

**HANA ADVISORY COMMITTEE TO THE
MAUI PLANNING COMMISSION
MEETING OF AUGUST 31, 2015**

** All documents, including written testimony, that was submitted for or at this meeting are filed in the minutes file and are available for public viewing at the Maui County Department of Planning, 2200 Main St., Suite 315, Wailuku, Maui, Hawai'i. ***

A. CALL TO ORDER

The meeting of the Hana Advisory Committee (Committee) was called to order by Vice-Chairperson, Ward Mardfin, at approximately 4:09 p.m., Monday, August 31, 2015, at the Old Hana School Cafeteria, 5091 Uakea Road, Hana, Island of Maui.

A quorum of the Committee was present (see Record of Attendance).

Mr. Ward Mardfin: ...(inaudible)... Clayton Carvalho, but he is absent so far, I am the Vice-Chair, so I'm calling the meeting to order at 4:09 p.m., on Monday, August 31, 2015, we're in the Old Hana School Cafeteria, and I call the meeting to order. We have members, I'm going to call them off if you just signify -- well, John Blumer-Buell here; Clayton Carvalho, absent; Scott Crawford here; Anjoleen Hoopai-Waikoloa --

Ms. Anjoleen Hoopai-Waikoloa: Here.

Mr. Mardfin: Dawn Lono.

Ms. Dawn Lono: Here.

Mr. Mardfin: Ward Mardfin is me, here; Gale Notestone.

Mr. Gale Notestone: Here.

Mr. Mardfin: Okay. And we have with us Jennifer Oana sitting next to me on my right, she's our attorney, Corp. Counsel; we have Clayton Yoshida, director -- assistant director? Deputy director? Administrator, but the high mucky-muck for today's meeting; Gina Flammer is a planner with the Maui Planning Department; and I see other people. Oh, Suzie is our Secretary. And I see Clayton coming up the sidewalk so I'm going to just pause presently, and he will get here and I'll hand him the microphone, so he can take over. And what he should be doing -- now that he is here, he is going to take over, and he is going to have public testimony.

B. PUBLIC TESTIMONY

Chairperson Clayton Carvalho: So agenda item B, for the sake of time, we can move any testimony forward for anything that's going to be heard later tonight if anyone has to speak now and possibly leave right now if you have -- looks like everyone's going to stay for the next agenda item. No one's in a rush? Okay. Essentially, that's what it is. John?

Mr. John Blumer-Buell: Just to be clear for folks that are here and may want to testify, you can testify now for any agenda item, but you can't testify twice. So if you're going to be here when your agenda item comes up, that's the best time to testify so that -- so that you can be asked questions. Is that correct, everybody?

Ms. Jennifer Oana: Basically, the Committee Members can ask questions for clarification, but there should be no debate back and forth, but any clarifying questions is allowed.

C. INTRODUCTION OF NEW MEMBERS - DAWN LONO and GALE NOTESTONE

Chair Carvalho: Thank you. Thank you, John. That being said, let's move on to agenda item C. Yeah. We'd like to formally introduce our new members to the Advisory Committee; first is Gale Notestone. Stand up. Thank you. And also, Ms. Dawn Lono. Thank you so much. We can move on to agenda item D, the election of officers for the 201-2016 board year, both the chair and the vice-chair. I believe I can just leave it up to nominations. John, go ahead.

D. ELECTION OF OFFICERS FOR 2015-2016 BOARD YEAR - CHAIR and VICE-CHAIR

Mr. Blumer-Buell: I just wanted to take a step back about four years ago when I started by journey on this board, what we tried to do at that time, and Scott will remember this, is that we thought that everybody that's part of this Committee should be chair at some point, so we've been kind of -- Scott's been chair, I've been chair, Clayton's been chair, and so, you know, in that, I don't know if she -- if Anjo would like to serve as vice-chair this year but I'd like to nominate her if she would, and this is to honor your service on here; if you don't want to, then you can deny it. What's that?

Ms. Hoopai-Waikoloa: Thank you, but it's okay.

Chair Carvalho: Okay.

Mr. Scott Crawford: Were you nominating her as chair or vice-chair?

Chair Carvalho: Yeah, well --

Mr. Blumer-Buell: I was just seeing -- I would have -- just to see if she was interested in serving 'cause her and I are both going off next year. So with that in mind, I'd like to nominate Ward Mardfin as the new chair.

Chair Carvalho: Dawn will second. Do we have any other -- well, first off, do we have any other nominations first before we put that --

Ms. Lono: I move we close nominations for the chair.

Chair Carvalho: Dawn will move to close the nominations, and Anjo will second. All in favor of chair, sorry, the chair, Ward Mardfin. Actually, we have to ask Ward, would you be willing to accept the nomination?

Mr. Mardfin: I am willing. Sorry, I didn't think I had a mike. Willing.

It has been nominated by Committee Member Blumer-Buell, seconded by Committee Member Lono, then unanimously

VOTED: that Committee Member Ward Mardfin serve as Chairperson for the 2015-2016 board year.

Mr. Carvalho: So unanimously approved. I would like to hear nominations for vice-chair. John?

Mr. Blumer-Buell: I -- since everybody that's wanted to has served, I'd like to nominate one of our new members, Gale Notestone, to be vice-chair, if he's willing. You know, my philosophy's to spread it around.

Mr. Crawford: I second the nomination.

Mr. Carvalho: Gale, would you be willing to accept the nomination?

Mr. Gale Notestone: My first time at the mike. I'll accept.

Mr. Carvalho: Do I hear another other nominations for vice-chair?

Ms. Lono: ...(inaudible - not speaking into the microphone)...

Mr. Carvalho: Dawn will be moving to close nominations for vice-chair, and Anjoleen will second.

It has been nominated by Committee Member Blumer-Buell, seconded by Committee Member Crawford, then unanimously

VOTED: that Committee Member Notestone serve as Vice-Chairperson for the 2015-2016 board year.

Mr. Carvalho: Unanimously approved. Thank you, Ward and Gale. Thank you. Ward.

Chair Mardfin: Okay.

Mr. Blumer-Buell: Chair Mardfin?

Chair Mardfin: Now that we've had elections --

Mr. Blumer-Buell: Chair?

Chair Mardfin: Mr. Blumer-Buell?

Mr. Blumer-Buell: Yeah, I just wanted to, it's not on the agenda, but I wanted to say mahalo to Clayton. I think he's done a very good job, really good, so thanks.

Chair Mardfin: I second that, and I think we ought to give him a round of applause for his service.

Mr. Carvalho: I'd like to thank my vice-chair, Ward Mardfin, as well. Thank you for -- yeah, thank you.

Chair Mardfin: And thank you, John, for doing that. We are up to item E, on the agenda, Approval of Minutes of the March 9th meeting and the March 17th meeting. Let's start with the March 9th meeting. Would anybody -- do I hear a motion to either to approve the March 9th meeting minutes, or to correct them, or to add to them? Would somebody that's been at the meeting -- was at the meeting move to approve the minutes?

E. APPROVAL OF MINUTES OF THE MARCH 9, 2015 and MARCH 17, 2015 MEETINGS

Mr. Crawford: Move to approve the minutes for March 9.

Chair Mardfin: Is there a second?

Mr. Carvalho: I will second. Yeah. Clayton. I will second.

Chair Mardfin: Thank you. It's been moved and seconded. Discussion? Are there any additions or corrections that need to be made. Seeing none.

There being no discussion, additions, or corrections, the motion was put to a vote.

It has been moved by Committee Member Crawford, seconded by Committee Member Carvalho, then unanimously

VOTED: to approve the minutes of the March 9, 2015 meeting as distributed.

Chair Mardfin: That appears to be unanimous. Would somebody made a motion to approve the March 17 minutes?

Mr. Crawford: I so move.

Chair Mardfin: Thank you, Scott. Is there a second?

Mr. Blumer-Buell: I'll second that.

Chair Mardfin: Thank you, John. The minutes for March 17 meeting has been approved and seconded. Are there any corrections or additions? Mr. Blumer-Buell?

Mr. Blumer-Buell: Yeah, I have one that is -- that is important to correct. It's on page 3 of the draft minutes, the bottom paragraph, which I said that -- and where it says, "number two, this land upon the proposed use is sought," and what it says is, "it suited for uses permitted within the district," and what I said was, "that the proposed use is sought is not suited," and what I was quoting there was one of the five Hawaii Revised Statutes, number 205 test, so I was basically saying that the -- that I failed that test, and if you read the rest of it, you can see what I was saying. But anyway, what I said was, "the proposed use sought is not suited," and that's a --

Chair Mardfin: Thank you, John. So on page 3, down under Mr. Blumer-Buell, at the bottom, one, two, three, four, five, six, seventh line down, the word "it" is changed to "is not."

Mr. Blumer-Buell: Thank you.

Chair Mardfin: Without objection, that is -- the change has been made. Are there any other additions or corrections? Seeing none, we're ready for a vote on the motion to adopt the minutes as corrected.

It has been moved by Committee Member Crawford, seconded by Committee Member Blumer-Buell, then unanimously

VOTED: to approve the minutes of the March 17, 2015 meeting as corrected.

Chair Mardfin: That appears to be unanimous. We have approved minutes. Item F, Public Hearing, action to be taken after the public hearing.

Chair Mardfin read the following agenda item into the record:

F. PUBLIC HEARING (Action to be taken after public hearing.)

- 1. ROBERT and ERICA REYNOLDS requesting a State Land Use Commission Special Use Permit and a Short-Term Rental Home Permit in order to operate the Hana Estate Short-Term Rental Home (STRH) in the State Agricultural District on approximately 6.81 acres of land located at 110 Maia Road, TMK: 1-3-009: 076, Hana, Island of Maui. (SUP2 2012/0022) (STHA T2012/0003) (G. Flammer)**

This short-term rental home application is being referred to the Hana Advisory Committee and the Maui Planning Commission for review and action because the proposed short-term rental home is located in the Hana community plan area and the number of bedrooms proposed for short-term rental home use is greater than three.

Chair Mardfin: Ms. Gina Flammer is the planning person on this. Gina, would you care to make a presentation?

Ms. Gina Flammer: Sure. Thank you. Feels good to be back in Hana. It's been a little while since we're had one of these permits. We don't have our regular screen today, it's not the greatest quality there, you do have copies of it, I printed it out for each of the members, and then there are some copies over in the corner if anybody in the audience would like to go along as we got through it.

Ward just mentioned that there's some numbers associated with it. This was one of the first short-term rental homes to come in in 2012, you can see it actually was the third one. It came in before our farm plan requirement. It caused a delay but only in that we -- the applicant -- we then went to require farm plans coming in before the permit actually was submitted, we then went through several different inspectors out in Hana, so getting -- we had a whole bunch right in the beginning, he kinda got caught during this period when we didn't have inspectors that were coming out to Hana, so it took quite a while to get somebody out here, so the delay really is on the department, not at all on the applicants, so I just wanted to explain that. I also brought my wrong glasses so if you see me going up and down, or occasionally grabbing this, that's why. I'm going to do the best I can here.

Okay, so we have, today, it's a regional map, you guys -- this is more for the Maui Planning Commission when we get there, and this shows you where the parcel map is, off Ulaino Road, it's Maia Road. It's almost 7 acres. It's in the Hana Agricultural Park. A history of the property. The applicants bought it about seven years ago, they did some renovations, and then they began an extensive agricultural effort. Some of you may have know the property over the years and you've probably seen all the plantings, the trees, the vegetables that have gone in over the years. It's one of the few properties that I've seen that actually has a full-time farm manager that's there every day working on the property.

Here's the Reynolds family. The applicant prepared his own presentation. We're so busy these days that, in most of the cases, we have the applicant do it. I added a lot of slides though, about 50 to it, so it's going to be a little bit longer, and I thought it'd be better if I went ahead and gave it instead of him, but he wanted to show you his family.

And then to show you a little bit about all the work that they had done, and when they got the property, a lot of invasive plants, trees that they spent a lot of time taking out. The soil classification is very poor in that area, it's D, it's actually D-15.

Chair Mardfin: Gina? Gina, may I interrupt a minute? Are the applicants here?

Ms. Flammer: Yes. We have Robert right there.

Chair Mardfin: Robert.

Ms. Flammer: At the end, I'm going to introduce who else is here. Actually, kind of his whole team is here.

Chair Mardfin: Okay.

Ms. Flammer: So the applicant used a lot of the chippings, and has done a lot work for soil nourishment over the years. So his got an approach where it's organic farming - or the family I should say, I know the wife is also very involved in the farming - and they focus on biodiversity. I know we talk a lot about monocrops, it's kind of the history of Hawaii; in their case, they're looking at the opposite, seeing all the different types of products that they can grow on the farm.

It does, of course, now has a county-approved farm plan, so you've got the letter, as Exhibit 4, and then you've got the description in Exhibit 3 that kinda shows you where everything is, and then you can see all the different types of agriculture that's on the property, that's also included in your staff report.

And then what I did in the report is I just kinda went through and showed you a lot of different pictures of what the agriculture is. We've got a lot of citrus. I think we're looking at 15 -- 15 different varieties. And then there's just some different pictures of all the different trees. I always like to see younger trees planted. It shows that they're continuing to expand their operations. So you can just see the varieties - mangoes, avocado, lots and lots of bananas when I was on the property. This is one of the longer sites and hotter sites that I've done. I mean I think I spent about an hour-and-a-half walking around the property just looking at all the agriculture, and one of the nice things is I didn't see a lot of fruit on the trees, which tells me that it's all being cultivated and used. It's hard to go on a site visit and see rotting fruit, and I didn't see anything of that sort on this property at all. So there's also lilikoi, all other different types, I think they said thimbleberry, a variety of fruits, lots of vegetables, and they continue each time they come out to plant different types of vegetables and expand the different beds in which they do that. Quite a bit of pineapples also on the property. You've also got some herbs, some other culinary and medicinal types of plants growing as well. You can see the aloe that's there. Lots of coconuts and lots of different variety of coconut. I wanted to you see that. Chickens, that's an important part of organic farming. You have bug control. They eat the coconuts that are not sold also. And then the eggs are also a part of it.

You folks have seen a number of these state land use special use permits in the past. There's only one case when you've actually -- that you've actually been the reviewing body for the short-term rental home property, that was the Hana Gardenlands property. The trigger, in both those cases, was, for Hana, when there's more than three bedrooms, the Maui Planning Commission and the Hana Advisory Committee is the approval authority for that, so because this is a five-bedroom property, you are the approval authority for both of these permits today.

So here are some pictures of the house. It's actually two different structures that are being permitted. In the report, you've got the floor plans, and then I just wanted to show some

pictures so you can get a feel of what it looks like. You've got the main house with a living area, kitchen. You've got, on the upper floor, there's two different guest bedrooms. There's two different guest bedrooms on the bottom floor. And then there's a separate -- oh, they got a game room in between there. That kinda shows you what the back looks like. And then there's a second, there's a one-bedroom cottage also. It's kinda designed for multi-generations, for families to come.

And I wanted to give you the big picture also, so where we're at with Hana with short-term rentals in general. We're currently at 12 permitted right now. The cap is at 48. And then here's the map, you can't really see it on here, but in your report, you can see it in color where they're located. And then I gave you a list of where they are also so you can take a look and see who's permitted.

And then bed and breakfast, I thought you might want to see that too. Again, we're at 12 permitted. And then I gave you a list of that as well so you can see.

In terms of agency comments, the State Office of Planning is the agency that's -- they call themselves kind of the protector of ag lands, they take a look at all of the state special use permits for properties located in the ag, state ag district, and they had no comments on this, which is nice.

And in terms of testimony, neighbors within 500 feet were notified in 2012, when the application was first filed, that's one of our requirements. When the public hearing was scheduled, just a few months ago, the neighbors again were notified. The applicant is required to publish an ad of the public hearing in *The Maui News* for three times informing the public about the hearing. The department is also required to put an ad in *The Maui News* informing the public about the public hearing. There were no letters that came in, no letters or protests, even with all the public notice that we did. And as of today, we've had three letters of support for the project, one of them is in your staff report, and then I handed out two today that are on top of the packet.

Ms. Lono: Excuse me. I didn't receive a packet today.

Ms. Flammer: Oh, it should be right on your --

Ms. Lono: Well, I just got this -- I got this in the mail but I didn't receive anything today.

Ms. Flammer: There should be an extra sitting -- it's a copy of the presentation. Oh, there you go.

Ms. Lono: ...(inaudible - not speaking into the microphone)...

Ms. Flammer: Okay. Oh good. I'm glad you spoke up. Sorry about that. So I just put in here just so you can see Exhibit 15 is the first letter that came in, and then just some copies to remind you of the other two letters that came in.

So what I wanted to do, real briefly too, since it's been a while since we've seen one of these permits here, I wanted to go over what the permit guidelines are. So the first one I'm going to go over is the state special use permit, what we call, you know, the "ag permit" because it's located in the state ag district. So we have, in the law, objectives or guidelines that are for you when you're reviewing a permit. The first one is the use shall not be contrary to the objective sought, accomplished by the ag code, the state ag code. So, basically, the department puts a response in, in our report, and that is that this short-term rental use is taking place in existing dwellings, and it's without conflict of the existing agricultural uses on the property, and that we don't anticipate that they will conflict, that the short-term rental use home is in any way going to impact the agricultural use. Actually, in this case, because it's more of an agricultural, agri-tourism type of operation, we view it as enhancing it.

Second, the criteria: The desired use will not adversely effect the surrounding property. I know we've had some really interesting conversations here before about this for other permits. For this one, we're looking at a very large parcel with lots of vegetation that provides privacy as well as sound barriers. It's a residential agricultural neighborhood with single-family dwellings. There are no records of noise complaints shown with the police. There's been no letters of protest received. And I just wanted to point out, as with all of our short-term rental home permits, there are house policies that require that the applicant tell people that there are no parties or gatherings of non-registered guests. There is also the farm manager lives across the street, and he's the caretaker of the property too, so if noise is going to be happening, they're going to be hearing about it just as soon as any of the other neighbor would be.

The third one that we have is that the use would not unreasonably burden public agencies to provide road, street, sewers, water, drainage, school improvements, police and fire protection. We're talking about a very minimal use here. These state special use permits are a very general type of permit that's for any use in the ag district that's not already stated in the code. So it's a wide variety from a concrete batching plant to the Maui Boys and Girls Club. So when we look at the overall picture, we see this type of use isn't going to be putting any additional burden on any public agencies in this case because it's such a small limited use and it's in a house that's already existing and it's already approved for a long-term rental.

Fourth, unusual conditions --

Chair Mardfin: I'm sorry. Would you say that again?

Ms. Flammer: Sure. The criteria or the --

Chair Mardfin: No, the -- it's permitted for long-term rental.

Ms. Flammer: Yes. A long-term rental is a permitted use in the state ag district.

Chair Mardfin: Okay.

Ms. Flammer: As long as it's a farm dwelling.

Chair Mardfin: Okay.

Ms. Flammer: So because of that, having a rental less than a 180 days, we don't see that it would cause additional need for higher road infrastructure, stronger sewer systems.

Chair Mardfin: And it's as if the owner were there if you have a long-term rental?

Ms. Flammer: We view -- the department views it as the same.

Chair Mardfin: Thank you.

Ms. Flammer: Yeah. The fourth is that unusual conditions and trends have arisen since the district boundary rules were established. Those rules were established in the early 1960s, right after Statehood. I know that there's rules that they're supposed to be updated every ten years, but then rezoning is supposed to occur, but that really hasn't happened. During the past 55 years, there's been quite a change in agriculture in Hawaii, as you know. When those rules were written, we were looking at sugar and pineapple. These days, agriculture's really become diversified agriculture, and short-term rental home use and bed and breakfast, and even hotel use has become kind of one of the mainstays of Maui's economy whereas, back in the late '60s, it really didn't play the role that it does today, so we view that as a unusual condition that's arisen over time.

And then also the last one, we're looking at the state ag permits is, the last criteria is that the land upon which the proposed use is sought is unsuited for the uses permitted within the district. And again, we've had some good conversations in here about that in the past. In its most limited sense, we've talked about the fact that it's a house that's right on that land making it you can't farm with that. I did want to point out, in this particular case, we're looking at really poor soil quality, so under the eyes of the law, that poor soil quality does make it unsuited. And then also the short -- like, you know, we just talked about the fact

that long-term rental use is allowed, the short-term rental use, in this case, we see it as, because the applicants come a couple months out of the year, it does make the long-term rental use not available to them, like it would have been, so then that way it makes it unsuitable for the permitted use within that district.

So next, I just wanted to briefly go over what are the short-term rental home permit criteria. I know that we talked about this at length when we went over the amendments, so I know you're familiar with them, but I'm just going to go real quickly through them now. So the first criteria that we look at is what's the number in distance from the parcel to other permitted short-term rental homes. Are you seeing concentrations of them, and if you are, is that okay? So in this particular case, it's the only one within 500 feet, and it's actually the one within its subdivision. There are two other permitted short-term rental homes located near them but it's over a third of a mile away, and you've got the map again in your staff report to take a look at that.

Your other criteria that you're looking at is the protest. What's the number of protests and what's the substance of those protests. In this particular case, there were no protests, and there was quite a bit of neighbor notification, so I don't think the lack of protest comes from people not knowing about it.

Again, we take a look at existing or past complaints about rental operations, and there were no complaints about it. I did want to point out, there was a request for service filed in April, it was an interesting case where it was the same person filed two cases that day; one was mistaken, he'd gotten the wrong address, I took the call, he had gotten the wrong address, later felt terrible. He had had friend, he told, that it was being kicked out a short-term rental, a legal one, had gotten angry, filed two complaints, but realized later that he had confused the addresses and didn't do it directly. The department was then unable to contact him. The email no longer worked. So nothing ever came of that request for actually either of the properties that he filed against.

So our fourth criteria that we look at is existing or past noncompliance with government requirements, and if there was noncompliance, what was the degree of cooperation. In this case, there's been full compliance with government regulations, there's been no violations of any type for this type of property while the applicant has owned it.

And then the last one deals with correspondence received by the department regarding the homeowners associations. We do have subdivisions that do have homeowners associations and sometimes those restrict short-term rental. This particular subdivision, as far the department is aware of, does not have any homeowners covenants.

So that's the end of my presentation. I did want to introduce the applicant. We have Mr. Robert Reynolds here today. We have the farm manager, Michael Finley, who's also here. And then we have the managing agent, the realtor, Brett Christiansen, who does run all of the operations himself is also here today if you have any questions for any of us. So thank you.

Chair Mardfin: Thank you, Gina. We -- this is a good time for public hearing portion of this. If there's anybody that would like to speak publicly about this application, please make yourself known. Nobody's interested in speaking? Good enough. Public hearing is closed. Members of the Committee, do you have any questions you would like to ask regarding this item? John?

Mr. Blumer-Buell: Thank you, Chair. I want to take a step back in this whole vacation rental, you know, B&B, short-term rental, and STR. When this first came up more than 20 years ago in Hana, there was already a problem with, people recognized it, with vacation rentals. And in the Hana Community Plan, the existing community plan, which is an ordinance, it says, "Conduct an inventory and study of existing nonconforming uses, including vacation rentals, to determine: one, their numbers; two, geographic distribution; and three, effects upon the local housing and real estate markets, and the local economy, and identify recommendations for resolving nonconforming use issues." And I'd just like to ask the Planning Department, as far as I know, and I've asked this year after year, have they ever done this study 20 years later?

Ms. Flammer: Yeah, as far as I'm aware of, I think the answer is no. It hasn't been conducted.

Mr. Blumer-Buell: Okay, that's just one point that I want to make, and this is not -- this is not speaking against this applicant at all. After all these years, I'm really fed up with this situation. The Hana Advisory Committee, the last five years, has been asking for enforcement out here. We even had one member on the Hana Advisory that filed a complaint that the Planning Department didn't followup on. And, you know, as far as I'm concerned, the short-term STRs aren't working. I still think that the B&Bs can work. But I don't think that short-term rentals are working outside of Hana, and, you know, something that's come up and some of the people here have testified, and that is, you know, the number, and I've watched every council hearing on this, the number of units, which is 48 at this point, that was never developed through any community consensus, and we've had people that since then that have testified repeatedly about that number being just totally subjective, and really not based on any standard, and on top of that, the council has repeatedly said that, well, when we reach the number, we'll just increase. So, as far as I can see, this is, you know, really out of control, and the big issue that was in the statement that's still in the community plan has to do with affordable housing, and that's a big -- that

is a big impact on this community, we've had a lot of testimony about that, and I'd like to read one more thing from the community plan, then give somebody else a chance at this, on page 8 of the community plan, it talks about problems, and this was all identified by the residents of Hana, this community plan language is our language: "Problem. Affordable housing. Identification of affordable housing solutions to meet the needs of existing Hana region residents is a fundamental community need. The lack of an affordable housing inventory is attributed to: one, inadequate infrastructure servicing lands designated for residential use, and, two, regulatory requirements may not be suited to rural conditions down in the region. In addition, the use of existing housing inventory for illegal vacation rentals was cited as a factor which decreases the availability of housing for residents." This is a statement that was made 20 years ago, so it's, if anything, it's just gotten worse, and I have, on this, I want to let other members ask questions, but I have one question that I will ask, with what you've heard, that applies to this application. Is bedroom number five, it sounds like an independent unit, could that be -- if this were to go through, I would want to require that unit to be an affordable housing unit. So I'm just making that comment. I don't expect a response right now, but I'm saying the problems are there, there's a detached building that's room number five that could be affordable housing, so I'm going to let -- I have quite a few questions for Corporation Counsel regarding Hawaii Revised Statutes 205, but thank you for letting me go, Chair.

Chair Mardfin: Thank you, Mr. Blumer-Buell. Mr. Carvalho?

Mr. Carvalho: I just had a -- just to add on and not to -- it's nothing against the applicant. It was really frustrating to read in the email from Dawn that the Planning Commission did not want to reassess the cap or even make a motion to reassess the cap for this past meeting. I think that's something we bring up every year, as John said, and it's never addressed, and it looks like it's never going to be addressed, and it just kinda puts a damper on people who are applying and applying under the right conditions, but, yeah, I'll leave it to you.

Ms. Flammer: Did you want me to respond or is that just a statement --

Mr. Carvalho: That was a comment.

Ms. Flammer: Did you want me to pass that on to the Planning Commission?

Mr. Carvalho: Yeah.

Ms. Flammer: Okay.

Mr. Carvalho: But I mean if you have anything, not in response, but if you have anything to add or --

Ms. Flammer: Didn't we talk about this during the time when we were commenting on the amendments?

Ms. Lono: Yes, we did.

Ms. Flammer: Okay. Okay, great. Yeah, all those comments went to the commission and then they're at the council right now. Yeah.

Chair Mardfin: Dawn? Ms. Lono?

Ms. Lono: My understanding from what is before the council does not -- the Planning Department did not recommend that reduction in units for the Hana District. It's still at 48, 48 even though we requested it be reduced to 30, and I don't see that discussion at all being brought forward before the council or before the committee or anything right now, so a lot of times, I think, we in Hana, speaking for myself, what I see is that people think when they come to the Hana Advisory Committee, and the Committee makes a recommendation, they feel like that recommendation was heard and that's going to be brought forward so they kind of lack or get lax in following the legislation thinking that it's been dealt with and taken cared of, but it hasn't. And unless we continue to advocate for whatever change we're trying to promote, then it just slips through the cracks and we don't get any -- we don't get heard. I mean it kind of -- and that's happening on several items of legislation right now, and this is one of them, and even though the Hana Advisory Committee said 30 each, because we have, you know, only so many and so many applications in, that looks like it would cover it, and considering the crisis we're in with affordable rental housing in this community, we're just not being heard and nobody's listening and nobody's considering it when the legislation comes before the committee. So I just wanted to express that.

Ms. Flammer: Okay. I can pass that message along.

Chair Mardfin: Any other questions? Well, I want to get a chance in here too, John, but, Ms. Hoopai?

Ms. Hoopai-Waikoloa: I actually have a simple question more for the farm manager and short-term rental managing agent. Because in the letters it says they hire locally, so I consider myself local, so for the two of you, one, where are you from? And, two, is how long have you been in Hana to be considered "local" 'cause I've been here my whole life and I don't think I've ever seen you guys around? And I'm involved in the community, I'm out there, for it to be saying that there's local employees.

Ms. Flammer: If you could step up to the microphone and then just state your name. Thank you.

Mr. Michael Finley: Michael Finley, and I've lived in Hana for eight years. I have two kids and they're both born in Hawaii. I've lived on Kauai for six years, and the Big Island for one year, and Hana for eight years. But I don't get out very much. I just go to work, come home, take care of the family.

Chair Mardfin: Just out of curiosity, what part of Hana do you live in?

Mr. Finley: I live Kaeleku.

Chair Mardfin: Okay. Thank you.

Mr. Brett Christiansen: Hello. My name is Brett Christiansen. I've been on Maui for 14 years. I first came here in the '80s as a kid and decided I wanted to live here so -- and I reside in Paia, I have an office in Haiku, and -- that I work out of, and any other questions?

Mr. Carvalho: Your job doesn't require you to be here in Hana at all times? No?

Mr. Christiansen: Not at all times. We, you know, we work as a team. Michael is on the property almost every day, and I take care of all the business stuff, and I'm -- my phone in my pocket at all times, including my email, so, fortunately, I almost never get to disconnect, so anything else?

Ms. Hoopai-Waikoloa: Thank you.

Mr. Christiansen: Thank you.

Chair Mardfin: Gina, what is the requirement for the manager?

Ms. Flammer: They have to be within 30 driving miles.

Chair Mardfin: Is that within 30 driving miles?

Ms. Flammer: Yeah.

Chair Mardfin: Okay. Mister, if you don't mind, I'm going to ask you a couple questions, and, actually, this is sort of a followup on what John asked, and my questions are for Mr. Reynolds, so if would go to the mike.

Mr. Carvalho: One, just quickly, to add on. We have a letter from Brandon Pu, I believe he's an employee?

Mr. Reynolds: We have two letters of locals, sorry, have worked on the property but we have employed a lot of people to work on the property, all locals, almost all local. We try local as much as we can so --

Chair Mardfin: Okay, I have a series of questions for you.

Mr. Reynolds: Yeah.

Chair Mardfin: First one deals with what Gina said about you can't rent it out long term because you're on the property, and when do you come?

Mr. Reynolds: It's always different. The nature of my job is I manage rock bands and so I go tour with their tour cycles, but we try to spend two months a year, sometimes three months, it's usually during summertime, but it varies, sometimes we'll come out for two different chunks of time. I would love to be here more. It's a constant battle.

Chair Mardfin: And when you come, where do you stay?

Mr. Reynolds: Oh, we stay at the house.

Chair Mardfin: In the main house?

Mr. Reynolds: Both. We -- they're quite close to each other, so sometimes our two daughters are in the studio and we're -- we're a big family, and I'll have sometimes other family members will come out with us too so --

Chair Mardfin: And the garage, it's a garage on the building permit, is that correct?

Ms. Flammer: It shows that it was built in 1997. I talked to the applicant about talking to real property tax. We learned quite a while ago that remodeled permits were not always routed to real property tax, so it's not an accurate assessment of building permits and what's on the property. So I talked to him about maybe going in and talking to real property about getting all of that updated.

Chair Mardfin: So there may be -- it may be assessed lower than it should be?

Ms. Flammer: Yes. I guess that's a possibility. Yeah. I think this permit will probably bring everything up.

Chair Mardfin: I want you to describe this on the -- if you go to the tax map key information, it calls it a "garage," but I can see from the diagram that this is not a garage, this is a guest bedroom.

Mr. Reynolds: Yes.

Chair Mardfin: And does it have any toilets?

Mr. Reynolds: What it is it's adjacent to a garage and so it used to be one large garage; prior to us buying it, somebody separated it; half of it is where we keep the lawnmowers and all of Michael's equipment and fertilizer and things, and other half it's that kind of studio room and it has a bathroom, small bathroom adjacent to it, and a closet.

Chair Mardfin: And a shower?

Mr. Reynolds: Yes.

Chair Mardfin: Does it have any cooking facilities?

Mr. Reynolds: It has a -- is it a propane or electric stove? Is that right? Yeah.

Chair Mardfin: Any refrigeration?

Mr. Reynolds: Yes.

Chair Mardfin: Running water?

Mr. Reynolds: Yes.

Chair Mardfin: Okay. Thank you very much. Oh no, I have one more question. Have you ever considered renting out that place for long-term rental?

Mr. Reynolds: You know, we did think about having somebody -- a caretaker live in that, not for long-term rental though unless it's kind of part of it all. My concerns -- I really respect the suggestion, by the way, I understand the need for more local housing, I don't know that it's right here for two reasons. One is, you know, there's a lot of fruit and would they partake in the farm plan and eat off there, would they stay to themselves? I don't know how they would stay to themselves, it's right next to the house. I might be strange for guests coming and there's somebody else -- I just don't know. If they're not part of it somehow, being caretakers or something, it might be weird. Then the other thing is really having ten people stay there makes a big difference. It makes a big difference with our

family when we come. We really do need room for ten people. I'm the oldest of 9 kids. I have a family of 11. We all -- when we come out with spouses and like we really -- we need those bedrooms for us, and also we find that guests, I mean there's very few short-term rentals that you can sleep 10, and I just think there's real value. You know we have just full candor, but this was a rental before we purchased it, and the -- we quit doing it when we were told we weren't allowed to and filed the appropriate permit.

Chair Mardfin: When did you quit doing it?

Mr. Reynolds: Gee, I don't know. It's been six months. I can remember how many months ago. Anyway, we were told you can't be doing this. Here's the proper way to do it. We shut it down. But I can tell you prior to it, there's people that -- it's families that do -- they go out, they want to come every year, and so that number of bedrooms, for the people that have been coming here for ten years, it matters to them too.

Chair Mardfin: Thank you.

Mr. Reynolds: Just to be honest. Yeah.

Chair Mardfin: Are there any other questions from anybody on the Committee? Dawn?

Ms. Lono: You said that you stopped doing rentals six months ago?

Mr. Reynolds: Well, we tapered off. We quit advertising before then, and then when we have people that have been coming, we paid, Brett can tell you, we paid GET and taxes and then we stopped, I don't know exactly when we stopped, he can tell you better. That's my guess. Something like that. Maybe it's been longer. It's been a year. I don't know. But it's been -- it's been a while. You can say exactly. I don't know 'cause I've been in Las Vegas but --

Mr. Christiansen: Because when Maui County, it was allowed if you're in process, you could be operating while in process, but then the rule -- it was stated that you cannot. They changed that. And so when they changed that, we stopped. And I don't remember exactly when that happened, but when that change occurred, then we stopped so --

Chair Mardfin: Did you stop or did you taper off? Did you stop or did you taper off?

Mr. Christiansen: We stopped. I don't know when -- when did that go?

Ms. Flammer: I don't know the dates. Our Zoning Division doesn't require -- they give people a grace period in which to finish up reservations. They -- we -- I know the

department went into discussions with the hotel industry to talk about what's a reasonable amount of time to cancel people's reservations, so I know that they give them 60 plus some days in which to finish out reservations. So when the department started sending out notice that it was -- the rules -- things had changed, they gave them time to clear up a certain number of reservations.

Mr. Christiansen: But we have no marketing and we're taking zero reservations right now.

Chair Mardfin: Thank you. Do you, Brett, excuse me, do you do most of operations? Is Robert sort of not involved in this part of it?

Mr. Christiansen: Him and his wife are involved but I'm their representative, so, you know, when it comes to, you know, guests --

Chair Mardfin: So the reservations go to you, not to him?

Mr. Christiansen: Right.

Chair Mardfin: The money goes to you, not to him, initially? I know you get it forwarded it on but --

Mr. Christiansen: Right. Yeah. So there's a client trust account.

Chair Mardfin: How do they get the keys to the unit?

Mr. Christiansen: Well, usually, they're greeted by Sherry, who's Michael's wife, so they're greeted and they're, you know, welcomed into the house so they --

Chair Mardfin: Okay.

Mr. Christiansen: They usually don't need keys.

Chair Mardfin: Okay. Thank you. Does the Committee have any other questions?

Ms. Lono: Is the helipad still existing on the property, and is there intention to continue using it?

Mr. Christiansen: No. No intention. There's the airport right there so there's no intention of using that helipad.

Ms. Lono: Does the helipad still exist?

Mr. Christiansen: There's still a concrete pad. The circle's faded away and --

Unidentified Speaker: ...(inaudible - not speaking into the microphone)...

Mr. Christiansen: Yeah, we've talked about making it like a yoga spot or something.

Ms. Lono: Is there intention to have a wedding business and wedding parties at the property as part of the business?

Mr. Christiansen: There is not an intention of that.

Mr. Carvalho: That's -- that's not allowed under that.

Ms. Flammer: No. The house rules state that you can't have non-registered guests on the property. It's even more strict. You can't even invite local friends over if they're not registered, and council understood how strict that was, but they did it for a reason.

Ms. Lono: How long is the permit good, initially, and then when it's renewed, what is the process, and how long is it good when it's renewed?

Ms. Flammer: Sure. The first permit is granted for one year, and that's it, so the renewal process, we take a look at complaints when go through and take a look at compliance, and both of those affect what the -- whether or not it's renewed and also it affects how long that it would be renewed for. There's also the option to revoke the permit should there be any noncompliance with any of the conditions. The department has revoked permits in the past.

Ms. Lono: I might be confused and remembering things incorrectly, but I thought that the manager needed to be within 30 miles or one hour or one half-hour or something like, what is that?

Ms. Flammer: It's 30 driving miles from either a residence or a business office, and they need to be able to be at the property within 1 hours, and I know we talked a lot about the difficulties of that being in Hana, and I know this Committee actually recommended something different because of that, but it still stands at that.

Ms. Lono: So this, basically, is not in compliance with that?

Ms. Flammer: No, he has an office within 30 driving miles. He also has an office on the property. They wouldn't have come to you if it didn't meet the qualifications of the permit. Then if you go through the staff report, in addition to the criteria that I went through with

you, are the restrictions and standards of the permit, and if it doesn't meet any of those restrictions and standards, it doesn't even get to you because they're not discretionary types of rules, like the ones that I went through with you. So on page -- actually, they're in here twice, so the first one on page -- it starts on page 4, it actually list out what those restrictions and criteria are, and then the department later on goes through and addresses how they've been met, later on, starting on page 16.

Chair Mardfin: Gina, I have a question. If they live in -- if he lives in Haiku, or has an office in Haiku, he comes down to the road at Mile Marker 0, from up there, is that correct?

Ms. Lono: Kapakalua is ...(inaudible)...

Chair Mardfin: Kapakalua is where Hana Highway begins. That's at Mile Marker 0.

Ms. Flammer: Okay.

Chair Mardfin: And he's gotta drive from where his office is to there, right?

Ms. Flammer: He's a little further in but within the 30 miles.

Mr. Christiansen: So I know you're trying to, you know --

Chair Mardfin: I'm trying to get the mileage down.

Ms. Flammer: Actually, for this also, just so you understand, he actually has an office on the property itself, so I talked to him quite a bit about that. I know the rule is 30 miles driving distance, but in addition to that, I asked questions: Where are you? How long does it take you 'cause it's a windy road, an hour or so far out? He actually has a business office that he uses on the property himself.

Chair Mardfin: Where is that?

Ms. Flammer: It's on the -- it's -- that's a good question. Where on the floor plan?

Chair Mardfin: But if that's an unmanned office, most of the time, I don't know why we should be counting that.

Ms. Flammer: We don't. But the criteria is that he has a business office or a residence within 30 miles, not fly, crow fly miles, but 30 driving miles.

Mr. Christiansen: I know you're -- so, you know, let's say we have someone there and there's an issue, I mean our usual response time is within minutes really because either they're talking to, you know, our onsite caretaker that's on the grounds, you know, if I get the phone call, you know, it's usually 'cause something major is broken, so I -- we had a fridge break one time, for example, and I was able to go -- instead I was able to actually go to Sears, go pickup a fridge, and drive it on out, you know, so it depends on what -- if it's something that can be dealt with onsite, then, you know, we have a team so, you know, our response time is within minutes, really, so, you know, it's either something that's quick, or if something big, then it usually requires going to Kahului and then, you know, I'm bringing something big out, you know, we've had ACs break, we've had, you know --

Ms. Lono: Yeah, that's not issue though.

Mr. Carvalho: Is the language "30 miles or?"

Ms. Lono: No, "and."

Mr. Carvalho: "And" one hour driving time?

Ms. Flammer: Yes, it is. Yeah. But it's also residence or office that's there. And I know that we -- one of things that we considered with this application was waiting until the language -- you folks recommended during the amendments that a caretaker provision be allowed as allowed under state law because we've got the problems with the realtors, we only have one realtor out here now, so I talked to the applicant about, however, because we do have the caretaker right across the street, Mr. Christiansen does run the business end of it and the money of it, so I felt much more comfortable, even though he's at the outer-edge, but within the 30 miles, with him being as the manager as opposed to waiting and having it be the caretaker because of the money collection.

Chair Mardfin: Gina, I'm not sure about the 30 miles, technically, driving 'cause if he has to come two miles down to Kapakalua Road intersection, that's Mile Marker 0, I live at Mile Marker 33, so you go back 3 miles from my house to get to 30 miles, not counting getting to Kapakalua, I don't think he makes it.

Mr. Christiansen: Well, technically, Huelo is ...(inaudible - not speaking into the microphone)...

Chair Mardfin: Do you come -- do you go down to the intersection of Kapakalua and Hana Highway, or is there a shortcut that I don't know about?

Mr. Christiansen: No, I'm -- I'm in Huelo, so off of Ululena, so that's further in. Huelo is technically, you know, it's Haiku, there's no zip code.

Chair Mardfin: So he doesn't go back as far as Mile Marker 0?

Mr. Christiansen: Right.

Chair Mardfin: Okay. Thank you. That takes care of my problem on that one. Any other questions? Mr. Blumer-Buell?

Ms. Lono: I'm still not done with my ...(inaudible - not speaking into the microphone)...

Chair Mardfin: Ms. Lono then.

Ms. Lono: Okay, so I had asked about the length of the permit, so it's for one year, and then it gets renewed for a to be determined amount of time based on complaints or whatever.

Ms. Flammer: It can only be renewed for an additional two years at that point.

Ms. Lono: Okay.

Ms. Flammer: Up to two years.

Ms. Lono: Okay. And then when that all comes around and the farm plan and use are confirmed, then the farm plan is verified again, and all of that.

Ms. Flammer: When I give the recommendation, I usually go through the conditions, but I just want to jump ahead.

Ms. Lono: Okay. Well, we can wait for that then and not take up our time now.

Ms. Flammer: Okay. But I just want to answer the question 'cause I feel really strongly about this. We require evidence of compliance with the farm plan at renewal. It's condition no. 7 on the state land use special use permit, and it's one of our condition that goes on all of them. We understand that farming conditions can change, so we need to know that that farm is still implemented at that time of renewal.

Ms. Lono: And, I guess, you know being a farmer in Kaeleku myself, and knowing the soil conditions, I just have a really hard time with this classification thing and saying, oh, it's not suitable for farming, but look at the production that's on the property. I mean that's

ridiculous. So anybody who tries to use that as an excuse to not farm, I mean that shouldn't have any weight whatsoever because there are lots of us farming in Kaeleku on land that's classified by God only knows who, God only knows when, so I just have a real hard time with, you know, having somebody try to sell me that this land doesn't work as a farm, and then you show me these pictures of this amazing, you know, property that is totally in farm production.

Ms. Flammer: It is a great example of how out of sync the state rules are with the county rules, and how this permit is such a general permit that it's for any use. I would think that condition is something that's used more when you're looking at heavy industrial uses, like concrete batching plants. In this particular use, we require farming, so it's kind of a -- we had a really hard time in the beginning trying to figure out how to put these together because, in one case, the state law is telling us you can't be able to farm, and in the other case, Maui County is coming in and saying you must farm, so I wish we could update the state rules for this specific type of permit, but we kind of are stuck with the rules that we have.

Ms. Lono: Well, the state doesn't say you can't farm. The state says, "This land is classified not conducive to farming," but it doesn't say you can't farm. It's just saying -- you know, so that's two totally different things, so there's nobody in the state saying you can't farm. I just had one other question, and I may have just lost my train here. Oh, I know. What are the criteria for a farm plan? I mean if you have six acres, do you have to be farming a certain amount of the acreage, or what is -- what constitute an acceptable farm plan?

Ms. Flammer: Yeah, that's a great question. You have to have a majority of the property needs to be in agriculture or conservation. A majority, numerically, is 51% or more. This property is much more than that. Conservation means that we will accept a National Resource Conservation Service Plan as conservation, it can't just be, oh, that area is conservation.

Ms. Lono: I just have one more question. Is there still a golf course on this property?

Ms. Flammer: I have to -- when I did the tour, there was -- I didn't see one. We could -- maybe the applicant can address --

Ms. Lono: I'm sorry, I can't turnaround easily and address you guys.

Ms. Flammer: Yeah, I understand with your foot. Maybe the applicant can address what's currently on the property.

Ms. Lono: Is there still a golf course on the property is my question.

Mr. Reynolds: You can hit a golf ball here and there, but I would not call it a "golf course."
It's not been -- I don't golf. It's not our priority at all so --

Ms. Lono: Well, and golf course, not meaning like an 18-hole golf course, but there used to be putting greens and, you know, it was setup to actually play golf, I'm just wondering if still exist.

Mr. Reynolds: The person before us cared quite a bit about it, some version, full candor, some version still exist, a much lesser version, some guests like to try to play a round on it in the past, but we've, since then, we've been planting mango trees between the holes and -- it's not --

Ms. Lono: So it'd be kinda hard to --

Mr. Reynolds: It's not --

Ms. Lono: Go between --

Mr. Reynolds: If you like to golf, you're not going to be quite as happy. Yeah.

Ms. Lono: Right. Okay, thank you.

Mr. Notestone: I have a question.

Chair Mardfin: Mr. Notestone.

Mr. Notestone: The farm produce, is that going to be sold somewhere?

Ms. Flammer: I'm going to have the farm manager speak to that.

Mr. Finley: Yeah, we've been selling the produce to Hana Farms, plus the guests that come.

Chair Mardfin: Would you identify yourself, please? I know you've done it before but every time you go up there, your name.

Mr. Finley: Michael Finley. Sorry.

Chair Mardfin: Please continue.

Mr. Finley: Yeah, and we sell the eggs to the neighbors, and Hana Farms is a pretty good outlet for us. We sell -- we got lots of receipts so we sell, I don't know, about three grand last year to them, and doing pretty good this year too. And the guests, like I say, probably take quite a bit also, and flowers.

Chair Mardfin: Thank you.

Mr. Finley: Thank you.

Chair Mardfin: You have anymore questions? Mr. Blumer-Buell.

Mr. Blumer-Buell: I'll a couple and then let someone else ask some. I just want to say that, you know, I am so tired of the Planning Department creating this smokescreen of issues and making their own interpretations. The interpretations of this community are crystal clear. They're right in the community plan. They're clear and unambiguous. I want to agree with the point that Dawn made, and this is another smokescreen that the county uses, you know, the ALISH system, which is the state classification system for agricultural lands, was setup at a time when sugarcane was growing much more than it is now, and it was based -- a lot of it was based upon the level of the soil, the slope of the soil, and access to ports. Now, referring to the -- we went through -- the community went through, probably 20 years ago, a contested case hearing regarding some land in Kaeleku, and the owners were going we can't grow anything, and we used -- they used the justification of D and G, the lower classifications to justify that because they had stony, rocky, stony muck, they couldn't grow anything, and that is just -- that is just nonsense, and that needs to be clarified. The Planning Department needs to really understand what's going on. There is some great growing land in Kaeleku. There's some places where the Laupahoehoe, the flow is up near the surface, and it can't be -- you know, you have to adapt to that, but that's -- the land classifications are no excuse for -- for this.

Now, I wanted to ask, I have other questions, but I want to give this one to Gina and to our Corporation Counsel, and I'm looking at Hawaii Revised Statutes 205-2, it has to do with districting and classification of lands, and that's on page 4, keep going down the page, page 5, and under 10, actually it starts on page 4, it says, "Agricultural districts shall include," and you go down to 10, and it says, "Agricultural tourism conducted on a working farm or a farming operation as defined in section 165-2 for the enjoyment, education, involvement of visitors provided that the agricultural tourism activity is accessory and secondary to the principle agricultural use and does not interfere with the surrounding farm operations, and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism." So, you know, I look at this project and it's, you know, this is basically a hotel they're asking for, and the farm plan and all that are

just incidental and implemented farm plan, I think that is all but meaningless at this point, so my --

Chair Mardfin: John?

Mr. Blumer-Buell: Yeah?

Chair Mardfin: John, you asked a question to Gina, and now would you let her answer, and then you can speak.

Mr. Blumer-Buell: Okay, fine. So I guess my question, the first --

Chair Mardfin: Gina? Oh, you want to restate it?

Mr. Blumer-Buell: Yeah, is with the -- we just went through the or still going through the agricultural farm stands, one of the three things of proof that have to be presented, and it's two out of three, is showing an income of \$35,000. Now, to me, if you can show an income of \$35,000 on an existing agricultural operation, you have an implemented farm plan. So my question is, it seems to me, way back, that we used to talk about the financial requirements of the state in dealing with this, I don't see any -- I haven't seen anything for a while, what are the agricultural -- is the county having an implemented farm plan just bypassing the state requirement for \$35,000 in income.

Chair Mardfin: Ms. Flammer.

Ms. Flammer: Well, first, I want to address the section the you brought up. I like coming here 'cause you guys are really knowledgeable. The section that you just read is a permitted use, which would mean if you met that criteria, you would not need to come for a state special use permit. However, nobody can meet that criteria because the County of Maui has not adopted an agricultural tourism ordinance. So it was an effort to make agri-tourism a permitted use and, thus, you didn't need a state special use permit, however, the county needs to take, well, in order for that to apply, the county would have to pass a separate bill, so because we haven't passed a separate bill, we have the system that we have. So the system that we have is the short-term rental home code, the 19.65 that we talk about in here, and those are the criteria that are used. Interestingly, the implemented farm plan is not in there. When council passed that bill, they chose not to put in there. The Planning Department, with the State Office of Planning, got together and decided that even though the state special use doesn't require farming, we feel much more comfortable with an implemented farm, it's actually a recommendation, it's not a requirement. We strongly recommend that applicants file that. In the amendments that we're proposing to the bill right now, and working with council, we're recommending that it become a part of that code and actually become a requirement.

Chair Mardfin: John do you have any others?

Mr. Blumer-Buell: Well, just on that point, you know, I was, you know, I've said it before, I don't think the STR bill is working after all these years, but, you know, I think in this case, if we were to approve it, I would not -- I want to see it come back to Hana. I don't want to see the Planning Director have the discretion to decide, oh, it's okay, and on the farm plan thing, I think --

Chair Mardfin: John, are you talking about at time of renewal --

Mr. Blumer-Buell: Yes.

Chair Mardfin: Or you're talking about now?

Mr. Blumer-Buell: Of renewal because Dawn raised the point, and I think at the time of renewal, there should be a requirement to show some income at that point, you know because the implemented farm plan is just being used as a way to get your foot in the door, and we've seen all these farm plans and they're supposed to be producing money. They're, basically, in my view at this point, being used as an excuse to have short-term rentals and B&Bs. So there's -- let me, I have a couple more sections of the Hana Community Plan I'd like to read for the Committee, but I'd like the Chair to be able to call on someone else.

Ms. Flammer: Can I make a quick response? We talked about the farm plan income requirement extensively when we talked about the amendments, and it was a good discussion. In the end though, the Committee chose not to recommend that as a requirement.

Mr. Carvalho: I think that was a meeting last year and we couldn't --

Ms. Flammer: Yeah, it was last summer.

Mr. Carvalho: We couldn't agree on a dollar amount because there were so many different factors.

Ms. Flammer: Yeah, and it's a discussion that's gone on, not just with this group, but all over the county; How do you define farming? Can you put a dollar amount on it? It's not just Planning that deals with it, the Water Department deals with it, so it's a good discussion, but it is one that we've had here and I do understand your argument, your concerns about it.

Chair Mardfin: John, did you have -- does any other member of the Committee have something to ask a question about? John, then you can go ahead.

Mr. Blumer-Buell: Yeah, I would just like to read a couple short sections from the 1994 Hana Community Plan ordinance, it is an ordinance, it's not a -- it is law, and by law, the county can be more restrictive than the state, and Hana can be restrictive than the county, that's the intent of it, and in many cases, the Hana Community Plan were much more restrictive but the Planning Department's not following it.

Chair Mardfin: What page are you on?

Mr. Blumer-Buell: Okay, page 12, no. 6, and this is for information that's in the community plan and these people can, you know, see what they think of it, no. 6: "Prohibit uses and discourage activities which adversely effect active diversified agricultural endeavors within designated agricultural uses;" 7. "Discourage developing or subdividing land under agricultural use or agriculturally designated land for passive agricultural estate residential uses." This project is, it appears to me, this is an application for a hotel but it is certainly a very nice agricultural estate residential development as it stands. I mean they've done a nice job where we're talking about the use and so forth. Okay, no. 8, on page 10 -- page 12, "Discourage urban land uses and special use permits outside of Hana Town area except to allow those activities which are essential to region's economic well-being which provide essential services for the residents of the Hana District or which provide for the essential domestic needs of remote communities, such as Keanae, Kipahulu, Kaupo. Such activities shall not adversely effect surrounding neighborhoods and shall be supportive of the agricultural area." On this page 12, this is no. 9, on page 12, "Discourage transient rental vacation -- transient rental accommodation uses outside of the Hana urban area." And in my view, the county has just about completely turned around and is almost normalized the -- what's going on in Hana where, I'm going to repeat, on page 13, this is not a -- this not you have the choice to do this, it says, "Conduct an inventory and study of existing nonconforming uses, included vacation rentals, to determine: 1. Their numbers; 2. Geographic distribution; 3. Affects upon the local housing and real estate markets, and the local economy, and identify recommendations for resolving nonconforming use issues." So that's all I'm going to read from the community plan, but I'm just saying we are -- we're just -- this whole B&B and STR process, I think, are at such odds with the Hana Community Plan at this point, and this is after I've worked with this issue in the last community plan, so more than 20 years, and it's -- I don't believe the STR should even exist anymore, I still support bed and breakfast, to some degree, but, anyway, that's -- there wasn't -- there wasn't a question there but that's just information. And I would like to say to the owners and all the folks that are here that I hope you understand what I'm reading and all the stuff isn't about you, this is, for me, this is more than 20 years of frustration, having participated in a public hearing process for more than 20 years, actually changing my feeling about it

or position to see if it could work. I mean, you know, if ready my testimony from 20 years ago, I was dead set against it based upon the community plan. I changed that to see if we could make it work. I don't think we're making it work, but, you know, I just want these folks that have come in to know this isn't about them, this is a long-standing issue in this community, and I also wanna say that, you know, with your plan, the fact that you're trying to do it organically, I think that's fantastic, I mean I've been farming organically for more than 40 years, more like 50 years, and I would suggest you get certified, number one, that's very important, get US Department of Agriculture certification, not just Hawaii certification. So, you know, I think you're setting a good example on many levels and, you know, I'm kind of going, well, maybe we can address part of the affordable housing problem here. I thought about this meeting and I just thought, you know, I'm going to bring up all this stuff that's been going on for more than 20 years. I don't think -- I think it's not -- it's not being dealt with, and, you know, I suppose this is why I've been an advocate for Hana becoming its own municipality for decades so -- so that we can actually control this in our district. And, sorry, if I've gone on for too long, but thanks for the time, Chair.

Chair Mardfin: Thank you, Mr. Blumer-Buell. Ms. Lono?

Ms. Lono: Mr. Chair, can I request that we get back to the item on the agenda and address that, specifically --

Chair Mardfin: Yes.

Ms. Lono: And all of this other discussion is for probably another time, but it's great to make note of it in this meeting. Mahalo.

Chair Mardfin: Yes. Thank you. I have one specific question for Gina before we do go, however. This is a special use permit because they want five bedrooms. If this were three bedrooms, would they be before this Committee?

Ms. Flammer: This is a state special use permit because it's located in the agricultural district. We're seeing -- you are seeing the short-term rental home permit is because it is more than -- it's greater than three, so you see any short-term rental home permits where there's four or five bedrooms.

Chair Mardfin: If they had asked for three, we'd see the request for a special use permit on ag land but we wouldn't see the short-term rental.

Ms. Flammer: You wouldn't be the approval -- the recommending body for that permit. No. That would be an administrative permit.

Chair Mardfin: Now, we're the recommending body. Who do we recommend to?

Ms. Flammer: The Maui Planning Commission.

Chair Mardfin: And they the decision.

Ms. Flammer: They are the final approval authority. They have a choice as to whether or not to refer it to you, the Advisory Committee, and they do choose, on all of these applications, to refer them to you.

Chair Mardfin: Thank you. Are there any other quick questions? Not seeing any, Ms. Flammer, we are ready for the department's recommendation.

Ms. Flammer: The department is recommending approval of the state land use special use permit subject to seven standard conditions that are -- if you look on your green sheet, we start with the state permits, that's our hierarchy, the conditions start, for that one, on page 6, you'll notice that the seventh one is that farm plan shall remain implemented during the duration of the permit and we require evidence of implementation specifically at the time of the renewal application, even if they were to fall out of it during the permit, that would be noncompliance. The department also recommends approval of the short-term rental home permit, however, we have 23 conditions that we put on that. These conditions also show that the short-term rental home permit is valid for only one year, and that subject to renewal up to two years after that one year. I can go through the conditions or it might be easier if you have questions you can ask me about the specific conditions afterwards. It's up to you.

Chair Mardfin: Unless somebody wants them all read, I think we can read them, and do you have any questions on any of them? Mr. Blumer-Buell?

Mr. Blumer-Buell: I think it's good to read them and give the Committee the chance to ask questions right after. I have a questions, specifically, regarding what you just read.

Ms. Flammer: Okay.

Mr. Blumer-Buell: And that is, you know, it seems to me we're just headed for an endless amount of these permits, and what do you anticipate? I mean let's say it's one year, and then the two-year extension, and then what's after that? Is this -- are we really -- I think we should start putting a limit on the thing in perpetuity, you know, that's what it's --

Ms. Flammer: Let me finish up my recommendations just so we're doing it in a clean procedural manner --

Mr. Blumer-Buell: Okay.

Ms. Flammer: And then you guys can deliberate afterwards. Is that okay if I go ahead and do it that way?

Mr. Blumer-Buell: Okay. No, that's fine. Sorry.

Ms. Flammer: Okay. So what I'd like to do is just finish up the recommendation and then let's do specific questions about specific conditions after that. So in conclusion of the foregoing, which are the recommendations and the approval stated, the Planning Department recommends that the Hana Advisory Committee for the Maui Planning Commission adopt the Planning Department's report and recommendation prepared for today, August 31, 2015, as your findings of fact, conclusion of law, and decision and order, and authorize the Director of Planning to transmit the recommendation to the Maui Planning Commission.

Chair Mardfin: And, group, if you look at on the white, if you look at page 23, 23 at the bottom gives the alternatives for this Committee to do. We can, one, defer; we can, two, approve with no conditions; we can, three, approve with conditions; and we can, four, outright deny. And whatever we choose to do, well, I guess deferral will come back; if we choose any of the other three, that'll go to the Maui Planning Commission.

Ms. Lono: I guess what I'm not hearing -- are we going to go through the Planning Department recommendations?

Ms. Flammer: It would be easier if you have specific questions on each of them or did you want me to actually read them into the record?

Ms. Lono: Well, I think --

Ms. Flammer: Well, let's start with the state special use permit.

Ms. Lono: Right.

Ms. Flammer: Yeah, so any questions about any of those? Let's start with that. Okay, so we're starting on page 6 of the green sheet, 6 is where the recommendations begin.

Chair Mardfin: Up to page 6 ...(inaudible)...

Ms. Flammer: Which are the conditions that would be --

Chair Mardfin: Reasons and the rationale; 6 is where the recommendations begin.

Ms. Flammer: Where the actual conditions that go on the permit begin. So the first one, typically, is always the length of the permit, so this one is we usually do the land use permit for three years, the total of what the short-term could go, though the short-term's only for one year. The second one states that the special use permit cannot be transferred without written approval of the Planning Director, however, we've talked about this before. Because the short-term rental home permit is not transferrable, it limits the ability of the short-term -- of the state special use permit. No. 3 requires that an insurance policy be obtained of at least a million dollars and it adds the County of Maui as an additional insured. No. 4 is that compliance -- full compliance with all government regulations be rendered. No. 5 states that there be a detailed report addressing compliance of these conditions upon renewal. No. 6 requires that the property be developed or what was represented today actually becomes attached as a condition. And then no. 7 is the farm plan that we talked about. Does anybody have any specific questions about any of those conditions?

Ms. Lono: I have no questions.

Ms. Flammer: Okay.

Ms. Mardfin: Then continue with the --

Ms. Flammer: The short-term rental, given the length of it, did you want to just -- did you have a question of any of them or did you want me to go through them? Sure. I'd be happy to. The first one states that the short-term rental home permit is valid for one year subject to further extensions. Those extensions, when you -- oh, no. 2 actually goes into what those extensions are. The permit maybe extended by the department for up to a period of two years provided that there are no recorded complaints against the operation and subject to payment. We can extend it for shorter periods based upon adverse impacts. We have to do an investigation and there needs to be a complaint or reason why. Subsequent renewals need to come in 90 days prior to the expiration date. That's to give the department enough time in which to process that. It explains then what that renewal procedure is. No. 4 requires that if this permit is approved, that the permit-holder send a copy of the permit approval letter, the number, the house rules, and the 24-hour contact information to the abutting properties and then also the adjacent properties next to them, so two rings out. And that needs to be within 30 days of receiving the permit, and that's so if there's a problem, the neighbors know, they have a letter, they know who to contact. If anything changes, this is condition no. 5, your manager, telephone numbers, anything like that, again, you need to notify the neighbors next door and then the neighbors next door to them. No. 6 is that the insurance policy, again a million dollars, and the County of Maui needs to be named as an additional insured. No. 7, there needs to be a 2 square-foot sign

displayed along the main access road, and they need to -- the permit-holder would need to provide evidence to the department that that sign is in place, and that, again, so if there's a problem, people don't have to knock on the door, they can just see the sign at the road and call. They can call the manager or they can call the Planning Department, that numbers also needs to be on there. The house rules need to be prominently displayed in the dwelling. They need to be included in the rental agreement. And those specifically state no non-registered guests, no parties, what the quiet hours are. All advertising must include the permit number, this is no. 9. And reservation websites have to have a link or actually have those house policies right on it. Council wanted to make sure people understood, when they were reserving, that they can't have a wedding reception or any other types of parties on the property. No. 10, each dwelling unit shall be rented to one group at a time. There are exceptions for Lanai or when you live next door. And that, again, that's to limit the impacts. No. 11 is that this particular permit would be limited to those five guest rooms within the two dwellings. And the total occupancy, you can only have two guests per bedroom, so ten guests would be the maximum occupancy. As you may recall, the bed and breakfast has a higher occupancy, but we wanted the short-term rental homes to stay lower to minimize impact. No. 12, no parties or group gatherings other than registered guests shall occur. No. 13, the short-term rental should not operate when the manager is not accessible, being accessible means being able to answer the phone at all times and being able to be physically present at the rental within one hour following a request by a guest, neighbor, or the agency, and having an office or a home within 30 driving miles. There needs to be a fire escape posted, a fire escape plan posted in each of the sleeping rooms, each of the bedrooms, and that's condition 14. No. 15, all the smoke detectors need to be working and tested monthly, and then it goes into a little about battery versus if they're hardwired. Condition no. 16, there needs to be a fire extinguisher with a minimum rating of a 2A-10BC. That's the shorter fatter one, not just the small one you see at Costco. And no. 17, it needs to be available for biannual fire inspections. These are -- the last three were Fire Department standard conditions. No. 18, the operation shall be subject to periodic inspections by county enforcement personnel at reasonable times. I know we talked about that, again, over the summer, but this is our current condition that we have. No. 19, the operation shall be conducted in substantial compliance with representations made today. So anything that was stated on the record does become a condition or a part of the permit. No. 20, full compliance with all government regulations shall be rendered. No. 21, we can revoke the permit pursuant to our provisions that they state in there. No. 22, when at renewal time, the owner proprietor needs to provide written verification of tax payments. And then no. 23, the permit is non-transferable except for the exception the death upon the permit-holder, it may be transferred to an immediate family member.

Mr. Notestone: I have a question, Mr. Chair.

Chair Mardfin: Mr. Notestone.

Mr. Notestone: No. 17, available for biannual fire inspections, has that been done already?

Ms. Flammer: It's up to the Fire Department. As far as I understand, they don't schedule them.

Mr. Notestone: They don't schedule them.

Ms. Flammer: But that is -- that does allow the Fire Department to do them should they have the manpower and want to.

Mr. Notestone: So is it done privately by, like the fire extinguishers, or our Maui County Fire Department, you know, like a fire extinguisher service, or is that done by Maui County Fire, the inspection?

Ms. Flammer: As far as I'm aware, it's at the Fire Department's discretion. I believe it would be their own personnel that would come and do it.

Mr. Notestone: So has the Fire Department done an inspection of the property?

Ms. Flammer: Not that I'm aware of. Oh, of this particular property?

Mr. Notestone: Yes.

Ms. Flammer: No. They do not come out and do fire inspections. They give standards conditions instead. So when the planner goes out, we will test the smoke detectors to make sure they're working, and we will make sure that the fire extinguisher is the correct size, and we will make sure that the fire escape plan is posted in each of the bedrooms.

Mr. Notestone: Alright. But it says it shall be available for biannual fire inspections.

Ms. Flammer: Yeah.

Mr. Notestone: It's not required, it's just --

Ms. Flammer: It's not required but the Fire Department has the option to do that should they get the manpower or should they want to. Yeah.

Mr. Notestone: And the log for the monthly testing of the smoke detectors, is that on property?

Ms. Flammer: That comes in at renewal time; we request that.

Mr. Notestone: That's all I have.

Chair Mardfin: Thank you very much, Mr. Fireman. Ms. Lono.

Ms. Lono: Just a comment on no. 10. I don't know how that would enforceable, you know. Who's going to enforce it? How are you going to enforce it? There's just no way enforce it.

Ms. Flammer: Interestingly, we require this to go on the advertising on the website.

Ms. Lono: Yeah, that's about probably the best you could do I guess. Yeah. The other thing that I have is relative to that fifth bedroom unit, and whether that unit is actually legal, and that should be taken cared of before this permit is -- moves forward 'cause if they have to go in retroactively to take care of that building, then that should be done before this permit becomes --

Ms. Flammer: Yeah, how it works now is we -- we certify that it's built to code. You can add a condition on there if you would like them to formally go provide evidence that it's permitted. I did look through the permits more than just what's on real property tax, I went into our KIVA system, and you do see building permits, it doesn't show you -- I don't have --

Ms. Lono: It's a garage in the building permit, right? It's a garage.

Ms. Flammer: It's finalized actually more than that. You can -- I wish I had brought it with me. But if you would like to add a condition where they need to supply evidence of all finals and everything, that's something that you can do.

Ms. Lono: But it has been determined that it's all built to code and that everything -- you know, so it's safe and all of that.

Ms. Flammer: That it's been certified.

Ms. Lono: That's the most important thing, and that's what building permits are about. And then, of course, the taxation portion of it, so I don't know. I guess if the county's satisfied with what's in the record, then the county's satisfied with what's in the record.

Ms. Flammer: You do have an option to make -- okay.

Ms. Lono: Well, if you guys don't care. You know what I mean?

Chair Mardfin: Are there any other questions, comments? Mr. Blumer-Buell.

Mr. Blumer-Buell: A question for the -- for Gina on the conclusions of law, and that is, you know, this is the Planning Department's interpretation of this, and it's a common, but no. 5, we went through this rigamarole, this roundabout with the Hana Advisory Committee before, and it was put to rest and --

Chair Mardfin: Mr. Blumer-Buell, 5 on page 8?

Mr. Blumer-Buell: No. 2, it's the land use commission special use permit.

Chair Mardfin: Page 7?

Mr. Blumer-Buell: Page 2 of the green.

Chair Mardfin: Sorry. I was looking at the recommendations.

Ms. Flammer: Oh yes. I see what you're talking about now. Yes. Yes.

Mr. Blumer-Buell: So, you know, the questions is I would like, you know, the land that this project is being proposed for, it is clearly suited for agricultural purposes, so I just don't know how you can say that it is unsuited for it. Can you give me your legal interpretation?

Ms. Flammer: Yeah, we've had this discussion before, and it really got me thinking. I think it was Commissioner Crawford that asked me specifically about it and it led me to talk to some of the different attorneys about it. So there's two approaches: there's the very conservative approach that says the land that we're talking about is the specific land underneath that house, which it makes it difficult to farm; the other way of looking --

Mr. Blumer-Buell: I'm sorry to interrupt. That is such a ridiculous interpretation. I don't know why -- how anybody could even come up with that. Thank you.

Chair Mardfin: Mr. Blumer-Buell, you're welcome to your opinions but, please, let's be polite and curious.

Mr. Blumer-Buell: I'm trying to be.

Chair Mardfin: Thank you very much.

Mr. Blumer-Buell: Thank you.

Ms. Flammer: Okay, so the second way that we look at it is it doesn't say "agricultural uses," it says "permitted uses." So if you take a look at the agricultural code, there's quite a bit of permitted uses. The closest one that would fit this would be the long-term permitted uses, and the reasoning that it would be unsuited for long term would be that the applicant comes part of the year, and then is there, I don't know what he stated, three months, two months out of the year, and that would make it difficult for it to be suited for the long-term permitted use.

Chair Mardfin: Anything more, Mr. Blumer-Buell?

Mr. Blumer-Buell: I would like to see this in, you know, a really put this in writing, this interpretation, 'cause we're talking about the land, the `aina, and agricultural use and, you know, these other interpretations are just interpretations of convenience, I believe. Thank you, Chair.

Chair Mardfin: Thank you. I think we've had sufficient discussion, and I would call upon one of the members of the Committee to make a motion, and that motion can be to deny, to approve with no conditions, to approve with conditions, or to defer. I would do the special use permit and the short-term housing at the same time. I would but it's up to you. You don't have to. Mr. Crawford.

Mr. Crawford: I move --

Chair Mardfin: Scott? Scott?

Mr. Crawford: Yes? Yeah, yeah, yeah. What I'm going to say? For the -- both the special use permit and the short-term rental home permit that the Hana Advisory Committee recommends to the Maui Planning Commission to adopt the Planning Department's report and recommendation and authorize the Director of Planning said recommendation to the Maui Planning Commission to approve the application without conditions -- without further conditions.

Chair Mardfin: This is as the findings of fact, conclusions of law, and decision and order, right, I assume.

Mr. Crawford: Correct.

Chair Mardfin: Thank you very much, sir. Is there a second?

Mr. Carvalho: I will second.

Chair Mardfin: Mr. Carvalho seconds. Discussion? Ms. Lono?

Ms. Lono: Just on no. 13, I'm still a little bit confused about that one requiring that the manager be within 30 miles or 1 hour whenever there is a occupant -- it doesn't sound like the manager is the person that's taking care of this sometimes and is that appropriate, you know, if the manager gets called and he's in Huelo, or wherever he is, but he's got someone on the property, he just calls someone on the property or someone across the street to handle the issue. Is that acceptable?

Ms. Flammer: That's a great question. It's something the department talked about in the beginning. If you look at rental property management businesses, we're just talking in general, often -- let's talk about Kaanapali, they often manage hundreds of condo units, it's not one person that's there responding to each of the complaints, it's often the companies, the manager, and they have employees that are responsible for it. If there is a problem, however, we will go back to the manager and hold that manager responsible. So as long as he meets the requirements. This is to ensure that if that manager goes on vacation, or goes away for extended periods of time, the property is not left without somebody that can address any types of complaints. If the manager -- if there's a problem and the manager chooses to call the caretaker across the street, who walks across the street and tells the people, hey, tone it down, you know, or there's a water problem and shuts the water valve off, the department is comfortable with that type of response.

Ms. Lono: Mahalo.

Chair Mardfin: Thank you. Any other comments? I, seeing none, I'm going to say something. The motion to approve without conditions.

Ms. Flammer: I believe it was to approve with the conditions as recommended by the department.

Chair Mardfin: No additional conditions. My feeling of this is I'm happy for them to have three bedrooms, and I would vote for three bedrooms, but five is asking to go above and beyond what we normally have here, and so I can understand if somebody wants to make a motion to limit this to the three bedrooms but still approve the special use permit.

Ms. Lono: It doesn't need a special use permit, right?

Chair Mardfin: They'd still need a special use permit.

Ms. Lono: Oh, it doesn't need the short-term.

Chair Mardfin: It doesn't need the short-term rental.

Ms. Lono: Right. I wouldn't need the short-term rental permit.

Chair Mardfin: Another possibility, I, personally, would be willing to give them four bedrooms in the main house if, and only if, the fifth bedroom was used for long-term rental. But I don't know what they will feel about it. But I could -- I would only be prepared to vote for three bedrooms, at this stage, on the short-term rental.

Mr. Crawford: He did state, previously, the applicant did state that because they need that fifth bedroom during the time of their occupancy that the same reason why it's not practical for the rest of the house applies to that bedroom as well.

Chair Mardfin: Under those conditions, I would approve three bedrooms only if it were up to me and I --

Ms. Flammer: If I could interject. If we're going to go down that road, it needs to tie back into the condition, the guidelines for the short-term rental home permits. You understand how --

Chair Mardfin: No, I don't. Explain it to me. Oh, okay. So what would happen is the department needs to justify, it's usually called "the decision and order," when it varies from what the departments recommends, and those justifications tie back to page 4, actually if we could go -- they would need to tie back to the criteria that is used to evaluate the permit, so I would just ask that if you're going to go down that route, that you would turn to page --

Ms. Lono: Okay, wait. A point of order, sir? Chair?

Chair Mardfin: Ms. Lono?

Ms. Lono: We have a motion on the floor.

Chair Mardfin: The motion is on the floor.

Ms. Lono: So in order to address yours, this motion would not pass, and then you could make a different motion?

Chair Mardfin: You can move to amend. If somebody wants to go down this road, we could amend the motion.

Ms. Lono: Okay, so right now we have a motion on the floor, so somebody either needs to move to amend the motion, or we need to vote on the motion.

Chair Mardfin: Correct.

Ms. Lono: Correct. Okay. Could we call for that --

Chair Mardfin: If we --

Ms. Lono: Before we go down this road of trying to justify --

Ms. Flammer: I'll advise you if you get to that point.

Ms. Lono: Okay. Thank you.

Chair Mardfin: Does anybody want to make a motion to amend? Who's my vice-chairman? Gale, would you take the microphone? I'm going to make a motion to amend. I move to amend to approve to split the motion, to approve the special use permit and deny the short-term rental. What that would effectively do is give them the three bedrooms and not the five, and since we're the recommending body for anything more than five, that would essentially kill the five bedrooms.

Mr. Notestone: Is there a second to the motion?

Chair Mardfin: I've been advised by Corp. Counsel that I can't make motions.

Ms. Jennifer Oana: Actually, I said I'm not sure.

Chair Mardfin: I may not be able to make motions, which is why I was handing the meeting to the vice-chair, but then I would take it back. Okay, so if I can't make a motion, I'm going to vote no on the main motion.

Ms. Oana: ...(inaudible - not speaking into the microphone)...

Chair Mardfin: I only vote during a tie?

Ms. Oana: Yeah.

Chair Mardfin: Okay. Anymore discussion?

Mr. Blumer-Buell: Yes.

Chair Mardfin: There's a motion to approve as recommended.

Mr. Blumer-Buell: The discussion. I will be voting for denial so we can have a new motion on the floor and it's clean.

Chair Mardfin: You aren't moving to deny, you're voting -- you'd be voting -- the main motion is to approve the department's recommendations.

Mr. Blumer-Buell: Yeah. I won't be supporting that.

Chair Mardfin: So you're going to be voting -- you're going to be voting no on it. You're not voting to deny. You're voting no on the main motion.

Mr. Blumer-Buell: Right. Mr. Carvalho?

Mr. Carvalho: Sounds like we may have three different votes here. I we go through this approval with no conditions, and that doesn't pass, and then we go through approval with conditions, amended conditions that Ms. Lono talked about, and that's denied, and if we go to denial, and that's also denied, and that's also denied, where do we stand?

Ms. Flammer: Deferral?

Ms. Oana: ...(inaudible - not speaking into the microphone)...

Mr. Carvalho: Thank you.

Ms. Lono: We have a motion on the floor, Mr. Chair.

Chair Mardfin: The motion on the floor, made by Scott Crawford, seconded by Mr. Carvalho, was to approve the recommendations of the department with regard to both the special use permit and short-term housing for five bedrooms. Any discussion?

Mr. Crawford: In addressing the question of three bedrooms versus five bedrooms, to me, I don't really see the benefit of trying to limit the use of the property to three bedrooms. The impact would be minimally different. But if it's going to be used as a vacation rental, I don't see why you wouldn't want to let them use the whole facility instead of having two bedrooms basically being empty when it's rented. I'm not sure I really understand the argument for why that would be beneficial so, to me, it makes sense to approve the application as recommended by the department to allow all five bedrooms to be used.

Chair Mardfin: Is there any further discussion? I'm going to call for the vote.

There being no further discussion, the motion was put to a vote.

It has been moved by Committee Member Crawford, seconded by Committee Member Carvalho, then

VOTED: to recommend approval of the state land use commission special use permit and the short-term rental housing permit to the Maui Planning Commission, as recommended by the department.

Assenting: C. Carvalho; S. Crawford; A. Hoopai-Waikoloa; D. Lono; G. Notestone
Dissenting: J. Blumer-Buell

Chair Mardfin: The motion passes.

Mr. Crawford: And just as a point of order, I want to remind the applicants and everybody that we recommending only. This Committee has no actual authority, we're purely advisory, so this is our recommendation to the Planning Commission, whether they choose to follow our recommendation or not, and the council, is up to them, but this is our opportunity to be able to have input and discussion around this issue that affects our community.

Chair Mardfin: That is correct except it doesn't go to the council. It will stop at the Planning Department.

Mr. Crawford: Right. I'm speaking in general terms, but, yes, in this case, the Planning Department.

Ms. Flammer: And they do read the minutes so they know what you talked about in addition to getting my summary.

G. COMMUNICATIONS

- 1. MS. CHARLENE SHIBUYA, of MUNEKIYO HIRAGA. consultant for the STATE DEPARTMENT OF TRANSPORTATION, requesting comments on the Hana Highway. Route 360, Bridge Preservation Plan within the Hana Highway Historic District, Federal Aid Project No. BR-0360 (012) - Pre-Final Draft.**

The Committee may provide its comments on the draft.

Mr. Mardfin: We're up to item G, Communications, item 1, Ms. Charlene Shibuya. I understand that she is not going to be here so you would like to defer?

Mr. Yoshida: Yes. Thank you, Mr. Chair. The Department of Transportation consulting team was planning to be here to present their pre-final draft on the bridge preservation plan within the Hana Highway Historic District, however, you know, they're from Oahu, and they would have to make certain monetary outlays as far as airfare, they were going to stay overnight, so forth, you know when they looked at the track of hurricane -- yeah, when they looked at the track of the hurricane on Friday morning, it seemed like the greatest impact would be Monday evening in Maui County, so they had to make a decision, a business decision on -- by the close of business on Friday, much as they would have liked to have been here today to make a presentation, they had suggested that, well, one, they would like to finish this -- finalize the preservation plan by the end of September, they would like to schedule a meeting of this Committee within the next two weeks so they could come here when we're not threatened by a hurricane, Hurricane Ignacio or whatever, and they can make their presentation. You know, they have provided access on how you can -- people can access this pre-final draft, they did make a presentation to the Cultural Resources Commission earlier this month, and so they were going to make a presentation to the Hana Advisory; unfortunately, the timing and the tracking of Hurricane Ignacio was such that on midday on Friday, it seemed like it was heading for Maui County and we would be severely impacted.

Ms. Lono: Mr. Chair, I would like to make a motion that we defer this item until it can be rescheduled.

Chair Mardfin: Ms. Lono?

Ms. Lono: Yes?

Chair Mardfin: Before we do that, I would like, since it is on here, I would like to say a couple things about it first, and then I will entertain your motion. I have passed around a handout to you that I made up. I did -- there are errors in the original preservation plan we saw, there's many, many, many of them. I did this back in January. I -- the italicized stuff is stuff I put on today, but the non-italicized stuff are mistakes I found in the plan. I went through the disc they sent us, and many of them were not addressed at all, so I got frustrated and disgusted, and decided that I wasn't going to read anymore until they fix the things I already told them were wrong. I'm hoping -- I'm giving this to Clayton and hoping that he will pass this on to them so they can fix their report. There are many names that are wrong.

Mr. Crawford: Mr. Chair?

Chair Mardfin: There are many spelling areas, and I did that. I also gave them a special report on the archaeological report, and after they made a minor change in it, I complained about that to Charlene and they made a much better one. The one that we received was much, much better than it had been before, and that they have fixed. But this other thing, until they fix it, it's just horrible. Anyway, Ms. Lono, I will take a motion from -- Mr. Blumer-Buell? Mr. Crawford? Somebody?

Mr. Crawford: I would actually like to make a motion that we transmit your documents as part of the official minutes of this hearing and that we also request that it be transmitted -- that it be -- official minutes of the hearing and that it be transmitted to the Department of Transportation.

Chair Mardfin: Is there a second?

Ms. Lono: I will second.

Chair Mardfin: Ms. Lono seconded. Any discussion?

There being no discussion, the motion was put to a vote.

It has been moved by Committee Member Crawford, seconded by Committee Member Lono, then unanimously

VOTED: that Chair Mardfin's document be transmitted as part of the official minutes of this hearing and that it be transmitted to the Department of Transportation.

Chair Mardfin: That appears unanimous.

Mr. Carvalho: Thank you, Ward, for your work with that as well.

Chair Mardfin: Mr. Blumer-Buell?

Mr. Blumer-Buell: I would like to request the information on a CD. The paper that I got showed it was available on CD but it wasn't sent.

Ms. Lono: Okay, I have one in my office. I'll give it to you.

Mr. Blumer-Buell: Thank you.

Chair Mardfin: Any -- Ms. Lono, are you ready to make your motion to defer?

Ms. Lono: I would like to make a motion that we defer this item until it can be rescheduled sometime in September at the convenience of the Committee and the applicant.

Chair Mardfin: Is there a second?

Mr. Carvalho: I will second.

Chair Mardfin: Is there discussion? Seeing none.

There being no discussion, the motion was put to a vote.

It has been moved by Committee Member Lono, seconded by Committee Member Carvalho, then unanimously

VOTED: to defer this item until it can be rescheduled sometime in September at the convenience of the Committee and the applicant.

Chair Mardfin: That appears unanimous. Is there anything more to do with that item? I think not.

Mr. Yoshida: Well, I guess we were proposing, we have to check with DOT's consultants, say two weeks from today, September 14.

Chair Mardfin: Two weeks from today? How are calendars two weeks from today for the meeting?

Ms. Lono: I don't have my calendar in front of me, but it's - what is that date?

Mr. Yoshida: September 14.

Ms. Lono: My availability is questionable but I'm only one person on the Committee.

Mr. Carvalho: Can we take this discussion to email, possibly tomorrow or, you know, when you folks get back to --

Ms. Lono: I don't want you too much take my situation into account because it has to do with medical issues that are beyond my control, and I won't know the answer to that until

after September 11th, so that's not going to help the Committee, so I would suggest you schedule it if you can get a quorum without my presence if possible.

Mr. Carvalho: Is there a deadline for that -- these comments? I mean I know there was but what's the hardline?

Mr. Yoshida: Well, I guess the intend of the Department of Transportation is to try to finish the preservation plan by the end of next month, so they would like the opportunity to make a presentation to this body and to the Hana residents, who choose to attend your meeting, and get input on this pre-final draft.

Mr. Crawford: September 14th works for me okay.

Chair Mardfin: Mr. Blumer-Buell?

Mr. Blumer-Buell: ...(inaudible - not speaking into the microphone)...

Chair Mardfin: Clayton, why don't you send out an email tomorrow to each of us asking who could make it on that date, and if you don't get sufficient numbers, then we'll pick another date. Is that okay? Moving right along.

Mr. Notestone: Mr. Chair, we have public testimony who've been waiting to talk about this subject, I believe.

Chair Mardfin: We did public testimony in the morning but -- earlier but I will allow it. Is there people who want to give some public testimony?

Ms. Lono: Then, Mr. Chair, could I request that we have a five-minute recess, please, 'cause I'd like to address these people that came to discuss this, and also, it would have been nice for us to be notified that they weren't coming, even this morning if we knew, because I could have let people coming from Nahiku know that they didn't need to come to address this issue today so --

Chair Mardfin: That would have been appropriate.

Ms. Lono: In the future, I would just like to ask to be notified in a change in the agenda, no matter how late it is, so that we can take steps, if possible, to not inconvenience our community.

Chair Mardfin: Thank you very much. And I declare a five-minute recess.

(A recess was called at 6:13 p.m., and the meeting reconvened at 6:24 p.m.)

Chair Mardfin: The meeting of the Hana Advisory Committee to the Maui Planning Commission will come to order. I don't know what the time is but if we have to note it, we can note it. What is it? 6:24. I believe I turn this over to you.

H. ORIENTATION WORKSHOP

- 1. Duties and Responsibilities**
- 2. Meeting Schedule**

Mr. Yoshida: Yeah, we thought that since this is the first meeting of the this body with this composition, we'd have a brief orientation session. One, you are the Hana Advisory Committee to the Maui Planning Commission entitled to seven members, all of you are Hana residents serving staggered five-year terms. Largely, you are charged with being advisory to the planning commission on matters concerning Hana. They may refer to you land use applications in the Hana region, such as the Kawaipapa Quarry or the short-term rental home that we dealt with today. There also could be legislation, like the Hana Community Plan Update, Maui Island Plan, specific zoning districts, service business residential, and so forth, that impacts the Hana region as there are several properties community plan SBR. So for -- I guess in order to take action, you need to have at least four affirmative votes 'cause you're entitled to seven members, whether you have four members here or you have seven members here, you need to have four affirmative votes to take an action.

Chair Mardfin: Does the chairman count as a vote?

Mr. Yoshida: If it's to break a tie.

Chair Mardfin: But if there's no tie, if it's three-zero, and I'm the fourth person --

Mr. Yoshida: Yeah. Then you can vote.

Chair Mardfin: Then I can vote or I can't vote.

Mr. Yoshida: You can. Yeah, if there's only four members here.

Chair Mardfin: If there are four people here, three people vote yes, I'm willing to vote yes, I can vote to make --

Mr. Crawford: It may be more accurate to say if it's the deciding vote as opposed to if it's breaking a tie.

Mr. Yoshida: Yeah, it could be the deciding vote. You know, if it's say four to -- I mean three to one, and he could be the fourth vote, then he could vote. Okay, as far as meetings, typically, we have them in the afternoon starting at about 4:00, either here or we've gone to Helene Hall at times, depending on the topic that we have, and it's kind of at an ad hoc as we get items to schedule, we'll contact you ahead of time to see if we can generate a quorum for that meeting. So I thought, with that, if there are any questions -- well, typically, I guess we probably meeting on either Monday or Thursday afternoons because Tuesdays are Maui Planning Commission days, and Wednesdays are Molokai, Lanai and -- Molokai and Lanai Planning Commission days. So if there aren't any questions, I'll turn it over to Jennifer Oana, the Deputy Corp. Counsel. She can talk about the Sunshine Law and ethics.

Chair Mardfin: Jennifer, it's all yours.

- 3. Chapter 92, HRS - The Sunshine Law**
- 4. Ethics**

Ms. Oana: Thank you, everyone. So I know all of you have been on boards and commissions already, so this isn't your first rodeo, but I just wanna pass out these handouts to you as a little guide and talk a little bit about the Sunshine Law and ethics for the Maui County. So what I passed out to you has four different documents. I'm going to talk to you first about the Sunshine Law, so there's the Sunshine Law powerpoint slide document as well as the Open Meetings Guide to the Sunshine, that is distributed by the State Office of Information Practices, so this is a really good guide, this Open Meetings Guide to the Sunshine Law. If you have any questions about the Sunshine Law, this guide pretty much addresses everything you need to know. The first, I would say, 30 pages is really just their explanation of what the Sunshine Law in plain language, and then when you turn to about page 31, that is the actual text of the Hawaii Revised Statutes, Chapter 92, which is the Sunshine Law.

So, what is the Sunshine Law? The Sunshine Law is Hawaii's open meetings law, it imposed requirements and restrictions on how all state and county boards conduct their business. The intent of the Sunshine Law, you're going to -- you hear that a lot when you, you know, talk about boards and commissions, and the council, and it's also the term "the spirit of the Sunshine Law," which is really the intent of the Sunshine Law, and the intent is to open up government processes to public scrutiny and for participation by requiring state and county boards to conduct their business as openly as possible. The legislature expressly declare that it is the policy of the state that the formation and conduct of public

policy, the discussions, deliberations, decisions, and action of government agencies shall be conducted as openly as possible. This means that, with open meetings, all the provisions of the Sunshine Law should be liberally construed to require open meetings, and with regards to some exceptions to meeting in private, those provisions should be strictly construed against closed meetings. So if there's any -- if there's any question with regard to whether you should discuss something, it should be strictly construed against having private conversations.

Now, why this matter? Well, you folks have already --

Chair Mardfin: Jennifer, may I ask a quick question about that?

Ms. Oana: Sure.

Chair Mardfin: Does that mean -- what is -- can two people get together and talk about something? Can I and Clayton talk about an issue?

Ms. Oana: Yeah, so we're going to get back that a little down the road.

Chair Mardfin: Okay. Sorry.

Ms. Oana: But you can. I'll talk about it a little bit later, about maybe two minutes down the road. So why does this matter? I'm sure all of you have heard about Kanahale versus the County of Maui, and that was a case where the public, the citizens, filed a lawsuit against the County of Maui, actually the County Council for various things, but one important thing was there were memos from one council member to the other council members, basically outlining their ideas of what was going on, what was board business, and on the bottom it said, "I ask for your favorable consideration," so the court found that that was improper. You cannot discuss amongst yourselves, you cannot discuss board business outside of a properly noticed meeting, now there are exceptions that we're going to get into, but that particular memo did not fall into any of the exceptions and so the court said that was improper.

Now, why is that important? Well, anything that board decides on or votes on could be invalidated if it was done improperly; any decision you guys make could be overturned as well as if there is a lawsuit, and the citizen or whoever brings up this complaint, they can't get all of their attorneys fees, which could be hundreds and hundreds of thousands of dollars, so we want to avoid that. We don't want the county to paying attorneys fees for a mistake by the board, commission, or council, etcetera.

Now, there's two ways to avoid -- so there's two ways to avoid board action: there's open meeting problem, or there's a notice problem. So if you see on page 2 of the slides, the open meeting problems, all interested persons shall have an opportunity to submit data, views, or arguments in writing on any agenda item. So you should let all people who come to testify, allow them all to testify, the board or the chair can limit the length of their testimony, they can say all testifiers have three minutes, just as long as everybody gets equal amounts of minutes, you can't give one ten minutes and the other person three minutes, but that's pretty common sense. Board meetings should be open and all may attend. All interested persons shall have the opportunity to present oral testimony on any agenda item. Board may make reasonable time limit for oral testimony. Problems continued are if you don't let people testify, if closed meetings are not handled properly, closed meetings in a meeting are, basically, executive session meetings, or executive session, I think we're going to get to that a little later, but you need two-thirds of the vote of the board, commission, or committee to go into executive session.

And the other problem, of course, and this is a big one, is if you talk about board business outside of the Sunshine meeting. So what is a meeting? A meeting is the convening of a board for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which the board has supervision. So in this case, the Hana Advisory Committee has seven members, four constitutes a quorum. If we have a meeting, and there's four people, we can have a meeting. And all actions of this Committee must be taken by a motion approved by the majority of the members, so four of the members have to approve a motion for it to carry. If it doesn't, then the motion fails, no action taken, there can be further motions after that until we get a motion approved by four.

What is board business? Board business is matters over which the board has supervision, control, jurisdiction, or advisory power that come before or reasonably expected to come before the board. I used to get this in one of my committees a lot. They wanted to send emails to each other to talk about things that are going to be on the agenda, and that is a no-no. If it's going to be on the agenda, if you know it's going to be on the agenda, then that is board business and you guys can't talk about it outside of a properly-noticed meeting except for limited circumstances, which we'll talk about right now.

So, okay, no. Not right now. Okay, when not to discuss board business. More than two members of the board cannot gather to discuss board business. There's no serial communications. Serial communication is basically Ward telling Clayton something, and then Clayton telling Scott something, and Scott telling John something. That is improper as well. Board members cannot discuss board business by phone, fax, email, or social media, as Facebook. Basically, what you can't do face-to-face, you can't do it, and, you know, other technology kind of communications. How about social gatherings?

Ms. Lono: Can we notice a meeting on Facebook?

Ms. Oana: Notice the meeting on Facebook? Well, there's requirements for notice of meetings, it's basically six days prior to the meeting, you have to post the agenda up at the County Clerk's office. If you, yourself, want to notice your friends on Facebook, that's perfectly fine, but they have their process and I'm sure you're aware --

Ms. Lono: Right...(inaudible - not speaking into the microphone)... on Facebook, hey, don't forget the Hana Advisory Committee today at 4:00 and it's at ...(inaudible)...

Ms. Oana: Yes, that's fine. That's fine.

Ms. Lono: Alright.

Ms. Oana: You talking to non-board members about things is completely okay. The Sunshine Law, basically, prohibits you folks from talking about things outside of a properly noticed meeting.

Mr. Carvalho: Can we mention the meeting as well as the general...(inaudible - not speaking into the microphone)...

Ms. Oana: You can say the Hana bridge restoration preservation is coming up so here's the meeting and the meeting time, you can say that. Okay, so how about social gatherings? You can go to social gatherings, you know, this is a small -- this is a small community and I'm sure you guys are friends with the same people, and, you know, there might be a baby party coming up, so you can go to social gatherings, they're called "chance meetings" really, as long as no board business is discussed. I've heard some attorneys caution against this because, you know, John can be talking to Ward at Anjoleen's baby's party, and can be completely talking about the baby, but someone in the public may speculate and cause some problem. So it's really it's okay but we have to be cautious on the public perception as well. Okay, right here, you can discuss board members with non-board members. Yes, you can do that. The Sunshine Law doesn't apply. And meetings can be held by telephone or video conference.

Okay, so in the Sunshine Law, basically, the general rule is no talking about board business outside of a properly-noticed meeting, however, there are some exceptions, and if you turn to page 32 of The Guide to the Sunshine Law, it'll show you Hawaii Revised Statutes 92-2.5, permitted interactions of members, and this is the section that basically tells you when it is allowed to talk to each other about board business. So the first one is the permitted interaction group. Oh, I'm sorry. That's not the first one. The first one is two members of the board may discuss between themselves matters relating to official board business to

enable them to perform their duties faithfully as long as no commitment to vote is made or sought, and the two members do not constitute a quorum of the board. So I think, Ward, that was probably a section you might have been talking about when you just asked me that question. So you can talk to Clayton about, you know --

Chair Mardfin: So it's two or more ...(inaudible - not speaking into the microphone)... but then I can't go to talk to Scott about the same thing, and I can't go talk to John about the same thing. That would be serial --

Ms. Oana: That would be a serial communication, and not allowed. Yeah. Okay, the second permitted interaction is, basically, I believe the permitted interaction group where two or more members of the board, but less than the number of members which would constitute a quorum for the board, may be assigned to investigate a matter relating to the official business of their board. Now this is very attractive to people because it, basically, allows two or more members to meet outside to gather information for the rest of the board. However, I want you all to be aware, and I think most of you are because we had this little problem last spring where we wanted to go visit the Hoeffken mining operation, so if ever you want to do this, I want you folks to keep in that at the meeting you want to bring this up, you have to spell out what the scope of the investigation is, and the scope of each member's authority is defined at the meeting of the board. So you have to say who is going and what they have to do. Now, at -- now, they're going to go do their thing, and at the next board meeting, they're going to come back and present to you folks their findings and recommendations. There's no deliberation at that point. It's at the third meeting where the whole board can deliberate and decide on the matter. So it's going to take three meetings, sometimes we don't have the time, or sometimes you may not want to do it if it takes that long, so this is possible, but I just want you to keep in mind it's a three-meeting process to do that.

Chair Mardfin: And that's why we didn't do it that.

Ms. Oana: And that's why we didn't do it.

Chair Mardfin: That's why we met as a whole at the site visit so that we could get the information back that day.

Ms. Oana: Yes. Yes. And make a decision that day. Okay, let's see. Okay, the next one -- sorry. Okay, the next one is two more members of the board, but less than the number of members that would make up a quorum of the board, may be assigned to present, discuss, or negotiate any position which the board has adopted at a meeting of the board provided that the assignment is made and the scope of each member's authority is defined at the meeting of the board prior to the presentation, discussion, or negotiation. So this

might, and an example might be if you folks want to give public testimony as the -- as the Hana Advisory Committee to the County Council, if you want to do that, you have to define the scope and what the -- you have to define the people and what the scope of the presentation is going to be before people can do that. So you can go ahead, if you want to present testimony to the council personally, on your behalf, you can always do that, but if you're going to present testimony on behalf of the entire body, it has to be, at a meeting, it has to be defined who's going to do and what the scope and what your testimony's going to be.

Okay, the next one is discussions between two or members of the board, but less than the number of members which would constitute a quorum for the board, can discuss concerning the selection of the board's officers, they can do that in private without limitation or subsequent reporting.

The next exception is board members present at a meeting that must be canceled for lack of quorum or terminated may, nonetheless, receive testimony and presentations on items on the agenda and question the testifiers or presenters provided that -- okay, so basically this is for the situation where, let's say, Hana -- let's say the State DOT came out today but we didn't have a quorum, but they came out here all the way from Oahu, they want to give their testimony now, we only have, let's say three people present, they can still give their presentation, and they can still be questioned by the three members present, but not deliberation can take place on that day. At the next scheduled meeting, the three people present, one of them at the meeting should have been taking notes on the report that the State DOT was making, and at the subsequent meeting, one of the three members shall present a report to the entire body to make sure that everybody is aware of what the presentation was, and at that time, then deliberation can happen.

Ms. Lono: Excuse me. It's the board member's responsibility or ...(inaudible - not speaking into the microphone)...

Ms. Oana: In the statute, it does say that a member from the board shall take notes and make a report to the entire body, especially the people who were absent at that meeting; however, I have been in meetings where the Planning Department made their own report, they did a written and an oral report, which basically covered everything, including what the public testifiers presented. So that was a very thorough report, and I allowed that to happen just because I was present at that meeting and they covered everything. Further, all the board members who were there -- was there the day that the presentation took place had no additions or anything to the Planning Department's report, and all the board members had the opportunity to address any questions, the applicant was there, the Planning Department was there, and there was a full discussion.

Okay, the next one is two or more members of a board, but less than the number of members which would constitute a quorum of the board, may attend an informal meeting or presentation on matters relating to official board business, including a meeting of another entity, legislative hearing, convention, seminar, or community meeting provided that the meeting or presentation is not specifically or exclusively organized for or directed towards members of the board. The board members in attendance may participate in discussions, including discussions among themselves, provided that the discussions occur during and is part of the informal meeting or presentation, and provided further that no commitment relating to a vote on the matter is made or sought. At the next duly noticed meeting of the board, the board members shall report their attendance and the matters presented and discussed related to official board members at the informal meeting or presentation. So an example of this would be like in the case of a council member, you know, meeting, there's an Upcountry Community Association meeting that multiple members of the council want to attend so they can hear what their constituents want to say, they are allowed to go there, present, and then discuss as long as no commitment relating to a vote is made, and then at that next meeting, all the board -- they relate their discussion to the full board. Another one, I don't think --

Chair Mardfin: Can I ask a question about that?

Ms. Oana: Sure.

Chair Mardfin: It said less than a quorum. There are public meetings here where, easily, four of us could be going out of general interest. That would be a violation?

Ms. Oana: Yes.

Ms. Lono: But isn't there legislation that they're discussing right now to address that?

Ms. Oana: I believe so because I think the council members are having a problem with that 'cause they all want to go --

Ms. Lono: ...(inaudible - not speaking into the microphone)...

Chair Mardfin: Because out here, you know, suppose Hana Ranch were going to give a presentation at Helene Hall?

Mr. Crawford: But it does say relating to board business, so if there's not a matter before us on the agenda, I don't -- you know, it's not like we can all go to the same party or the same community meeting if it doesn't specifically relate business before us.

Chair Mardfin: Oh. Okay.

Ms. Oana: So just remember all the things on the agenda, and all the things that you've heard Clayton say coming up --

Chair Mardfin: Okay.

Ms. Oana: You know, all the things that Clayton says is coming up, think of that as board business.

Chair Mardfin: Okay.

Ms. Oana: If it's something to do with, you know, something else that it's never going to come before the board, then it's fine to me. The next exception, I'm not sure if this would ever happen in this Committee, but discussions between the governor and one or more members of the board may be conducted in private without limitation or subsequent reporting provided that the discussion does not relate to a matter over which the board is exercising its adjudicatory function.

The next one is the discussion between two or more members of the board and the head of a department to which the board is administratively assigned may be conducted in private without limitation provided that the discussion is limited to matters specific in section 26.35, which I'm not sure what that is, but I don't think it is pertinent in this situation, but I can find out.

The next one is communications, interactions, discussions, investigations, and presentations described in this section are not meetings for purposes of this part.

Okay, now turning to permitted interactions regarding executive session. Now, executive sessions are meetings closed to the public. If it's anticipated and it's not -- if it's unanticipated and not listed on the posted agenda, a vote must be taken to amend the agenda to add the executive session, and this vote requires two-thirds the affirmative vote of the members present. The purpose of the executive meeting should be announced in open session, and usually it's to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, and privileges. This you can find on page 18 of The Guide, and unless the eight purposes for which the executive meetings can be convened, besides talking to your lawyer about the duties and liabilities of the board, I'm going to go into too much because I'm not sure if this really pertains to all of you, but the main one is if you need to ask me something that you think the county might be liable for if you state in open public, basically, we want to avoid the county getting sued by anything we say in a meeting, so if you think that what you say may be -- may come down to the

county being liable for something, you can ask for executive session, and we'll need two-thirds of your folks' vote to do that.

Okay, talking about the minutes and what the minutes require. Each meeting has to have minutes, and it has to be a true reflection of the matters discussed, date, time, and place of the meeting has to be on there, the board members present or absent have to be included, substance of all matters proposed, discussed, or decided, and a record of votes taken, and this is all in our minutes. Okay, any other information requested to be noted by the board members, and public record to be made available within 30 days of the meeting, sometimes minutes aren't prepared in 30 days, but as long as draft is available for whoever request it is fine.

Okay, there's a second problem area for meeting agendas. If the notice is faulty, the meeting must be canceled. There should be no additions to the meeting agenda once filed, but we can amend the agenda, or add something to the agenda if there's two-thirds of the vote of all the members to which the board is entitled.

Chair Mardfin: So that would be ...(inaudible - not speaking into the microphone)...

Ms. Oana: Two-thirds would be ...(inaudible)... now it can't be amended though if the issue that you want to add to the agenda is of reasonably major important and the action will affect a significant number of people, and that's, basically, because we want public participation, and we can't have that if nobody knows what you folks are going to be talking about that today. If it affects a significant number of people and it's of major importance, then we have to do in the normal way, six days out, post the agenda so everybody can be aware of what you folks are talking about, what you folks are deliberating about, what you folks are deciding on. All items in the agenda must be sufficiently detailed, we can't just say, "old business," "new business," it has to have some kind of description so the public an be aware of what you folks are talking and what you guys are going to decide.

Ms. Lono: And just to clarify, we don't decide what's on the agenda. The planning commission decides what's on our agenda. We don't really have any say of what -- it's assigned to us and we don't meet on any matter unless it is assigned to us by the planning commission. Correct?

Ms. Oana: Yes. So this problem won't be your mistake. It'll be my mistake or the Planning Department's mistake when we're checking it. Okay, let's see, I think that's all I have for Sunshine Law. Like I said, this Sunshine Law guide is so very helpful. If you just read it from beginning to end, it'll give you a really good idea of what the Sunshine Law is. If you have any questions, you can always email me directly. We also have an attorney in our office who came from the Office of Information Practices, she usually does these training

or orientation but because this is Hana, we didn't wanna ask her to drive all the way out here, so her name is Linden Joesting, so you can email her or email me any question you have about the Sunshine Law, and I would prefer you to email me or her if you have any questions before you decide to do something that you're not sure of.

Next I want to -- oh, does anybody have any questions? Okay, next I want to talk to you about the Maui County Code of Ethics, and I have a powerpoint slide document for you as well as a portion of the County Charter, and the portion that I made copy for you is Article 10 of the Code of Ethics, and this, like I said, this slide -- well, Linden Joesting prepared this so she has a lot of cute little things on this document, Live Aloha, and Stay Pono, Life is Ono when you live Pono, but the Code of Ethics, that's basically found in Article 10 of the Charter, and the Declaration of Policy is elected and appointed officers and an employee shall demonstrate by their example the highest standards of ethical conduct to the end that public may justifiably have trust and confidence in the integrity of government. So all county employees, elected and appointed officials, including boards and commission members are governed by the Code of Ethics, so, basically, if you look at the charter, I was going to run this off for you, but elected and appointed officers, if you look at that, boards and commission and committee members are elected and appointed officers, or they are considered officers.

The Board of Ethics is charged with the duties of hearing allegations of violations of the Code of Ethics, and we also issue advisory opinions relating to whether or not certain conduct is permitted under the Code of Ethics. So I'm sure you all know that there's a Board of Ethics in the County of Maui, similar to this board. It's appointed by the mayor, confirmed by council, and they are volunteer citizens, just like you folks and they hear complaints on the violations of the Code of Ethics, and they also render advisory opinions. So if anyone has any concern whether they may be violating the Code of Ethics, they can write a letter to the Board of Ethics, and they can issue an advisory opinion to you, which could guide into the right direction. And if you look at the -- on page 45, of the Code of Ethics, on the very bottom, no. 5, "If any officer, employee, or former officer or employee obtains an advisory opinion from the board and acts accordingly, or acts in accordance with the opinions of the board, the officer or employee shall not be held liable for violating any of the provisions of this article." So when in doubt, ask for an advisory opinion and go with what they say.

Okay, so there are eight major prohibitions to the Code of Ethics, and this you can find on -- starting on page 46, of the Charter, I'm not going to read them all off 'cause we're going through them one by one. Okay, so starting on page 4, of the slide show, and 46 on the Charter: No officer or employee of the county shall solicit, accept, or receive any gifts, directly or indirectly, whether in the form of money, service, loan, travel, entertainment, hospitality, thing, or promise, or in any other form under circumstances in which it can

reasonably be inferred that the gift is intended to influence the officer or employee in the performance of the officer or employee's official duties, or intended as a reward for any official action on the officer or employee's part. So this prohibition on gifts is basically intended where the circumstances indicate that the gift was intended to influence or reward the officer or employee in the performance of his her duties. So if someone wants to give you a hundred dollars, or whatever, say no, no, no, no, no to that. But there is an exception, and they call it "gifts of aloha," so basically, in past opinions issues by the Board of Ethics and the Hawaii State Ethics Commission, they noted that there has been a long-standing tradition of giving small token gifts of aloha to those persons within one deals with on a public or private basis. The Board of Ethics caution that the gifts must be nominal and given in the traditional spirit of aloha. However, once the gift becomes a matter of substance and a cloud of attempted influence or reward overshadows any spirit of aloha and a violation of the Code of Ethics would not be found. So, I mean, basically, for me, I would call it "omiyage," you know, you go someplace, you kind of -- you're shame or embarrassed to not take something to someone when you visit them, you know, that probably is considered a gift of aloha, but if you have something major, I would just say no to that.

The Board of Ethics has ruled that no violation would be found if the following criteria are met: the gift was given freely in the traditional spirit of aloha; there was no solicitation on the part of the county officer or employee receiving the gift; the gift is nominal value; and there are no other circumstances indicating an apparent intent by the donor to reward the recipient for pass services or influence the officer or employee to give the donor special treatment in the future. Now I heard this one example, from another attorney, it was basically, it was like a beach situation, and maybe your department or Ocean Safety saved someone or helped someone out on the beach, and so the next day they came back and wanted to give the lifeguard, or whoever it was, a whole platter of sushi. That may be improper because that may cost like a lot of money. And so it's best to just say no to any kind of gift or any kinda, you know, special thing that you're provided.

Mr. Carvalho: I have a question. What's the determination of "nominal?"

Ms. Oana: I heard a \$20.00 rule, but I haven't seen it written anywhere, so if it's under \$20.00, that could be considered nominal but if it -- it kinda depends, you know, If they're going to give you a \$20.00 thing because they know you want this \$20.00 thing and they're trying to influence you, then I would just say no to that too. Now if someone from the public were to come and bring a box of donuts for everyone here to enjoy, including the public, and everyone who walks by, you know, that's fine. You can take that. But if it's specifically for you, they want to try to influence you, then I would just say no. It's best to just say no.

Chair Mardfin: How does this interact with campaign finances for people running for office? Are they subject to this?

Ms. Lono: Do we really need to talk about campaign finances?

Chair Mardfin: Okay. You're right. I take it back. I'll ask you after the meeting.

Ms. Lono: ...(inaudible - not speaking into the microphone)...

Ms. Oana: Okay. Okay, so it's getting late. Just quickly, if you turn -- basically, all the prohibitions and violations of the Code of Ethics can be found on page 46 and 47 of the Charter. The next one is: No officer or employee can disclose information which, by law, are practices not available to the public and which the officer or employee acquires in the course of the officer or employee's official duties, or use such information for the officer or employee's personal gain or the benefit of anyone.

The next one is: No officer or employee can engage in any business transaction or activity or have a financial interest indirect -- direct or indirect, which incompatible with the proper discharge of the officer or employee's official duties or which may tend to impair the officer or employee's independence of judgement in the performance of the officer or employee's official duties. Nobody has any questions about those, right?

The next one is: Use of county --

Mr. Crawford: This has come up at previous meetings that because you have some kind of financial interest doesn't necessarily mean you have to recuse yourself, you just have to disclose that interest.

Ms. Oana: Yes. Yes. I think number -- letter C is more for, let's say, I'm just going to use Mr. Notestone as an example, because he's a fireman, right, and so let's say he has a side business of, you know, selling some kind of fire equipment, that might be considered a conflict of interest if the Fire Department has to buy that kind of fire equipment. So that's kinda where this is.

Okay, the next prohibition: No officer or employee can use county property or personnel for other than public activity or purpose. So, you know, no using the copy machine for personal use, you know, that kinda thing.

The next one is: No officer or employee can fail to disclose a financial interest in any matter which may be affected by an action of the county agency or vote on any matter -- or vote on any matter affected by such interest.

The next one: No officer or employee can receive compensation for any service rendered on behalf of any private interest after termination of service to or employment with the county in relation to any case, proceeding, or application with respect to which the officer or employee was directly concerned, or which was under his or her active consideration, or with respect to which knowledge or information, not generally available to the public, was made available to him or her during the period of service to or employment with the county.

The next one: No former non-salaried employee or officer of the county shall appear for compensation before any department or other agency of the county by which such employee or officer was last employed within a period of one year after termination of service to or employment with the county. So they have to stay out one year before they represent or appear for compensation before any agency.

The next one is also very important: The county shall not enter into any contract of value in excess of \$500.00 with an officer or employee or with a firm in which an officer or employee has a substantial interest involving services or property unless the contract is made after competitive bidding.

Ms. Lono: Are we considered an "officer?"

Ms. Oana: Yes. Under the Charter, members of boards and commissions are officers. And so, no. 4, basically says that no -- so officers and full-time employees of the county shall not appear on behalf or represent private interest while you're an officer or employee of the county, but you can represent your own interest when you're dealing with your own personal matters. Okay, and I think that's it. Does anybody have any questions on Code of Ethics?

Ms. Lono: I'd just like to acknowledge that the situation of my serving on this Committee was called into question and brought before the Board of Ethics, and it was cleared, and so employees of the county are not restricted from serving on boards and commissions in any way, and any personal issue with any opinion that I may have had in the past or ... (inaudible - not speaking into the microphone) ... on this committee and other committee in the past is not relevant, so that was brought up, and, basically, called my entire -- me, as a person, called my integrity into question, and I had to work really hard to go and get letters of support in my community to uphold my integrity as a community member and a former board member, and it caused my job to be called into question with the county office that I work for, and so I would appreciate if anybody has any question about anything that I do or may do or would be considered something that they feel is questionable that they at least come and speak to me first before writing a letter and causing this kind of upheaval in my personal life and my professional life in any way, shape, or form, and that's directed

specifically to Mr. Blumer-Buell who was the one who wrote the letter very discouraging about me to the council.

Ms. Hoopai-Waikoloa: Because of your role --

Ms. Lono: Because of my job and because of previous service on the Committee, and the way that I voted in certain matters, and things like that. I mean it was very, very detailed. So I just would like to put that out on the table, and have it clear, and put it away, and if there is ever any question whatsoever about me that it be brought, at least the consideration is brought to me first if there's a problem, and then it needs to be taken further, whatever, but just to have some kind of courtesy among us that, hey -- hey, Dawn, you know, I think that this is not okay, I think you're going to have to look at that and, you know, so, anyway, I would just like to have that courtesy so it not screw my whole life and make me lose my job and so I'm ...(inaudible)... so I appreciate that consideration for all of us.

Chair Mardfin: Thank you, Dawn. Jennifer, does that finish your part?

Ms. Oana: All finish.

Chair Mardfin: Thank you very much for the orientation. Item I, Director's Report, scheduling of other Hana region applications.

I. DIRECTOR'S REPORT

- 1. Scheduling of other Hana Region Applications**
- 2. Discussion of Future Hana Advisory Committee Agendas**

Mr. Yoshida: Thank you, Mr. Chairman. After we get past the pre-final draft of the Hana Bridge Preservation Plan, there are two applications: One, the Planning Director has introduced the community plan amendment and zoning change to revert the -- those designations for the Hana Golf Course back to the original ag designations, as you remember, back in 1993, Keola Hana Maui received those entitlements, and I guess with the support of the current owner, Biological Resources, so that probably will be coming to you before the end of this year. The next item request is from Gary Stice for a special management area use permit to construct two dwellings on a property on Haneoo Road in the Koki Beach area. If you remember five years ago, the Planning Director, at that time, Jeff Hunt, determined that Mr. Stice should go through a SMA use permit process because of potential environmental and ecological impacts. He appealed that to the Planning Commission; the Planning Commission denied Mr. Stice's appeal and sided with the

department. So Mr. Stice is going to through the process of getting a special management area use permit now. So those are the two applications.

Chair Mardfin: Jennifer -- John Blumer-Buell.

Mr. Blumer-Buell: Yeah, just for clarification. Thanks, Clayton. So the application by Mr. Stice for the two dwellings is going to come to the Hana Advisory Committee?

Mr. Yoshida: That's for two dwelling and for a special management area use permit, so that will go through a public hearing with you folks, and you would make a recommendation to the Planning Commission.

Chair Mardfin: John?

Mr. Blumer-Buell: Yeah, thank you. I had accidentally or not accidentally come across, going through Planning -- Planning Commission agendas, and I saw that, and I have a letter in there now asking that question, so I just want to thank you because the Hana Advisory Committee has asked the Planning Department in the past to please have all SMA permit applications and all SMA notices come through the Hana Advisory Committee. I mean I think that's really useful for the Committee to get that information well in advance. Thank you.

Chair Mardfin: Anybody else? Jennifer, I was on Planning Commission when this whole thing first started, and so -- and I voted, and I voted on the appeal. Would you check to make -- find out whether I can still speak on this matter, or am I precluded from doing it, or whatever? But it might be a -- I don't think it's conflict of interest, but I have voted on previous iterations of this action.

Ms. Oana: ...(inaudible - not speaking into the microphone)... but I will double-check.

Chair Mardfin: Thank you.

Mr. Carvalho: How long has this issue been ongoing with that dwelling? I'm sorry. I'm new to it.

Chair Mardfin: Seven or eight years.

Mr. Carvalho: Sorry, I'm new to it. Okay.

Chair Mardfin: Yeah.

Mr. Blumer-Buell: Chair?

Chair Mardfin: Mr. Blumer-Buell?

Mr. Blumer-Buell: Yeah, I have a question for Clayton on one other item that he referred to, that is the maps regarding the PK-4 conditional zoning for the Hana Golf Course and Country Club. I'm just wondering why that is coming up at this point when the conditional permit expired more than 15 years ago, and members of the community, including myself, have tried to have this very issue dealt with for some time, so I thank you for this, but why is it necessary and, you know, zoning's expired, and since you're requesting -- since you're requesting a change, William Spence is requesting a change of zoning and community plan designation, won't that trigger an environmental assessment?

Mr. Carvalho: I'm an employee of Biological Capital, and Clayton -- I mean Clayton will answer it but there is definitely a reason why it's being brought up now.

Ms. Lono: And the appropriate time to address that would be in a meeting of the hearing, not now ...(inaudible - not speaking into the microphone)...

Chair Mardfin: That's correct. It probably doesn't need to be dealt with today.

Mr. Carvalho: Yeah.

Mr. Yoshida: I think the current owners, Biological Resources, is in favor of the reversion of the land use designations back to their original. I don't think they want to build a golf course there.

Mr. Carvalho: Yeah. Basically, they're undoing -- undoing, reversing, as they said, they're undoing what -- basically, they're squashing the bug that's out there, kinda saying it's out there, even though it's expired, it's still there, and we have -- you know, Biological wants to take care of that problem.

Chair Mardfin: We have a dead body and we want to put it in the grave.

Mr. Carvalho: Yeah. Essentially, in regards to the zoning.

Chair Mardfin: So that's other region applications. Is that -- that's also future Hana Advisory Committee agendas? Are we going to have a problem in two with agendizing the meeting to discuss the bridges? Don't we have to have three weeks in advance or something like that? No? Okay.

Mr. Yoshida: Well I think you need to, well, according the Sunshine Law, you need to post the agenda six calendar days prior to the meeting.

Chair Mardfin: Okay. Thank you.

Mr. Yoshida: That's why we had that, when we dealt with Kawaipapa, we had a meeting on March 9, we had a meeting on March 17 because the Committee wanted to deal with it quickly.

Chair Mardfin: Okay. Thank you.

J. ADJOURNMENT

Mr. Crawford: Chair, I make a motion to adjourn this meeting.

Ms. Lono: I second it.

It has been moved by Committee Member Crawford, seconded by Committee Member Lono, then unanimously

VOTED: to adjourn the meeting at 7:17 p.m.

Chair Mardfin: Meeting is adjourned at - would somebody give me a time? 7:17. Thank you very much for all of you, welcome, new members.

Respectfully submitted by,

SUZETTE L. ESMERALDA
Secretary to Boards & Commissions

RECORD OF ATTENDANCE

Present

Ward Mardfin, Chairperson
Gale Notestone, Vice-Chairperson
John Blumer-Buell
Clayton Carvalho
Scott Crawford
Anjoleen Hoopai-Waikoloa
Dawn Lono

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Others

Clayton Yoshida, Planning Program Administrator
Gina Flammer, Staff Planner
Jennifer Oana, Deputy Corporation Counsel