to me, I need the Planning Department to determine if this is a five-acre lot and it's our jurisdiction, or it's a 27-acre lot and it's the LUC jurisdiction.

Mr. Starr: I'll pass it to the Director.

Mr. Hunt: The issue before you that you need to determine is whether you are going to grant the petition to be heard. The merits of the case will then follow depending on this decision, but you

can't get to that—the merits of the case—until you get through this issue. I can tell you that my understanding is that the State has allowed us in the past to be the jurisdiction on a parcel of land that is larger than 15 acres as long as the application for the use is smaller than 15 acres. I'm getting a head nod from my staff. So hopefully, I can put that one issue to bed. But the issue of the merits of the case isn't before us at this time. We gotta get through whether you're going to grant the petition to hear the petition or not, and I'm not sure if I'm using the right legal language.

Mr. Starr: If we do not affirmatively deal with that, then that will come before us again. Dr. Iaconetti?

Mr. Iaconetti: How can we grant the intervention if we've already determined that it was not filed in a timely manner for good cause, which was what the motion was that unfortunately, we had enough people voted against? We can't— That's it. I mean, if you – if you don't— if you say it was not delivered in a timely manner, then there is no intervention. We can't vote on an intervention now.

Mr. Starr: Okay, but I will comment that that, you know, was not stated as the reason for the – for not hearing it. Director?

Mr. Hunt: Your laws – your rules state that the petition has to be served no less than ten days before the first public hearing date otherwise it's untimely. Untimely petitions will not be permitted except for good cause. So you can accept this petition if you find good cause.

Mr. Starr: Commissioner Guard?

Mr. Guard: Okay, so we're all in agreement that that timely manner was not met. That's— So now—?

Mr. Starr: Well, no, we're not in agreement.

Mr. Guard: Well, that's what – it seems like Corp. Counsel or someone from staff should be able to give us a timeline saying here's the dates they didn't hit or hit. And I don't think the burden should be on us to determine the date of the subdivision file or anything else. It seems to be fairly cut and dry because we've gone through this with the same attorney in the past to the point of what time he had to go to the mailbox late and put hand stamps on versus having it delivered to the County. And at that meeting, it was actually another attorney in his place who couldn't give the reason on why it was so late. I mean, so this issue of timeliness becomes a factor on the other – on the flip side of the coin.

Mr. Starr: Well, so far this is the first discussion of that issue, and that's after the vote. It would've probably been more suitable to make that a reason for denying it. Yes, Director?

Mr. Guard: Wait, wait, wait. I got – there was no vote to deny the motion to approve at the time of the vote did not pass. Is that correct, Corp. Counsel?

Mr. Starr: Yes. So if you wish to make a motion to deny based on that it's not timely, then that might be something that you would consider doing, you know, those who were against hearing the petition to intervene. At least that would create some kind of reason for why it was denied.

Commissioner U`u?

Mr. U`u: My decision to vote against Mr. Mardfin's – Dr. Iaconetti's motion was the same problem Commissioner Hiranaga has—to determine whether LUC has jurisdiction or us. And that's the point I saw, and that is the reason for my vote. Commissioner Hiranaga?

Mr. Hiranaga: So basic – currently, there's no action on this item. My question is, if there is no action, what happens to it? And if we allow it to go somewhere else for a while, we could make a motion to reconsider it at some future time. Is there a timeliness requirement for a motion to reconsider if no action is taken?

Mr. Starr: Jim?

Mr. Giroux: I think *Robert's Rules of Order* says a motion to reconsider can be heard at any time. The problem is you're dealing with a development-type permit, I think, like SMAs, boundary amendments, special use permits. Those all have internal timeframes I believe within 120 days of the finding of completeness. And I think that's one issue you're raising is whether or not it's complete. So the issue of intervention needs to be disposed of. You have to – you have to deal with that before there's final action. So if the question is can you put off making any type of motion on the petition to intervene seeing that there's no action, I guess so, but the problem is is that you're a Board of nine. You have nine people here. If you're inaction goes on for what the Supreme Court would say "too long," then that inaction would be seen as an action, which could be appealable to the Circuit Court. So you have to be aware of that in your thinking. You can't just sit on this issue. And, you know, as your lawyer, I'm sorry, the Supreme Court doesn't give us very much guidance on how long you cannot sit on it, but I can tell you that it's gonna be in the reasonable – you know, the discussion is gonna be about reasonableness. And if we can't even get to good cause, I sure as heck don't think we're gonna get to the issue of reasonable. So what I'm encouraging you to do is act because is it an action is where we will be able to dispose of this, and that's what people are asking for today.

Mr. Starr: If we don't wanna hear it, the Chair also would like to see some kind of an affirmative motion made so that we can dispose of it. And, Commissioner Pawsat, you had your hand up?

Ms. Pawsat: At this point, I feel like it's – this is all preventing us from hearing the merits of the case. I'd like to make a motion to deny for lack of good cause.

Mr. Giroux: And the issue of timeliness also stated in that?

Ms. Pawsat: Yeah, I make a motion to deny 'cause of failure – I don't – how do you say it? I don't find good cause under non submittal?

Mr. Starr: So the motion would be to deny the petition – the petition to intervene to be heard due to lack of good cause in regards to timeliness of filing. Is that–? Director, have you got that? Now, is there a second to that motion?

Mr. Mardfin: I'll second it for the purposes of discussion.

Mr. Starr: Okay. So we have a motion by Commissioner Pawsat, seconded by Commissioner Mardfin, and the motion is—?

Mr. Hunt: To deny the petition to intervene due to the lack of good cause regarding timeliness of the filing.

Mr. Starr: Okay. Now, discussion on that. Commissioner Hiranaga? And please remember that we cannot discuss and should not discuss the merits of the case, or the acreages, or the number of tent sites, or any of that. We are discussing a very narrow issue. And so far the only logic behind it that's been put on the table is the timeliness of filing. So, please, if your comments regard – relate to that, please make them. Commissioner Mardfin?

Mr. Hiranaga: I still have the floor.

Mr. Starr: Oh, Commissioner Hiranaga, go ahead.

Mr. Hiranaga: I will be voting against the motion. Once— Can we have some order, please?

Mr. Starr: Yeah, go ahead, please.

Mr. Hiranaga: I will be voting against this motion again based upon the argument that I feel that the staff report is incomplete. If DOT opposes this application because of noise levels, I don't know why we need to go down this road. That's my reason for voting against the motion. We don't have to go down this road unnecessarily.

Mr. Mardfin: I have a question for Corp. Counsel. My question is, I'm torn on how to vote on this. I think that it was filed with good cause in a timely manner. However, if it fails, and it sounds like given my colleagues' position to vote against it, which is sort of the way my heart is 'cause I think that the motion's wrong, then we're left in the limbo again. If I vote for it so that we get the five votes so we have an action, then the intervenor can take the decision to court to challenge it. Is that interpretation correct? So if this motion passes, at least it's a clean action that the court could then intervene on. Is that correct?

Mr. Giroux: I think, Member Mardfin, I believe your interpretation is that it was filed untimely; however, you find good cause? Okay, I just want to make that clear.

Mr. Mardfin: That's what I have in my heart. Untimely, but was good cause, but if I vote that way, then I vote against the motion.

Mr. Giroux: Right, because the motion is to deny because – because the motioner has found that it was untimely and that there was not good cause to hear the petition. Okay? But two reasonable minds can defer. Okay? Now, what we gotta do is get a majority on one side or the other. If we fail to get a majority on one side or the other, what's gonna happen is that the Circuit Court is gonna get something that they're gonna have a very hard time dealing with, as the lawyer for the intervenor has said, based on what facts and based on, you know, what evidence. So you have

to be very clear. What you decide has to be an action because that's what's gonna be determining the documents produced to actually be able to carry on our work. So if that helps. Yes, the Circuit Court, if you vote in favor of the motion that's currently now on the floor, then the petition – the intervenor can take that, and go to the Circuit Court, and the Judge can analyze that. And you do have to be aware that this has been done before. We've denied something for timeliness. Our ten-day rule got interpreted by the Judge and we got reversed. You have to understand that. Okay? If you allow – if you find good cause, you still have to get to the merits of the intervention which, you know, is another section in the book as to how you're gonna determine whether or not an intervention on its merits would be allowed or disallowed according to your rules. Okay?

Mr. Starr: Livit Callentine, you had a comment?

Ms. Callentine: Mr. Chair, I just wanted to suggest that you might wanna divide this into two separate votes: one, whether or not this intervention was filed in a timely manner; and two, whether there's good cause within the intervention because I think you've got them mashed into one vote, and it's been confusing from the start. Also, just from the staff's point of view, and to clarify, the first public hearing was held on August 26th, 2008. So ten days prior to that would've been August 16th, 2008.

Mr. Starr: If it was the desire of the maker and the seconder to bifurcate the motion, I would allow that. Commissioner Hedani?

Mr. Hedani: Okay, I'm gonna be voting against the motion. My reason is when you vote – when you vote to deny – when you vote to deny an intervention, you have to dot your i's and cross your t's. In this particular case, we don't even know if we're dealing with a five-acre or a 27-acre subdivision. And from my perspective at least, there's enough questions that have been raised that – that we should be looking at granting intervention in this particular case. That being said, you know, although the merits of the application may be valid and something that I agree with, I think in this particular case, because I participated in motions to deny interventions in the past, and because those decisions have been reversed upon the Commission at the Circuit Court level, I think we need to be very careful if we're gonna be going down this road again. I think we need to deal with it one way or another here.

Mr. Starr: Yeah, and the law does use the term “freely grant” – it should be “freely granted.” Commissioner Pawsat?

Ms. Pawsat: I feel like, you know, here, we've already wasted two and a half hours, and I can't really say I appreciate this intervention at all which I see is mostly based on people's prejudices. And it's actually on questions we would – they would have in their intervention we would get to if they would allow us to even get there, but instead, they would like it killed in the water. I'm pretty disappointed about that.

Mr. Starr: Commissioner Hiranaga?

Mr. Hiranaga: This is a question about process. So if we – if we grant a motion to reconsider, and it's approved, does the intervention process suspend the application until the intervention is

completed?

Mr. Starr: Yeah, my understanding is if we did grant – if we did, first of all, allow it to be heard, and then the second part was we granted the intervention, then the process would stop until intervention is done. Am I correct?

Mr. Giroux: Yeah, once – once intervention is granted, then there's a whole other chapter on that, but what you have to look at is then you have to decide do you wanna have a hearings officer hear it, or as a Board, do you want to handle the intervention process? So–

Mr. Starr: My understanding is that in any case, until the intervention issue is dealt with affirmatively one way or another, the process is put on hold. It's . . . (inaudible) . . . a queue.

Mr. Giroux: Well, that is the process. The intervention is the process.

Mr. Hiranaga: Follow up?

Mr. Starr: Yeah, go ahead.

Mr. Hiranaga: So if the intervention was not granted, and the application is processed, and the intervenors are unhappy with the determination from the Planning Commission, they have a right to appeal, right?

Mr. Giroux: That is correct.

Mr. Hiranaga: And I guess in a way, you know, what Commissioner Pawsat is saying is, I would've appreciated the opportunity for the Commission to go through the process and – to make a determination. And if the intervenors were unhappy with that determination, then to file an appeal versus intervening and preventing us from reviewing this application based upon its merits. So I know it's a very difficult situation.

Mr. Starr: That is not the process. Commissioner Guard?

Mr. Guard: This might be for Corp. Counsel. If memory serves me, if this had been, I guess, delivered to the applicant earlier, they might have had time to put together a formal objection letter that goes through some of their lists? I guess I feel like I'm going through this as if I'm an attorney and I'm not – trying to establish whether all of these issues are correct or not. And we only got this today as well. So to say that we can agree or disagree with it is a fairly quick judgement for me to make anyway. And – and this is the only letter that we have in opposition, and it's not really the same format that we've seen in the past, correct?

Mr. Giroux: I believe after everything is said and done, the applicant did raise the issue that they actually had a couple more days to file a motion to object. However, that wasn't really raised in that they – they weren't asking for that.

Mr. Guard: So we're gonna vote on possibly letting it go through and they still have a couple days

to object after-the-fact if they wanted to?

Mr. Giroux: No, once you've taken action, you've pretty much crossed that bridge.

Mr. Starr: Okay, Members, we have a motion that's been seconded that's on the floor which is to deny the petition to intervene to be heard based on timeliness. Unless someone wants to modify that with an amendment, I would like to, take a vote on that motion. Are we ready? Director, go ahead.

Mr. Hunt: Just to clarify, I believe the motion is to not – to deny the petition due to lack of good cause regarding the timeliness of the filing.

Mr. Starr: Yeah, but the petition to intervene to be heard – we're denying it to be heard, not denying the petition. Does everyone understand that? We're going to vote now on this. All those in favor of that motion, please raise your hand. All those oppose, please raise your hand. Director?

Mr. Hunt: I have it two in favor and seven against.

It was moved by Ms. Pawsat, seconded by Mr. Mardfin, and

The Motion to Deny the Petition to Intervene to be Heard Due to Lack of Good Cause Regarding the Timeliness of the Filing, Failed.

(Assenting - J. Pawsat, W. Mardfin)

**(Dissenting - W. Iaconetti, B. U'u, D. Domingo, K. Hiranaga, J. Guard,
W. Hedani, J. Starr)**

Mr. Starr: Okay, so the motion fails. So once again, we are still in limbo. We have not allowed the petition. We have not denied the petition to be heard. We can have another motion, or we can let it stay in limbo, and we can have another fun morning just like this one. Commissioner Mardfin?

Mr. Mardfin: I hope this can be done quickly, but I move to reconsider the motion to prior. In other words, to – I was on the failing side. I move to reconsider – I move to reconsider the motion to accept – allow the petition based on the fact that it was either timely and/or was not timely but – not timely because of good cause.

Mr. Starr: Okay, there was no timely wording attached to the original motion, but we do have a motion to reconsider. And Commissioner Hedani?

Mr. Hedani: Second.

Mr. Starr: We have a motion by Commissioner Mardfin to reconsider. We have a second by Commissioner Hedani. Director, go ahead.

Mr. Hunt: I'm not sure there's been much of an argument even on the petitioner's side that the petition was filed in a timely manner. In my mind, it clearly came in after the public hearing. It was

supposed to be ten days before, but you do have an exception in your rules that if there's good cause, you can accept an untimely petition.

Mr. Mardfin: I accept that as a friendly amendment that the motion – my motion should've been to reconsider the motion that it was untimely but with good cause.

Mr. Starr: Commissioner Hedani?

Mr. Hedani: I think what we're debating right now is whether or not to reconsider.

Mr. Starr: Yes.

Mr. Hedani: Whether or not to reconsider the original motion.

Mr. Starr: Correct.

Mr. Hedani: So one step. The original motion comes to the floor for reconsideration. You can amend it at that point.

Mr. Starr: Well, then we'll be on to the merits of the petition and we can attach whatever we feel as basis for that. Commissioner Hiranaga?

Mr. Hiranaga: So if we're unable to make a determination and it falls back into limbo, what that allow – would the staff be working on the application during the meantime in case they receive–? You know, are they gonna require that the–? You know, file these requests or adhere to these requests from the FAA and DOT or–?

Mr. Hunt: The way the process works is it's before you right now. If the petition is heard and then eventually granted, then the whole process before you right now is on hold. So we won't work on the process before you.

Mr. Hiranaga: No, the question is, if there's no action, so it's in limbo, there's no action today, will the staff continue to work on the application until it comes back to the Commission again?

Mr. Hunt: I imagine we'll continue to work on it as staff members. I don't think we'll be making a formal presentation.

Mr. Hiranaga: Right, but you'll make these requests to the applicant or the DOT comments?

Mr. Hunt: I'm getting a head nod yes, but again, the – as I understand it, the issue before you is whether there was good cause on an untimely petition, not the merits of the case, not the adequacy of the staff report, not a supposition – well, eventually the staff report's gonna be for denial, so we don't have to go through this. You guys – you need to deal with the issue of intervention.

Mr. Starr: Okay, I am allowing discussion on the motion to reconsider which is unusual, but let's keep it brief. Commissioner U'u?

Mr. U`u: I think the reasoning prior to us voting on the original motion was I don't think we was giving proper time to discuss it, and that was the reasoning for some of our votes. But in hearing the discussion, I believe that it was untimely, but I also do believe it was for good cause.

Mr. Starr: Okay, can we take a vote on the motion to reconsider? Okay, all those in favor of the motion to reconsider, please raise your hand. All those oppose, please raise your hand. Director?

Mr. Hunt: We have six votes in favor and three against.

It was moved by Mr. Mardfin, seconded by Mr. Hedani, then

VOTED: To Reconsider the Motion
(Assenting - W. Mardfin, W. Iaconetti, B. U`u, D. Domingo, W. Hedani,
J. Starr)
(Dissenting - J. Pawsat, J. Guard, K. Hiranaga)

Mr. Starr: And as my understanding it requires a two-thirds which we have.

Mr. Giroux: (Inaudible)

Mr. Starr: Yeah, yeah. Okay, so the motion – the motion to reconsider passes. Hold it. We're going to take a two-minute recess while Corp. Counsel checks on the *Robert's Rules* just to make sure.

(A recess was then taken at 11:27 a.m. and the meeting reconvened at 11:29 a.m.)

Mr. Starr: . . . (inaudible) . . . a two-thirds vote. A two-thirds vote has been attained, so the motion does indeed pass. Now, since we have now voted that we shall allow the petition to intervene to be heard for good cause—

Mr. Iaconetti: No, we haven't.

Mr. Starr: What?

Mr. Iaconetti: I was going to again . . . (inaudible) . . . original motion.

Mr. Starr: Oh, okay.

Mr. Iaconetti: So moved.

Mr. Starr: Okay, do we have a second?

Mr. Mardfin: Second.

Mr. Starr: Okay, we have a motion by Dr. Iaconetti, seconded by Commissioner Mardfin. The

motion restated again, Director?

Mr. Hunt: I believe the original motion was to allow the petition to be heard due to good cause.

Mr. Starr: Okay, is that agreeable? Okay. All in favor, please raise your hand. All oppose, please raise your hand. Okay, Doctor? Director?

Mr. Hunt: I've got it at six votes in favor and three against.

It was moved by Mr. Iaconetti, seconded by Mr. Mardfin, then

VOTED: To Allow the Petition to Be Heard Due to Good Cause.
(Assenting - W. Mardfin, W. Iaconetti, B. U'u, D. Domingo, W. Hedani,
J. Starr)
(Dissenting - J. Pawsat, J. Guard, K. Hiranaga)

Mr. Starr: Okay, so motion passes. So we are allowing the petition to intervene to be heard for good cause. Now we can get on to the merits of the petition itself, which is another matter entirely.

MR. ISAAC HALL, attorney for Ed and Patty Angulo, Barkley Batian, Martin Brass, Naomi A. Brundage Revocable Trust, Suzan Cengiz, Beirne & Jayne Chisholm, Gregg Chisholm & Karen McHugh, Karen Gallagher, Mark and Julie Gilliland, Philip & Luran Golm, Holly Hammond, Michael and Martha Hecker, Ian Horswill, Jeannette W. Iwado, Billy and Carla Jalbert, Robert and Margaret Kaplan, Janice and Allan King, Greg and Marilyn Knecht, Cort & Liz Larned, Martin and Paula Lenny, Jeffrey and Suzanne Lundahl, Raphael & Vivienne Masters, Robert & Donna McCleary, Adama and Lenna Miller, Cyrus and Jill Monroe, Uli Montague, Scott Newman, April Nims, Point Triump L.P., Kathy Ross, Michael Ruben, Louise and John Severson, Tricia Shoemaker, Peter and Judy Siracusa, Elizabeth and Mathew Smith, Gayln Sweet, Denis, Anne, Robby and David Swift, Roger and Sheri Thorston, Jane and Jack Thompson, Alice Tremble, Dane Ward, Roger and Elsa Wark, Linda and Gene Wasson, John Yeoman submitting a Petition to Intervene Received on September 4, 2008 on the request by MR. PETER KLINT MARTIN requesting a State Land Use Commission Special Use Permit for the proposed Hoomoana Campground in the State Agricultural District at TMK: 3-8-001: 003(por.), Spreckelsville, Island of Maui. (SUP2 2007/0007) (L. Callentine) (Public hearing conducted on August 26, 2008.)

Mr. Starr: Okay, I want to turn it over to Corp. Counsel to explain the purview of the next item we're deciding on which is the actual merits of the motion and what we should be considering in that decision.

Mr. Giroux: You should ask the attorneys if they're satisfied that they've had a chance to-

Mr. Starr: Yeah, I will be asking the attorneys, but first I you want to just make a– You want some time to–?

Mr. Giroux: Oh, no. I've got it.

Mr. Starr: Okay, we're gonna have James explain what we're using as our criteria, and then we'll be calling on Mr. Hall and Mr. Welch.

Mr. Giroux: Thank you, Chair. I just want– If you have the rules, to go to 12-201-41. It's right below where Ward where was reading–12-201-40. There's a b, c, and a d section there. I'm gonna read the whole thing into the record just so – just so in the future there's reference to it. It says:

All departments and agencies of the state and the county shall be admitted as parties upon timely applications for intervention. All persons who have a property interest in the land subject to commission action who lawfully reside on the said land or can demonstrate that they will be so directly and immediately affected by the matter before the commission that their interest in the proceeding is clearly distinguishable from that of the general public shall be admitted as parties upon timely application for intervention.

So if you find the above, you shall allow intervention. Section c, "All other parties," if you don't find the above;

All other parties may apply to the Commission for leave to intervene as parties leave to intervene shall be freely granted provided that the Commission or its hearing officer, if one is appointed, may deny an application to intervene when in the commission's or hearings officer's sound discretion it appears that the position or interest of the applicant for the intervention is substantially the same as the party already admitted to the proceeding, the admission of the additional parties will render the proceeding inefficient and unmanageable, or the intervention will not aide in the development of a full record and will overly broaden issues.

So in your discussions, you have to go through that paragraph and hit all those points, okay? And the attorneys can help you out.

Mr. Starr: Okay, I believe– Mr. Hall, since we're hearing your petition, why don't you go first?

Mr. Hall: Good morning, Mr. Chairperson Starr, and Members of the Maui Planning Commission. Isaac Hall for 77 intervenors that are listed on the petition to intervene. And we have in compliance with the Commission's rules listed all of those 77 intervenors where they live and where their TMKs are. And where they live is along Stable Road behind where the campground and in Henry Spencer Subdivision which is adjacent to this lot and in Spreckelsville. I don't think you've had an intervention petition where you've had 77 intervenors before. That's a large number of people.

I wanna stick with what the Corp. Counsel's asked me to address. 11-200 – 11-201-41b is generally known as the test for intervention as of right. And either you own the property, or

adjacent to it, or you'll be so directly and immediately affected by the matter that your interest is distinguishable from the general public. And by the Akau test, you don't – you can be a member of the general public so long as you're among the injured. I'm not gonna repeat – and what I did in the petition to intervene was to incorporate by reference all of the testimony that you've got and I trust– Livit, did all the emails that you got get submitted to the Commissioners?

Ms. Callentine: Yes, they did.

Mr. Hall: Okay. So you've received all of these emails from a lot of the intervenors already. And I hope you've read them, but basically, I think those emails and letters that you've received demonstrate adequately that these intervenors are directly and immediately affected by this proposed campground sufficiently confer the right that they have to intervene as a matter of right. Some have alleged that their property values will be affected by this. Some have alleged that they will be themselves immediately affected by it, that their enjoyment of their own properties will be affected. So we believe that they have shown that they have a right to – they are entitled to intervene as a matter of right under 12-201-41b.

The test under 12-201-41d is even if there's no intervention as a matter of right, the test under d is for what they call permissive intervention. That is even if you are not directly and immediately affected and injured as a matter of the member of the public, leave to intervene is freely – to be freely granted no matter what under three conditions.

One condition is that the position or interest of the applicant for intervention is substantially the same as a party or is not substantially the same as a party already admitted to the proceeding. So there aren't any other parties admitted to the proceeding, and so our positions are not substantially the same as anybody else.

And the second test is the admission of additional parties will render the proceedings inefficient and unmanageable. There aren't any other parties so that that's not really an issue, but you might have a concern because of the number of intervenors that are here, but all of these intervenors are represented by one attorney. And I've listed in here all of the mechanisms that are available to a hearing officer to make sure that the proceedings are efficient and are manageable. In other words, you can avoid duplicative testimony. There's any number of ways to make sure that – I mean, in other words, there's no right for all 77 people to put on a case. There's just one case and it can be managed by the hearing officer. And I've participated in many contested cases before, and will cooperate with the hearing officer making sure that these proceedings are efficient and are manageable.

The third issue is the intervention will aide in the development of a full record and will overly – not overly broaden the issues. I think a contested case is warranted in this case because the record needs to be developed more fully. I agree with Commissioner Hiranaga in a lot of respects that the – there are issues that haven't been developed fully. There is information that needs to come from HDOT and the FAA on the actual noise levels. What they think is compatible and incompatible–that needs to be developed. What can be built on a parcel within what LDN line–that's gonna determine what can be done there. So we're uniquely suited to develop that full record. I, myself have participated in noise issues before in a trial that had to do with the noise levels at the airport, so I'm

familiar with noise issues at the airport, and understand them, and can help do those. So that basically addresses those.

The commercial campground, I have to agree with the Planning Director that I think there has been a lot of confusion in the way this application has been developed. You know, the size of the parcel, what size, who has jurisdiction, and it hasn't been addressed by the reviewing agency. Some of have been confused about the size. Some have been confused about the objectives. What's the campground for—that's been confused. And – and we've laid out a number of issues in the petition to intervene itself that need to be addressed; whether a change in zoning's really the proper mechanism; whether a commercial campground really can be a homeless shelter. I know that the County definition of a campground is that you can only stay there for six days, and then you have to leave for 24 essentially, and then you can come back on the 30th day. I'm not sure that that campground really was set up to be a homeless shelter. Now whether – that means that if it were gonna be used for the homeless, somebody's in the position of having to evict a lot of people, and I'm not – I just don't think that that's necessarily what anybody wanted there. Again, the noise issues—we've addressed that before. The burden on the taxpayers. The water demand for the campground, commercial campground, was never addressed in the application. Assuming that you have six pods with 30 people and 180 people, the water demands for 180 people were never addressed. Sewage demands for 180 people were never addressed. And then, locating a commercial campground on the borders of the airport where there aren't any – there's no stores, there's no services, that issue has never been really addressed. The fourth test is whether unusual conditions and trends have arisen since district boundary rules were established. I don't think that ever has been addressed by anyone.

And then a special use permit can't be granted if the lands – unless the applicant can prove that the lands are not suited for agricultural uses. And these lands actually are highly suited for agricultural uses. And by our own County Code, we've said that the lands that we should preserve in agricultural use are those that are in the ALISH system, those that have in cultivation for ten years, and those that are contiguous to lands in the ag district. These lands are ALISH lands or prime ag lands in the ALISH system. They're not E-3. We believe they're A-51-I. And they were and have been cultivated by HC&S. So I don't think that that fifth test can be met. So we would like to have the petition to intervene be granted so that we can prove that the five tests for a special use permit cannot in this instance be met.

And I agree personally what many others have said—the idea of finding – for providing homeless shelters – I'm a hundred percent in support for, but I had trouble with the County, or the Planning Commission, or the Planning Department finding that a place that's in 70 or 75 LDN is something as a matter of policy the County wants to say is a good place for the homeless or anybody else. So I'd ask that you grant the petition to intervene.

Mr. Starr: Okay, thank you, Mr. Hall. Mr. Welch, please.

Mr. Welch: Thank you, Mr. Chairman. It's a complicated issue. The question of intervention, whether or not you'll permit intervention regardless of the merits of some of the arguments of the intervenors that Mr. Hall was allowed to get into here is whether the proposed intervenors are going to be substantially and immediately affected by this proposal. The – and the effects that have been

discussed or mentioned are the property values will be affected and their safety will be affected. I think those are the two basic things that they've said. There hasn't been any proof about – to establish that. The proposal, you know, is – is not right up against their neighborhood. It's only near their neighborhood and my neighborhood, too, by the way. As far as safety is concerned, there haven't been any – there's no proof or detailed allegation of how the safety would be – the public safety or the safety of the community would be affected. The proposal that has been put forward is for a 24-hour per day supervised campground, and it has been always Mr. Martin's assumption and conviction that the neighbors would not be affected, that it would be managed in a way that it would not affect them, and would not affect Peter Martin is in the neighborhood, too, closer to this than my house and many of the others that have testified. The issue of granting intervention–

Mr. Starr: Excuse me. Could you close the door back there? We're – it's getting a little difficult to hear. Okay. I'm sorry, Mr. Welch. Please proceed.

Mr. Welch: Thank you, Mr. Chairman. When you grant intervention, you're not taking away from this Commission the power and ability to deal with all of the merits of the matter. All you're doing is changing the format and the forum. And you're extending the proceedings out into the future in a complicated litigation, and record-preserving – record-creating manner, and giving people the right to appeal. That's what you're doing here. And that's why – and that's why when you – when they come in and show that they're directly affected, impacted, that you have to decide from a policy standpoint that, yes, there's enough issue – the issues are so important here to this neighborhood, real issues, that they should – not just so they don't want it, but that there's real, real issues. That you want to be able to give them the right to be represented by counsel to have findings of fact, conclusions of law, and to be able to appeal. So that's what your decision is here today. And – but your decision is not whether or not you're gonna be able to hear the merits and discuss the merits of – of the proposal. None of the issues raised by Mr. Hall discussing the merits necessarily needs a – need a contested case to be able to – for this Commission to reach a considered and carefully decided resolution.

The other aspect of it is that if you permit the intervention, Mr. Martin will withdraw the application. It's not a fair position to put this Commission in, but it's just the reality. To permit the intervention, to grant the intervention, denies the proposal. And that's just what's gonna happen. It's okay, and we don't mean to be putting everybody on the spot on this, but Mr. Martin is sincere in his deep feeling that he doesn't wanna prolong this litigation – you know, prolong this thing – this acrimonious thing with his neighbors, and litigation, or extended dispute. So the choice is yours and we hope you'll let us go forward. Thank you.

Mr. Starr: Okay, thank you, Mr. Welch. Mr. Martin, I'll allow you. Please be really brief.

Mr. Martin: I will. Generally– My name is Peter Martin. Generally, the attorney does a– What I was trying to get across is that I believe all the issues Mr. Hall brings up I don't mind discussing them here with you today, or deferred in another time. I just don't wanna go to the contested case with hearings officers and that on a one-year permit that I'm willing to take down to whatever we agree on if we can talk to it, and maybe these folks can even agree on it. I think it takes us away from the issue and often to legalese. I mean, I read this thing, all these emails people have been floating

around. I know I'm not supposed to get it. You know, put the legal, you know, attack dog lawyers involved in all this thing. That's just the wrong way to go in my opinion. I don't mind addressing Mr. Hall's points and things, but to set this all in a contested case when you guys might only grant me – we don't even know what you're gonna grant me yet. We might delay to 'til five units, or three units, or only 12 people. So all this exaggeration stuff is about something we don't even know that we're gonna negotiate. So I'd like to skip that and get something that we agree on that's positive that we don't think we'll get sued on, or you won't get sued on, or I won't, some experiment, and do your best. And if he wants – those guys wanna sue afterwards, let them, but let's do something so proactive and good and forget this.

Mr. Starr: Thank you, Mr. Martin.

Mr. Hall: Can I . . . (inaudible) . . . ?

Mr. Starr: Yeah, Mr. Hall, you're welcome to come up.

Mr. Hall: I think one thing that's gotten forgotten here is that the first step under your rules if you grant intervention is mediation. And Mr. Martin can have what he wants with the mediation.

Mr. Starr: Okay. Members, questions for either Mr. Hall or Mr. Welch? Seeing none, okay.

Mr. Mardfin: I have one.

Mr. Starr: Yeah, go ahead, Mr. Mardfin.

Mr. Mardfin: I'd like to ask Mr. Martin– I guess I have two questions. One, you said you don't wanna go into litigation with your friends and neighbors, and I can understand that, but if their petition is denied, won't you be going – having the same problems with your friends and neighbors?

Mr. Martin: Well, first, I don't think so. I think we will– Once again, we – we– The story is broader than the first answer.

Mr. Starr: No, we're . . . (inaudible) . . . optimists, Mr. Martin.

Mr. Martin: Well, first, we might, but – but after– And again, I don't– I went into mediation before. And it was a year. And I paid attorneys for a couple years. And I think Tom was involved. There's many attorneys. I would rather have– And this is a one-year permit. And by the way, by the time I get the building permit, and I'm only getting the six campsites, maybe we can restrict them to two people each, it's 20. I just don't see creating all this for that. If we could've just spoken amongst ourselves– And I think those folks fault me for not going to them ahead of time. I still this was the place to hear it. We still haven't got to hear it. The last time, Noelani and Josh here, everybody explained it, they were all gone. I think there was one person left. They – folks testified for three hours. And I'm not blaming them. It was the way it was. But now, here we are. I think we can settle on some nice rules. And they'd be very small. Come back in a year, just like my letter said, and I will, if you guys said this wasn't any good, I'll listen to you, all that, but we're really asking to make a mountain out of a molehill here.

Mr. Mardfin: My second question – statement is, one, let me – let me say at the outset you're – the testimony we had from the Camp Olowalu people was very impressive. I really–

Mr. Martin: (Inaudible)

Mr. Mardfin: Well, we – the Commission did. And we thought – I was, at least, very impressed by that. And I share your concern for the homeless and the way you wanna deal with it. You've said that you don't wanna go into litigation and that therefore if we admit the petitioner that you would withdraw your application. There's nothing that would stop you from later dealing with them and resubmitting an application after you've found some common ground with them is there?

Mr. Martin: I guess that's correct. I think if we got something– You know, if we could talk about the proposal and make a rule, maybe – I mean, possibly that's true. But I don't see why we have to go there. I think we could come up a decent thing. Let me get started. I think the best thing is to prove to the community that this is a positive thing. I'm more than happy to let them be on the board. I'm more than happy to let them interview each person I bring here. I got all kinds of ways that we could talk about it right here and probably be done with it. But – and I'm very – I'm willing to concede on all different ways, but I even told my daughter I at least want one guy to go camping that stuck. That would be the minimum–one.

Mr. Mardfin: If we turned down the petitioner, don't allow them to intervene, aren't they gonna take you – take us into court anyway?

Mr. Martin: That's what you'd first assume, but maybe not because – because we don't know what you're gonna grant me yet. I believe – would they take me to court if we granted one guy and he had to be in a wheelchair that they all got to intervene – interview first? Probably not. So to say for sure we need to hear what we're going to prove.

Mr. Mardfin: Thank you.

Mr. Starr: Thank you. Members? Dr. Iaconetti?

Mr. Iaconetti: I have a question for our attorney. If we grant the intervention and Mr. Martin actually removes his application, does the intervention proceed then?

Mr. Giroux: No, with no application, there's no process. There's – it's done.

Mr. Iaconetti: Thank you.

Mr. Starr: Commissioner Guard?

Mr. Guard: Okay, I guess I'm having a real hard time with this because most interventions come prior to the application being presented to us. And I don't really recognize anyone in the room that was able to stay for the presentation last time. So for me, they do have an uphill battle because as a bleeding heart, I heard some very valid stories of people that deserve a second chance. And I think– I don't know if it was on Akaku yet or not. I would've hoped they would've been moved by

those that we could take – I'm sure there's ten terrible homeless people, but from the stories I heard, it sounded like there was more than that – a number of people that deserved a second ... (inaudible - changing of tape)... have had to live in their cars. I just watched the Country Music Awards last night on Jewel who's a raving pop star who used to be homeless as well. So to group all these people together and I guess that's my problem with the intervention is I'm seeing to very different ideas of the people involved of ruining property values and rental values only because we've already been privy to the application process. And I mean, by being so untimely and actually seeing a good project and presentation, it makes this a very difficult decision for me. I guess that's why I'm having a very hard time moving forward. In application, I think homeless is listed three times versus commercial campground.

Mr. Starr: Okay, thank you for that. Now does anyone have a motion if they wish to make whether to proceed on the merits of this petition to intervene.

Mr. Iaconetti: I move to grant the intervention.

Mr. Starr: Okay, is there a second?

Mr. Hedani: Second.

Mr. Starr: Okay, we have a motion by Dr. Iaconetti, seconded by Commissioner Hedani. I'm going to go to Corp. Counsel just to be sure that the phrasing of the motion is correct if it's adopted.

Mr. Giroux: To the motion to grant the intervention?

Mr. Starr: Yeah, so that's all we need? Okay, so we have motion to grant the intervention. Dr. Iaconetti, Commissioner Hedani. Are we ready to call the question? Commissioner Hiranaga.

Mr. Hiranaga: I will be voting for the motion to grant the intervention basically because I believe the original application was flawed because of I believe what was proposed and what the intended use was not clearly defined. So by granting the intervention, the applicant will withdraw his application and if he wishes to reapply, he should do so and he should make his intentions very clear from the start. I think there's too many questions that have not been answered and I think he needs to start over again. So that's my reason for voting for the motion.

Mr. Starr: Commissioner Pawsat.

Ms. Pawsat: I have a question for Mr. Martin. How do you determine if someone's homeless? Do you make them provide you proof of none home ownership or do you discriminate and not allow people in or can anyone come and camp there?

Mr. Peter Martin: Yes, it is a – thank you for the question. It is a commercial campground. You did ask for my financials on a five-year business plan which I did turn in. It answer that question, we're guessing around a third of the people would be, a third of the campsites would be at market rates. Again, now we've dropped at this – again, my proposal now is for the first year to be only six, but the idea was to be a third would be for commercial and all people would be charged. There'd be

just like, and you weren't at the meeting last week, I understand but Noelani explained that most of that, the Olowalu camp is commercial. Some of the people are allowed, reduced rates or ability to work or do things at the campsite to help out. And I did have monies in my budget, I think it was shown for again, that was for a bigger campsite but it shows for mental health consultants, all types of different counselors and job things. But it's a mixed camp is the idea.

Ms. Pawsat: So you have no criteria or any sort of thing like that that defines what a homeless person is? Like they wouldn't have had to be to a minimum without a home for a year or just kicked out for a week, right?

Mr. Martin: I was trying to satisfy people that there referred to us that were in – that would be referred to the camp in some type of difficult situations. For one reason or another, they're referred there. We're also, it might be like Olowalu, sometimes the whole Cub Scout groups rent the campsite. So it would be depending. I want to try this thing and see how it goes. And I think we'd all – I hopefully you'd come visit it. Maybe some of you want to be on the board of it or something, you come visit and we'd watch it over the next year.

Mr. Starr: Thank you. So Jewel could come there either while she was homeless or after she's a rock star and she could get the counseling.

Mr. Martin: Yeah, rock stars are welcome.

Mr. Starr: Okay, are we ready to vote now? Commissioner Hedani.

Mr. Hedani: I'd like to, I would support the motion only because in this particular case, I think there's sufficient questions of fact and there's sufficient questions of information relative to the application that a fuller record would be developed through the intervention process. And I think we don't we really have a stellar record of defending at the Circuit Court level when it comes to reversals. And I think that the applicant has a very worthy project that should be supported in some form, in some location. Unfortunately in this particular case we have a lot of people, with a lot of money, with a very good attorney that's going to make it in my view impossible to proceed.

Mr. Starr: Thank you. Commissioner Pawsat.

Ms. Pawsat: Yeah, I'm disappointed about this in general that the intervenors aren't giving this place a chance. I think a year is, you know, we give TVRs all the time and you know, bed and breakfast, TVR a year to prove themselves and that's been accepted and I'm just really surprised that the community is just not even, not even giving this a chance. I think it's disgusting.

Mr. Starr: Director.

Mr. Hunt: Just a few comments. Just to remind you that the law says that intervention shall be freely granted. Frankly, I don't really like the intervention process a lot and I agree with the comments that have been made earlier that often times it is used merely to obstruct which may be a very good project. In this particular case the project may be very good, but I think there was some problems with the original notice and how the project was described and I think that caused me

concern.

I would also like to mention that as somebody else mentioned that the intervention process does provide for mediation and one of the mediation sessions, the original one, the first one is provided by the Planning Department. And there's additional mediation that can be done, but between the two parties and your rules also state that that the parties may hold informal conferences and ...(inaudible)... in arbitration for the purpose of submission and consideration of facts. So, I don't think that necessarily going to a contested case means that it has to get into a legal situation. Hopefully there could be mediation and there could be some resolution of these issues.

Mr. Starr: Okay, could you – Okay members we ready to take a vote on this? The motion once again is to approve the petition. Okay members we're going to vote now on the motion, all those in favor of approving the petition to intervene please raise your hand. All those opposed please raise your hand. Director.

It was moved by Mr. Iaconetti, seconded by Mr. Hedani, then

VOTED: To Grant the Petition to Intervene.
(Assenting - W. Iaconetti, W. Hedani, K. Hiranaga, B. U'u, J. Guard,
W. Mardfin, D. Domingo, J. Starr)
(Dissenting - J. Pawsat)

Mr. Hunt: I have that at eight in favor and one against.

Mr. Starr: Okay, so the motion passes. Eight in favor and one against. So we will be allowing the intervention. And it, I think a lot of us do hope this will – Yeah, Dr. Iaconetti.

Mr. Iaconetti: Do we now appoint a mediator at this point?

Mr. Starr: A hearings officer.

Mr. Iaconetti: Hearings Officer.

Mr. Starr: Yeah, we're about to get there. Our next step in this is to appoint a hearings officer and for that we'll be turning to Livit Callentine who is almost ready for us.

Ms. Livit Callentine: Mr. Chair, in your amended, in the department's amended report to you dated September 8, 2008, it's a memorandum from the Director the Planning Commission, on the second page there's a section entitled, "Potential Hearings Officers and Mediators" and on your behalf the department contacted everyone on our list of potential hearings officers and six potential hearings officers and mediators responded in the affirmative that they appeared to not have any conflict and would be able to conduct either a mediation or a contested case hearing for the project.

The names of the potential hearings officers are Guy Haywood, Gilbert S.C. Keith-Agaran and Mr. Keith-Agaran had some disclosures which are shown in your Exhibit E. Number three, Glenn

Kosaka, number four, Timothy McNulty, number five, Judith Neustader, and number six, Lee Ohigashi.

Mr. Starr: Mr. Hedani, commissioner.

Mr. Hedani: Given the applicant's position relative to whether or not we grant intervention is it necessary to appoint a hearings officer?

Mr. Starr: Mr. Counsel.

Mr. Giroux: I guess you have to hear from the applicant.

Mr. Peter Martin: Right, as I said, I was going to withdraw my application. So I don't want to burden you with any – and thank you for listening.

Mr. Starr: Okay Mr. Martin, so we take that as a withdrawal?

Mr. Martin: Yes. I'm withdrawing my application.

Mr. Starr: Okay, while your at the mike I just want to comment that I hope that a way is found to create campgrounds and to create shelters for homeless because I think we've heard from members of the commission and certainly my own belief that both of those functions need to be served and you know, that area of Maui, you know, is potentially a good place to do it. But there are problems in the process and we hope that a way can be found that working with the community there is a way to develop camping and there is a way to develop homeless shelters and we really want to thank you for trying in this regard. It is, you know, your heart's in the right place and we appreciate that.

Mr. Martin: I do agree with you. Also, I believe, I love this book they say, you probably read at the last lecture about brick walls are there for a reason. I'm not saying, I think this is a good time to rethink and look at this brick wall and figure out. But as I said, I'd like to withdraw and I appreciate it and agree with your sentiments. Thank you.

B. UNFINISHED BUSINESS

- 1. MR. PETER KLINT MARTIN requesting a State Land Use Commission Special Use Permit for the proposed Hoomoana Campground in the State Agricultural District at TMK: 3-8-001: 003(por.), Spreckelsville, Island of Maui. (SUP2 2007/0007) (L. Callentine) (Public hearing conducted on August 26, 2008.)**

The following testimony were given at the beginning of the meeting:

Mr. Starr: The next testifier is Barbara Woods. Please come. Try to keep it brief for us and thank you for coming today.

Ms. Barbara Woods. My name is Barbara Woods, and I live in Spreckelsville, and I'm testifying on Peter Klint Martin's request before the Planning Department. And I actually have questions about his planned campground. He gave us an overview of it last week. And there are a very big turnout from Spreckelsville. And initially I thought it seems to me he was gonna only do eight to 12 campsites in the next year during this period, you know, nine. And he's gonna use port-a-potties. And there will be no electricity. And that makes me wonder how people can live in this society without electricity for that long a time. And so I have more questions for him that I would like clarified. And I'd also like to know if there are any lawsuits that he is facing with his campsite at Olowalu. And I would like a lot more clarification from him about responsibility on security and the screening that he carries on and the backup that his group has so that there won't be people wandering around the area who may not be responsible type of people. I don't think there should be a hardship on the population of Spreckelsville even though it is a good work. And that's basically my . . . (inaudible) . . . this morning.

Mr. Starr: Well, thank you for coming before us. I know the Members have heard your concerns, and I'm sure that we'll have some spirited discussion related today on this.

Ms. Woods: Thank you.

Mr. Starr: Thank you very much for coming before us, Barbara.

Mr. Starr: Our next testifier is – I believe it's Donna McCleary. Please identify yourself and once again pardon me if I got your name wrong.

Ms. Donna McCleary. Hello. I'm Donna McCleary. I'm a resident of Spreckelsville and I'm also speaking against the proposition of Mr. Martin to create a campground for the homeless in the Spreckelsville area. My husband is an invalid. He's home almost all the time by himself because I work. And I have great concerns about the safety of the community not just for my husband but for others who are either elderly, or are disabled, or single women and men who are living alone in the community. Our area is safe right now. We'd like to keep it that way. I have a great deal of empathy for the homeless. I think we do need to have a comprehensive approach to dealing with the homeless situation on Maui. Having a sort of approach and less than well thought out temporary or partial solution may actually be harmful in that it might well prevent the County from seeking a really good response, a really good approach to dealing with the problems of our homeless. The homeless is not a homogeneous population. Many are very caring good people who are doing the best they can. We've also . . . (inaudible) . . . drug addicts, and people with mental illness who have special needs, needs that may not be able to be met in a campground. Department of Human Services has very rigid and strict rules for homeless shelters that are there on purpose theoretically, depending on your opinion of the Department of Human Services to preserve, and protect, and safeguard the safety and the welfare of the people who are involved in these projects or in the homeless shelters. I don't see any of that kind of oversight being applied to the homeless shelter, "the campsite" that's being proposed, and perhaps we need to consider that. We need to consider the liability that we are imposing on our County by approving something that might provide – decrease the safety of our community, and while still not adequately meeting the needs of the population that it's stating to be helping. Thank you.

Mr. Starr: Okay. Thank you, Donna. Any questions? Seeing none, thank you very much for coming before us today. The next testifier is Billy Jalbert, I believe. Please come forward. Identify yourself.

Mr. Billy Jalbert: Good morning. Thank you for hearing me out. I am here to testify against Peter Martin's campground or proposed campground in Spreckelsville. I am a resident of Spreckelsville and I am a father of two young children. Peter Martin came to meet with our community on September 2nd. And he started out presenting facts. And what I'd like to do is present a few facts to the Planning Commission also.

Number one, I am not a homeless expert. Number two, neither is Peter Martin. Peter Martin held that neighborhood meeting at the senior center in Kaunoa on September 2nd. When asked for a show of hands as to how many residents were in favor of Mr. Martin's campground, two people raised their hands. There were approximately, 50 people in the room. Peter Martin stated that the opinions of his neighbors, friends, and business colleagues were important to him. Peter Martin did not formally notify his friends, neighbors, and business colleagues until August of 2008. Peter Martin applied for a State special use permit in September of 2007. That's an 11-month difference. Peter Martin stated that he was stunned by the opposition of the community. Peter Martin stated on September 2nd that he felt it was very important that the environment for the homeless be peaceful while these folks are in transition. Situated not less than 500 feet from the end of the runway at Kahului Airport I would argue that this location is anything but peaceful. On September 2nd, one of Peter Martin's representatives stated that this campground would not have a negative on the area residents' property values unless they're trying to sell their property. Peter Martin stated that he does not intend to have mental health professionals onsite. Peter Martin stated that no matter what happens, something needs to be done about the homeless situation in his backyard down the street. And Peter Martin stated that the campground will ultimately cost him a significant amount of money and yet it may only help a few people.

Now, I'll give you a few of my opinions. Peter Martin's quest to help the homeless on Maui is an extremely worthy cause. Homeless is a major problem on this island and it's something that we all need to focus on and all need to work on together. I believe that Mr. Martin's idea and proposal is a misdirected idea and a waste of money. It will have a negative impact on the fabric of my neighborhood. I have read over and over in the paper and heard testimony here by the County Council, the Planning Commission, Planning Director that TVRs and home-based businesses have a negative impact on the fabric of our neighborhoods and our communities.

Mr. Starr: Please wrap up.

Mr. Jalbert: And that this is an important reason to reject those businesses and TVRs. I have no argument with that. I happen to believe that a homeless camp that will not have mental health professionals on staff, that will not do immediate background checks for sex offenders for violent criminals will have a negative impact on the fabric of my neighborhood and the safety of my two young children.

Finally, I'd be more than happy to meet with Mr. Martin to help him find an alternate location and to identify experts in homelessness that can help to solve this problem on Maui. The most effective

solutions to community problems happen when a community comes together, not when one maverick stands up and says I've got the best idea and then chooses not to listen to his friends, neighbors, and business partners. Thank you very much.

Mr. Starr: Okay. Thank you. Please stay at the mike. Commissioner Hedani?

Mr. Hedani: I'm sorry, I didn't get your name.

Mr. Jalbert: My name is Billy Jalbert.

Mr. Hedani: How far away from the site do you live?

Mr. Jalbert: I'm approximately, one-half mile away.

Mr. Starr: Okay. Thank you very much, Mr. Jalbert. The next testifier is Carla Jalbert. Please come up and testify. Introduce yourself and try to keep it as brief as you can.

Ms. Carla Jalbert: Aloha. My name is Carla Jalbert. Thank you for listening to me. I did speak at the last meeting here when Mr. Martin presented. Besides the countless safety reasons, there are many reasons why the campground in Sprecks is not a good idea. We commend Mr. Martin's ideals in wanting to help a few people while they are in transition. There are plenty of more centrally-located areas that are a better fit for this venture. Sprecks isn't near anything within walking distance. It boggled my mind that the Planning Committee would consider allowing this campground in the middle of a residential area. Most of my neighbors on ag land are not allowed to build ohanas as it was considered to have too much of an impact on the neighborhood. In the past, the Planning Committee has not allowed TVRs or B&Bs in our neighborhood. It was stated that they would provide a direct negative impact on the neighborhood. It's been stated in the paper that a B&B cannot change the character of a rural, agriculture, or residential neighborhood. Please tell me how you think this campground will change the character of our neighborhood. Mr. Martin has asked for a one year permit to give this thing a try. He told us at the meeting that the first year would only allow six campsites. Eventually, his plan is to have up to 30 or more. How can we honestly judge the impact of the campground when he's only going to have six campsites? This is a valid concern for everyone in our neighborhood. Members of the Planning Committee, I ask you to take an honest look at yourselves. You know that if this was proposed in your backyard in your neighborhood, you would not want it there. A residential neighborhood is not the place for a homeless campground. Please, we ask that you do the right thing and reject Mr. Martin's proposal. Thank you.

Mr. Starr: Okay. Thank you. Commissioner U`u?

Mr. U`u: Yeah, I'll be honest. If it was a half mile away from me, I would think about it. That's just me. It's not you, but I would think about it. I wouldn't say I would pass it, but you cannot put words in my mouth, but I would think about it.

Ms. Jalbert: Thank you for thinking about it.

Mr. U`u: Yeah.

Mr. Starr: Okay. Thank you very much for your testimony. Next testifier is Karen Gallagher.

Ms. Karen Gallagher: Hello. My name is Karen Gallagher and I testified at the last meeting regarding the campground in Spreckelsville. And when I testified the last time, I didn't get to stay for the presentation because I had to go to work, and at that time, there was some confusion as to whether it was a campground or a homeless campground. So I just wanted to testify today to say that I did attend Peter Martin's meeting in Spreckelsville where he said his intent is it for it to be a campground for the nonviolent, mentally ill homeless. So now that that confusion has been cleared for me, I wanted to testify again that I am still against it after hearing his presentation. Thank you.

Mr. Starr. Okay. Thank you for coming before us.

This concludes the testimony received at the beginning of the meeting.

The applicant, Mr. Peter Martin withdrew his application for a State Land Use Commission Special Use Permit.

Mr. Starr: Okay, and I just want to thank members of the committee and staff for hanging in there and getting through it. We're going to take a recess until ten minutes after 1:00 p.m. for lunch.

A recess was called at 12:10 p.m., and the meeting was reconvened at 1:10 p.m.

Mr. Starr: Maui Planning Commission meeting of September 9th is back in order and before we begin we have a short paid advertisement by the director, paid announcement.

Mr. Hunt: Good afternoon, what I'd like to do is announce our new Deputy Director for the Department of Planning and that's Kathleen Aoki. She's over there in the green. Kathleen's been with us almost six years. She's and born and raised on Hawaii so she brings that kind of background. She's got management and budget experience and she knows planning. She agrees with my philosophy that development if it's managed, actually brings benefits to our community but it needs to be managed. So I think she'll be a good fit with our management team. She will be sitting here and helping you folks out on occasion. So I just wanted to introduce here and let you know who she was.

Mr. Starr: Congratulations Kathleen and glad to have you. And before we proceed I'm going to ask Livit to do a short commercial for the wonderful conference that's coming up starting tomorrow. So 30-second version.

Ms. Callentine: I think Kathleen would probably be better at this than me. So the Hawaii Congress of Planning Officials is holding its annual conference on Maui this year. Maui host the conference once every five years and most of the commissioners have signed up to attend the conference as I understand tomorrow we'll kick it off with mobile workshops to four different locations and they're going to be jam packed. I mean the roster of people on your workshops is just incredible. You're going to have a lot of interesting people to talk to. And then we have four keynote speakers on

Thursday and be sure you show up tomorrow night for the incredible hosted refreshments and libations and then again, on Thursday night we'll be having another big banquet that night and then some more conference on Friday morning. So I'm sorry I can't go into details on the program. That's not been my focus.

Mr. Starr: We don't need detail, but just...(inaudible)... commissioners and everyone interested or involved with planning issues on Maui participate because it's a great opportunity and I want to thank the department for taking the lead in this. This is a statewide conference and it's part of the national organization, the American Planning Association and we're honored to have it on Maui this year after a number of years. Okay, moving right along, I turn it over to our director to introduce the next item. The previous item that is still on our agenda which was the main item regarding proposed campground, etc., that item has been withdrawn so we don't need to go back to that. So Director, please take us away with the next item, the Family Life Center.

Mr. Hunt: Your next agenda item involves the Family Life Center requesting a County Special Use Permit in order to construct improvements to an existing homeless structure facility including interior alterations to an existing building and construction of a 600-square foot freestanding shower and restroom facility at 95 South Kane Street, TMK 3-7-005:lot 15 in Kahului. The file number is CUP 2007/0003 and Livit Callentine is the planner assigned to this project.

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

1. THE FAMILY LIFE CENTER requesting a County Special Use Permit in order to construct improvements to an existing homeless shelter facility including interior alterations to an existing building and construction of a 600 square foot freestanding shower and restroom facility at 95 S. Kane Street, TMK: 3-7-005: 015, Kahului, Island of Maui. (CUP 2007/0003) (L. Callentine)

Ms. Callentine presented the Maui Planning Department's Report.

Mr. Starr: Yeah, we'll be happy to have that. Ask if we could get the 10-minute version of the 15-minute presentation?

Ms. Callentine: And this is Jason Medema to present on behalf of Chris Hart and Partners and Family Life.

Mr. Starr: Okay, and I understand Jason is LEED certified which is a great addition to Chris Hart and Partners. Welcome Jason, take it away.

Mr. Chris Hart: I'm just going to start and then Jason is going to take over. Thank you very much, Mr. Chairman, and Members of the Commission. It gives us great pleasure to be able to present the Family Life Center Project to you. Before I begin, I'd like to introduce some of the individuals from Family Life Center that have been participating in this process. Maude Cumming is here. She's the Executive Director of Family Life Center. Randy Rodrigues is also here. He's a Project Coordinator. And we have also been working with the County. The Deputy Director of the

Department of Housing and Human Concerns, Lori Tshako, and also JoAnn Ridao who is the Housing Commissioner from the Mayor's Office. There is an interest in this project by the Administration in terms of providing services in Kahului.

The Family Life Center is located – this would be Kaahumanu Avenue, the intersection of Kane Street and Kahului Harbor. The parcel is located right opposite the Foodland Shopping – Foodland Store. And it's an area of Kahului that was actually Kahului Town when Dream City was designed. It was set aside primarily for churches, and there are several churches located in this area.

This is an aerial. Pretty much, this is Kaahumanu Avenue, the harbor. This is the State land use district boundary map which identifies the parcel as urban. And then the community plan map actually identifies the parcel as public/quasi-public consistent with the uses in the area, which I mentioned are primarily church-related uses. This is our zoning map. In this particular case, the property is zoned R-3 residential district.

The project profile—the current uses are the Family Life Center. There's also a church, worship services conducted by the King's Cathedral Ethnic Ministries. There's the Family Life Center offices, administrative offices, counseling services, a restorative housing program, a food pantry, an emergency overnight shelter, meeting rooms, one Alcoholic Anonymous Meeting per month.

A little bit of the history—in the late 1950s, the property was deeded to the Assemblies of God in Hawai'i by Alexander and Baldwin. In 1961, the church use established on the subject parcel as outright permitted use in the R-3 residential district. In 1982, the Family Life Center established at – itself at the church site. In 1997, the Family Life Center begins providing social services to the homeless community. In 2007, the Family Life Center begins the process to establish a homeless shelter at the church site. In 2007, a letter from the Planning Department advising the Family Life Center to provide – to apply for a special use permit to establish a homeless shelter use.

I'd just like to – we included this letter, but I'd just like – it's a letter from the Planning Department signed by the Director, Jeffery Hunt. And just in terms of the second and third paragraphs, it says:

It is our understanding that this church use has been in existence since 1961. At that time, our land use laws did allow churches as an outright permitted use in residential districts. Therefore, this church is now a lawful existing nonconforming use subject to Section 19.500.110 of the Maui County Code. As such, to establish an overnight shelter, you will be required to obtain a County special use permit. An application has been enclosed for your convenience.

And that's the subject of this application. Okay? At this point, I'm gonna have Jason take over, okay, and present this to you. Okay.

Mr. Jason Medema: Good afternoon, Mr. Chairman, Members, of the Planning Commission. My name's Jason Medema, and I'm a Planner with Chris Hart and Partners. I've been doing a lot of the day-to-day work on this project. The proposed use for which is an overnight homeless shelter is an expansion within – primarily within an existing large building on the site and the object of the proposed project is to provide dormitory-style accommodations for families so that, you know, mothers, fathers, children can stay together as an intact family unit. There will be sleeping areas,

restrooms, laundry facilities. And there's also going to be planting, and painting. As you see the landscape plan here, there'll be upgrading building exterior as part of this project also. This supplements what you see on the board. I think you'll actually see there's going to be some parking lot trees added, some trees along the front. There's monkeypods there designed actually according with the street landscaping that's going to take place in front of the future Kane Street Mixed Use Project which is one parcel to the north.

The objective of course of the project is to provide critically needed overnight shelter services for the homeless population in a central location that is close to transportation and basic services. You've seen it. It's right in Central Kahului. This also allows Family Life Center to expand the access that their clients have to services that they provide by providing greater capacity onsite.

This section of Maui County Code that allows for special uses, or defines special uses rather, meets the intent and purpose of the zoning district, but which requires a little bit of extra review and approval. And specific authority behind this application is the church use and the residential district as you saw with that letter. When this parcel was established, it was – or rather when the church was established on this parcel, it was an outright permitted use, and now it's a special use.

Here's a photo of the project site along Kane Street facing east to northeast towards the site here. Here's the rear of the building facing the two buildings. You see the chapel and the office building. And this is facing out the back of the parking lot. Here, you're facing south along Kane. Foodland would be to your right. Maui Land and Pine offices would be straight ahead, and the project site is right here. This is facing north along Kane toward Kaahumanu. This is the site of the future A&B Mixed Use Project. There's Foodland. There's Maui Land and Pine, which is sort of catty-corner. And then this is the Seichi No-le Church which is directly next door just south of the project site. There's the MEO facility at the northeast corner of Vevau and Kane Streets. And here, you're facing Kaahumanu Center from the corner of Vevau and Kane just one parcel over from the site. So it's situated in and amongst compatible and complimentary uses.

This is the site plan of the Kane Street Mixed Use which will be constructed sometime in the relatively near future. The Family Life Center's parcel is right here. And this is the U.S. Coast Guard beacon. Again, so if you can kind of imagine, flip this upside down, this is the side of the parcel that abuts Kane Street. This is the new restroom building. And that's it. At this time, we'll open it up for– I guess we have a couple of individuals who wanted to– Right? No?

Mr. Starr: Members, questions for the applicant or for staff? Okay, Commissioner Mardfin?

Mr. Mardfin: I don't know who it's for. Probably you guys or possibly Livit. I'm confused. It looks like you're applying for two things: a special use permit and for construction of a freestanding restroom and shower. And yet, in several – in three of the letters from Chris Hart, namely Exhibits 2, 7, and 11, he says there's no construction. So the comments of the exhibits listed before 2, 7, 11 can be ignored it sounded like it.

Ms. Callentine: I'm sorry, Mr. Mardfin, Commissioner Mardfin, could you repeat the question for me, please?

Mr. Mardfin: Yeah, the document we have in front of us talks about to obtain a County special use permit to provide overnight shelter, dah, dah, dah, dah, dah, and for construction of a freestanding restroom and shower facility.

Ms. Callentine: We included the freestanding shower facility as an overall part of the project, but that in and of itself is an accessory use. So you're approving – you're acting on the use itself of the existing building for a homeless shelter.

Mr. Mardfin: And construction of the shower?

Ms. Callentine: The construction of the shower and restroom facility will be accessory to that use, and so you do not have to be voting on that. That was included to let you know that that is a component of the project.

Mr. Mardfin: So if it's a component of the project, then there will be construction and the comments that were made in the Exhibits 1, 6, and 10 therefore become valid and not as Exhibits 2, 7, and 11 say you're only dealing with a special permit, therefore ignore the construction impacts.

Mr. Starr: Chris, do you have a comment? You like you're burning.

Mr. Hart: Mr. Chair, Members of the Commission, we were requested to apply for a special use permit essentially to establish that this homeless shelter use was going to be a permitted special use in the single family residential district. We have also applied for an administrative approval of a special management area minor permit for the construction of the 600 square foot restroom facility. So those facilities, you know, will be actually covered by administrative permits or permits that would be actually processed administratively by the Department as accessory facilities to the use that is actually being requested.

Mr. Starr: Okay, go ahead, Commissioner Mardfin.

Mr. Mardfin: But then when you say in Exhibit 2 – excuse me. In Exhibit 2, you're responding to Exhibit 1. In Exhibit 1, Jeff Hunt says, a road-widening lot shall be provided, all structures shall be removed, a 30-foot radius, and a bunch of other stuff. And then . . . (inaudible) . . . "a special use permit is to establish overnight homeless shelter, and by itself does not entail any construction activities." And yet – so that – so you turn off Jeff's letter by saying there's no construction. You do the same thing in Exhibit 7 which is responding to the Police Department's concerns . . . (inaudible) . . . about noise created during the construction phase to say, well, there's no construction, but I just heard Jason said there is construction.

Mr. Hart: It's – what we're applying for is a zoning use permit. That's what we're applying for today. The construction related permits are a special management minor – special management area minor permit and basically the interior renovations to the existing building are considered exempt. All items that are being requested as far as construction will be covered by a building permit. Building permits will be issued for those facilities, but we're not applying for construction approval in the context of this use permit.

Mr. Starr: . . . (inaudible) . . . has signed up first on this. And please be really brief because we're way behind on time.

a) Public Hearing

The following public testimony was given at the beginning of the meeting:

Mr. Starr: The next testifier is Cindy Kline. Please come forward. Introduce yourself.

Ms. Cindy Kline. Good morning, Commissioners. My name is Cindy Kline. And I am here – I'm from Women Helping Women, Deputy Director, and I'm in charge of the shelter operations. But I'm here today to support the Family Life Center. I know there's a lot of talk about the other things, but we work closely with the Family Life Center, and they do need improvements to their facilities. Women Helping Women received 11,000 calls to our hotline last year. And out of those 11,000, at least 25% were from homeless women and homeless women with children who did not qualify for our services because there was no domestic violence. So what we do is we refer directly to the Family Life Center, and I want you to know that they've been a valuable, valuable service for our community in working with homeless women and their children, and single homeless women too because it's beyond just providing a shelter, a place to stay, a bed, a warm meal. They provide case management on how to become self sufficient, how to locate housing, and other broad types of services. So I wanted you to know that they really do need improvements to their facilities. And we are in full support, and we'll do whatever we can to also help them because they help us too. Thank you very much for your time.

Mr. Starr: Okay. And thank you very much for coming before us. Members?

This concludes the testimony received at the beginning of the meeting.

Ms. Erlinda : Good afternoon. Family Life Center is an awesome place to be. I've been homeless almost four years. I've been there almost two years. They gave me back my life. You know? Give us a lot of support. The staff that works there that runs that place is awesome. I try encourage all the women to come in with their children. You know, I've been out there. It's no place to be. I got ten kids. They've helped me tremendously. You know, I have services there. I have counseling, budgeting, rehabilitation, real drugs. The place is awesome. It's an awesome, awesome place to be. Thank you, Jesus. Thank you.

Mr. Starr: Okay, aloha. Thank you. Next is – looks like Marita Cumming. And please give us your correct name and excuse me if I mispronounced you – and please try to be brief.

Ms. Maude Cummings: It's Maude Cumming, and I'm the Director for Family Life Center. And I just wanted to give you some brief statistics. Last year we were able to help 151 women and children. Out of those, we placed 38 in permanent housing, ten in transitional housing, and five in treatment. So that's 53 people that we were able to get off the streets. So I encourage you to approve this.

Mr. Starr: Thank you so much and thanks for your testimony. Any others wish to testify please come forward and introduce yourself.

Mr. Hart: As I indicated before, we had been working with JoAnn Ridao who is the Housing Commissioner for the Mayor's Office. JoAnn had to be called away for a special meeting to interview an employee. In her place is Gary Tavares of the Mayor's Office to read a letter from the Mayor. Thank you.

Mr. Starr: Okay. And thank you, Gary.

Mr. Gary Tavares: Good afternoon, Chairperson Starr and Members of the Maui Planning Commission. A letter from the Mayor to the Planning Department:

The Family Life Center has been a provider of social services to Maui's homeless population for the past 25 years. The Family Life Center is requesting the use of part of its current facilities at Kane Street as a homeless shelter. It is my understanding that the proposed project of a homeless shelter at this location represents an action that is appropriate and compatible with its environs. The proposed project will provide the Family Life Center the opportunity to place homeless families into supportive permanent housing. The granting of their request of a County special use permit will benefit the public as well as County government in providing much needed space for sheltering the homeless. I am very much in support of this project and request your assistance in facilitating this application as quickly as possible.

Sincerely,
Charmaine Tavares
Mayor, County of Maui

Thank you.

Mr. Starr: Okay, thank you for bringing that forward to us. Aloha to the Mayor. Any other members of the public wishing to give testimony on this, please raise your hand or step forward. Not seeing any, public testimony is closed. Members, now is the time for any additional questions, comments, or any motion on this. Commissioner U`u?

Mr. U`u: Motion to approve.

Mr. Iaconetti: Second.

Mr. Starr: Okay, we have a motion by Commissioner U`u, seconded by Dr. Iaconetti to approve. I believe there are conditions. So I'll pass it over to the Director to make sure that the form of the motion is—

Mr. Hunt: Generally speaking, we have the staff planner make the recommendation, and we don't have to go through all the conditions, but she can touch on the more pertinent ones.

Mr. Starr: Yeah, go ahead, Livit. And then we'll see if that's in conformance with the desires of the maker and second of the motion.

Ms. Callentine: Okay. Thank you. Within the residential district, a special use permit may be granted pursuant to Title 19, Chapter 19.08, Residential Districts, and pursuant to 510, 19.510, that is, Special Use Permits. They shall comply with the criteria established for a permit. And the policies and objectives of both the General Plan, the community plans, the Hawai'i Revised Statutes, and the Revised Charter of the County. A State Special – sorry, not a State–

Mr. Starr: I don't think we need to read it all, Livit. Just anything that's really particular to this one. We have it all before us.

Ms. Callentine: The Maui Department– the Planning Department does recommend approval based on the following standard conditions and there are seven standard conditions. There are 24 project specific conditions. Most of these – and each one of those standard – the project specific conditions, after the condition is shown the department who has recommended that condition. Most of these conditions are tied to a building permit or some other permit so that will be their – that will be how they will be measured against – they will be measured against other permitting such as a building permit or a grading permit. So I think it will be important– Actually, in terms of which ones are the most important, I wouldn't venture to guess which are. I would ask you to just get concurrence with the applicant that they are willing to abide by all of these conditions.

Mr. Starr: Commissioner U`u, is it my understanding that the recommended conditions form part of your motion?

Mr. U`u: Correct.

Mr. Starr: And, Doc, is that okay? And just to go back to the applicant, are the recommended conditions acceptable to the applicant?

Mr. Hart: We're certainly willing to accept the conditions, but I think as Livit said that the conditions will really come forth in the context of the issuance of the SMA minor permit and the building permits for the project and really don't have a lot to do with the use issue anyway, but we're certainly willing to accept them and to move forward. Thank you very much.

Mr. Starr: Okay, thank you. Members, ready to vote? Okay, all in favor, please raise your hand. Any opposed? Director?

It was moved by Mr. U`u, seconded by Mr. Iaconetti, then unanimously

**VOTED: To Approve the County Special Use Permit.
(Assenting - B. U`u, W. Iaconetti, K. Hiranaga, J. Guard, W. Mardfin,
D. Domingo, J. Pawsat, w. Hedani, J. Starr)**

Mr. Hunt: I'll record that as unanimous: nine in favor, zero against.

Mr. Starr: Okay.

G. COMMUNICATIONS

- 1. KAK II, LLC requesting to amend Condition Nos. 4 and 11 of a Special Management Area Use Permit to provide twelve (12) after-the-fact and three (3) proposed retaining walls in conjunction with the 90-lot Ke Alii Kai II Subdivision single family residences on approximately 28.57 acres of land at TMK: 3-9-019: 004, Kihei, Island of Maui. (SM1 2003/0013) (L. Callentine)**

Ms. Callentine: Good afternoon again, Commissioners. In the interest of time, I think you've seen the report. What I'd like to point out is this is an amendment to a special management area permit that was passed by previous Commission. This actually is a – the reason this came before us is because of a technicality because you have to approve amendments. So we could not approve this administratively otherwise, we would have. This is a 90-lot subdivision that the preparers of the special management permit and plans were under the impression that they had included retaining walls in their application. This is a sloped site so they did have to do retention. So they went ahead and constructed nine of 12 – 12 of 15 total walls without permits. And when they went in without a special management area permit not knowing that it wasn't included, that was caught at the building permit stage, and basically, our Zoning Division came back and said, wait a minute, these walls aren't on the plans. So 12 of the 15 were – had already been constructed. So an after-the-fact processing fee was levied against the applicant. They paid that fee. Now there are three additional walls they would like to construct. And so the amendment request is to approve the 12 that have been constructed and the three will be constructed. Thank you.

Mr. Starr: Okay, Members, any questions on this? Commissioner Hedani?

Mr. Hedani: Livit, the fees amounted to over \$50,000 worth of fees? Are those fines or—?

Ms. Callentine: No, they are fees, yeah. They are established by the General Fund – by the – sorry, the general fees and the fee schedule of the County. And they're based upon valuation and percentage of completion of the work and substantial – the nature of the work, whether it's substantial or minor.

Mr. Starr: I have a question which is, are any of these walls adjacent to other properties outside of the subdivision? And if so, are any of those tall-bearing walls?

Ms. Callentine: I believe that there may be one that's actually– Could I ask the applicant's representative to come forward? So most of the walls – if you will look at your Exhibit 8, Exhibit 8 will actually show you where the walls exist. And so the question was asked was, are any of the walls bordering another property, and it looks to me like there's only one. And that would be shown as with the – a black circle with the white – a white – two in the middle up at the top, lefthand quadrant of your Exhibit 8, does everybody see that?

Mr. Starr: Yeah, go ahead, Rowena.

Ms. Rowena Dagdag: Commission Members, my name is Rowena Dagdag. I'm from the Planning

Firm of Munekiyo and Hiraga representing the applicant. I do have a larger size of the site plan that's in your packets right now if any of you would like to have a copy of that. Should I pass that out?

Mr. Starr; I don't know if we need it.

Ms. Dagdag; Okay.

Mr. Starr: I know— The Director just showed me there's one wall that's to an adjacent property that's the school, and it only looks like it's about two feet high.

Ms. Dagdag: Yes.

Mr. Starr: So I think that my concerns are swayed by that.

Ms. Dagdag; Lot 7.

Mr. Starr: Yeah. Commissioner Hedani?

Mr. Hedani: A question for Public Works as to whether or not they have any concerns of the walls that abut the drainageway.

Mr. Starr: I think we lost Mike.

Mr. Hedani: Oh, forget it then.

Mr. Starr: Oh, there he is. Mike, we had a question for you whether Public Works has any concerns about the walls that abut the drainageways on this. Sorry to put you on the spot.

Mr. Michael Miyamoto: Thank you, Mr. Chair. We have no concerns at this time. In checking with staff, they are going through the process.

Mr. Starr: Okay, thank you. Okay, Commissioner Hedani?

Mr. Hedani: I'm sorry. They didn't have the staff recommendation.

Mr. Starr: Yeah, we also didn't have public testimony either. So seeing no great fervor in asking more questions, we're gonna see if any members of the public wish to give testimony on this. If so, please raise your hand or make yourself known. Not seeing any, public testimony is over. And with that in mind, we'll ask for our staff report in as brief a form as possible.

Ms. Callentine: Yes, Commissioners, the Planning Department does recommend that you approve this request. And we would just amend Conditions No. 4 and 11 to reflect the changes in the site plan.

Mr. Starr: Okay. Thank you. Commissioner Hedani?

Mr. Hedani: Move to approve.

Mr. Starr: With the conditions per the staff?

Mr. Hedani: Move to approve as recommended.

Mr. Starr: Okay, whoever seconds it?

Mr. U`u: Second.

Mr. Starr: Okay, Commissioner Hedani, seconded by Commissioner U`u I saw first to approve as recommended. Any discussion, amendments, whatever? Not seeing any, everyone in favor, please raise your hand. Any opposed? Okay, unanimous.

It was moved by Mr. Hedani, seconded by Mr. U`u, then unanimously

**VOTED: To Approve the Request to Amend the Special Management Area Use Permit as Recommended.
(Assenting - W. Hedani, B. U`u, K. Hiranaga, J. Guard, W. Mardfin,
D. Domingo, W. Iaconetti, J. Pawsat, J. Starr)**

Mr. Hunt: We'll note that as unanimous in favor.

Mr. Starr: Okay, thank you very much.

Ms. Dagdag: Thank you.

Mr. Starr: Thank you, staff.

C. PUBLIC HEARINGS

2. MAUI FAMILY YMCA requesting a Special Management Area Use Permit in order to expand the Central Maui Facility at 250 Kanaloa Avenue at TMK 3-8-007: 127, Kahului, Island of Maui. (SM1 2007/0009) (J. Buika)

Mr. Jim Buika: Good afternoon, Chairman Starr, Commissioners. My name is Jim Buika with the County Planning Department. I would like to thank each of you for your expertise in your time and commitment to the citizens of Maui.

I have with me Glenn Tadaki and Jason Medema of Chris Hart and Partners who will present the details of the project to you in a short power point presentation. We also have Mr. Mike Morris, Executive Director of the YMCA with us today to answer any questions you may have.

I will begin by providing some introductory remarks regarding the review process for the special management use permit application, and then turn it over to Glenn and Jason to provide you with

the details of the project.

They are requesting a special management area use permit both to refurbish and to expand the existing Maui Family YMCA facility. It'll expand the facility approximately – it'll double it in its size from 17,000 square feet current to about 35,000 square feet. The YMCA is located in Kahului on a 4-acre lot within the Central Park district boundary, and it borders Wailuku across from the War Memorial Complex and adjacent to the Keopulani Regional Park.

Regarding the environmental review process, the project application has not previously come before you during the environmental review process because the Maui County Parks and Recreation Department was the accepting authority on the environmental assessment. The combined SMA application and the draft environmental assessment was distributed by the Planning Department to 25 State, Federal, and County agencies and departments for review and two private utilities organizations. All of the agency comments are summarized in Table 1 in your report beginning on page 16. Table 1 has references to all of the agency comment letters that are also included in the report. All the agency requirements and comments were incorporated into the draft EA to create the final environmental assessment. And the Maui County Park and Recreation Director and staff reviewed the final EA document and issued a finding of no significant impact on June 2nd 2008. The FONSI letter is Exhibit 15. And then the FONSI was published for 30-day public comment and that is included as Exhibit 25. The project was also presented to the Urban Design Review Board in February 19th 2008, and the UDRB had two comments that are included as Exhibit 16 and as conditions of the project.

I'd like to conclude my introductory remarks by stating that other key exhibits include a completed traffic mitigation report, a preliminary drainage and engineering report, a cultural impact assessment was completed, and the State Historic Preservation Division has concurred on an archaeological monitoring plan for any grading and grubbing. So this concludes my introductory comments. And with the Chair's permission, I would like now to ask your permission to have Glenn Tadaki and Jason Medema give a short presentation on the project.

Mr. Starr: How long will their presentation be?

Mr. Buika: Approximately ten minutes.

Mr. Starr: Okay.

Mr. Glenn Tadaki: Good afternoon, Chairman Starr, Members of the Maui Planning Commission. My name is Glenn Tadaki. We're planning consultants of the Maui Family YMCA. I'm with the landscape and architecture planning firm of Chris Hart and Partners. With me today is Mike Morris, Executive Director, of the Maui Family YMCA; Jason Medema, of our office; Jim Niess, of Maui Architectural Group; Stacy Otomo, of Otomo Engineering; and David Surida, of our firm, will speak to landscape architecture if there are any questions.

The YMCA site is located in the State urban district. It's zoned for Maui Central Park District uses by Maui County zoning. The site is also designated for park uses by the Wailuku-Kahului Community Plan. As you can see on this map, the subject property is located within the limits of

the special management area for this portion of the Island of Maui. This is an aerial perspective of the YMCA site, which is located here and the surrounding area. As you can see, it's in an area of existing urban development largely characterized by Keopulani Regional Park, the War Memorial Complex, residential properties on the west, the Baldwin High School on the west as well, residential properties to the south, Queen Kaahumanu Shopping Center, Maui Community College, Harbor Lights Condominiums, Maui Police Department, Cameron Center, and Maui Memorial Medial Center all within the vicinity.

This is a view of the current facility with the west – oh, I'm sorry, east-facing orientation. This is another view of the facility with the camera facing north. This is a view taken from Keopulani Regional Park facing northwest with the YMCA in the background. This is part of their property as well with the tents erected. This is a view of their current parking lot with the camera facing southwest orientation, and another view of the existing facility with the camera facing west. This is a view of the adjacent Keopulani Regional Park camera facing northeast. And a view with single family residential properties in the background and Kanaloa Avenue in the foreground.

I know public mass transit is an area of interest to the Maui Planning Commission so we included a couple of slides illustrating the existing bus stops. This is one bus stop positioned in front of the YMCA. This is on Kanaloa Avenue. And another bus stop which is located across Kanaloa Avenue just south of Mikohu Loop. So the YMCA is well serviced by these two bus stops.

This is a street scene of Kanaloa Avenue with the camera facing in a southward orientation, and another view of the YMCA facility with the camera facing south. This is taken across the street from – on Kanaloa Avenue. At this time, I'd like to turn things over to Executive Director Mike Morris who will basically speak briefly about the project need.

Mr. Mike Morris: Thank you, Chair. Thank you, Commissioners. We certainly are in need of growth in our YMCA. For the last eight years, we've seen tremendous growth mainly in our family membership area. A proto typical Y across the country which there are 2,689 YMCAs as of to date, a proto typical Y serving the amount of folks that we do today is a 45,000 square foot building on 11 acres. That's a proto typical Y. Even when we're finished with this, we won't reach what we need in our size.

Let's switch to the next slide, and you can see our growth in membership over the last – I think this is from 2000 'til 2008. What you don't see there is the amount of family membership. This is total membership. Family membership has grown 224% in that same time period. The other thing that you may notice is the majority of the people that we serve aren't Y members. They're participants that learn swim lessons, participate in childcare or one of the other many programs that we do at the Y, and I'll leave it at that. Keep it short.

Mr. Starr: Thank you.

Mr. Medema: Good afternoon, Mr. Chairman, Members of the Commission. Once again, I'm Jason Medema with Chris Hart and Partners. And I will take you through the remainder of the presentation. In the interest of time, I'm going to just breeze through the architecture. You can ask the architect and landscape architect questions if you like afterwards. They're all here for you.

The project profile—this is an 18,000 square foot addition roughly to the existing YMCA which includes a new outdoor family swimming pool, gymnasium, aerobic exercise room, locker room and showers, other amenities. In addition to this SMA, we've been through the draft and final environmental assessment process which also require NPDES, building, plumbing, electrical, and grading permits.

The project will be done in three phases. The first phase is rehabilitation and remodeling of the existing structure, and site work, and a two-story addition. The gymnasium and the second pool are coming in later phases based on funding primarily. Here's a preliminary phasing plan for you. The future pool, phase two, is gonna be constructed adjacent to the existing family pool. And this is the future gymnasium to be constructed as part of the third phase. The rest of this existing structure here and then the addition, two-story addition are part of the first phase. See, the concept, the site and landscape plan, there's quite a bit more landscaping being added to the site that we have for screening and shading.

Here's the first floor plan: the basketball courts, racquetball courts, aerobics' room. Second floor plan will include offices and conference room upstairs.

Exterior elevations: this is west facing from Kanaloa Avenue. This is what you'll see from the rear of the building with the gymnasium. From the park northern aspect with the building entry. This would be facing across the parking lot if the park was behind you. And then this is from the south.

Here's an oblique aerial view showing a rendering of what the new building ought to look like. And this is the conceptual building elevation from the front entry. There's going to be parking spaces that are here currently that are gonna be removed and converted to a loading zone. Here's the new pool. This is a concept rendering of some of the interior features. This will be the members' lounge, the wellness area, and the building program also calls for the gymnasium. And there are a number of green building features and strategies incorporated into the plans for the building on this site and landscape side. A lot of it was to, of course, to minimize disturbance, minimize water use, and maximize shading, minimize heat island. We'll also be putting in bike racks which in addition to the well – being served well by public transit, fits in with the Y's mission of keeping people healthy and cuts down in driving.

Mechanical elements include the heat recovery of the mechanical system to heat the pool, a thermal mass storage system for cooling, solar hot water, low-flow shower and restroom fixtures, energy star appliances. And of course, they're reusing the existing building. Basically 50% of the structure roughly is gonna be existing, pre-existing. Maximize wall and roof installation, low . . . (inaudible) . . . finishes, and of course, locally-produced materials and construction materials, including recycled . . . (inaudible) . . . as well.

A traffic study was done by Phillip Rowel who's on Oahu. This is generally not seen to be a high traffic impact project. The major issues were found to be with parking lot circulation. And there was actually a recommendation that there be a second driveway added for various reasons of, you know, cumulating a conversation with Public Works where they recommended against that. That wasn't seen to work, but what is going to happen is the existing driveway is gonna be widened to

three lanes, left-out, right-out, and ingress. Then there's a – Kanaloa Avenue in front of the project site goes from four lanes down to two, and it's got this weird sort of – it kicks you over to the left before you have to take a right-hand turn into the Y parking lot. So essentially what's going to happen is this project – part of this project is going to be re-striping along Kanaloa where it becomes a right-turn deceleration lane, and into the project driveway. With that it was seen that we'd mitigate any circulation problems involving traffic backing up onto Kanaloa. And that was the only – seen as the only risk from a traffic mitigation standpoint for this project. Here's a view of Kanaloa Avenue. You can see that strange left-hand turn thing. Okay, so bike lane facing north – streetscape scene. That's it. At this time, I'll turn it over all of you for questions and comments.

Mr. Starr: No, you'll turn it over to the Chair.

Mr. Medema: Thank you, Chair.

Mr. Starr: Okay, thank you. Members, questions? Dr. Iaconetti?

Mr. Iaconetti: This may not be appropriate at this point, but could you explain briefly the economic support of the YMCA? Where does it come from?

Mr. Buika: May I ask the Executive Director from the YMCA to – Mike Morris?

Mr. Morris: The majority of our funds come from our membership, our program fees, and contributions—those three areas of funding for the Y.

Mr. Starr: I wanna follow that up. Are all three phases funded?

Mr. Morris: Not yet. We are in a capital campaign. The goal for the capital campaign is ten million dollars. We are currently at 3.788 million.

Mr. Starr: How far is that – will that take you through phase one?

Mr. Morris: It won't take us through phase one. Our goal is to hit through phase one by the end of this year.

Mr. Starr: Okay. Commissioner Mardfin?

Mr. Mardfin: I'd like to do a followup on the followup. You said the majority are from programs, memberships, and contributions. Can you break that down? If you gave me the percent contributions, that would help.

Mr. Morris: About 15%.

Mr. Mardfin: And so the other 85 is from memberships and programs?

Mr. Morris: Yeah. We're about a 1.9 million-dollar annual budget. And that's up from a million dollars eight years ago. So you can see the growth. It's really quick.

Mr. Starr: I've got one for Jim Niess. It looks like your going with trying to build a green – what other energy stuff–? Are you gonna insulate it well and use ASHRAE on air-conditioning? ASHRAE standards and that sort of thing? How far are you gonna go with that?

Mr. Jim Niess: Absolutely. We're gonna go as far as we possibly can. We're studying a photo voltaic system now at this point. And the daylighting aspects have been pretty well addressed where we've got clear-story windows bringing in north light. We're trying to light up the gymnasium as a distributor of daylight into the entire facility. The curved roof drops to the south to reduce thermal exposure. If you've got a second, there is a whole page of issues that we're trying to do. Jason touched on the minimal land disturbance. Of course, we're gonna storm water management. We have bike racks. The lighting are all gonna be fluorescent fixtures, of course, and downlighting to reduce light pollution. We're gonna use skylights, insulated skylights. And we've got a whole window wall along the east side of the gymnasium again to fill that big volume with daylight. We're gonna use BMP practices in the construction. The roof will be fairly reflective again, to reduce thermal buildup. The hot water heat recovery system that Jason mentioned will help the hot water production which there's a lot of in this facility because of the locker rooms. We're using, of course, variable . . . (inaudible) . . . and the ASHRAE standards that are contemporary. We're gonna take some of the hot air out where you've got a very tall profile tower down the middle to remove hot air and pre-cool the structure. And Jason kind of mentioned the other issues. Irrigation water—we're gonna try to develop our – well, there is a County well we'll be using, and David can talk to that issue a little more. So these are some of the concepts we're trying to employ here.

Mr. Starr: It looks like a good design. And from your list up there, I saw at least LEED certification numbers, if not LEED silver, if you're – are you gonna go for it?

Mr. Niess: You know I'm gonna defer that question to Jason who's our environmental specialist.

Mr. Starr: I mean, you got the points.

Mr. Medema: Thank you, Jim. Thank you, Mr. Chair. My understanding from conversations with Mike is that, in fact, this building had energy use as a specific goal at the outset of project planning back in 2004. And probably I would have to – you might have baseline certification to go through. The documentation and administrative cost to go and check that out, you know, I'd have to incur that and get back to you. I guess the point being is it's got very ambitious environmental goals, and the – as you know, the best way to really ratchet up the cost on a LEED project is to not think about it from the very, very beginning. You know at the time that this came on to the YMCA's radar, LEED wasn't really on the radar on Maui. In fact, the current version 2.2 did not even exist at that time. And when this project actually gets built, they're going to be into the next generation of LEED, LEED 2009. So while it'd probably be a matter of best practice, in all practicality, it'd be a tough thing to tack on now when the project is undergoing fundraising still as it is. But most of those features that are being used, you're correct, they're common to a lot of LEED's buildings—some of the strategies are. They're going for a lot of the I'd say lower hanging fruit maybe, you know, high solar reflectivity, you know, staying away from the really, crazy, off the grid stuff, but you know, putting a lot of fairly orthodox, good, solid, green building protocols in there.

Mr. Starr: It seems like, you know, from your list, you're gonna be there. You might as well take –

go through the paperwork and take the credit for it, but anyway. Commissioner Mardfin?

Mr. Mardfin: I'd like to do a followup on this. On Exhibit 16, there's a letter from a Jeffrey Hunt, which talks about – it says in paragraph – not paragraph two, but item no. 2 that:

The Urban Design Review Board has requested the applicant to consider the flexibility to add regular lighting in addition to the planned solar lighting noting that solar lighting can be as much as three times the maintenance cost of regular lighting that solar lighting requires heavy metal batteries to store the solar generated electricity.

And I was – and I don't see a comment to that letter. Can you explain what the issues are for me?

Mr. Medema: Well, that's an interesting tradeoff in sustainable building strategies is that some of them, you know, get say energy savings on your lighting, but that came from Anthony Riecke-Gonzales. And yeah, I guess it's just a matter of how you look at it. There are pollution and disposal costs for some of the metals – heavy metals that the batteries and those lights use. You do have extra maintenance costs. It's sort of – you know, we took that comment to be a recommendation to seriously consider the tradeoffs before, I guess, committing to that technology as a parking lot lighting scheme.

Mr. Mardfin: But that plan is not to add the regular – as they suggest, to add regular lighting in addition to–?

Mr. Medema: I believe the comment was to maintain the flexibility to keep that as an open option.

Mr. Mardfin: Okay.

Mr. Starr: Director Jeff?

Mr. Hunt: For several reasons, there's a real push in community planning to emphasize transient – use of transient. I didn't quite understand–do buses actually pull into the parking lot here, or is there a bus stop nearby, or could you just explain?

Mr. Medema: It's – there are two buses along Kanaloa Avenue. And the – it's the Wailuku loop and the reverse loop bus routes. So they actually serve the general public and stop. As far as I know, I think it just pulls into that curb lane. There's been discussions about – have we talked about working with the County and putting in a pad there in the right-of-way? You guys can probably see it better if we pull up the slide for you. There's it is. There's a fairly wide curb lane, yeah. And so it sort of pulls up along the sidewalk.

Mr. Starr: Please, use the microphone.

Mr. Tadaki: Glenn Tadaki with Chris Hart and Partners. The bus pulls up along curbside to allow passengers to get on or get off. It's located just in front of the YMCA property. Across the street just to the west of the western portion of the Mikohu Loop intersection with Kanaloa Avenue, there's

another bus stop location. The bus stop also pulls curbside at that location to load or offload any passengers. There are no – well, it's my understanding that the County is looking at establishing bus stop shelters. They've gone so far as to establish design criteria for bus stops. And they're in the process of evaluating all the various bus stops for appropriate improvements to accommodate passengers waiting.

Mr. Hunt: Thank you.

Mr. Starr: I noticed that in your submittal, the nearest bus stop was .42 miles back at Kaahumanu. So it looks like it's been – stops had been added on Kanaloa subsequent to the original submittal which just goes to show that the system's expanding.

Mr. Medema: We found some more that were closer.

Mr. Starr: Okay. Thanks for doing the analysis. Doc, did you have something?

Mr. Iaconetti: Not to beat a tired horse, but did you receive funding from the County or State?

Mr. Morris: Thank you for your question. Yes, we do in regards to the capital campaign. We don't in operating dollars in our annual budget.

Mr. Iaconetti: Is there an association of YMCAs nationally that help support you?

Mr. Morris: No, we are self-supporting. All of our money is raised and used on Maui. We are a part of the YMCA of the USA. It provides training and expertise in doing new buildings.

Mr. Iaconetti: Thank you.

Mr. Starr: Commissioner Mardfin?

Mr. Mardfin: Could you go to Slide 19? That looks very strange to me. Could you explain why that went down twice? Three times?

Mr. Morris: Membership increased, fee increased.

Mr. Mardfin: Oh, fee– So every time fee increased–

Mr. Morris: Because typically what happens when we do a – and our number is 3%, when we do a 3% increase, we'll see a drop for a year, and then it goes back up.

Mr. Mardfin: And it's too far away for me to see. What's the horizontal access? Is that annual?

Mr. Morris: 3,600. I think it's starting down at 24? Is that the number?

Mr. Mardfin: No, I'm asking the other–the horizontal access, 1994, and every dot is annual?

Mr. Morris: Yes. (Inaudible)

Mr. Mardfin: Okay, thanks. Could I ask another--?

Mr. Starr: Yeah, a quick one.

Mr. Mardfin: I'm sorry. This is sort of a technical one. You talk about -- on page 20 and 21 of the report, you talk about the age distribution, and that there's an increase in demand over the next 20 years, but I couldn't tell whether that was from 1987 or from 2002. It's on page 20 and 21. On page 20 you talk about -- this is from the Wailuku-Kahului Community Plan for 1987, updated in 2002. And then the top of the next page you say over the next 20 years, there'll be an increase demand. Is that 20 years from '87 or 20 years from 2002?

Mr. Morris: I'm sorry, I can't answer with expertise here. Yeah, sorry.

Mr. Mardfin: Okay.

Mr. Starr: Okay, can we move along to public testimony now? Okay, any members of the public wishing to give testimony on this item, this item only? Please make yourself known. Not seeing any, public testimony is closed. Are we ready for our recommendation? Yes, Jim?

Mr. Buika: Thank you, Mr. Chair. Regarding the conclusions of law, the special management area use permit application complies with the 12 applicable standards of the special management area. These applicable standards are listed on page 5 of the Department report dated September 9th 2008. The Planning Department based on the facts presented in the Department report finds that the proposed action will not have a significant adverse environmental or ecological effect provided that mitigation measures are incorporated into the project. The proposed action essentially meets the objectives, policies, and guidelines of the SMA rules. And the proposed action is consistent with the County zoning and the Wailuku-Kahului Community Plan. Regarding the Departmental recommendation, the Maui Planning Department recommends approval of the SMA use permit application request subject to the 14 standard conditions and 18 project specific conditions as stated in the Maui Planning Department's recommendation memorandum to the Maui Planning Commission dated September 9th 2008 meeting in front of you. The standard conditions again can be found on page 5 through 7 and then the project specific conditions can be found on page 7 through 9 of the Department's recommendation memorandum. Would the Chair like me to read any of the--?

Mr. Starr: No. Does any Member need any clarification regarding any of the conditions? No, thank you, Jim.

Mr. Buika: Okay. May I--? I'd just like to actually change potentially one standard recommendation.

Mr. Starr: Yeah, please read the old and then the new one.

Mr. Buika: Okay, sure. It's the standard condition no. 3, which is, "The final construction shall be in accordance with the preliminary plans revised in the SMA application received by Maui County

Department of Planning on July 24th 2008.” And what I would like to do is have the plans that are represented today and in your report for September 9th. So I’d like to just change the date for that standard condition no. 3 to read, “The final construction shall be in accordance with preliminary plans in the revised SMA application received by the Maui County Department of Planning on September 9th 2008.” And the reason there is just a – there’s a slight change.

Mr. Starr: Okay, anything else?

Mr. Buika: That’s it.

Mr. Starr: Okay. Members? Commissioner Hedani?

Mr. Hedani: Move to approve as recommended and amended.

Mr. Iaconetti: Second.

Mr. Starr: Doc got there first. Moved by Commissioner Hedani, seconded by Doctor – Commissioner Iaconetti to approve as recommended. Okay. Looks like we’re ready for a vote. All in favor, please raise your hand. Any opposed? Okay.

It was moved by Mr. Hedani, seconded Mr. Iaconetti, then unanimously

**VOTED: To Approve the Special Management Area Use Permit as Recommended.
(Assenting - W. Hedani, W. Iaconetti, K. Hiranaga, B. U’u, J. Guard, D. Domingo, J. Pawsat, J. Starr)**

Mr. Hunt: We’ll note that as nine in favor, zero against.

Mr. Starr: Okay, congratulations. Keep up the good work. Keep raising the money. Get it built. Hey, Jim, good project.

- 3. MR. JEFFREY S. HUNT, Planning Director transmitting Council Resolution No. 08-48 containing A Bill for an Ordinance to Change the Zoning from A-2 Apartment District to PK-4 Golf Course Subdistrict for the Kaanapali Golf Courses Property at TMK: 4-4-013: 003, 4-4-008: 009, 4-4-008: 010, and 4-4-008: 014, Kaanapali, Island of Maui. (CIZ 2008/0007) (R. Loudermilk)**

Ms. Loudermilk: Good afternoon, Commissioners. As indicated before you today regarding Council Resolution requesting a change in zoning from the A-2 apartment district to the PK-4 golf course park for portions of the Royal Kaanapali Golf Course on approximately 71.685 acres of land. I’d like to provide you with a power point presentation at this point in time.

As indicated, this request is from Maui Council Resolution No. 08-48 passed earlier this year requesting the change in zoning from the A-2 apartment district to PK-4 park district for

approximately 72.61 acres of land. The - two of the properties before you today are owned by the Employees Retirement System of the State of Hawai'i. And those would be the - these two parcels-the green color-Exhibit 1 in your packet. And then a - approximately one acre portion along Honoapiilani Highway by Kaanapali Land Development. Current land use designations: State-Urban; West Maui Community Plan-PK golf course; zoning is A-1 apartment district; and it is located in the special management area.

To your right is the original zoning map adopted. The colors are not correct. This will come into play when we talk about of how the rezoning occurred. And then to your left is the West Maui Community Plan. And you see golf course designation surrounding the area comprising the property.

Back in 1991, the Council adopted Ordinance 20-31 also known as Bill 56. And what that did it established a park zoning district. Also, it automatic rezoned a number of properties to the PK-4 golf course if the properties were County zoned agriculture, interim, residential, or hotel.

The other portions of the Kaanapali Golf Courses were part of the automatic rezoning. This would include all of the lands mauka and portions of the property below Kekaa Drive. The properties that are part of this request were not rezoned to PK-4 as they were zoned A-2 apartment district. The change in zoning would provide conformance with the West Maui Community Plan.

The golf courses had been identified for golf course use as well as providing open space values within the resort going back to 1968 with the original adoption of the General Plan for the Lahaina District also known as the West Maui 2001 General Plan renamed in that district for the Lahaina Community Plan first adopted in 1982, and then renamed the West Maui Community Plan which was adopted in 1996.

The change in zoning will reflect the existing use of the property. When golf courses were constructed in the 1960s and '70s, which both of these courses were, a golf course use was a permitted use in the A-2 apartment district. However, golf courses are no longer a permitted use in this district. Additionally, the property is located in the special management area, and any development would require a special management area permit. For these particular properties we would be unable to process any special management area permit as the land use consistencies between the State urban district, community plan land use and zoning are not there. Thus, the Department would not even be able to process or issue a special management area permit for any of the properties.

The ERS became the owners of the golf course in 2003 through a foreclosure action against Amfac, Pioneer Mill, and Amfac Properties. The golf courses themselves cover approximately 305 acres. The request covers approximately 72 acres with the remaining acreage already PK - zoned PK-4.

As indicated earlier through testimony as well as a letter that's part of your exhibits, the ERS has concerns that the rezoning will diminish the highest and best potential of the property. Further, the ERS has a fiduciary duty to manage all assets for the beneficiary, by the way which I am one. And they believe that this rezoning will affect property valuation. The valuation of the golf courses has fluctuated from a high of a \$125 million in 1991 to a low \$18 in 2003. The current valuation is

approximately \$35 to \$40 million. The importance of the valuation to the ERS is that the property assist to reduce any unfunded liabilities that the ERS may have.

What I have here is the County of Maui real property tax assessments for the property. This is for the makai properties which are - which the top two numbers: 4489 and below that 10 are before you today. I've included the zoning, the current assessed value by real property tax. The RPT categories would be the taxation rate. 2008 RPT taxes are the amount of taxes paid in 2008. And 2003 real property taxes, I've also included. And I've included the 2003 because that was the year in which the ERS acquired the property when it was valued at \$18 million.

So in terms of the categories, all of the categories of the golf course are conservation. Based upon real property tax, the classifications are based upon the highest and best use. We - there are a number of tax classifications: improved residential, apartment, commercial, industrial, agriculture, conservation, hotel and resort, unimproved residential, homeowner, and timeshare. The lowest valuation is with agriculture at 450. The next is conservation at 475.

These are the numbers of the mauka property which is not part of your request today. However, all of those properties are zoned PK-4.

Mr. Starr: Excuse me, Robyn. These charts, are these in our handout?

Ms. Loudermilk: No.

Mr. Starr: Oh, okay.

Ms. Loudermilk: No, the charts are not. I can make copies of the power point and hand them out.

So again, categories are conservation. However, there are two lots identified as unimproved residential. And again, the real property taxes paid in 2008 are less than the real property taxes paid in 2003. Now, I do realize that we are talking apples and oranges, but I'd like to explain after going through these slides.

Part of the information provided by the ERS is that there are trends in various national golf course surveys indicate that play is declining. And should this continue, the ERS may redevelop portions of the property, and this is one scenario: instead of two 18-hole golf courses, there may be one - one 9-hole executive golf course, and then the remainder of the property potentially, developed for apartments or some other use other than golf course.

Importantly, there was some talk about this earlier that any future development proposal will require a review as part of the General Plan and community plan updates. And should there be any consideration for any individual considerations, we would not necessarily support that at this period in time.

Now, getting back to the valuations, and I do realize we are talking apples and oranges when we're talking about real property taxes versus valuations that are done for other purposes, but what I wanted to get across is that two-thirds of the property is already zoned PK-4 prior to 2003, prior to

the ERS obtaining the property. The property has continued to increase in value. And the change in zoning would at a minimum keep the existing value of what's there right now. They're talking about future development proposals. Now how that gets incorporated into valuations that is not for me to say. That is not my area. However, what I do know is that any improvements that they would want to include on those portions of the property could not be done. And that those - part of the task that the ERS is working on right now are improving the golf courses. They've just completed the portion of the golf course mauka. They- Next would be the makai. However, should they come in for the makai, they will not be able to do anything, again, because our special management area law would not allow us to process or issue an SMA permit based upon the land use inconsistencies. Community plan golf course does not include apartments. So that's the point that I want to make - get across in terms of uses. We're not diminishing any use. Should they come in today, they would not be able to do the changes that they want to do on the makai property. In the future, they may want the community plan to be updated to indicate that portions of the golf course should be redesignated for some sort of use other than golf course.

So in the short term, what this request would do will allow the ERS to be able to do the improvements on the makai side of the property that they want to do should they want to do that. In the long term should they not get the change in zoning, they'll not be able to do any improvements on this other property, and deterioration could occur. Now, this may be more technical in nature because it's not necessarily based upon the zoning in terms of what eventually could be allowed through this Commission 'cause you have the final say in the special management permit. So that's - that concludes my portion of the presentation.

Mr. Starr: Okay, Members, questions? Dr. Iaconetti?

Mr. Iaconetti: On page 5, next to the last paragraph, "Eventually the property was rezoned to residential, however. West Maui constituents requested that the identified portion of the golf courses be zoned to PK-4 golf course park." Who are the West Maui constituents? Do you have a list of these people?

Ms. Loudermilk: I do not have- These people came out when the Sunstone property- There was a small portion of property located between the two golf courses came in to build apartments. And it was during that time that it was determined that these two portions of the golf course property were not part of the automatic rezoning. For any listing, you should check with Council member Jo Anne Johnson's Office as the resolution came from her office and went through the Planning - the Council Land Use Committee and then was sent to us. And that's taken directly from the resolution.

Mr. Iaconetti: I have a hard time understanding who is - who pushed this forward. I can't believe the Council has that much interest in changing the zoning. And you say you don't have a list of the West Maui constituents. Are there West Maui constituents? Who is pushing this?

Ms. Loudermilk: I would defer to the Council. By Charter, the Council can initiate, and they've chosen to use that power to do that, and sent it down here for us to comment, and make a recommendation, and send it back up. I can't answer your question other than it came from Council. They passed - this was passed.

Mr. Iaconetti: Just- This is probably beyond but it seems to me that if the Council decides that they want to rezone anyone's property anywhere on the island all they have to do is ask to do so, and ask for our opinion on it. That doesn't make sense.

Mr. Starr: Commissioner Hedani?

Mr. Hedani: Maybe I can shed some light on this.

Mr. Starr: Please.

Mr. Hedani: The Sunstone Project was a 1.6-acre parcel that was distinct from the golf course. It was subdivided off back in the '60's. For what reason? I don't know. But it was never a part of the golf course property, per se. That parcel is contiguous with the parcels that are being discussed today. And when Amfac sold that particular property to a developer - three developers later - three owners later, Sunstone came up with a plan for developing five houses on that property. That drew several hundred people that are residents of the Kaanapali area in opposition to the project because they had always assumed that that property was part of the open space of the golf course and they objected to it being converted to single family residential use because it would obstruct their views. It was considered taking away open space.

They took the battle to the Council. The Council opted to try to downzone that property. Sunstone took the position that downzoning it would leave them with worthless property-zero economic value. And therefore, they filed suit against the County to recover the value of their property from the County of Maui. The County of Maui opted not do that because they weren't interested in buying resort residential property to convert a 1.6-acre property to park. The dollars weren't there. They weren't interested in doing that. It would be a million dollars per lot. Five million dollars for 1.6 acres and it didn't make sense. In that particular case, they didn't have an economic use for the property other than what they were proposing. So they did have an argument that would reduce the properties' value to zero. In this particular case - well, once that happened-

Mr. Starr: Wasn't there a swap?

Mr. Hedani: No, the County opted not to condemn. And the developer was told you're okay to proceed which they are. In this particular case, the golf course does have an economic value. Golf courses have at one time been valued a \$150 million for two, 18-hole courses. I personally passed one of those offers to Amfac at one point in time and it was rejected because it was too low. So the value of a golf course fluctuates. And I don't think the same argument can be made that converting to golf course use or park use would reduce the property's value to zero. Because of what happened to the five-acre lot or the five parcels in that 1.6-acre lot, the . . . (inaudible) . . . cry was, well, what if they developed the rest of this 60 acres of 70 acres to take out the rest of the golf course open space? And that was the gist of the Council's request to down zone this property of reclassify this property from apartment to park. That's a quick answer.

Mr. Starr: Robyn, I noticed in your report and also in some of the testimony there is comment that says that the utilization of golf courses is declining. And I may be the least golf savvy person on Maui, but I know that as a national trend, there are more people playing golf now than ever, that the

numbers are huge, but that there - in many parts of the country there have been hundreds, thousands of new golf courses and golf course developments built. So that - you know, I guess it's kind of a misleading number to say that the use is declining because, you know, there's just so many more of them where on Maui there have not been a lot built. I mean, am I correct to feel that that's-?

Ms. Loudermilk: I got that information from the information provided to me from the ERS based upon what they've looked at and trends, but that's a potential. It could happen on Maui. Maybe not. I'm not gonna- I'm- That was just information provided to me that I wanted to share with you in relation to what they're looking at based upon whatever trends, surveys they're looking at. So you may wanna defer that to them.

Mr. Starr: Yeah, but I assume there's no information leading that the golf courses on Maui are suffering because people don't wanna play golf.

Ms. Loudermilk: I'm not aware of that.

Mr. Starr: Commissioner Hiranaga?

Mr. Hiranaga: Well, actually, I am an avid golfer, and I think most resort and semi private courses on Maui are suffering financially because of tourism down too.

Mr. Starr: Just temporarily, though.

Mr. Hiranaga: What's temporarily? Five years? Eight years? Ten years? And, you know, the economic downturn on the resident population because golfing is expensive. No, I think if you go to the parking lots on any golf course after noon, they are almost totally empty, which means the play is satisfied by morning play. There's very, you know- If you have insufficient capacity, the course will be full the entire day. I don't think that's happening. So they are all suffering.

Mr. Starr: Okay. Members? Commissioner U`u?

Mr. U`u: I would hate- We have a lot of projects come before us that ask for a change in zoning. This is one where they're saying let's keep it how it has been. And I've heard testimony saying that they're not gonna be able to build even though it's zoned, and there's complications that might arise to stop them from building. But I would rather take the owners of the property and let them decide their fate without me stepping in front, and saying, hey, you should rezone your property. It's a benefit for you. That is - I feel that's not my job to intervene on the owner's behalf to rezone something they don't want zoned. And I heard prior to testimony that the Council wasn't privy of this information. So that's not gonna be up to me. I'm gonna vote against it. I'm gonna vote against the zoning change. I cannot go against the teachers, underpaid, by the way; the firemen, who risk their lives. And they telling me, hey, Bruce, can't, cannot. Well, guess what? I going with them, and I going vote no. I cannot do this. So good luck to the Planners and good luck to you.

Mr. Starr: Okay, Commissioner Hiranaga?

Mr. Hiranaga: I had a question regarding your statement that because of the inconsistency between the underlying zoning and the community plan designation that they would be unable to obtain an SMA permit. If you're doing repairs and maintenance to an existing facility under - I guess there's no monetary limit? I mean, if you're gonna spend \$30 dollars to repaint the exterior door, you have to get an SMA permit?

Ms. Loudermilk: No. The special management area rules indicate that prior to even making a determination whether it is exempt because it's repair and maintenance, we have to make a determination on one of five criteria. One, the proposed action is exempt from the requirements as it's not a development. Two, the proposed action requires an SMA minor permit. Three, the major permit. Four, the emergency permit. Or five, the proposed action cannot be processed because the proposed action is not consistent with the County General Plan, community plan, and zoning unless the General Plan, community plan, or zoning plan application for an appropriate amendment is processed concurrently with the SMA. So the way that our rules read, we cannot - they might say, repair and maintenance - and I'm saying "repair and maintenance" like they wanna do major changes to holes, not mowing grass, not painting the door, not changing the color of the flag, but if they're looking at reconfiguring and a lot of earth-movement, by our rules, we cannot even say that it's exempt because of the land use consistencies. And that's based on our rules.

Mr. Hiranaga: Follow up question: since this is a nonconforming use because, I guess, previously under A-2 zoning, a golf course development was a permitted use, and so now it's considered nonconforming, that doesn't provide them any grandfathered right as regarding to SMA permits?

Ms. Loudermilk: No, it does not.

Mr. Starr: Commissioner U`u?

Mr. U`u: Question: That nonconforming rock revetments at time, they're allowed to repair themselves even though it's nonconforming. So in this matter, it wouldn't? Is it correct? We've had that before.

Ms. Loudermilk: It's different nonconforming. In terms of the zoning, it's from, as you indicated initially one use was allowed, and then it changed, and got grandfathered in. When it comes to rock revetments, the conformity does not necessarily deal with the land use. It deals with the revetment itself in relation to the shoreline area and the ocean property, not necessarily the zoning. At least that has been my experience. And if the Director or the Corp. Counsel wants to further clarify.

Mr. U`u: No, I understand that part, but in actuality, the rock revetment which is nonconforming is actually damaging where this is not. That's the point I'm making. It is damaging the neighboring landowners and we all know that. So being they haven't built their nonconforming structure, we will not allow them to build anything which at one time was legal. Correct?

Ms. Loudermilk: Could you please-?

Mr. U`u: I couldn't make it as clear- That was as clear as it's gonna get. It was zoned A-2 and it was okay to build back in time.

Ms. Loudermilk: Yes, yes, it was okay to build back in time.

Mr. U`u: Along in the process over time, we made it where it's not allowable to build as we stand now.

Ms. Loudermilk: Yes, yes.

Mr. Starr: Okay, Commissioner Mardfin?

Mr. Mardfin: It took me about an half an hour of reading the thing before I figured out sort of what was going on, but I'm still a little unclear so I wanna ask a question. At the time this comprehensive zoning was given to create the golf courses, automatically, anything zoned rural, urban, residential, interim, I think that was it, all got automatically done, but somehow apartment wasn't mentioned.

Ms. Loudermilk: Correct.

Mr. Mardfin: And so that could've - was probably an oversight at the time. If they'd thought about it, they'd have added apartment and everything, and we wouldn't even be discussing this today.

Ms. Loudermilk: Yes.

Mr. Mardfin: And so we're trying to correct sort of a technical oversight that happened many years ago?

Ms. Loudermilk: The Council has taken it upon themselves to say let's look at rezoning from A-2 to PK-4.

Mr. Mardfin: To be consistent with what they did with all the other zoned properties a long time ago?

Ms. Loudermilk: I think yes.

Mr. Mardfin: Okay.

Mr. Starr: I think the Director has a comment.

Mr. Hunt: The way the Planning Department is looking at this process is it's a matter of consistency with the community plan. Whenever we get a zoning application, change in zoning, the first thing we do is we look to the community plan. In essence, that's what this is. And I understand all the arguments from the Retirement System. And just to be full disclosure, I hopefully in the near future will be a member of that Retirement System, but technically, from a planning perspective, and that's what our job is to do is to analyze it from a planning perspective, I don't know for a fact that there was an oversight back when they did the automatic rezoning, but I think you can make that assumption given the fact that all the golf courses at that time were automatically rezoned and the intent as best as I can tell was to assure that they wouldn't be converted into some other type of development use. I think that assumption has some validity because a portion of this golf course was automatically rezoned so why you only automatically rezone a portion of it. And so, I believe

to the best of my opinion it was an oversight. And now we are correcting that to be consistent with the community plan. In the future, if the owners want to develop the land, they would come in with a community plan amendment and a change in zoning, and we would take a look at that. This isn't locking it up as a golf course forever. It's just saying let's take care of the oversight. Let's make it consistent with the community plan. That's the technical planning analysis.

Mr. Starr: Commissioner U`u?

Mr. U`u: But the change in zoning could be asked to go back to A-2 apartment.

Mr. Hunt: In the future or you mean right now?

Mr. U`u: Well, say we was to let this zoning change go by, and in the future they coming for a change in zoning back to A-2 apartment.

Mr. Hunt: They could. They would have to also change the community plan to apart - or multi family.

Mr. U`u: I know they could. And that's why I not agreeing with it where they have it now. Granted, I took what you said into consideration.

Mr. Starr: Okay, Commissioner Hiranaga?

Mr. Hiranaga: I guess I have to take objection to the Director's statement that this was probably an oversight. I would like to assume that our Councilmembers are very competent in what they're doing and that this was not an oversight, that this - there was intent to eliminate or not include A-2 zoning in their ordinance. And also, I believe the portion that you referenced that was rezoned was zoned R-3. Therefore, was rezoned based upon that Ordinance 20-31. So I guess I have to object to that - to that statement that we have to assume that this was an oversight. I can't agree with that.

Mr. Starr: Objection noted. Members, are you ready for testimony?

Ms. Loudermilk: We do have the ERS people here, if you want to. They put together a presentation. And as a property owner, I think the Department would like to have them have an opportunity to tell their side of the story.

Mr. Starr: How long will that run?

Ms. Loudermilk: Approximately five minutes.

Mr. Starr: Okay, five minutes, they have.

Mr. Mich Hirano: Thank you, Chair Starr, and Commissioners. My name is Mich Hirano with Munekiyo and Hiraga, and we're representing Kaanapali Holdings, as well as the ERS Capitol this afternoon. We'd like to just give a little background on the property for the Commissioners. And then have Jackie Miyamoto - Jackie Ferguson Miyamoto who is the Chair of the ERS to give her

presentation and David Shimabukuro, the Administrator, to just give some comments to the Board.

Mr. Starr: Okay, welcome. Please come up. Is Jackie gonna come up?

Mr. Hirano: (Inaudible)

Mr. Starr: Oh, you're gonna do the-? Could we have the portable mike for Mich?

Mr. Hirano: Thank you very much, Commissioners. Thank you. I'd just like to give some background to the Commissioner - to the Commission on the project. There are three parcels that are being rezoned. And two are owned by ERS. And one is owned by Kaanapali Land Management Corporation. And as Howard Hanzawa had mentioned this morning, I think it's important to note that this change in zoning had occurred - one of the property owners had not even been informed of it. This had been going on for about two or three years. And owning a parcel of land that is subject to a change in zoning and not being informed is really concerning in terms of due process.

This is the subject parcels. It totals approximately 71 acres. The Employees Retirement System owns 305 acres both on the makai side and the mauka side of the Honoapiilani Highway. This is in the heart of the Kaanapali Resort. And although there is this automatic downzoning, the ERS does have and take issue with the process in which that automatic downzoning had taken place and really questions the legitimacy of it.

The stated justification for this action is that the proposed legislation has been introduced at the request of the constituents in the Kaanapali area. And I think these are the homeowners of El Dorado and the Royal Kaanapali Condominium. And they wish to insure that the golf course property and adjacent open spaces are not inappropriately converted to residential use because of improper zoning. The ERS contends that the current A-2 apartment zoning was established by Ordinance No. 297 in 1961 by the County Board of Supervisors. It was one of the nine comprehensive plans and zones that were passed by the Board of Supervisors. It was original zoning really that had been established on Maui and is therefore very proper.

This is a picture of - I took this picture at the Planning Department's zoning map. This is a copy of Map Zone No. 9. And as you can see, the mauka lands were all zoned residential and the makai lands. And this is the subject property was zoned A-2. The ERS also owns a 9.7-acre parcel that's zoned hotel where the clubhouse and driving range are located. And we believe it's still zoned hotel, H-1 hotel.

With respect to community plan and putting the action in the context of the community plan, we would like to note that the Maui Island General Plan is currently being updated. The Planning Department is going through this process with the General Plan Advisory Committee. And they are looking at establishing urban growth boundaries throughout the Island of Maui. In terms of their tourism goals and policies, they state that it's to seek to minimize the impact of visitors on residential lifestyle, our resident lifestyle; limit and define the resort destination areas of Wailea, Makena, Kapalua, Kaanapali; and prohibit major resort development outside these resort destination areas. So we'd like to - I think the plan's intent is to keep the resort areas that are

currently defined, and keep them as well in the future, and not let them grow out of their current boundaries.

The action is then to adopt the directed growth plan that clearly delineates the resort destination areas. And in order to achieve this because in the future there is a need for resort housing, there is a need for residential - resident housing, I think the draft Island Maui Plan in terms of its urban land goals and policies is to promote infill, redevelopment of underutilized lands, and vacant urban lands within the urban growth boundaries. And the Kaanapali area especially where the subject properties are located are currently within the proposed urban growth boundaries. And for the future, it means to promote higher density and more compact urban communities.

The General Plan Update indicates that approximately 4,000 additional residential units are needed to accommodate projected growth in West Maui. This was a Planning Department letter comment to the Land Use Committee saying that as this was being deliberated, this change in zoning action. Another consideration would be to wait until the West Maui Community Plan is updated. The update of the community plan could provide direction regarding the types and amounts of land use designations that are needed in the West Maui area.

The change in zoning for the Kaanapali golf courses and the ERS lands I think should be made in the context of the 305 acres and not just the portion of the lands, not the lands that were automatically or purported to be automatically downzoned from residential to golf course. And especially not these lands that are A-2 zoned and are being downzoned to park golf course. I think it should be done in the context of the overall lands. And the reason for that as you can see is that there is a substantial land area that the ERS owns-305 acres both on the mauka and the makai side.

And some of the features of these lands is that, yes, granted, there is existing golf course use and there will be future golf course use. Open space, and golf course, and buffer zones are very important considerations. And the ERS realizes that and respects that. However, it also has opportunities for community benefit. It has beach access. There's open space and also a need for a future public parking.

So the ERS request the Maui Planning Commission to recommend denial in order to maintain the existing zoning. And this zoning the ERS feels would provide the future flexibility to meet the West Maui community's future needs. And there is a lot of opportunity here and some amenities that currently are not available on West Maui and to the residents of West Maui that I think ERS with sound planning and overall master planning of the lands can make available. So I'd like to just ask Jackie Ferguson-Miyamoto to say a few words and then David.

Mr. Starr: Yeah, very briefly, though, please.

Ms. Jackie Ferguson-Miyamoto: I'm Jackie Ferguson-Miyamoto. I'm the Chair of the Board of Trustees for the Employees Retirement System, and also a 32-year member of the System. And I thank you very much, Chair Starr, for this opportunity to respond to this.

I'm gonna skip a lot of what I was going to say, but I wanted to impress upon you who is actually

affected. Who is ERS? 108,800 constituents statewide. Who are these people? 108,000 of us? We're educators in HSTA. We're workers in UPW, United Public Workers. We're government workers in the HGEA, Hawai'i Government Employees. We're professors and staff of the University of Hawai'i. We're also Police Officers of SHOPO and the Firefighters throughout the islands and the Counties, throughout the State and the Counties. The ERS has a fiduciary responsibility to sustain a system for retirement benefits for all of these people.

The Kaanapali Golf Courses represent a significant asset for the ERS and we believe this proposed action will adversely impact the value and limit the potential of the property. We believe the current A-2 apartment zoning provides future flexibility to address the long term needs of West Maui and provides long term benefits to our Maui constituents and to the greater West Maui community. And therefore, the ERS requests the Planning Commission to recommend denial of this change in zoning application.

Mr. Starr: Okay, thank you very much for coming down to us. And please introduce yourself. Welcome.

Mr. David Shimabukuro: Good afternoon, Chair Starr, Members of the Planning Commission. I'm David Shimabukuro and I'm the Administrator of the Employees Retirement System of the State of Hawaii. I've been with the ERS for over 26 years, and I wanted to just provide some background information as to how we got involved with the Kaanapali Golf Courses.

In 1991, the ERS made a \$60 million-dollar, five-year business loan to Amfac JMB and two of their affiliates. The loan was secured by the golf courses which then had an appraised value of \$125 million. The loan was subsequently restructured and extended to 2001. The borrowers then defaulted on the loan and Amfac JMB filed for a Chapter 11 bankruptcy in 2002. A consensual foreclosure agreement was then negotiated and the ERS took title to the Kaanapali Golf Course lands in 2003. We then subsequently put in \$13 million to renovate and restore the golf courses and to improve our revenues. Although it was never our intent to go out and purchase the golf courses, we felt it was very important that we maintain and grow the value of this asset for our members. We believe the Kaanapali Golf Course lands have a significant potential value due its underline A-2 apartment, H-1 hotel, and R-3 residential zoning. However, as indicated, we are also aware that the community plan must be amended to realize this potential.

In this regard, we note that the Maui County is currently updating its General Plan to look into the future needs of its community to the year 2030. As part of that process, we will request that the County take another look at the automatic downzoning as our position is that there has never been an automatic downzoning of this property. We think this will be in opportune time to look at the Kaanapali Golf Course lands to address some of West Maui's community needs. The ERS has 305 acres all of which is not required for golf course use in the future. We believe that a portion of the land can be developed for more public parking, public beach and waterfront access and housing for the working people of West Maui, many of whom are ERS members. The ERS will commit to work with the County to masterplan the Kaanapali area. This will help protect our members' interests and will be a win-win situation for all. We therefore request the Planning Commission to take appropriate action to deny the proposed zoning change. This will allow the ERS flexibility in the long term planning for the golf course lands. Thank you very much for the opportunity to testify

in opposition to this resolution. Thank you.

Mr. Starr: Thank you. I have a question. Please stay up. I had thought from what the presentations before that really this was just to kind of hold on to the status quo, but allow sort of higher numbers to be kept on the books of the ERS with the potential since it actually books a higher value with the higher zoning. But from what you just said, it sounds like you have an active plan where you actually want to convert these golf courses to apartment buildings and other types of things. Am I correct with that?

Mr. Shimabukuro: This is just a potential. Okay? We are in the process of, yeah, thank you -

Mr. Hirano: Chair Starr, I'd like to just answer that. The value of the golf course is for ERS's accounting is based on its revenue generation return on the investment and it's based on the number of rounds of golf play. So that's how the value is determined. Not on some square foot cost. It's basically based on case flow. And the ERS has been working and looking at upgrading and developing and getting higher potential and returns on their lands. There's no question about it. They've been looking at that.

They're looking at reconvertng some of the restaurants that are there. There's a restaurant parcel there. There's a light industrial parcel that they've been reviewing. So they have been in the, you know, in the land planning portion. They haven't looked at golf course, at the golf course lands though. But this is in reaction in response to this initiative.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: You say the value is based on the revenue generated, so how much is that roughly?

Mr. Hirano: There's a positive cash flow of \$1 to \$2 million and so it's generating, you take that out to about \$35 to \$40 million that's how the value is determined.

Mr. Mardfin: Initially they had made a \$60 million loan. How much of that have been paid off at the time they foreclose.

Mr. Shimabukuro: Nothing.

Mr. Hirano: David said, none of the principle, there was interest but none of the principle.

Mr. Starr: There was a balloon they never paid. Okay, thank you very much. Members, we ready to move to public testimony?

a) Public Hearing

The following testimonies were received at the beginning of the meeting:

Mr. Starr: Okay, I'd like to call the Honorable Georgina Kawamura. Come, welcome. Please introduce yourself for the record.

Ms. Georgina Kawamura: Aloha, and thank you very much for this opportunity. I will be testifying on Item No. 3 which is on your public hearings' list. Good morning, Mr. Chair and Members of the Commission. My name is Georgina Kawamura. I am the Director of Finance for the State Department of Budget and Finance. I also serve as an Ex-Officio Member of the Board of Trustees for the State Employees' Retirement System. The Employees' Retirement System is the current owner of two of the parcels being considered for the change in zoning. Again, this change in zoning request with regard to the Kaanapali Golf Courses. I respectfully request that the Commission deny this request.

My comments today are twofold. First, as a member, as a trustee for the State of Hawai'i Employees' Retirement System. It is my fiduciary responsibility to maintain the value of the System that has the constitutional obligation to provide retirement benefits for our current 108,000 beneficiaries. 12,600 of those beneficiaries live in the County of Maui. Any action to re-zone could potentially impact the value of our System's assets and therefore could impact the welfare of our beneficiaries. More than 795 million dollars of benefit payments were made in the past fiscal year which ended June 30th 2008. And we anticipate very shortly that we will be paying about a billion dollars annually for benefit payments.

Secondly, in my position again as the Director of Budget and Finance, the State of Hawai'i is the largest of the group of six employers that make contributions to the Retirement System on behalf of our respective employees. All counties, including the County of Maui, and the Board of Water Supply of Honolulu are also part of this employer group. We continue to be concerned with the increasing required contribution that helps to reduce the System's \$5.1 billion unfunded actuary accrued liability. This required annual contribution considers the System's assets, our return on investments, and our continuing obligations. Therefore, if you diminish the System's assets, it will have a negative impact and increase our future annual required contributions which come from yours and my tax dollars. I believe the proposed zoning change will have an adverse effect on the value of our properties. I urge the Commission to help us preserve the value of these assets that are owned by the System or the implications to future public dollars could be devastating. Others on behalf of the Employees' Retirement System will be speaking later when the agenda item comes up-I'm sorry, but I have to go back to Honolulu-and will provide a broader discussion of our concerns. I ask you please to consider our comments and do not alter the Systems' ability to provide retirement benefits for our employees. Thank you very much.

Mr. Starr: Okay, thank you. Members, any questions? Commissioner Mardfin?

Mr. Mardfin: Since you're with Budget and Finance, you might be a good person to ask about this-by how much is it expected to harm you - what is the estimated the amount - the value of the property that you'd lose if this is passed?

Ms. Kawamura: Well, right now we don't have that estimate because it would depend on later subsequent appraisals.

Mr. Mardfin: So it might be a dollar?

Ms. Kawamura: I doubt if it would be a dollar.

Mr. Mardfin: Okay. Could it be a hundred million dollars?

Ms. Kawamura: I would not venture an estimate. I would leave it for other professionals to do that.

Mr. Mardfin: Is there anybody in your group that is prepared to make an estimate?

Ms. Kawamura: Well, perhaps with that question now being heard, they may be able to address it.

Mr. Mardfin: Thank you.

Ms. Kawamura: Thank you.

Mr. Starr: Commissioner Hedani?

Mr. Hedani: Chairman Starr, because the Royal Kaanapali Golf Course is a member of Kaanapali Operations, I will be recusing myself from voting on this particular issue. However, I would like to participate in discussion, and to direct some questions to the testifier.

Mr. Starr: Yes, and I hope you would because I think you have the greatest degree of expertise here. Please continue, Commissioner Hedani.

Mr. Hedani: Georgina, I understand the ERS's position relative to fiduciary responsibility to preserving assets. The ERS actually reversed itself into ownership of a golf course, if you will, by default by the fact that they foreclosed essentially on Amfac's loan that it defaulted. So ERS essentially is a defacto owner of the golf course at this particular point in time. From my perspective, I see the golf course as the highest and best use for the property as compared to apartments. Since when the resort was masterplanned, it did not - although it was zoned for apartment prior to the masterplan, it created additional value to surrounding properties by creating open space in terms of the golf course. I don't see it as a diminution of value of the property to keep it in golf course use. From my perspective, I cannot foresee the property ever being converted to apartment use. It fronts 204 units for the El Dorado. It front 105 units with the Kaanapali Royal both of which would launch 204 lawsuits from the El Dorado and 105 lawsuits from the Kaanapali Royal if you decide to build apartments immediately in front of them. It's not gonna happen. So I don't see that there's a diminution of value. It's a hypothetical value if none of those properties were built. But from a practical standpoint, I can't see it ever happening. Do you have any comment on that?

Ms. Kawamura: That was a very, very long question, but yes I will try to comment on it. First, I think, with due respect, I think it's pretty shortsighted if you state today that nothing will ever happen on that property whereas I believe the Planning Department, and it'll eventually come to the Planning Commission is in the process of the broad General Plan overview. In that broad General Plan overview, then going down to Maui Island, and going down to West Side, I think there has to be a recognition of the needs on the West Side. And one of those needs that I don't think is a secret to anybody is affordable housing. Now, if you again leave the flexibility to go through the process of the general fund planning, the West Side planning, and let's see what the community then decides with regard to this. I cannot speak on behalf of 204 residents of El Dorado suing

eventually. I mean, that's one thing that comes with the consequence of making decisions, but that's the hard decisions I think that eventually need to be made in the content of probably a broader overview than just what is being put before you today.

Mr. Starr: Commissioner U`u?

Mr. U`u: Good morning, Georgina.

Ms. Kawamura: Good morning.

Mr. U`u: I'm curious. It went before the Council and it passed. Why was it? And you guys supplied testimony to the Council.

Ms. Kawamura: Unfortunately-and thank you for that question-it did go through the Land Use Committee process, and then the County Council before it sent a resolution down to your Commission. We got into the game very late. And it was on the final hearing of the Land Use Committee, I believe, that we made any comments. And unfortunately, that's an oversight on our part that we will admit to. And so now we are just coming to make sure that we are a part obviously of the process as it moves forward. And these concerns that I've told you today, these are concerns that the members of the Board of Trustees individually tried to speak to the County Council Members also. Unfortunately, they were again pretty well on in their process. So it did - the resolution did pass, and it's now in your hands. Thank you.

Mr. Starr: Doctor Iaconetti?

Mr. Iaconetti: Good morning.

Ms. Kawamura: Good morning.

Mr. Iaconetti: Perhaps you can't answer the question, and perhaps I should be waiting 'til later, but has your group been paying taxes on that property all this time?

Ms. Kawamura: Absolutely.

Mr. Iaconetti: And what sort of taxes? Are you paying hotel taxes?

Ms. Kawamura: Whatever the designated land use is of it right now, that's what we pay taxes on.

Mr. Iaconetti: And in the event that it becomes part of the golf course, will you still own that property?

Ms. Kawamura: Yes, we own the property.

Mr. Iaconetti: And so you'll be paying taxes on it even though you can't use it?

Ms. Kawamura: I don't understand, because we currently own it, and we pay taxes on it, then as

long as we continue to be owners-

Mr. Iaconetti: And if the zoning is changed, you'll still be the owner. And if the zoning is changed, and you're still the owner, are you still paying taxes on the property that you won't be able to use?

Ms. Kawamura: Yes.

Mr. Iaconetti: Thank you.

Mr. Starr: Commissioner Mardfin?

Mr. Mardfin: Can somebody tell me-? It's a question I was gonna ask anyway. If it gets re-zoned, will that change the amount of real property taxes that they pay on it?

Ms. Loudermilk: I'm sure it would.

Mr. Mardfin: Would it lower it?

Mr. Starr: Hold on. I'll ask Planner Loudermilk. We're not really at that part of the agenda, but-

Ms. Loudermilk: Yeah, just to let you know, that's part of the Department's report that we'll be providing to you later on. So those types of questions, if you can please note them and ask them during the presentation. Thank you.

Mr. Starr: Okay. Thank you very much for coming down and wish you aloha.

Ms. Kawamura: Thank you very much.

Mr. Starr: We have next Mr. Alton Watanabe. Thank you for coming to see us today, Mr. Watanabe. Introduce yourself for the record.

Mr. Alton Watanabe. Good morning, Commissioners. My name is Alton Watanabe and I'm the Maui Division Chief for the Hawai'i Government Employees Association. And I was contemplating after you mentioned earlier about coming before at the time of the agenda item, but after hearing that you're gonna be 'til 5 o'clock, I decided to speak now. So I'm here this morning to testify in opposition to Maui County Council Resolution No. 8-48 proposing to change the zoning from A-2 apartment district to PK-4 golf course subdistrict for the Kaanapali Golf Course's property. HGEA represents over 28,000 active employees and 9,000 retirees statewide who are members of the Hawai'i - State of Hawai'i Employees' Retirement System. Almost 5,000 of them reside in Maui County. As stated in the Planning Department's report to you, they received 21 letters, 19 in opposition to the proposal and two in support. I am disappointed that the Planning Department failed to consider the testimony of the owner, the Employees' Retirement System, and the other testimony that was submitted opposing the proposed down-zoning. Most importantly, the Planning Department failed to consider the potential financial harm to the Employees' Retirement System should the zoning for the Kaanapali Golf Course be changed. The Employees Retirement System has a fiduciary responsibility as you heard earlier from Georgina to maximize the value of the

property and maintain a viable retirement system which currently affects more than 108,000 beneficiaries, and I repeat: 108,000 beneficiaries. Since this proposal to down-zone the property will reduce the value and size of the Employees' Retirement System's overall asset portfolio, we ask that you disapprove the proposal to change the current zoning. Thank you for the opportunity to testify this morning.

Mr. Starr: Okay. Thank you. Members, any questions? Okay, seeing none, thank you very much for coming down. The next testifier is Howard Hanzawa.

Mr. Howard Hanzawa: Aloha and good morning. Chairperson and Members of the Planning Commission, my name is Howard Hanzawa. I'm here to speak in opposition to Resolution No. 08-48 on the down-zoning of the Kaanapali parcels. I have a dual interest in this matter. I am vice-president of Kaanapali Land Management Corp., which owns one of the parcels, and I'm also a beneficiary of the State Employee Retirement System, which owns Kaanapali Golf Course.

For your information, the parcel that my company owns is not contiguous to the golf course but is across the street on Kekaa Drive, which is the road that leads to the Royal Lahaina Resort. On the other side of the parcel is Honoapiilani Highway. I learned of this resolution only two weeks ago though I understand that this matter was discussed in the Land Use Committee for about three years. I haven't had a chance to research how this parcel was created or what kind of potential it may have.

For your information, we have not looked at developing this parcel. I'm here today to speak about fairness. The public depends upon the reliability and the fairness of governmental processes including that of zoning. You hear about how bad an idea it is to spot zone parcels. It is equally bad, if not worst, to spot down-zone parcels. The property owners in this case, the State Employee Retirement System and Kaanapali Land Management Corp. have relied upon the zoning that was previously approved by the County of Maui. The zoning is an intrinsic part of the asset which has value to the owners. It doesn't matter if the parcels ever get developed. They will retain the intrinsic value of the zoning.

Another thing to keep in mind is that these parcels are in the SMA district. Thus, any developmental plans or concepts will need to have a public hearing before this Body. Would you not at that time review the preliminary plans and approve with conditions or deny if necessary to protect the public interest? There already is that safeguard in place. When there are almost arbitrary decisions to change the zoning, the existing zoning of parcels, one has to question the reliability of government and the fairness of the system. If this matter is allowed to proceed, how often will we see similar initiatives occur in the future? In the current case, you are being asked to review the down-zoning of parcels around a golf course. Next year, could there be similar cases presented before the Commission for other parcels that affect someone's view of the ocean, or a mountain, or a forest, or just to maintain open space next to his residence? Looking at the big picture, would this be a fair process that all parcels in the County could be subjected to? I think not, but you need to decide. Again, I ask you to strongly consider the impact of this resolution on the public's perception of the reliability of government and the fairness of our land use system. Thank you very much.

Mr. Starr: Thank you, Mr. Hanzawa. Thank you for testifying.

This concludes the testimony received at the beginning of the meeting.

Mr. Starr: I'd like to first call on Maurice Morita to come forward and we're asking everyone to try to keep it brief, certainly less than three minutes and thank you very much for coming down before us.

Mr. Maurice Morita: Okay Chair Starr and Members of the Planning Commission, my name is Maurice Morita and I'm the Government Relations Director for the Hawaii State Teachers Association formerly of Maui and now I have to work in Honolulu. But in behalf of our 13,000 members, public school teachers, we're opposed to the zoning that is in front of you and I'll try to make it brief.

Maui County as a employer should be concerned about Employees Retirement System retrieving the amount of their loan as well as other monies to upgrade the golf course. If the ERS is not able to retrieve the amount of the loan to the original investors as well as the upgrade costs this may effect the employers contribution to the Employees Retirement System. So you have a vested interest in this.

And the Hawaii State Teachers, we do recognize the workforce housing shortage that we have here on Maui. As Maui grows we know that we need to bring in more teachers and working with the Department of Education this island have a hard time trying to find housing for people who come from the mainland. So hopefully with the ERS proposal in the future that this would help with the workforce.

I just wanted to add that really nothing can happen until changes are made in the General Plan and community plan so really don't need to pass this zoning proposal and the close the doors for the ERS to retrieve its investment. And the ERS has stated is willing to work with the Maui County resolve everyone's concerns. So we hope that you would be against this proposal. Thank you.

Mr. Starr: Okay, thank you. It's good to see you again and thanks for coming over. Anyone else wishing to? Please come forward, identify yourself, try to keep it short because we're on a short time frame today. You have a handout?

Mr. Marc Kirchof: No I don't have a handout.

Mr. Starr: Oh okay.

Mr. Kirchof: Good afternoon ladies and gentlemen of the commission, director and chair. My name is Mark Kirchof. I'm a representative from HGEA, Hawaii Government Employees Association. And I'm here basically to tell you I'm in opposition in regards to the downgrading or down zoning of the Kaanapali Golf Course.

For your information, HGEA has about 28,000 active employees within the county and state and about 9,000 of them are currently seeking retirement benefits. From the 9,000, about we have

5,000 in Maui County seeking retirement benefits.

The ERS or State of Hawaii Employees Retirement System they're obligated to their - to keep healthy portfolio. To downgrade that property would tremendously impact that portfolio and would have an impact on the beneficiary not now, even in the future. And overall, if you look at all the counties and the State of Hawaii together we have about 108,000 people who are beneficiaries under that system. So I would urge the planning commission not to move forward on this proposal and deny this today. And that's all I have to say. Thank you so much for your time.

Mr. Starr: Thank you for coming forward.

Mr. Kirchof: And the opportunity.

Mr. Starr: It's appreciated. Please come forward and introduce yourself.

Ms. Gail Fujimoto: Good afternoon Commission Members. My name is Gail Fujimoto and I'm one of the 108,000 beneficiaries. I'm currently employed with the State in the Department of Commerce and Consumer Affairs. I have a 91-year-old mother and an 87-year-old father and they're both very well and functional. I anticipate being around for a long time and so I would like to see the ERS funds maintained at the highest level possible. Thank you.

Mr. Starr: Okay, and thank you very much for coming forward and talking to us today. Anyone else wishing to, please come forward sir, introduce yourself, welcome.

Mr. Larry Hansen: My name is Larry Hansen and I am an owner at the Maui Eldorado. I've given testimony before in several instances where our interests have been impacted on this. I'm here today to listen to and sympathize with the HGEA and all of the retirement service people, but we are here on a consistency request. Either make it all PK-4 which I support. I am also an employee of the Masters of Kaanapali Hillside. They have a lot of interest in keeping the golf course below the freeway because that's - people want to be on the ocean with the golf course. I'm just cautioning that consistent zoning for the golf course is a starting point. We don't have that now and I believe having been involved in this for quite some time that that was the intent of the motion by the Council to the Planning Commission is to get uniform zoning for the golf courses and then move forward from there.

Mr. Starr: Okay, thank you very much for coming forward. Any other members of the public wishing to give testimony on this item, please make yourself known. Not seeing any, public testimony is closed. Are we ready for staff recommendation on this? Yes, we are.

b) Action

Ms. Loudermilk: The request does meet the conclusion of law and the requirements for the change in zoning from A-2 to PK-4. And the Planning Department would recommend to the Commission to recommend to the Council approval from the change in zoning from A-2 to PK-4. That concludes the recommendation.

Mr. Starr: Okay, thank you and good presentation. Members, Chair would welcome a motion or more discussion? Commission U'u.

Mr. U'u: I'd like to make a motion to recommend denial of the change in zoning from A-2 Apartment to PK-4, Golf Course Park.

Ms. Domingo: Second.

Mr. Iaconetti: Second.

Mr. Starr: Okay, we have a motion by Commissioner U'u, seconded by Commissioner Domingo who got there first to recommend denial to the County Council. Any discussion? Commissioner Hiranaga.

Mr. Hiranaga: I guess sort of echoing what Commissioner Iaconetti mentioned, I mean, why is the County Council trying to zone private property? I mean, are they planning to do this on all properties that are inconsistent or I mean?

Ms. Loudermilk: I cannot speak for the Council.

Mr. Hiranaga: It would seem to me that if the private property owner wanted to develop the property they would go through the process of obtaining consistent zoning, community plan designation. Why does the Council feel that they know better than the private property owner as to what the appropriate use should be for this property? It just seems to me that if the property owner is satisfied with the inconsistency between A-2 and community planned park that that's their business and I just don't understand why the Council is becoming involved in this matter. It's like, to me it's big brother at its worst. It's just Council thinks that they know what's good for the private property owner. To me, it's a bad precedence.

And also, you know, personally my parents are members of the ERS. They both, one retired from the State of Hawaii and the other one retired from the County of Maui. This loan for \$60 million, the property is now appraised at \$35 to \$60 million, that means if there's an outstanding balance of \$20 million that you're going to be taking away possibly from the pension funds of all these employees, I just don't understand why this is even before us. So I will be voting against this resolution.

Mr. Starr: Commissioner Hedani.

Mr. Hedani: I'd like to reiterate that because the golf course is a member of KOA, I'll be recusing myself from voting on this particular motion. From the standpoint of the resort development of Kaanapali, I know that open space is critical to the master plan resort development of the Kaanapali Beach Resort. The prospect of converting golf holes into workforce housing or apartments or employee housing is I think far fetched at the best and inappropriate for that particular area. I think employee housing has and should be built in areas that are appropriate for employee housing and that consistency of the golf course in preserving open space is important to not only the owners that are adjacent to the golf course, but to all property owners in the resort including the hotels.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: I'm just going to comment that I'm not going to recuse myself but my wife is a member of ERS and I benefit obviously through health insurance paid by ERS, but it's a - my assessment is that's it's a - it's actually a very minimal impact realistically on the change in value whether they have the zoning or don't have the zoning.

Mr. Starr: Okay, members we ready for a vote? Director.

Mr. Hunt: Just to try and clarify the whole intent is as I understand it, the Council through some lobbying from the constituents in that area realized that there was this potential and this inconsistency between the community plan and the zoning and I think their intent is to make it consistent and also to treat all the golf courses the same. I believe this is the only golf course that isn't like that. I think that was the intent. How would we treat all the other golf courses? It just happened that this portion through the foreclosure came into the hands of the public retirement system and frankly it's put us in a really awkward situation. I really don't want to recommend against the retirement system that I may be a benefit of in the future, but as planners we have to take a technical objective analysis and that's all we're trying to do. If I gave an opinion earlier that seemed to tell you what you had to do, that wasn't my intent. My intent was to merely give you my opinion and you can take it or leave it. But that's how I see this whole proposal and it is somewhat awkward, we'll admit that.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: Just a couple additional comments. If this property were to be developed into a higher use, of course they would have to have a community plan amendment which needs to be approved. Any type of vertical construction would be in the SMA area would have to be approved by the Planning Commission. So it's not like they're going to build four, six stories, affordable housing without any type of oversight. So again, if and when they determine they want to change direction from this nonconforming use, it's up to them to enter the process of amending the General Plan, applying for SMA permits and so I really don't see why it's anybody's business what they do with their land currently.

Mr. Starr: We ready for the vote? Okay, the motion on the floor is to recommend denial to the County Council for the change in zoning. All in favor of the motion, please signify by raising your hand. All opposed please raise your hand. And we have one recusal.

It was moved by Mr. U'u, seconded by Ms. Domingo, then

VOTED: To Recommend Denial of the Change in Zoning to the County Council.
(Assenting - B. U'u, D. Domingo, K. Hiranaga, J. Guard,
W. Iaconetti)
(Dissenting - W. Mardfin, J. Pawsat, J. Starr)
(Recused - W. Hedani)

Mr. Hunt: I've got five in favor, three against and one recused.

Mr. Starr: Okay the motion passes. The recommendation from the Planning Commission will be to recommend denial.

Ms. Loudermilk: Okay, thank you.

Mr. Starr: I just want to comment that I hope this doesn't stop the department from trying to create consistency in the future. I also want to note that when this went through the Council there was no opposition to it and it was a unanimous vote of the members present at the Council at that time and there was quite a bit of the public in favor of it. Thank you very much. Good presentation Robyn.

Ms. Loudermilk: Thank you.

Mr. Starr: Okay, order please quiet, please quiet in the back. We're moving along to our next item. Director Hunt please introduce it.

Mr. Hunt: Your next item involves Robin and Judy Vivian requesting a conditional permit in order to operate a short term vacation rental in the R-1 Residential District at 81 Aleke Place, TMK 2-6-11:lot 14 in Kuau. The file number is CP 2005/0008 and Paul Fasi is the planner assigned to this project.

4. ROBIN and JUDIE VIVIAN requesting a Conditional Permit in order to continue to operate a short-term vacation rental in the R-1 Residential District at 81 Aleiki Place, TMK: 2-6-011: 014, Kuau, Island of Maui. (CP 2005/0008) (P. Fasi)

Mr. Starr: Okay, take it away Paul.

Mr. Paul Fasi: Thank you Mr. Commissioner and good afternoon Commissioners. The applicant's request on a Conditional Permit in order to continue the use of an existing single family residence for TVR short term rental. It has been in operation for approximately 12 years.

The land use designations are as follows: The State Land Use District is Urban. It is in the Paia-Haiku Community Plan as single family. The County zoning is R-1 Residential. It is in the SMA. And I just want to give you a brief background and a little bit of recent events.

The property has been operating as an unpermitted TVR since the applicant purchased the property in 1996, approximately 12 years. It is a densely populated R-1, single family residential neighborhood. R-1 minimum square foot requirement is 6,000 square feet. The owners are residents of California and do not reside on the property. I cannot tell you definitively if there is or is not a property manager residing on the property at this time. I will let the applicant's consultant address that.

On October 26, 2007, in a certified mail, return receipt letter addressed to the applicant's agent, the applicant was instructed to cease all TVR operations on January 1, 2008. This was a standard form letter sent to all TVR applicants from the Department of Planning.

On about the second week of July 2008, via telephone conversation between this planner and the firm of Frampton and Ward, who prepared the applications, the department was verbally assured that the TVR operation did in fact cease all operations on January 1, 2008.

On July 16, 2008, seven months after the receipt from the department's certified letter, this planner made its site visit to the subject property and discovered that the TVR did not cease operations and was in fact, visibly still operating at that time in the usual manner.

The applicant proposes to have a property manager live in the main dwelling. There are two dwellings on the property, a main dwelling and an ohana. The applicant proposes to have the property manager live in the main dwelling and continue to rent any short term rental guests as a TVR in the main dwelling. The second smaller dwelling, the cottage, will be rented on a long term basis.

The department has no objection to the cottage as a long term rental. However, the department does have objections to the TVR portion of the proposal as it is inconsistent with numerous aspects of Maui County Code and law and ordinances. It is also in opposition with portions of the Paia-Haiku Community Plan.

Before the department gets into the analysis portion, we would like to give the applicant an opportunity to present their presentation.

Mr. Starr: How long will the applicant's presentation take?

Mr. Fasi: Between five and 10 minutes.

Mr. Starr: Okay, under 10 then. Go ahead Mich.

Mr. Mich Hirano: Thank you Paul.

Mr. Hiranaga: Mr. Chair, I have a question.

Mr. Starr: Hold on a second, Mich. Go ahead Commissioner Hiranaga.

Mr. Hiranaga: This was placed on my desk a couple of minutes ago.

Mr. Hirano: I just passed that.

Mr. Hiranaga: Are we expected to read this during the presentation or before a vote. I mean, why is this being handed out to us two minutes before the agenda item?

Mr. Starr: I also don't particularly like that practice, but I don't think I want to prohibit the applicant from adding additional info, but it would be better to have it to us earlier.

Mr. Hirano: Thank you Chair Starr and good afternoon Commissioners, my name is Mich Hirano and I represent the applicants, the Vivians with this conditional permit application before you today.

I have some slides that I would just like to show of the property. Excuse me I just had to get my pointer. The property is in Kuau. This is Hana Highway. This is the Kuau corner store. You turn left at the Kuau corner store, go down Kaimao and their property is right at the end of that road.

It's an 18,940 square foot property. It's zoned R-1, residential. With the R-1 residential it's a minimum lot size of 6,000 square feet. With that parcel size, three residences could be built on it. Currently there's a seven-bedroom, single family residential dwelling and the two-bedroom ohana which is, and will be available for long term rental.

This is the street and the driveway entrance. This is the ohana. This is the driveway, you can park two cars in the garage, two on the sides and two in front of the ohana, or one car and two small cars in front of the ohana. This is the ohana and there is a car parked in front of the ohana.

I'd just like to point out it is a shore fronting property, however, this is the wall that is a stone wall that kind of defines the front yard of the residence and as you can see although this is part of the property, there is a ample room between the front wall of the property and the shoreline. It's well setback from the shoreline. The palm trees that you see are approximately on the makai side property boundary. Beyond that is a rocky shoreline. However, any use of this property really does not interfere with the lateral shoreline access. There's substantial room to traverse the shoreline in front of the property.

We just did a little research in terms of the TVRs that have been approved by the commission and by the Council. There's Hale Hookipa Inn and that was a TVR in a residential area that has been approved a one-year period. Again, the Old Wailuku Inn, there's a 10-year approval. It's in the R-2 residential area. Maui By the Sea, this is a parcel in Kuau, there's a TVR conditional permit has been approved and a time extension has been approved. It's zoned R-1 residential and it's been approved for five years. There are a number of TVRs in the rural that's been approved. This is Luuwai in Makena. It's a TVR in the R-3 residential on the water front and that's been approved. Star Lookout, of course, upcountry has been approved and another house, the Hoolii House in Launiupoko.

I just gave you and what I handed out, and really it's -- the substance you can just breeze through it, they're very short letters, but I think this is another condition of a criteria for conditional permit approval and that is the support from the neighbors. This is the subject property on Alaiki Place and the numbers that you see are the letter numbers of letters of support that have been submitted with this application or submitted today that support the transient vacation rental of the property.

I think that there were two testimonies given or three testimonies given this morning in regards to this particular application. I'd like to just address those. One was from one of the -- one was from a letter of support from the person who lives next door or adjacent to the neighbors to the subject property. And I think it's particularly important to note that her comment was that she prefers the transient short term rental because long term rental is where they really do run into problems and the Vivians have purposed this property as Paul had mentioned had been operating for 12 years. When they bought the property it was really a rundown piece of -- it was a rundown residential area. They had to clean it up. It was situation where there was a rock band in the garage, there were --

each room was rented out, there are seven bedrooms, each room was rented out so there were seven different entities, unrelated persons living on the property. Since the Vivians have taken over, they've certainly have put a lot of love and care and attention into this property because it is going to be their retirement home. And until they retire they are renting out on a short term basis. Have been doing that, have ceased operations and I'd like to have John Rapacz just speak to that about what Planner Fasi had mentioned respect to the operations on the month to month rental basis had raised some concern by the Planning Department. But it does have community support. The neighbors have written letters of support for the property.

This is the public beach access I believe -- I'm sorry there is a public beach access further down the street on the Alaiki Place but the renters that use this particular property at 81 Alaiki Place park inside the property. There's ample room for four cars. They don't park on the street. Part of the house rules is that no parking on the street. Park in the driveway. There's ample room in the driveway. And so I don't think the neighbors have concern about street parking, at least their neighbors who have voiced support for the application.

I also understand the concerns that were raised this morning about commercial properties impacting the neighborhood and I believe that this is of the scale that it doesn't impact the immediate neighbors and that perhaps the operations that were referenced this morning I don't that they were specific to this particular property. So you know, I think that what you have before you are letters of support from the immediate neighbors.

The application I believe meets three criteria that have been used to approve or recommend approval for condition permit applications for transient vacation rentals. First that the ohana will be available for long term rental. It's a two-bedroom ohana. There's a letter of support in the application where a single parent with a, a single working parent had rented this ohana and it was available for her as a affordable rental and so she spoke in support of this application.

Secondly, there will be a onsite manager living in the main dwelling and this has also been condition that received support for transient vacation rentals for the condition permit.

And then thirdly, there is support from the neighborhood. The immediate neighbors do support this application. They feel that the transient vacation rental of this property will be less impactful than long term rental.

The Vivians as I mentioned intend to retire on the property. If the property's sold the permit we understand would terminate on the sale of the property so the Vivians are long term owners and are intent to retire on the property. They will also post a sign on the driveway listing that the resident manager's 24-hour phone number in any case of concerns. The housing will be provided in the main house for the resident manager. There have been no complaints in 12 years of operation and nine of the adjacent and surrounding neighbors support the application. So thank you.

Mr. Starr: Okay, thank you Mich. Okay, John two minutes you got.

Mr. John Rapacz: I'll be very brief. Thank you Mr. Chair and Commissioners, Planning Director.

The issue that Mr. Fasi raised about ongoing operations does deserve some explanation. I advised the Vivians that they could do long term rentals. That's the position of the department after the announcement last July for short term rentals to terminate in January. Their realtor advised them that long term here means month to month. Everyone's on month to month leases. I think for any of you folks that have rented or remember back when you used to rent typically that was the case. I've only recently purchased my first home and I've been a renter all my life. It's always been month to month on Maui. In any case, that's what happened. And the applicants had one renter for I believe less than a week each time in each of the four months. They conducted four, one-month rentals that was it. As soon as the problem was brought up or realized, it was terminated and there's been no rental short term or long term since then.

The other question about presenting the exceptions today, and I do apologize for bringing those to you folks. However, I didn't receive the departmental report and recommendation until Thursday. I looked at and it, and as you'll see in the exceptions, I believe is -- contains many errors, many misstatements of fact, but primarily matters of opinion and belief that are stated as facts without any kind of information to support it. So for the record, I did believe it was important to get the exceptions on the record. I know you folks are not the decision makers but when we get up to Council, then it will be important to be able to say that we did disagree with many of the things in the report, that's why I presented it to you today.

Okay, just wanted to clarify one thing as well, the termination of the permit on sale is something that the applicants have agreed to. That they have no intention of trying to sell it as a vacation rental. They've been in it for 12 years. It's not a property to be flipped obviously. So they would agree to and request a condition that says if the property is sold, then the permit terminates. Also, that should prevent any escalation of the value of the house because if the permit terminates, the permit adds no value to the property. Thank you.

Mr. Starr: Thank you. One of the members earlier had a exception to the exceptions. Does anyone not willing to accept this lengthy document at this late time. Seeing none, okay. Go ahead Commissioner Mardfin.

Mr. Mardfin: I don't know whether I want to object to it or not. I'd like to read it and we don't have time to do it.

Mr. Starr: Well, if you want to do that then defer but I can't think of any other mechanism unless we want to eject the document. Commissioner Hiranaga.

Mr. Hiranaga: I have a couple of questions that maybe you could take that time to read the entire document.

Mr. Starr: Yeah go ahead.

Mr. Hiranaga: I guess, is this considered a hybrid TVR since they're going to have a onsite manager?

Mr. Hunt: I would consider it a hybrid in the sense that they have an onsite manager. There's two

types of hybrids that we're working with under our existing zoning scheme and one would be an onsite owner which technically would still be a TVR and the second one's an onsite manager. The County has approved some conditional permits in the past with an onsite manager and this body recommended one with an onsite manager earlier this year. There was a lot of discussion on that at the most recent TVR, the one in Launiupoko.

Mr. Hiranaga: Follow up question. So why is this not considered a hybrid B&B since the onsite manager is going to live in the dwelling that's going to be rented out?

Mr. Hunt: What we're doing is we're just dealing labels at this point. A hybrid B&B would I guess would be almost similar to a hybrid TVR. I mean, the point is our code allows for a true B&B with the owner or lessee in the same house on site. The other one is a TVR with nobody on site and then there's the hybrids in between.

Mr. Hiranaga: So because they don't have a lease with the onsite manager it's not considered a B&B? I mean, why is this not considered a B&B if they have an onsite manager living within the dwelling that's being rented out?

Mr. Hunt: That's a good question. Paul.

Mr. Fasi: Could you repeat that?

Mr. Hiranaga: Why is this not considered a B&B since they have an onsite manager living in the dwelling that will be rented out?

Mr. Fasi: It could be considered that. They haven't applied for it as a B&B.

Mr. Hiranaga: Oh, they applied for it as a TVR?

Mr. Fasi: Correct. But I may point out that in both instances, both elements are not allowed.

Mr. Starr: I have a question Paul. You know, I noticed in the presentation they say one of the criteria for a conditional permit is support from neighbors, but I know, you know, and they tabulated which neighbors support it, but it seems that we've gotten quite a few letters in opposition and also we've had public testimony in opposition. I mean, is -- if I remember kind of the criteria was not lack of opposition more than just support. Do you have any idea how much, you know, what the numbers are both ways?

Mr. Fasi: Department was handed those letters of support just before this meeting started. And in the future the department would request that the applicant get them to the department sooner so we may process them accordingly. The department did receive two letters in support of this earlier and approximately five, I believe, five letters in opposition to this action and one of the letters has a petition with 56 signatures on it.

Mr. Starr: That's in opposition?

Mr. Fasi: In opposition to it.

Mr. Starr: So it's like 60 to 5 or something like that?

Mr. Fasi: That is correct, 60 to 2.

Mr. Starr: Commissioner U'u.

Mr. U'u: I just -- I could be wrong but I frequent that area. I like diving there. In fact I was raised in that area and I have friends working on a house next door and the guy told me, the guy we building the house for, his last name is Ferrari which is cool, but I mean, he doesn't live there yet. But he has a letter here stating that he's for the TVR, but if I'm not mistaken he's not even living on property right now. I could be wrong, but the house ain't built yet. It says he owned the property next door for six years. He possibly could own the property for six years, but I'm not sure if he was living on property. Am I wrong?

Mr. Fasi: When this planner made the site visit there was a pretty substantial square foot house in the process of being built in close proximity to the subject property and I believe Commissioner U'u is referring to the same property.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: I think we cut Paul Fasi off a minute ago. He was starting to explain why if it -- the difference between a TVR and B&B. Since they asked for a TVR, your report dealt with why a TVR is inappropriate and I think you were about to say something about you'd find a B&B or hybrid B&B also inappropriate?

Mr. Fasi: Let me put it this way. Any short term rental. Any short term rental which would be a TVR or a B&B is not allowed on the shoreline in Kuau.

Mr. Mardfin: And the issue is because it's a shoreline?

Mr. Fasi: Because it's in the Paia-Haiku Community Plan which has some of the strongest language, in fact they do say they prohibit and I will get into it once I start going into the department's analysis. Just for the record, I would like to point out that the department's report is based solely on findings of fact, and conclusions of law. There is no opinion in this report. We cannot afford as planners to have personal opinions in these reports. Our reports are based on Maui County Code, the General Plan and the Paia-Haiku Community Plan.

Mr. Starr: Could you read the wording from the community plan and then I'm going to turn it over to the director?

Mr. Fasi: The Paia-Haiku Community Plan, page 15 of the Paia-Haiku Community Plan states and I quote, "prohibit hotel resort development within the region." As far as the Planning Department's concerned this is, any short term rental is considered hotel resort type of actions in that particular location. There is no stronger language than in the Paia-Haiku Community Plan of the nine

community plans. They're very clear about that.

Mr. Starr: Director.

Mr. Hunt: I don't necessarily agree with the statement that that language absolutely prohibits these types of uses outright in the Paia-Haiku Community Plan. There is some language in the Paia-Haiku Community Plan that this body should be aware of and in my mind, this is the problem with this particular application and page 17 in the Paia-Haiku Community Plan says, speaks to, and I'll quote, "limit visitor accommodations to owner-occupied bed and breakfast establishments." So that's the first problem. The second sentence goes on, "any proposed bed and breakfast should not be situated near the shoreline." I don't think that's an absolute but it gives us pretty clear direction that they didn't want these along the shoreline. The first one seems to be pretty strong language that the community only wanted owner-occupied and in this case it's not an owner-occupied. So even though it's a hybrid and the county has allowed some of these in the past, in this particular case, our recommendation is against it.

Mr. Starr: Okay, --

Mr. Hiranaga: What page of the staff report were you reading?

Mr. Mardfin: 11.

Mr. Hunt: Page 11.

Mr. Starr: Okay, start again, questions. Commissioner Guard.

Mr. Guard: Yeah, I just had to follow up on that that there are a few B&Bs and TVRs already approved in the area, correct?

Mr. Hunt: I'm not sure. What do you mean by the area?

Mr. Guard: Well, I live next to one and I'm in the area. So just to say that it's the most prohibitive of all the community plans seems to be a little contradictory. So I just want to make sure all of our terms and what we tell people is the truth. I live next to one.

Mr. Fasi: I believe what we have to keep in mind is that this body only makes a recommendation to the Council and the Council is the final decision making authority. Our recommendations are based on existing laws and trying to be as objective as we can. And adding to what the director said earlier regarding the use of the word, "prohibit," the General Plan also states, "restrict transient rental use of single family housing in residential zones" period.

Mr. Starr: Okay, Commissioner Hiranaga, do you still have something?

Mr. Hiranaga: Well, actually a different comment. I'd like to see in that 500-foot radius, you know, letters of opposition and letters in support. I keep asking for that but never seem to get it. It seemed like the applicant provided some of that information letters in support, but I'd like to know,

I mean, a lot of these people have signed a petition. They may not even live in Kuau. You know, they're passing a petition somewhere. I mean, it's the landowners in that 500-foot radius that to me has the biggest say. So giving me a petition with 50 names on it doesn't mean a whole lot to me.

Mr. Fasi: That is true. And I have encountered that similar problem with a similar application we had earlier along the shoreline in the same community plan area. But if you do look at the letters of testimony you'll have to just compare the addresses of Alaiki Place and assume that these were the neighbors writing these letters in fact do live in those neighborhoods.

Mr. Hiranaga: Maybe in the future you could create a --

Mr. Fasi: Well, I can't force the neighbors to write letters of testimony.

Mr. Hiranaga: No, but when you get them if you could plot it on a map for us? So we don't have to -- or the department --

Mr. Fasi: I will discuss that option with the director at a future planning date.

Mr. Hiranaga: Thank you.

Mr. Starr: I think that's something usually done by the consultants who are on the clock.

Mr. Hiranaga: They're only doing it for the people in support.

Mr. Starr: Yeah, right.

Mr. Hiranaga: I question where the people in opposition is.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: I'd like to ask Commissioner Guard who just made a comment a minute ago, about knowing of similar operations in Kuau if they were on the shoreline?

Mr. Guard: I believe one that came in for an extension of conditional permit was on the shoreline along Hana Highway on Tavares Bay and got approved.

Mr. Fasi: I'm familiar with that but with the Chair's permission I'd just like to review conditional permit's a little bit here and maybe it will bring things in perspective.

Chapter 19.40, Intent. "The intent of the conditional permit is provide the opportunity to consider establishing uses not specifically permitted within a given zone where the proposed use is similar, related or compatible to those permitted uses and which has some special impact or uniqueness." There is nothing in this neighborhood that is similar to a TVR currently.

Item b, Should the commission, this body, determine that the permit requested is for a use which is substantially different from those uses permitted in the use zone, the commission shall

recommend denial." That is law. There is no similar use in this residential, R-1 neighborhood in the close vicinity that is similar to anything else.

c, "Every conditional permit shall be conditioned upon the proposed development fully complying with all requirements of this title and other ... (inaudible - changing of tape)... application is inconsistent in numerous areas with the General Plan, Maui County Code and the Paia-Haiku Community Plan.

And I can go into the department's analysis if the Chairman wants me to?

Mr. Starr: No, we're not up to that yet. Commissioner Hedani.

Mr. Hedani: There was a question on the definition on the definition of short term rental. Is there a legal definition of short term rental?

Mr. Fasi: Yes --

Mr. Hedani: Is it a 180 days?

Mr. Fasi: Yes.

Mr. Hedani: Okay.

Mr. Starr: Okay, I'm going to open this up to public testimony, then we'll have the analysis and recommendations.

a. Public Hearing

The following testimony was received at the beginning of the meeting:

Mr. Starr: The next testifier is Mary DeCosta. Please come forward and identify yourself for the record.

Ms. Mary DeCosta: Good morning. I'm Mary DeCosta from 9 Lana, Kuau. I'm here on behalf of my children--my eight children and my 22 grandchildren. I'm concerned about our-- I'm kinda nervous. Having -- you know, having the business that they're having right now, we're having problems with vacation rentals. The biggest problem that we're really having is people are not respecting the properties. I'm a widow. I'm 84 years old. I have to rely on myself to get things done. I have my trash cans that goes out every Monday morning. People have no consideration. They run over the covers also, the cans. And I have pictures here of the problems we are having because of the vacation rentals. We also understand now we're gonna start having bed and breakfast. Our community is a very small place. And you know, right now there's some business going on that -- complain about that. They don't want to complain about -- 'cause they call you names. But I've got pictures here that I took yesterday that I can prove of all what's happening in Kuau. We even have in Kaimao, there's a street that says "No Parking." They took off the sign, "No Parking," so that they could park their cars. And that's -- you know-- I've lived in Kuau for over

50 years. I've not – I have not had bad neighbors, and I don't intend to have bad neighbors, but you know, it's one of those things that you can't bear the way people are treating us. We feel like we're animals. We're all fenced in. The moment they come in what they do is they put a wall so they make our street so much smaller. And when they park– We had a emergency. We had an emergency down the street. The ambulance and the Fire Department couldn't even go through. And that's scary because I have a heart problem. I have a very high medical care. And I'm worried about that. And also the neighbors that signed the petition, they're concerned what's happening in Kuau right now. So this is why I'm here. And if you wanna see, I have the pictures here that you can see the proof that's what's happening. These pictures were taken yesterday because the trash people picks the trash up in Kuau every Monday morning.

Mr. Starr: Mary, why don't pass the pictures to Commissioner Hiranaga so we can pass them around?

Ms. DeCosta: This here is the one that has the sign, "No Parking," but they took it down.

Mr. Starr: Yeah, okay.

Ms. DeCosta: So you can see the pictures that I took. That's the proof. That's what's happening here in Kuau. You know, we're a small community and we don't need business. When I moved into Kuau, it was only nine houses. Now there's 54 houses in Kuau. So I thank the Commissioners, you know, for – to help at least spare all the problems that we're having in Kuau right now.

Mr. Starr: Okay. Thank you. That's a very good testimony. Any Members, any questions? Okay, thank you very much for coming before us today. And this looks like Mary Ann Oda. Please introduce yourself and excuse me if I mispronounced yourself.

Ms. Mary Ann Oda: My name is Mary Ann Oda and I also reside in the Kuau community. I'm here today basically to request that the zoning change that has been requested to put not only a bed and breakfast but also a vacation rental both within half a block from my residential area, my home, be denied. We already, you know – I guess having a great deal of parking problems, the transients that come in because there is a 404 beach access which is directly next to my home. And you know, as an employed woman, I cannot get in and out at times, and it requires a great deal, you know, of effort, as well as times that we can't even locate the cars, you know, and the owners of the vehicles that are blocking our driveways. To put in two businesses within less than half a block of the residential community in such a small area I feel is just ridiculous and should not be considered. I'm also concerned about, you know, also the crime that will increase of these, you know, permits and businesses in that small residential community. My mother also has ailments and I'm taking care of her. She has a heart ailment. She's 80 years old and I'm concerned that we will not have access and be able to get in and out of the driveways to get to Kaiser or any other medical facility in a timely manner or fashion. That's basically all I have to say.

Mr. Starr: Okay. Well, thank you very much for coming before us. Members, any questions? Oh, Commissioner Mardfin?

Mr. Mardfin: Do you know if there are any other bed and breakfast or transient vacation rentals in the immediate area?

Ms. Oda: Well, they're trying to put up a bed and breakfast. It's about six houses from my home. But also the vacation rental would be two houses away.

Mr. Mardfin: This is in addition to this.

Ms. Oda: Yeah, that would be two new businesses within less than half a block from my house, and already I'm having a situation.

Mr. Starr: Commissioner U`u?

Mr. U`u: How long have you lived in Kuau?

Ms. Oda: Over 40 years.

Mr. U`u: Thank you.

Ms. Oda: You're very welcome.

Mr. Starr: Commissioner Hedani?

Mr. Hedani: Mary Ann, you know, when they block your driveway and do things like that, have you folks called the police?

Ms. Oda: We have.

Mr. Hedani: And what was the response?

Ms. Oda: And they've come down and they've given them tickets, but by the time they come back, it's four or five hours, six hours later. Then new people come. And we've also people, you know, knock down the fence in front yard of my home. I've come home from Costco to have people with a tent in the yard or using it because they're saying because I have a large lot there that they assumed that it was okay to park there. They've run up pipes creating a plumbing situation also resulting in over a thousand dollars in damages. Any other questions?

Mr. Starr: Okay. Thank you very much for coming before us. Oh, Commissioner U`u, please?

Mr. U`u: How was it prior to TVRs, your neighborhood?

Ms. Oda: It was a lot simpler, our lives. We didn't have people throwing beer bottles. There was less litter. When we went to work, we didn't have to— There wasn't all the basically the complications that have resulted in the significant amount of traffic increase that we have had to endure recently.

Mr. U`u: Thank you.

Ms. Oda: You're very recently.

Mr. Starr: Okay. Thank you very much for coming forward. Any other members of the public wishing to give testimony on any agenda item, please make yourself known. Not seeing any- Oh, I'm sorry.

Ms. Joyce Finze Wallenberg: No, I'm sorry. I'm slow.

Mr. Starr: It's okay. Please introduce yourself, and try to keep it brief.

Ms. Wallenberg: My name is Joyce Finze Wallenberg and I live in Kuau. We've owned the property there for 50 years and I've lived there for 30. And honestly, the problems that I've had with renters have been the long term renters, not the TVRs or the bed and breakfasts. And I just wanted to make that statement because we've had problems with loud parties, drug dealings, motorcycles in the morning. And while that particular house has been raised and an enormous house is being built in its place, I hope the owners are not planning to long term rent. I hope they're going to live there, but I doubt it. And that's my statement, sir.

Mr. Starr: Okay. Thank you very much for coming before us.

This concludes the testimony received at the beginning of the meeting.

Mr. Starr: Any members of the public who have not yet testified on this item and would like to share your mana'o please make yourself known. Please come forward and introduce yourself. Try to keep it short for us.

Ms. Needa Canton. Hi I'm Needa Canton. I'm 90 Alaiki and I'm against it. Thank you.

Mr. Starr: Short and brief.

Ms. Canton: I'm the owner of the house.

Mr. Starr: Thank you.

Ms. Canton: 90A is our renter.

Mr. Starr: We have a question for you though. Hold on please.

Mr. Hiranaga: I'm sorry, what was the house number?

Ms. Canton: 90 Alaiki and 90A is supporter and 90 is against.

Mr. Starr: Commissioner Hedani.

Mr. Hedani: I'm sorry, I just didn't get the name.

Ms. Canton: Needa Canton, C-A-N-T-O-N. 90 Alaiki.

Mr. Starr: Wait a second. Commissioner Hiranaga you have another question.

Mr. Hiranaga: 90?

Ms. Canton: 90.

Mr. Hiranaga: Why is there a 90A Alaiki Place?

Ms. Canton: That's our ohana.

Mr. Hiranaga: Oh, okay so she's in support, but you're the property owner.

Ms. Canton: Yeah, we are the property owners we are against.

Mr. Hiranaga: Okay, thank you.

Mr. Starr: Okay, thank you for being patient and coming forward. Please sir, come forward, introduce yourself.

Mr. Robert Karpovich: Good afternoon, my name is Robert Karpovich. I'm a property owner. I own two lots that are just a couple of doors down, parcel 8 and parcel 11. One is on the ocean where I'm currently building my own home which I've been building for several years. The other parcel is vacant.

One problem I've had is parking. This property as you saw in the pictures, they have a driveway and they also use the rest of their frontage to pull in what I call angle parking. While most properties have one permitted driveway and then the rest of the street frontage is open to public parking, parallel parking, some overdeveloped properties have had to resort to parking a bunch of cars straight in and therefore denying the public parking. As a result, when there's large groups occupy this property they park in front of my property and on my property. I've had to actually build a fence and argue with I don't know, managers, owners, sometimes there is convention like meetings or something, more than just people staying there. So I think if it is approved in any way that they should be restricted to their, any permitted driveway use and not be allowed to angle park on the entire frontage.

In general, I moved to Paia area in 1984 and as the old timers sadly passed away, more families would move in, but in the last 10 years typically in Kuau it's been absentee owners buy the property put it into vacation rental. I mean there may be one or two permitted but there's dozens, upon dozens of unpermitted. And I'm really against the proliferation of hotel resort use on the Paia North Shore. It has driven the prices up substantially and it's driven my property taxes up. So that's my other objection.

This property does have a pool which the consultant didn't show and therefore the rock wall on the front segregates the pool. Sometimes there's loud, noisy groups which during the day it really isn't too bad but it does change the character of the neighborhood and really support the Mayor and her quest to bring this proliferation of TVRs under control. Thank you very much.

Mr. Starr: Okay, thanks Robert. Any questions. Commissioner Hiranaga.

Mr. Hiranaga: If they were to limit the number of rooms to be permitted for TVR use based upon the number of onsite parking stalls that they could create and excluding tandem parking, no back to back parking. Would you still object to the application?

Mr. Karpovich: At this time I object to any applications on the north shore. I'd like to see it stay a community. But realizing that may be realistic, I feel that the parking should be addressed in a legal manner and so it doesn't overflow.

Mr. Hiranaga: So if they have only say three stalls that they can provide then it would be limited to three rooms not the entire seven bedrooms.

Mr. Karpovich: There's two homes on the property. So there's already, with 7 and 2, 9 bedrooms. The property, it's very densely developed and there's no way they can provide legal parking for all their residents.

Mr. Hiranaga: Thank you.

Mr. Starr: Okay, thank you. Any other members of the public wishing to testify, please make yourself known. Okay, nothing. Public testimony is closed.

a) Action

Mr. Starr: I'd like to have the analysis. Then if there's any questions and then the recommendation. Go ahead Paul.

Mr. Fasi presented the department's analysis.

Mr. Starr: Want to move onto your recommendation?

Mr. Fasi: I can do that certainly.

Mr. Starr: Hold on, I want to pass it to the director for --

Mr. Hunt: Paul could you at least address the community plan, the Paia Community Plan. I think that's important if that's okay.

Mr. Starr: Yeah, go ahead.

Mr. Fasi: I'll make this very brief. Page 17 of the Paia-Haiku Community Plan says, "limit

accommodations to owner-occupied bed and breakfast establishments." It doesn't address TVRs. If they wanted to have TVRs in this provision they would have included short term rentals in this provision.

It also says on page 15, "to prohibit hotel resort development within the region."

Page 11 says, it starts, it talks about the housing shortage which is also exacerbated by the conversion.

Mr. Fasi: I will get into the recommendation. The Maui Planning Department recommends denial of the applicant's proposed use to the Maui Planning Commission based on the above conclusions of law and the department's report. In consideration of the foregoing the department recommends that the Maui Planning Commission adopt the Planning Department's report and recommendation prepared for the September 9, 2008 meeting as its findings of fact conclusions of law and decision order and authorize the Planning Director transmit said documents to the Maui County Council on behalf of the Planning Commission. Thank you.

Mr. Starr: Okay members, any motions or questions? Commissioner Mardfin.

Mr. Mardfin: Quick question. On page 6 of your recommendations, the green recommendations referring to page 17 of the Paia-Haiku Community Plan you said it limited to bed and breakfast, the following sentence was also important I believe, "any proposed bed and breakfast should not be situated near the shoreline so as to avoid the proliferation of this use and subsequent changes in the character of the region's coast." I just wanted to highlight that in your recommendations.

Mr. Fasi: Thank you.

Mr. Starr: Yeah, thank you for that. Commissioner U'u.

Mr. U'u: I'd like to make a motion.

Mr. Starr: Please go ahead.

Mr. U'u: Motion to deny the applicant's proposed use.

Mr. Starr: Is this per the recommendations and the findings.

Mr. U'u: Yes.

Ms. Domingo: Second.

Mr. Starr: Okay, we have a motion by Commissioner U'u, seconded by Commissioner Domingo to deny per the recommendations of the department. Commissioner Hiranaga.

Mr. Hiranaga: I'm curious why the applicant did not apply for a B&B permit.

Mr. Starr: Quick response John.

Mr. John Rapacz: May I? Thank you Mr. Chair. John Rapacz again. This application was filed in 2005. Having been through, listening to these arguments and positions for a few years now, I recommended to the clients that they have the property manager live inside the dwelling that would create housing for one resident and that would free up the ohana and create long term housing for more residents. So that's why it's in as a TVR and at this late point in the process having seen that that's what the commission and department like to hear that's what I recommended and that's what they agreed to.

Mr. Hiranaga: Another question. Would the applicant be agreeable to limiting the number of rooms that could be used for short term rentals based on the number of parking stalls that they could provide on site. I'm not sure what Public Works opinion is about just pulling in from the street onto your yard or is it, are you supposed to only have one driveway to a residential property and you're supposed to use that for ingress and egress to a residential property or can you just pull off any part of your front yard?

Mr. Starr: Mike.

Mr. Miyamoto: Mr. Chair. Typically we encourage one singular driveway. As you look the roadway cross section you notice it's not an urban type cross section where you have curb with gutter. So typically in this situation unless it becomes a problem we have not been -- it's not something like they're redeveloping the property at this point, so it's not thing that we had to address at this point.

Mr. Hiranaga: So I guess you know, and excluding tandem parking, back to back parking --

Mr. Rapacz: If I could just point out one crucial difference between the TVRs and the B&Bs also and this operation in particular. In the B&Bs the individual bedrooms are rented out individually. So each occupant of a given bedroom may have a vehicle. So there is a vehicle requirement per bedroom. With TVR, the Vivians rent to only families or a small group that's together. They never rent individually rooms. So with the four parking stalls inside the driveway to the main house that has always been sufficient and then the ohana is separate from the main house and has its own parking. So the ohana has the one required stall in front of it, but there's also in front of the ohana enough space for two compact stalls in case there's overflow.

Mr. Hiranaga: One more question. Are the applicants here?

Mr. Rapacz: Yes. They're here. Robin and Judy Vivian.

Mr. Starr: Commissioner Hiranaga, you want to ask them a question or you want to hear from them really quick? Whatever you want.

Mr. Hiranaga: Actually that was one. I always think it's important when the applicant's in the audience versus --

Mr. Rapacz: Oh yes, they've flown in for this.

Mr. Hiranaga: I guess for further discussion, it seems like the applicant is making every effort to try and comply with the proposed B&B ordinance and it seems like the largest obstacle is the fact their residence is located ocean front. I have difficulty seeing how this house would contribute to the affordable housing inventory if it became, if it was not permitted to obtain this short term vacation rental permit. The flip side is you could technically I guess put six unrelated people in that house and give them a six-month rental lease.

Mr. Rapacz: That's correct. Or as Mich said, they could develop, on this property they could develop three single family dwellings or two single family dwellings and two ohanas.

Mr. Giroux excused himself at 4:30 p.m.

Mr. Starr: Okay members we have a motion on the floor to recommend denial. It's been seconded. We ready to call the question? We just lost Commissioner Hedani. I think he's still around. Okay, all those in favor of the motion please raise your hand. We got a -- we're voting on the motion if you're in favor put your hand up. The motion is to deny. Okay, all those opposed.

It was moved by Mr. U'u, seconded by Ms. Domingo, then

VOTED: To Recommend Denial of the Conditional Permit as Recommended by the Department to the County Council.
(Assenting - B. U'u, D. Domingo, K. Hiranaga, W. Mardfin, W. Iaconetti, W. Hedani, J. Starr)
(Dissenting - K. Hiranaga, J. Guard)

Mr. Hunt: We'll mark that seven in favor of denial and two against.

Mr. Starr: Okay, so the motion passes and our recommendation to the Council is to deny per the criteria of the department's recommendation. Thank you Paul.

Mr. Fasi: Thank you.

Mr. Hirano: Thank you for your consideration Commissioners.

Mr. Starr: Okay thank you. Sorry Mich. Okay, moving right along.

Mr. Starr: Director, before our next item is we have some action minutes for August 26th. Anyone interested in making a motion regarding those action minutes?

D. ACTION MINUTES OF THE AUGUST 26, 2008 MEETING

Mr. Iaconetti: Move approval.

Mr. U'u: Second.

It was moved by Mr. Iaconetti, seconded by Mr. U'u, then unanimously

**VOTED: To Approve the Action Minutes of August 26, 2008, as Circulated.
(Assenting - W. Iaconetti, B. U'u, K. Hiranaga, J. Guard, W. Mardfin,
D. Domingo, J. Pawsat, W. Hedani, J. Starr)**

Mr. Starr: Unanimous. Action minutes, and they are coming out really fast and really good. I want to compliment the department on that, they're very useful.

Mr. Hunt: Did you hear that Carolyn?

Mr. Starr: You're doing a good job with them and it's really worthwhile. Okay, New Business. Mr. Director.

E. NEW BUSINESS

- 1. J. ROBERT BREWER requesting an Environmental Assessment Determination on the Final Environmental Assessment prepared in support of the proposed demolition of a one-story single family residential structure constructed in 1951 and its replacement with a two-story residence located in the National Historic Landmark District at 459 Front Street, TMK: 4-6-002: 017, Lahaina, Island of Maui. (EA 2007/0010) (SMX 2007/0306)(J. Prutch)**

The EA trigger is the location of the property within the Lahaina National Historic Landmark District. The Maui Planning Commission is the accepting authority for the EA.

The Commission may make a Findings of No Significant Impact (FONSI) determination or make some other determination.

The review of the Special Management Area Assessment will be conducted at a future date after the Chapter 343 process has been completed.

Mr. Hunt: Your next item involves J. Robert Brewer requesting environmental assessment determination on the final environmental assessment prepared in support of the proposed demolition of a one-story, single family residential structure constructed in 1951 and it's replacement with a two-story residence located in the National Historic Landmark District at 459 Front Street, TMK 4-6-2: lot 17, Lahaina. The file number is EA 2007/0010 and SMX 2007/0306. Joe Prutch is the planner assigned to this project.

Mr. Starr: Go ahead Joe.

Mr. Joe Prutch went over the Department's Report and Recommendation.

Mr. Starr: Could I, one thought I couldn't really understand about the runoff retention, could that

be explained what they're planning to do with that.

Mr. Prutch: Sure.

Mr. Anthony Riecke-Gonzales: My name is Anthony Riecke-Gonzales. I'm the architect on the project. We had Stacy Otomo of Otomo Engineers do a drainage report and with that we've done a design where we have a combination of above ground retention basins and single underground pipe for a total 650 cubic feet of retention and the required for the improvements that we will be doing to the property is 410 cubic feet which means we have an excess of 214 cubic feet that we'll be additionally retaining on the property above the 50-year requirement.

Mr. Starr: Okay, members any further questions? Commissioner Hedani.

Mr. Hedani: Is there a sight distance clearance on the walls that are proposed adjacent to the driveway?

Mr. Riecke-Gonzales: There is a sight distance clearance and we meet that because the walls are low. They're only four feet high so you can see over them.

Mr. Hedani: They're four feet high and that is acceptable as far as sight distance clearance is concerned?

Mr. Riecke-Gonzales: Yes, because they way they curve in, yes.

Mr. Starr: Okay, I'd like to open it up for public testimony on this item, if any, please make yourself known. Not seeing any, public testimony portion is closed. And I would like to open I up to members of the commission any further questions or any motion that any member wishes to make on this please do it now.

Mr. Iaconetti: Did we hear the final recommendation from the planner?

Mr. Starr: Yeah, we did to approve, to accept. Commissioner Hedani.

Mr. Hedani: I'm sorry was that a motion?

Mr. Iaconetti: No, but go ahead and make it and I'll second it.

Mr. Hedani: Move to accept the department's recommendation.

Mr. Iaconetti: Second.

Mr. Starr: Okay, we have a motion by Commissioner Hedani. Seconded by Dr. Iaconetti to accept the recommendation which is to accept the final Environmental Assessment for this project. Commissioner Hiranaga.

Mr. Hiranaga: I have just a question. The environmental assessment addressed the impact of

demolishing the existing building? It talks about the new building, but --

Mr. Starr: Yeah, go ahead Karlynn.

Ms. Karlynn Fukuda: Karlynn Fukuda, Munekiyo and Hiraga. Commissioner Hiranaga, you were asking in terms of the impact of demolishing a old building or?

Mr. Hiranaga: The existing building. The existing house.

Ms. Fukuda: I'm not sure if I'm answering your question correctly, but I think that we did file the historical assessment inventory with the State Historic Preservation Division for the demolition of the house, and then the contractor will follow all requirements for demolition of the structure.

Mr. Hiranaga: So they approved the demolition of the house?

Ms. Fukuda: We haven't submitted the permit for the demolition yet. But DSA would review the department requirements.

Mr. Hiranaga: To determine if it's a house should be demolished or not?

Ms. Fukuda: Well, SHPD reviewed that. And we filed that application over a year ago and we have followed up with them but have not heard back.

Mr. Hiranaga: So they haven't provided you a determination whether they object to the demolition of the house or not?

Ms. Fukuda: Correct.

Mr. Starr: Okay, before we call the question, Chair has a brief comment which is that I will not be supporting the motion personally and this is my own personal opinion. I happen to feel that going from a, you know, a small house in the historical district on the shoreline in this historical area and delicate area to a big trophy house is definitely will have an impact and I don't also see why kicking it up -- you know, I don't feel like I need more information. I feel that it will have an impact so I personally with a clear conscience cannot vote to issue a finding of no significant impact because I feel there will be an impact. But that's my own personal opinion.

Ms. Domingo: Mr. Chair?

Mr. Starr: Commissioner Domingo.

Ms. Domingo: As well myself, I'm going to recuse myself because I wasn't here when this first came before.

Mr. Starr: Okay, members are we ready to vote? All in favor of the motion which is to accept the FONSI please raise your hand? And all those opposed? And let the record show there's one recusal.

It was moved by Mr. Hedani, seconded by Mr. Iaconetti, then

**VOTED: To Accept the Final Environmental Assessment and Issue a Finding of No Significant Impact (FONSI) Determination.
(Assenting - W. Hedani, W. Iaconetti, K. Hiranaga, J. Guard, B. U'u)
(Dissenting - W. Mardfin, J. Pawsat, J. Starr)
(Recused - D. Domingo)**

Mr. Hunt: I'll mark that as five in favor, three against and one recused.

Mr. Hiranaga: I have a question.

Mr. Starr: Yeah, go ahead Commissioner Hiranaga.

Mr. Hiranaga: What happens if the State Historic Division says that this house should not be demolished because it has historical or cultural significance, then you don't issue a demolition permit?

Mr. Hunt: From my experience it wouldn't be that black and white. I think there would be alternatives and one would be to mitigate it, to do a habs, to record the existing condition for the future reference and education of the community. Perhaps there would be partial demolition, something like that.

Mr. Hiranaga: So this EA is just for the proposed new use?

Mr. Hunt: As I understand it.

Ms. Fukuda: Well, it covered both the demolition and the construction because the trigger for the EA was the work within the State National Historic Landmark District. But to elaborate on Director Hunt's comments, typically if it came back where the State Historic Preservation Division wanted portions preserved or in other cases of projects that I've worked on, they had wanted further documentation before the house is demolished. So the applicant would work with SHPD to meet whatever requirements that they imposed.

Mr. Hiranaga: Would this be coming back to us as an SMA application or is it exempt as a single family residence?

Ms. Fukuda: I believe it's exempt as a single family residence.

Mr. Starr: Okay, thank you very much and good luck with the project.

Mr. Fukuda: Thank you very much.

Mr. Guard excused himself at 4:44 p.m.

F. ADOPTION OF WRITTEN FINDINGS OF FACTS, CONCLUSIONS OF LAW, AND DECISION AND ORDERS (No public testimony will be taken as the Commission will be completing their adjudicatory function.)

1. **Adoption of Written Decision and Order prepared by BRIAN T. MOTO, Corporation Counsel and MARY BLAINE JOHNSTON, Deputy Corporation Counsel on behalf of JEFFREY S. HUNT, Director, Department of Planning, County of Maui Dismissing the Appeal filed by LANCE COLLINS, attorney for the Appellants WILLIAM KNOWLTON and CATHERINE KNOWLTON of the Planning Director's Decision to grant a special management area exemption (SM5 2008/0061) to LUDMILA GUTERMAN-REEVES for a parking barrier, three storage sheds and three garden structures on property located at 530 North Holokai Place, TMK: (2) 2-8-011:007, Peahi, Hamakualoa, Island of Maui. (APPL 2008/0001) (T. Kapuaala) (Action taken on the Motion to Dismiss at the July 22, 2008 meeting.)**

The Commission may act to adopt or modify the proposed written decision and order.

- a. **MR. LANCE D. COLLINS, Attorney for the Appellants WILLIAM KNOWLTON and CATHERINE KNOWLTON submitting a letter of objection dated August 18, 2008.**

The Commission may take action on this request.

Mr. Starr: Okay members, I have a slight conundrum here with our next item. Actually we have one more item on the agenda. I was really looking forward to getting through. The problem is Corp. Counsel had to leave, his kids were standing outside and he needs to take care of them. We have a item which is to adopt a written decision and order and the attorney from counsel, Mary Blaine Johnston who prepared that is here. However, James is not here and there was a letter objecting to the findings of fact by the opposition counsel, Lance Collins. So I'm not one who really wants to offer legal advice to the commission, I would feel more comfortable dealing with it when James is here. I'd like to kind of get a sense from members of the commission whether we should move this item along or try to proceed. Go ahead Commissioner U'u.

Mr. U'u: I'd like to make a motion to defer if that's what you're asking.

Ms. Domingo: Second.

Mr. Iaconetti: Second.

Mr. Starr: Okay, we have Commissioner U'u moved, Commissioner Domingo second. I think she beat you by about a millisecond to defer the item and we'll try to take it up next time. And I apologize to Counsel Johnston, but better safe than sorry. All in favor of the motion to defer please raise your hand. All opposed.

It was moved by Mr. U'u, seconded by Ms. Domingo, then unanimously

**VOTED: To Defer the Matter to the September 26, 2008 Meeting.
(Assenting - B. U'u, D. Domingo, K. Hiranaga, W. Mardfin, W. Iaconetti,
J. Pawsat, W. Hedani, J. Starr)
(Excused - J. Guard)**

Mr. Hunt: We'll mark that as unanimous. Just for the record that was Item F-1 on today's agenda, adoption of written decision and order prepared by Brian T. Moto regarding the rather lengthy description on your agenda.

Mr. Mardfin: Is it deferred to a specific date?

Mr. Starr: We'll try to do it for the next meeting if we can. Okay, so Director's Report. I guess we go to the Director for the Director's Report.

H. DIRECTOR'S REPORT

- 1. Planning Commission Projects/Issues**
- 3. EA/EIS Report**
- 4. SMA Minor Permit Report**
- 5. SMA Exemptions Report**

Mr. Hunt: First item is planning commission projects or issues. I believe this is where you bring questions to us or concerns or whatever.

Mr. Starr: I have two. One is you know, I've been getting a bunch of calls and I also we got one letter I think it was distributed to everyone about a house that's being proposed at Koki at in Hana which is, you know, a place that's kind of considered a park next to the main surfing beach in Hana. Word is circulating around the community that there's going to be a ...(inaudible)... house built out on that point in a place where people have been hanging out there since time ...(inaudible)... I know we had a request to put that, to have a hearing by the Hana Advisory Committee which I guess would move it into a different category from a minor. Director.

Mr. Hunt: The application is an administrative decision at this point. And the steps are is they present an application and we do an assessment on it. And based on the outcome of that assessment, there's three options. One is we could exempt it from the SMA requirements. We could require a minor permit, but that's unlikely because the threshold of a minor is a \$125,000 in value or we could recommend a major if we believe there's individual or cumulative environmental impacts. At this point we haven't made that determination. The motion, I believe there was an actual motion last meeting to request a hearing by the advisory committee in Hana and that was defeated by this board. So I would just – I guess I'll bring you up to speed on that and I'm happy

to talk to you folks about this. I cautioned the group last time and I'll do it again, if it is appealed, it comes before you, so you need to be very careful not to make any conclusionary remarks today. It could prejudice you and you would have to be – there's a chance you'd have to recuse yourself then.

Mr. Starr: Yeah, I see that as being correct. I would not want to say, you know, given an opinion project itself, just that, you know, if we do get contacted, I know I've been, I would assume Ward is also hearing it from people, I would assume that if it becomes an SMA then there will be process and then people will have their chance in Hana to have their say and so. If it were not gone outside of that process then there wouldn't be. So, I mean, what should we tell community members at this point?

Mr. Hunt: There's two likely outcomes. One is that the department will find it exempt from the laws, the SMA rules and I believe, correct me if I'm wrong Clayton, but I believe that's appealable to the planning commission? I'm getting an affirmative head nod.

The other option is that we find it that it is, requires a major SMA permit and then that would be heard before this body. At this point, you could refer it to the Hana Advisory Committee like you do other applications if you wish, but those are the two outcomes.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: I just have a short question I think. You say you haven't made a determination yet.

Mr. Hunt: Correct.

Mr. Mardfin: When this determination is made you'll let us know in a fashion so that we will have an ability to appeal or not?

Mr. Hunt: I believe that's what happens with these notification memos that we present to you. Is that correct Clayton that the 10-day appeal period doesn't kick in until they have actually received these? So it would be on your SMA list here as one of these applications or permits.

Mr. Mardfin: And how –

Mr. Hunt: That's the intent of that whole reporting to you.

Mr. Starr: Wait, you're saying that it will be on this list, but there's only a 10-day period. So in other words, we might get this three weeks later or two weeks later at which point we're given it, but it's too late for the citizenry to know that they could appeal it?

Mr. Hunt: Well, it kind of moves things along that way. I'm kidding. The 10-day period as I understand it, correct me if I'm wrong again Clayton, as I understand it, the 10-day period starts once you receive it.

Mr. Mardfin: No, it says it on here, it says open. What will say when you've made a decision?

Mr. Hunt: Approved or –

Mr. Yoshida: Approved or exempt.

Mr. Hunt: Approved or exempt.

Mr. Mardfin: So I keep watching this and when it comes and it changes from open to either approved or exempt – it's under SMA exempt right now as open. You will either determine that you'll approve it as exempt or it will move to the other list, earlier in here we have SMA major.

Mr. Hunt: I believe so, yes.

Mr. Mardfin: And it will say approved as an SMA major at that point?

Mr. Hunt: No, no, it would then be open as an SMA major and this body would review it.

Mr. Mardfin: Because we'd have to deal with it. Thank you very much.

Mr. Starr: I'd actually prefer if you could maybe inform all commission members immediately plus the public so they can, you know, immediately or within 24 hours.

Mr. Hunt: I appreciate the comment and I'll take that into consideration and I'll talk to my legal counsel. What we don't want to get into is an unfair situation where we're treating one applicant different than we do others. I think we've been upfront. We've told you folks the process. I a little bit of it, it sounds like it's due diligence on your part. I don't mean to be disrespectful.

Mr. Mardfin: I understand.

Mr. Starr: Just keep in mind there is a lot of public concern and we want to be sure that the public do get served.

Mr. Hunt: We just don't want to be perceived as ginning up opposition or controversy or whatever. We get enough of that.

Mr. Starr: Okay, Commissioner Hedani.

Mr. Hedani: There's a whole lot of paving going on at Ukumehame, does anybody know what's going on there? I thought the County acquired land from the developer for use for park purposes and it seems like we're paving everything over. Is that something anybody knows anything about?

Mr. Hunt: I believe it's part of the access to the Ukumehame Subdivision, but let me get better knowledge on that and report back to you.

Mr. Hedani: It just looks like for agricultural subdivision we're paving half the island.

Mr. Starr: Talking about paving, we've been – out in Kaupo there's two paving projects going on

and the community was informed first of all that the paving one's at Kaupo Store and then the next at Manawainui would be done in such a way that the road would be closed for portions of the day, but people would be allowed through and there were public meetings on that. And then when they were ready to begin the project which was supposed to be yesterday an email came through at the last minute saying that the road will be closed all day long and that no cars would be allowed passage through there all day long. Which considering the road is closed on the other side until some time in October means you're basically telling people that they cannot get home, they cannot get from their home to work or to the hospital. I mean, it seems to be something that Stan Zitnick who is the Mayor's representative seems to be M.O. to do that to the community out there. I'm sorry Mike is not here. But it's really stressing out all the people who live out there and it seems, you know, why can't they hold the paving off till October when the road is going to be open on the other side and then people could get out the other way if they need to. You know, no it's not really planning issue, though frankly since it's all in the SMA there should have been processed but when that whole project came forward it was done under some kind of FEMA emergency exclusion and now the people have been kind of tortured bit by bit, you know, not cool. Any way I said my piece on that and I apologize.

Mr. Hunt: Yeah, you're right, it's not a planning issue, but we're here to help you folks and I'll relay that message to the Public Works Department and hopefully we can get a response.

Mr. Starr: You know, what I've heard is they didn't want to wait till October and then inconvenience the tourist. But right now they're torturing the residents. They rather inconvenience the tourist and torture the residents.

Mr. Hunt: I really have very little knowledge of that project.

Mr. Starr: Okay, thank you members for bearing with me on that. Okay, Director. We have some items for the next. Dr. Iaconetti.

Mr. Iaconetti: Can you describe this greeters station, flag pole thing at Kaanapali that's been approved with conditions?

Mr. Hunt: I believe it's part of the – oh, that's at Kaanapali?

Mr. Iaconetti: That's what it says.

Mr. Hunt: Clayton, can you help me is that the Royale?

Mr. Starr: I think that's SVO. That's the Starwood Vacation.

Mr. Iaconetti: Yeah.

Mr. Hunt: Well, I shouldn't guess. That's not good.

Mr. Yoshida: Which page is that on?

Mr. Iaconetti: It's on the very first page.

Mr. Yoshida: Yeah, I believe that's at the Kaanapali Ocean Resort. The initial one next to the Kahekili Park.

Mr. Iaconetti: And the purpose of the greeter station and etc.?

Mr. Yoshida: On lot 1, the one next to Kahekili Park. You have lot 1, lot 2 and lot 3. This is on lot 1.

Mr. Iaconetti: Where is the greeter station?

Mr. Hedani: My guess is the greeter station is right at the entrance to the driveway.

Mr. Iaconetti: Isn't it a little strange I mean for a hotel to have a greeter station at the entrance of the highway?

Mr. Hedani: My guess is it's at the entrance to the driveway that leads into the property, to the Kaanapali Ocean Resort property. The road that comes off the highway is owned by our company and we don't have a greeter station on our –

Mr. Iaconetti: Okay.

Mr. Starr: Seem weird to me too Doc.

Mr. Mardfin: Mr. Chairman, was the director going to address ...(inaudible)... to H-6 and/or H-7?

Mr. Starr: Sure. How about H-2? We missed H-2. Why don't we turn that over to Mr. Yoshida.

2. Discussion of Future Maui Planning Commission Agendas

Mr. Yoshida: We've circulated the public hearings and I guess the one final EA to be considered at your next meeting on September 23rd.

Mr. Starr: Everyone got that?

Mr. Yoshida: Three public hearing items and one final EA.

Mr. Starr: Item 6, Director, the big event.

6. 2008 HCPO Conference, September 10-12, 2008 - Grand Wailea Resort

Mr. Hunt: The state annual planners conference again, starts tomorrow with the mobile tours and there'll be a reception at night and the main day is Thursday and there'll be several speakers. We believe we have some very interesting and exciting speakers and there'll be some breakout sessions also. There'll be a banquet dinner that night. And then Friday they'll continue with some

sessions in the morning and it ends generally around noon. So I believe, you know, we've talking about this for months. So most of you should be aware of this and hopefully we'll see all of you there. I'm not sure what the attendance will be.

Mr. Starr: Commissioner Hedani.

Mr. Hedani: At tomorrow night's reception, Jeff, is that just social or is there a speaker for that session?

Mr. Hunt: Clayton, you're kind of the head tomorrow night, can you describe what's going on?

Mr. Yoshida: I believe they have appetizers, socializing on the outside. They have music, welcoming from the Planning Director. We'll be presenting some of the top golf prizes and fishing. If they catch anything in the fishing tournament we may be able to eat some of the sashimi or whatever and it's kind of get together and then we have sort of a hospitality room planned after the reception. But the real heavy business as the director said is on Thursday with the welcoming by the Mayor ...(inaudible- changing of tape)... and to talk about solutions, common problems, how do you folks deal with it, here's how we're dealing with, make contacts, networking, you meet people that later on you can call up and say, didn't you guys, weren't you dealing with this problems. So just gives you a better, broad base of research and information. And to be honest, it is somewhat fun and it gives us a little bit of break. In this case, it's not that much fun because we're putting it on. It's actually a large burden to our staff in the last month or so, but it's a good thing and it's good for the planning community and we look forward to it being somewhere else next year.

Mr. Starr: Okay, should be a great event and thank you Director for having your people organize it and doing such a good job. Site inspections, we have any --

7. Date and Time of the Central Maui Landfill/ Ameron and Maui Lani VMX Site Visits

Mr. Yoshida: Mr. Chairman, Members of the Commission, at your last meeting I believe the indication from the commission is that they wanted to have it on a off meeting week on Tuesday due to Commissioner Mardfin's teaching schedule in Hana. So we're looking at September 30th @ 9:00 a.m. at the Central Maui Landfill Phase 4 site, and then we'll look at the Ameron quarry site and then we'll go over to the Maui Lani village mixed use site.

Mr. Starr: So September 30th, a Tuesday.

Mr. Yoshida: That's kind of a off meeting week on a Tuesday.

Mr. Starr: Where do we meet?

Mr. Yoshida: At the Central Maui Landfill Phase 4. We'll send out a map as to where.

Mr. Mardfin: But it's going to be September 30?

Mr. Yoshida: Yes.

Mr. Mardfin: Thank you.

Mr. Starr: And what time?

Mr. Yoshida: 9:00 a.m.

Mr. Starr: Okay, 9:00 a.m., September 30 for a fun-filled day at the landfill and other locations? Anything else anyone have? Okay, I want to thank everyone for helping get through a very tough agenda and working hard and very well. Thank you. Till next time.

I. NEXT REGULAR MEETING DATE: September 23, 2008

J. ADJOURNMENT

The meeting was adjourned at 5:04 p.m.

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Present

Jonathan Starr, Chairperson
John Guard IV, Vice Chairperson (excused at 4:44 p.m.)
Donna Domingo
Wayne Hedani
Kent Hiranaga
William Iaconetti
Ward Mardfin
Joan Pawsat
Bruce U'u

Others

Jeff Hunt, Planning Department
James Giroux, Department of the Corporation Counsel (excused at 4:30 p.m.)
Mike Miyamoto, Department of Public Works