

LIQUOR COMMISSION
DEPARTMENT OF LIQUOR CONTROL
COUNTY OF MAUI, STATE OF HAWAII

TRANSCRIPT OF PROCEEDINGS
REGULAR MEETING

Held at the Department of Liquor Control Conference Room, David K. Trask, Jr. Office Building, 2145 Kaohu Street, Room 108, Wailuku, Maui, Hawaii, commencing at 9:00 a.m., on Wednesday, November 9, 2016.

Reported by: Tonya McDade, CSR, CRR
CSR Maui
Wells Street Professional Center
2145 Wells Street, Suite 302
Wailuku, Hawaii 96793
(808)244-3376
reporters@csrmaui.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

Darren Lopez, Vice-Chairperson (Acting Chair)
Dawn Bicoy, Commissioner
Brenda Lee, Commissioner
William Kennison, Commissioner
Dana Souza, Commissioner
Roy Umeno, Commissioner
STAFF PRESENT:
Edward Kushi, Jr., First Deputy Corporation Counsel
Glenn Mukai, Director
Gene R. Silva, Senior Investigator
Layne N. Silva, Senior Investigator
Sarah Cordeiro, Secretary to Boards/Commissions II

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(Wednesday, November 9, 2016, 9:00 a.m.)

* * *

VICE-CHAIR LOPEZ: (Gavel.) Okay. The meeting of the Liquor Commission is now called to order. Let's have roll call, starting with Sarah, please.

MS. CORDEIRO: Sarah Cordeiro, Liquor Control.

COMMISSIONER BICOY: Good morning. Dawn Bicoy, Molokai.

COMMISSIONER KENNISON: Willy Kennison.

MR. KUSHI: Ed Kushi.

VICE-CHAIR LOPEZ: Darren Lopez.

COMMISSIONER SOUZA: Dana Souza.

COMMISSIONER UMENO: Roy Umeno.

COMMISSIONER LEE: Brenda Lee.

DIRECTOR MUKAI: Glenn Mukai, Liquor Control.

MR. LAYNE SILVA: Layne Silva, Liquor Control.

MR. GENE SILVA: Gene Silva, Liquor Control.

VICE-CHAIR LOPEZ: You have, before you, the agenda dated November 9th. May I have a motion of approval?

COMMISSIONER SOUZA: So moved.

COMMISSIONER UMENO: Second.

VICE-CHAIR LOPEZ: Okay. Moved and second. All in favor, say "aye."

(Response.)

VICE-CHAIR LOPEZ: Opposed?

1 (No response.)

2 VICE-CHAIR LOPEZ: Motion carried. We also have
3 the Liquor Commission minutes dated October 12th. May I
4 have a motion for approval?

5 COMMISSIONER SOUZA: So moved.

6 COMMISSIONER UMENO: Second.

7 VICE-CHAIR LOPEZ: Okay, moved and second. All in
8 favor, say "aye."

9 (Response.)

10 VICE-CHAIR LOPEZ: Opposed?

11 (No response.)

12 VICE-CHAIR LOPEZ: Motion carried. Okay. We have
13 Items A through G. May I have a motion for confirmation,
14 please?

15 COMMISSIONER SOUZA: I move to confirm General
16 Licensing Matters from A to G.

17 COMMISSIONER KENNISON: Second.

18 VICE-CHAIR LOPEZ: Okay, moved and second. All in
19 favor, say "aye."

20 (Response.)

21 VICE-CHAIR LOPEZ: Opposed?

22 (No response.)

23 VICE-CHAIR LOPEZ: Okay. Motion carried. Okay.
24 Licensing matters, Public Hearings. Application Number 01,
25 please step forward and state your name and position,

1 please.

2 MR. KAWAGISHI: Members of the Liquor Commission,
3 Michael Kawagishi on behalf of Three Sons and Associates,
4 Inc. doing business as Smokehouse BBQ Bar & Grill. And with
5 me today is Jose Lacap who is the officer of the
6 corporation.

7 VICE-CHAIR LOPEZ: Thank you.

8 MR. GENE SILVA: The applicant is Three Sons and
9 Associates, Inc. doing business as Smokehouse BBQ Bar &
10 Grill. The proposed premises is located at 930 Wainee
11 Street, Unit Number 1, Lahaina, Maui, Hawaii. This is a
12 public hearing for a new Dispenser General License, Category
13 C(ii).

14 The documents necessary for completing the
15 remaining application requirements for a liquor license are
16 listed in the summary report.

17 Notice of public hearing -- notice of public
18 hearing was published in "The Maui News" on September 21st
19 and 28th, 2016. There are a total of 26 owners and lessees
20 situated within 500 feet of the proposed premises. The
21 Department did not receive any protests.

22 VICE-CHAIR LOPEZ: Thank you, Mr. Silva. Do you
23 have anything else to add?

24 MR. KAWAGISHI: No.

25 VICE-CHAIR LOPEZ: Okay. The public -- the floor

1 is open for public testimony. Anybody in favor, step up to
2 the podium, please. Against? Okay. Seeing none, any
3 questions by the Members of the Commission? No questions.
4 Can I have a motion?

5 COMMISSIONER SOUZA: I move to approve Application
6 Number 01 conditioned upon the applicant completing the
7 remaining application requirements to the satisfaction of
8 the Department of Liquor Control.

9 COMMISSIONER UMENO: Second.

10 VICE-CHAIR LOPEZ: Moved and second. All in
11 favor, say "aye."

12 (Response.)

13 VICE-CHAIR LOPEZ: Opposed?

14 (No response.)

15 VICE-CHAIR LOPEZ: No opposition, motion carried.

16 Thank you.

17 MR. KAWAGISHI: Thank you.

18 VICE-CHAIR LOPEZ: Application Number 02, Nabee
19 doing business as Poni. Please step up and state your name
20 and position, please.

21 MS. HAN: My name Julie Han, President of Nabee
22 Inc.

23 VICE-CHAIR LOPEZ: Mr. Silva, please.

24 MR. GENE SILVA: Applicant: Nabee Inc. dba Poni,
25 doing business as. Applicant did not meet requirement for

1 public hearing, has been rescheduled for January.

2 VICE-CHAIR LOPEZ: That's it? Anything to add?

3 No.

4 MS. HAN: No.

5 VICE-CHAIR LOPEZ: Okay. The floor is open now
6 for public testimony. Anybody for the application? Anybody
7 against? Seeing none, any questions by the Commission? No.
8 Okay. Can I have a motion to --

9 COMMISSIONER SOUZA: So we're asking for a
10 continuance, she needs to get a public hearing?

11 MR. GENE SILVA: It's been scheduled --
12 rescheduled for January because the stuff that she sent in
13 wasn't complete.

14 COMMISSIONER SOUZA: Okay. So we're continuing
15 'til January?

16 MR. GENE SILVA: Yes.

17 COMMISSIONER SOUZA: That's the condition?

18 MR. GENE SILVA: Yeah.

19 VICE-CHAIR LOPEZ: There's no action?

20 MR. GENE SILVA: No.

21 VICE-CHAIR LOPEZ: All right. So it's going --

22 MR. KUSHI: Deferred.

23 VICE-CHAIR LOPEZ: Okay. Deferred to the next
24 meeting. Okay. We gonna defer this to the next meeting.

25 COMMISSIONER SOUZA: Is that the January meeting?

1 DIRECTOR MUKAI: January, because she has to
2 renotify.

3 COMMISSIONER SOUZA: Okay.

4 MR. GENE SILVA: Yeah.

5 COMMISSIONER SOUZA: Do we have a date on that, on
6 when is our next meeting?

7 MS. CORDEIRO: I believe it's the 11th of January.

8 COMMISSIONER SOUZA: January 11th.

9 MS. HAN: That's the preliminary hearing?

10 VICE-CHAIR LOPEZ: Yeah.

11 MR. KUSHI: No. Public hearing.

12 COMMISSIONER KENNISON: Public hearing.

13 MS. HAN: Public hearing.

14 COMMISSIONER KENNISON: The same.

15 MS. HAN: Same?

16 COMMISSIONER KENNISON: Yeah.

17 MS. HAN: Oh. So if I do submit all the paperwork
18 by then, I can --

19 COMMISSIONER KENNISON: Come here.

20 COMMISSIONER SOUZA: Come here.

21 MS. HAN: Okay. All right. Thank you.

22 VICE-CHAIR LOPEZ: If there's no more, we'll defer
23 to the next meeting. Thank you.

24 Application Number 03, Wailea Golf LLC dba "To Be
25 Named". State your name and position.

1 MR. NAKAMURA: Good morning, Mr. Chair, Members of
2 the Commission. Sorry for the delay. Craig Nakamura,
3 attorney on behalf of the applicant. And with me is Ms. Ann
4 Takabuki, who is the principal of the applicant. Also,
5 Judah Secunda, S-E-C-U-N-D-A, who is going to be the General
6 Manager of the restaurant. And, also, in the audience is
7 Barry Helle who also works with the applicant.

8 VICE-CHAIR LOPEZ: Thank you.

9 MR. NAKAMURA: Thank you.

10 VICE-CHAIR LOPEZ: Mr. Silva.

11 MR. LAYNE SILVA: Applicant Number 03, the
12 applicant is Wailea Golf LLC doing business as "To Be
13 Named". The proposed premises is located at 131 Wailea Ike
14 Place, Wailea, Maui, Hawaii. This is a public hearing for a
15 new Dispenser General License, Category C(ii).

16 The documents necessary for completing the
17 remaining application requirements for a liquor license are
18 listed in the summary report.

19 Notice of public hearing was published in "The
20 Maui News" on September 21st and 28, 2016. There are a
21 total of 319 owners and lessees situated within 500 feet of
22 the proposed premises. The Department received six protest
23 letters and one letter in support.

24 VICE-CHAIR LOPEZ: Thank you, Mr. Silva. Do you
25 have anything else to add?

1 MR. NAKAMURA: Yes, Mr. Chair. Given that there
2 have been some protests filed, I would like to give a brief
3 presentation to inform the Commission of what's going on
4 with this license. And if I might, I would like to
5 circulate just copies of the documents. You guys know I'm
6 kind of a visual guy, I like to look at pictures and give
7 kind of an explanation as we go along.

8 COMMISSIONER BICOY: We appreciate that.

9 MR. NAKAMURA: Well, I think, a lot of times, some
10 of the Commissioners may not be real familiar with the
11 details of, you know, where the license is and the
12 application and everything else.

13 So just -- I don't -- I don't know if there's
14 anybody here who actually submitted a protest like to
15 testify, but very -- just very briefly, you know, this --
16 what we're proposing here, this is a family restaurant; it's
17 not a bar or a nightclub. I think that's probably the
18 concern of the -- the people that did protest. This is not
19 that.

20 You know, we have Ms. Takabuki here and Barry
21 Helle. These are, you know -- some of you know them,
22 they're very longtime upstanding citizens in our community.
23 And Judah Secunda, Judah lived on Maui from 1994 to 2007.
24 During that time, he worked at the Grand Wailea, the Four
25 Seasons and for Wailea Golf. From 2007, he was working for

1 an oil company in the Persian Gulf, and, also, on the
2 mainland, operating food workforce accommodations, we call
3 it, which is, basically, including food service. So he has
4 experience in this area. And he recently returned to Maui
5 to -- to start this new business with our company.

6 I think the misconception that a lot of people get
7 is because of the Notice of Public Hearing that they
8 received in the mail. And I've attached, the first document
9 is a copy of the notice. And you can see, it says, "License
10 applied for, Dispenser General, Category C(ii), premises in
11 which live entertainment or recorded music is provided." So
12 when they see this, you know, they automatically jump to
13 the -- a conclusion, right, that this is going to be a bar
14 or a nightclub.

15 And under this Dispenser General category, you're
16 allowed to serve liquor until 2:00 in the morning. Okay.
17 So the fear is this is going to be a -- a nightclub, it's
18 gonna open 'til 2:00 in the morning and it's going to have
19 live music blasting in our ears all night. Okay.

20 That's not what this is. This is -- those are
21 just the general parameters of the license. It allows you
22 to do that. It doesn't mean that that's what we're going to
23 do.

24 You know, we're not -- there is a Restaurant
25 category liquor license. We're not allowed to apply for a

1 restaurant license because we need to show one year's worth
2 of food -- food out of our gross sales, 30 percent or more
3 has to be in food. So we can't show that until we've
4 operated for a year.

5 So if it said Restaurant license, it probably
6 would relieve a lot of people of their anxiety, but it
7 doesn't. It says Dispenser. So I think that's where the
8 misconception comes from. Okay.

9 This restaurant was originally constructed as part
10 of the tennis complex in 1975. So it's been there for over
11 40 years now. It was operated as Joe's. You might be
12 familiar with it being Joe's restaurant, operated by Joe and
13 Bev Gannon for many, many years. It's a small restaurant on
14 the second floor. The total area is 3,246 square feet, and
15 the allowed seating is only 100 people.

16 So I've attached a copy of the floor plans. Here
17 you can see that, you know, probably at least half of the
18 floor space is -- is back of the house. So we've probably
19 got maybe, you know, 1,600 square feet or so of actual
20 service area. The limitation is to 100 people. So the most
21 -- most we will have in this area is 100 people.

22 This is the actual seating plan. It show -- it's
23 showing the tables. You can see the -- the four -- you
24 know, the bigger tables in the middle with four people and
25 the ones on the side seat two. So the maximum capacity,

1 again, is 100 people.

2 Then there's -- this is a copy of the proposed
3 menu for the space. You can see, it's going to be called
4 Kitchen and Tap. Basically, it's a -- it's a very basic
5 menu serving some local items, you know, burgers, sandwiches
6 and so forth.

7 And, also, they have a kids menu. So, again, this
8 is focusing on families in the community. You know, it's
9 not a -- it's not a bar or nightclub.

10 The present plans for operation is from 10:30 a.m.
11 to 9:30 p.m.

12 There's going to be some recorded music. Right
13 now, there's some speakers. There's some TV screens up
14 behind the bar. There's some speakers there, right now.
15 Possibly, in the future, there might be more speakers, but,
16 right now, it's just those.

17 There's no present plans for live music. You
18 know, of course, we always like to keep the contingency in
19 case -- in the event of, you know, maybe happy hours in the
20 future or special events like weddings or birthdays. And if
21 that is the case, you know, again, this is not a large
22 space, so, you know, there would only be a small area set
23 aside for the actual stage or entertainment area. And that
24 would only fit a couple of people, probably acoustic music
25 or maybe some light amplification.

1 And, if so, you know, the plans are -- going back
2 to this floor plan, the plans are to have the stage area in
3 the -- in the lower corner here so that the music would be
4 facing inside and away from the -- the outside properties.

5 This is a -- this photo is submitted with the --
6 with the application. And it's the actual site plan. It's
7 like a overhead aerial photo. And you can see where the
8 premises is located. There's an arrow indicating where the
9 premises is located.

10 Immediately above here is the Grand Champions
11 Condominiums. And on this photo, to the right, is the
12 Wailea Town Center. Okay. So you can see the proximity.
13 The protests that I'm seeing come from these people at the
14 Wailea Town Center.

15 This -- this first building here right next to the
16 road is a two-story building. The bottom floor, right now,
17 is commercial and the upper floor is residential. So three
18 of the people who were protesting live on the upper floor
19 there. Then there's a building in the back, on the mauka
20 side, one of the persons who is protesting lives on the
21 upper floor there. So that -- that's where these people
22 are -- are located.

23 There's also a tax map. And you can see generally
24 where -- you know, this is, again, provided with the
25 application. You can see the -- the rings which indicate

1 the 100 and 500-foot radius where we've been required to
2 give notice. And the Wailea Town Center is Parcel 103
3 indicated on this map.

4 Then I've got some photos. Basically, going to
5 these pictures here, we're looking at the roads leading into
6 the property. Wailea Ike Place is this -- the road showed
7 in Photo 1B is going down to Wailea Ike Drive. Wailea Ike
8 is the main drag coming into Wailea from the highway. So as
9 you come down, it's on the right side.

10 1A shows, again, this is the -- the parking lot, a
11 small parking lot for the tennis center. You can see the --
12 the building -- the very top of the roof of the building
13 indicated on the -- about in the middle of the photograph
14 looking makai.

15 Two more pictures, kind of the same thing. 2A
16 shows the -- the main parking lot on Wailea Ike Place. And
17 then 2B shows the -- this is the stairway entrance from that
18 road going down to the restaurant premises. So you have to
19 park in these parking lots above and then walk down the
20 stairs to get to the restaurant itself.

21 3A is a photo from the road looking up at Wailea
22 Town Center, the condominium units, the people in the
23 upstairs are the people that are protesting.

24 3B is looking down the road towards the Grand
25 Champions.

1 4A is from the Wailea Town Center property looking
2 down at the restaurant. You can see the roof of the
3 restaurant here, the tennis courts makai of the Wailea Town
4 Center.

5 And 4b is the upper building where the other
6 protester resides, which is in back of the building fronting
7 the road.

8 5A is from the Wailea Town Center property,
9 looking down at the restaurant and the tennis facilities.
10 So you can kind of get an idea of where it's located in
11 relation to the Wailea Town Center.

12 6 is going into the -- 6B, we're going into the
13 restaurant here. This is from the entryway. As you come
14 down the stairs, you go into the -- you go down to this
15 restaurant.

16 6A is the bar.

17 7A is going into the restaurant. This is the
18 corner where the -- if there is some live music, that's
19 where it's gonna be located, in that approximate area, so
20 that the music will be facing makai.

21 In the back there, on the outside, you can see the
22 tennis courts and you can see the Grand Champions
23 condominiums next to it.

24 Page 8, again, pictures of the inside of the
25 restaurant. You can generally see the -- the size and where

1 the tables are located.

2 9A is the bar.

3 9B is from the inside of the restaurant, looking
4 up at the Wailea Town Center buildings.

5 And 10 is from the inside of the restaurant
6 looking out at Grand Champions.

7 So as -- as mentioned in the report, there were
8 319 public hearing notices sent out, only a few complaints.
9 And I kind of outlined exactly where the complaints are
10 coming from.

11 The applicant has had meetings with various
12 different associations in that area. You know, they're
13 generally very supportive. There's a letter -- I thought
14 there were two letters of support, but there -- there are
15 some letters of support.

16 And, again, the -- the main protest here is that
17 this is going to be a bar and nightclub with live music all
18 hours of the night. And as we indicated, this is not that
19 kind of operation at all. This is meant to be a family
20 restaurant, limited hours of service, you know, and some
21 background music for the customers, that's it.

22 These people that live next door are gonna -- you
23 know, those are the target customers for us, you know. We
24 expect people from the community to come in and eat. And so
25 the people next door are very important to us. And we're

1 certainly not going to have any kind of live music or
2 anything that's going to disrupt them and then cause people
3 not to come.

4 You know, we intend to be very responsive to any
5 kind of complaints. If there's any problems with music or
6 entertainment, we will be very responsive to that and -- and
7 be able to accommodate those kind of complaints.

8 So we ask for the opportunity to operate this
9 restaurant and obtain a liquor license. And we'll be happy
10 to answer any questions you have. Thank you.

11 VICE-CHAIR LOPEZ: So the floor is now open for
12 public testimony. We have anybody who wants to speak for
13 this license? Anybody against? Public testimony is closed.
14 Any questions by the Commission?

15 COMMISSIONER BICOY: I just want to say thank you
16 for providing all this information because some of the
17 testimonies were quite compelling. And to understand
18 exactly what is going on, thank you. This -- this really
19 helps --

20 MR. NAKAMURA: You're welcome.

21 COMMISSIONER BICOY: -- for me. Thank you.

22 VICE-CHAIR LOPEZ: Anybody else? Okay. Can I
23 have a motion?

24 COMMISSIONER KENNISON: I move to approve
25 Application Number 03 conditioned upon the applicant

1 completing the remaining application requirement to the
2 satisfaction of the Department of Liquor Control.

3 COMMISSIONER BICOY: Second the motion.

4 VICE-CHAIR LOPEZ: Okay, moved and second. All in
5 favor, say "aye."

6 (Response.)

7 VICE-CHAIR LOPEZ: Opposed?

8 (No response.)

9 MR. NAKAMURA: Thank you, again, very much.

10 MS. TAKABUKI: Thank you very much.

11 VICE-CHAIR LOPEZ: Application Number 04,
12 Nutcharee's Authentic Thai Food. Please state your name and
13 position, please.

14 MR. KAWAGISHI: Members of the Commission, Michael
15 Kawagishi on behalf of the Nutcharee's Authentic Thai Food
16 LLC doing business as Nutcharee's Authentic Thai Food. With
17 me today is Nutcharee Case, who is the sole member of the
18 company.

19 VICE-CHAIR LOPEZ: Thank you. Mr. Silva.

20 MR. LAYNE SILVA: Application Number 04, the
21 applicant is Nutcharee's Authentic Thai Food LLC doing
22 business as Nutcharee's Authentic Thai Food. The proposed
23 premises is located at 1280 South Kihei Road, Suite 124,
24 Kihei, Maui, Hawaii. This is a public hearing for a new
25 Dispenser General [sic] License, Category C(ii).

1 The applicant has submitted the documents
2 necessary for a liquor license.

3 The Department will be scheduling a final site
4 inspection of the premises with the applicant.

5 Notice of public hearing was published in "The
6 Maui News" on September 21st and 28th, 2016. There are a
7 total of 275 owners and lessees situated within 500 feet of
8 the proposed premises. The Department did not receive any
9 protests.

10 VICE-CHAIR LOPEZ: Thank you, Layne. Anything you
11 want to add, Mike?

12 MR. KAWAGISHI: No.

13 VICE-CHAIR LOPEZ: No. Okay. So I'm going to
14 open the floor for public testimony. Anybody want to speak
15 on behalf of the applicant or against the applicant? Seeing
16 none, questions by the Commission? No questions. Can I
17 have a motion to approve?

18 COMMISSIONER SOUZA: I move to approve Application
19 Number 04 conditioned upon the applicant completing the
20 remaining application requirements to the satisfaction of
21 the Department of Liquor Control.

22 COMMISSIONER UMENO: Second.

23 VICE-CHAIR LOPEZ: Moved and second. All in
24 favor, say "aye."

25 (Response.)

1 VICE-CHAIR LOPEZ: Opposed?

2 (No response.)

3 VICE-CHAIR LOPEZ: No. Motion carried. Thank
4 you.

5 MR. KAWAGISHI: Thank you.

6 VICE-CHAIR LOPEZ: Application Number 09, Drink
7 Enterprises. State your name and position.

8 MR. KAWAGISHI: Members of the Liquor Commission,
9 Michael Kawagishi on behalf of the Drink Enterprises, LLC
10 doing business as Spanky's Riptide. With me today is Adam
11 Clarke who is the manager of the location. Mr. Michael
12 Kash, I apologize for him because his mother was ill and he
13 had to leave to go to the mainland. My understanding is
14 that she has some kind of a heart condition.

15 VICE-CHAIR LOPEZ: Thank you, Mike. Mr. Silva.

16 MR. LAYNE SILVA: Application Number 09, Dispenser
17 General C(ii), Applicant Drink Enterprises, LLC, a
18 registered Hawaii limited liability company, doing business
19 as Spanky's Riptide applying for a Dispenser General
20 License, Category C(ii).

21 Member of the member-managed limited liability
22 company is Michael George Kash as the member. Personal
23 History Statement and Criminal History Statement are both on
24 file.

25 Lease Agreement: Applicant has submitted a copy

1 of a First Amendment to retail lease by and between FPA
2 Lahaina Shores Associates, LLC, a Delaware limited liability
3 company, as the landlord, and Drink -- and Drink
4 Enterprises, LLC doing business as Spanky's Riptide, as the
5 tenant, dated November 13th, 2012. The lease commencement
6 date shall be amended to reflect the revised date November
7 1st, 2011. The lease expiration date shall be amended to
8 reflect the expiration date of October 31st, 2021. Tenant
9 will have two five-year options to renew as more
10 particularly set forth in Section 2.2 of the lease.

11 Premises: The proposed premises contains
12 approximately 3,090 square feet of interior space and 250
13 square feet of exterior area/outdoor lanai area, for a total
14 of approximately 3,340 square feet, located at 505 Front
15 Street, Suite 129 and 130, Lahaina, Maui, Hawaii.

16 There are no schools or churches located within a
17 radius of 500 feet. Malu Ulu Olele Park and Kamehameha Iki
18 Park are located within a radius of 500 feet.

19 Betty's Beach Cafe is a license of the same class
20 and kind and located within a radius of 500 feet.

21 There are two Restaurant General, one Retail
22 General licenses located within a radius of 500 feet.

23 There are 111 licenses of this class and kind
24 currently issued within Maui County.

25 Plans of the applicant: Applicant initially plans

1 to be open seven days a week, from 11:00 a.m. to 2:00 a.m.

2 A site inspection was conducted of the proposed
3 premises on August 25th, 2016.

4 Additional information: Information received from
5 the Liquor commission, City and County of Honolulu, liquor
6 license renewal application for fiscal year 2017 revealed
7 that Kaschube, Michael II, LLC is a manager and member of
8 Waikiki Lulu's, LLC doing business as Lulu's Waikiki since
9 November 3rd, 2004. Michael Kash has submitted a letter
10 stating that he had sold his share of Lulu's Waikiki 10
11 years ago.

12 An inspection of the premises was done on July 11,
13 2016, at 9:33 p.m. by Liquor Control Officer Cielo Molina.
14 LCO Molina observed two signs posted on the front entrance
15 door, one of which stated that the premises was closed for
16 repairs and cleaning, and indicated that the closure was
17 temporary, and the other was, which was a two-page copy of a
18 Judgment for Possession, Civil Number DC-CIVIL 14-1-0120,
19 dated January 13, 2016, Plaintiff indicated as FPA Lahaina
20 Shores Associates, LLC and Defendant, Drink Enterprises,
21 LLC. Photos of the posted signs are attached.

22 On August 25th, 2016, the Department received a
23 letter from FPA Lahaina Shores Associates, LLC, a Delaware
24 limited liability company, as the landlord, through its
25 third-party management company, Kokua Realty, LLC, which

1 states that ownership has returned possession of Suite 129
2 and 130 back to Drink Enterprises, LLC doing business as
3 Spanky's Riptide as of August 25th, 2016.

4 On August 29th, 2016, at about 8:31 a.m., the
5 Department received an email from Taurean "Tory" Brown. The
6 email expressed concern for the reopening of the licensed
7 premises, indicating that in the time the licensed premises
8 has been closed that the neighborhood has been peaceful and
9 harmonious. The email suggests that, once reopened, the
10 nearby residents will have to suffer again, mentioning loud
11 music coming from the establishment. The email also states
12 that the party continues in the parking lot after hours,
13 2:00 a.m. and later, among other complaints cited.

14 Mr. Brown reported to have been threatened by
15 Jenny, who he identifies as one of the managers, indicating
16 that he had been told that she knows that he makes the
17 majority of the complaints and that she will tell all her
18 employees and customers who he is. A police report has been
19 made in reference to the threat. A copy of the email has
20 been submitted and attached to this report.

21 Past history: Michael George Kash was previously
22 a member of Drink Enterprises, LLC doing business as
23 Spanky's Riptide, Dispenser General C(ii), Liquor License
24 Number 240.

25 Drink Enterprises, LLC doing business as Spanky's

1 Riptide, Dispenser General C(ii), original license issued on
2 December 23rd, 2011.

3 On May 9, 2012, at approximately 10:32 p.m., Drink
4 Enterprises, LLC doing business as Spanky's Riptide did,
5 through its employee, fail to prepare all drinks on the top
6 surface of the bar area in such a manner as to permit any
7 interested customers to have a clear and unobstructed view
8 of the bartender's operations, contrary to section
9 08-101-84(d), Rules of the Liquor Commission, as well as
10 fail to serve freshly drawn draught beer to a patron,
11 contrary to Section 08-101-85(a), Rules of the Liquor
12 Commission.

13 On January 2nd, 2014, Drink Enterprises, LLC doing
14 business as Spanky's Riptide had been found guilty and had
15 received a penalty of a written reprimand.

16 Drink Enterprises, LLC doing business as Spanky's
17 Riptide, licensee, did fail on six separate occasions, (May
18 9th, 2012; May 25th, 2012; October 9, 2012; December 8,
19 2012; February 8, 2013; and March 1st, 2013) to comply with
20 the condition that it is subject to any other laws or rules
21 applicable to the business of the licensee, contrary to
22 Section 08-101-40(a), Rules of the Liquor Commission,
23 patrons smoking within the premises.

24 On January 2nd, 2014, Drink Enterprises, LLC doing
25 business as Spanky's Riptide had been found guilty of all

1 six infractions and had received a penalty of \$2,900 in
2 fines, with an additional sum of \$145 in late fees, bringing
3 it to a total of \$3,045.

4 Copies of the past history are attached.

5 As a result of numerous sound complaints, a permit
6 for Extension of Premises, Music and Entertainment was
7 issued with the following conditions. Permit Number 010-15
8 was issued on November 3rd, 2014. Conditions are as
9 follows: A, the lanai portion of the premises shall be
10 closed at 10:00 p.m. nightly; B, the lanai doors to the
11 premises shall close at 10:00 p.m. nightly; C, no music and
12 entertainment after 1:00 a.m.; D, from 12:00 midnight to
13 1:00 a.m., the volume of music will be set as such that it
14 will be of a minimum tone so that music will not be
15 generated outside of the doors of the premises; E, policies
16 related to music and entertainment will be provided in
17 writing to all employees, a copy of which will be given to
18 the Department of Liquor Control; F, monthly employee
19 meetings will be held to monitor the employees' compliance
20 with those policies; G, Mr. Adam Clarke will provide his
21 personal cell phone number to any neighbors who makes noise
22 complaints so they can contact him directly when a noise
23 intrusion might occur; H, entertainers shall be confined to
24 the designated music and entertainment area while
25 entertaining; I, music and entertainment area shall be a

1 nonconsumption area; J, this permit is subject to immediate
2 revocation or modification by the Director in the event of
3 any violation of Section 08-101-64, Noise Levels, of the
4 Rules of the Department of Liquor Control, County of Maui,
5 or permit conditions; K, an on-duty employee duly approved
6 by the Director must be in active charge within the area of
7 extension at all times; L, liquor shall not be removed from
8 the area, and signs posted in strategic locations indicating
9 liquor shall not be removed from the area of extension; M,
10 the approved area for liquor sale, service and consumption
11 shall be clearly defined; N, permit shall be readily
12 available on the license inspection for -- licensed premises
13 for inspection at all times; O, licensee shall obtain
14 necessary clearances from other governmental agencies and
15 comply with all State and County laws, ordinances and
16 administrative rules.

17 Drink Enterprises, LLC doing business as Spanky's
18 Riptide, license expired as of June 30, 2016.

19 Summary: Information contained within the DLC-006
20 Form submitted by Michael George Kash indicated that he had
21 been convicted for a violation of law other than a minor
22 traffic violation. Michael George Kash has submitted a
23 letter of explanation.

24 Information received from criminal background
25 checks revealed that Michael George Kash had been convicted

1 for multiple violations of law other than minor traffic
2 violations. Michael George Kash submitted additional
3 letters of explanation on October 12th, 2016.

4 Applicant is requesting Commission approval for a
5 temporary license.

6 All documents necessary for the issuance of a
7 liquor license have not been submitted. The applicant has
8 not filed the Department of Public Works miscellaneous
9 inspection, Department of Fire and Public Safety Fire
10 Prevention Bureau clearance, Department of Environmental
11 Management Wastewater Reclamation Division clearance,
12 Department of Health certificate for a liquor dispenser,
13 liquor liability insurance, license fee, and final
14 inspection.

15 That's it.

16 VICE-CHAIR LOPEZ: Sure?

17 MR. LAYNE SILVA: Sure.

18 COMMISSIONER BICOY: Do you need a drink of water?

19 DIRECTOR MUKAI: Water?

20 MR. LAYNE SILVA: No. I'm good.

21 VICE-CHAIR LOPEZ: Michael, do you have anything
22 else to add?

23 MR. KAWAGISHI: Not at this time.

24 VICE-CHAIR LOPEZ: Floor is now open for public
25 testimony for the applicant.

1 MS. BROWN: Yes.

2 MR. BROWN: No. Not for.

3 MS. BROWN: No, not for. Not for.

4 VICE-CHAIR LOPEZ: Okay. Against the applicant?

5 MS. BROWN: Yes.

6 VICE-CHAIR LOPEZ: Please step up to the podium,
7 you have three minutes -- three minutes to testify, please.
8 State your name and your position.

9 MS. BROWN: My name is Marlene Brown. My husband,
10 Taurean Brown. We live directly across the street from
11 Spanky's Enterprise -- Drink Enterprises. Our fence, our
12 property line is about 50 feet from the actual bar. And our
13 house is about 100 feet -- or where we actually live, our
14 main room where we live, is 100 feet from the actual bar.
15 And we're upstairs. We have double-pane windows. We close
16 our doors and windows every night. We finally invested in
17 our solar PV panels to run it every night. And, also, we
18 sleep with our TV. And we go to sleep with sound and we
19 wake up with it because it gets louder over the time. I
20 don't know if people are talking over the music or
21 what-have-you. But, basically, we're here because we're
22 having a really hard time understanding why we can't enjoy
23 living there.

24 I've spoken to a lot of our neighbors. And at a
25 point, we actually did -- when they first came in, we -- you

1 know, any kind of local business, we wanna support. We
2 always wanted to. But we have a really hard time speaking
3 with them or -- maybe because the way we feel already is
4 like enough is enough.

5 And we do have Adam's number to talk to them, but
6 we're past that point. I know they spoke to their attorney
7 and wrote up a paper.

8 But, basically, I'm here because we are
9 petitioning against Drink Enterprises. We feel the sports
10 bar is incompatible with the area. For one, they're located
11 near residential homes who hold legal precedence and are
12 grandfathered in. So these homes were here even before 505
13 was created. My auntie lived there for -- as long as she
14 was alive. And she's 80. They play loud music until late
15 night, which, of course, they have 'til 2:00 to serve
16 alcohol. And then, basically, disturbing the sleep of
17 neighbors.

18 Now, for me, I'll speak with my -- for my husband.
19 He works two jobs so that we can live there and actually own
20 something. I mean, we own it. We're young and we -- we
21 need to thrive. And it's very hard for him to work two jobs
22 and wake up early in the morning to go to the first one and
23 then, actually, go for the night one and not get any sleep.
24 And, for me, now we have a baby. So it's hard.

25 They also cause secondary noise of cars leaving

1 every single night. There's this one motorcycle that has to
2 rev up the road or down the road. I don't know if it's
3 because they know they want to irritate us or if it's just
4 his thing to just rev all the time.

5 They also cause violence due to the alcohol abuse.
6 We have a fellow employee that works with him at Feast at
7 Lele, that he was walking out and he got falded and he had
8 to drive himself to the -- you know, to emergency.

9 So it's just -- it's just everything is really
10 negative. There's no positive. I don't think they have a
11 positive impact.

12 But I don't -- for me and for my heart, and for
13 us, we don't want to shut somewhere down. We don't want to,
14 because we know that's somebody's -- you know, they provide
15 jobs. That's the positive thing. But for us, what we want
16 to do is we want to, for one, just limit the music and the
17 live entertainment.

18 I know the permit number of the areas for music
19 and entertainment, the 040-13L, they were given that. I
20 think we need to kind of take that step back and say, hey,
21 you guys gotta be held responsible for all the past four
22 years of continuous complaints against you guys for the
23 sound. So why not, okay, open your guys' bar, see how it
24 goes and then we can see and move forward.

25 Because, again, you know, with my neighbor Janet

1 Sprider, or even neighbors all the way up on Shaw Street,
2 1,000 feet, because of the way the bar faces and the doors
3 being open, over 800 feet, you can hear the bar. And I'm
4 just like, wow. But, on our side, I think for the -- the
5 Front Street side, they don't hear too much because the
6 doors don't open that way. And we're kind of like a -- like
7 a barricade or we kind of -- like it bounces off of our
8 house. So I don't feel it's really fair to us that we
9 continue -- or even to you guys, to continue to hear about
10 Drink Enterprises, you know.

11 VICE-CHAIR LOPEZ: Thank you.

12 MS. BROWN: Yeah. Okay. Thank you.

13 VICE-CHAIR LOPEZ: Thank you. And we understand
14 your frustration.

15 MS. BROWN: Okay.

16 VICE-CHAIR LOPEZ: Thank you very much.

17 MS. BROWN: Thank you.

18 VICE-CHAIR LOPEZ: State your name and --

19 MR. BROWN: My name is Taurean Brown. Good
20 morning, everybody.

21 VICE-CHAIR LOPEZ: You get three minutes. Three
22 minutes, eh?

23 MR. BROWN: I would like to just ask you guys to
24 not really revoke, but let's revamp their license, this
25 luxury license, I call it, to open 'til 2:00 a.m.

1 Like my wife stated, a lot of the concern about
2 emotional distress, about we cannot perform due to this
3 establishment. I need to monitor them. I am the one that
4 makes the complaints. I'm the one that makes the sound. So
5 I'm, basically, monitoring them throughout the night. And I
6 cannot perform my daily duties to take care of my family.

7 Secondly, the safety. We all know, at 2:00 a.m.,
8 people leaving that place drunk. We just had major
9 accidents recently. And for the safety of my community, I
10 don't need that happening in our -- in our town. Also, for
11 the safety of me and my family. I was already threatened by
12 the manager.

13 So we reopen this place, same people gonna be
14 coming to this place. And they gonna know who I am. I work
15 there at the Feast at Lele. I'm the sound guy. So I know
16 my decibels and reading and so forth.

17 My safety is in jeopardy because I gotta walk past
18 there every day, every night. No more really streetlights
19 or safety lights around. I could get jumped.

20 The 505 maintenance guy, his name is John Braggs,
21 got punched by one of the guys that was causing havoc in
22 505, broke a window, ran into Spanky's. He had to call
23 Jenny, tell Jenny that's the guy causing problems. The next
24 thing you know, he got falsed next to the mailboxes next to
25 Spanky's windows. And he had one broken nose, and he was

1 driving himself to the hospital.

2 So please, please don't let this happen any more.
3 We been in peace. You see my reports, it's about that big.
4 If you guys want this much, you know, grant them the
5 license, but, please, I ask you guys please take care of our
6 community, take care of the citizens, the hard workers that
7 live there.

8 And like she said, our property is the shield for
9 the rest. That's why maybe nobody really complaining.
10 Statistically, not too much people complain, anyway, but it
11 affects my life and so that's why I stepping forward today
12 and ask you guys please think real hard about giving them
13 this license.

14 If anything, there is entertainment, Feast at
15 Lele, Pacific'O's, Betty's, they all run bars. When
16 everybody shut down in that complex of 505, everybody should
17 tone down, close for the night, open up again in the
18 morning.

19 Another thing is, you enter Lahaina, you see this
20 ridiculous bar. You leave Lahaina, no matter how early or
21 how late, you see this ridiculousness. So if that's what we
22 want our people to see as soon as they enter Lahaina, you
23 know -- I don't know what to say after that, but please look
24 into the community's concern. And I think you guys will do
25 the right thing. Thank you.

1 VICE-CHAIR LOPEZ: Thank you. Anybody else want
2 to testify against? Seeing none, public testimony is now
3 closed. Can I have a discussion with the Commission?

4 COMMISSIONER SOUZA: I have a question maybe for
5 the Department. So when you guys go out and see these
6 complaints -- or have we been out there to see? And how is
7 the bar situated? Is it -- the windows open, I mean, the
8 music going to these people's home?

9 DIRECTOR MUKAI: I believe that's why they got
10 written up and cited.

11 COMMISSIONER SOUZA: So they've been found guilty
12 and --

13 DIRECTOR MUKAI: Yeah.

14 COMMISSIONER SOUZA: So every time there is a
15 problem, pretty much?

16 DIRECTOR MUKAI: Not every time, but frequent.

17 COMMISSIONER LEE: I have a question.

18 VICE-CHAIR LOPEZ: Yes.

19 COMMISSIONER LEE: There are a lot of, A to O,
20 conditions. Have they complied with those conditions, all
21 of them?

22 MR. LAYNE SILVA: Well, as far as I know, there
23 are outstanding sound complaints that are pending, but,
24 other than that, I don't believe there is any indication
25 whether they have or have not at this point in time.

1 DIRECTOR MUKAI: They had some on the open doors.
2 Where they --

3 COMMISSIONER LEE: Just these.

4 DIRECTOR MUKAI: -- had to close it at 10:00.

5 MR. LAYNE SILVA: Those conditions were placed
6 on -- by permit.

7 COMMISSIONER LEE: So what does the law require
8 them to turn their decibels down to after 10:00?

9 DIRECTOR MUKAI: The law is -- we have noise
10 codes.

11 COMMISSIONER LEE: Yes, that's what I'm asking.
12 What is the noise code?

13 COMMISSIONER BICOY: Well, it says right here,
14 according to this permit, from 12:00 midnight to 1:00 a.m,
15 volume of music will be set as such that it will be of a
16 minimum tone so that music will not be generated outside the
17 doors of the premises. So this is a condition, then, right?

18 MR. LAYNE SILVA: Yes.

19 COMMISSIONER BICOY: So it's over and above what
20 the law states?

21 DIRECTOR MUKAI: Yes.

22 COMMISSIONER BICOY: So -- and we're hearing that
23 they're not complying with this, right?

24 COMMISSIONER LEE: Yeah. Well, that's what I'm
25 seeing, reading from this.

1 DIRECTOR MUKAI: Yeah. You want to look at the
2 Department -- Commission noise levels, it's on Page 101-117,
3 it's 08-101-64, that's the noise levels.

4 COMMISSIONER BICOY: But we've actually asked them
5 to go over and above, right?

6 DIRECTOR MUKAI: Yes.

7 MR. LAYNE SILVA: Yes.

8 COMMISSIONER BICOY: So -- okay.

9 COMMISSIONER LEE: So have we tested the decibel
10 level at that time to justify --

11 DIRECTOR MUKAI: The thing of it is, some of the
12 complainants, like -- is Lahaina Shores next door? The
13 complainant, whenever we contact -- we have to take the
14 noise levels from the person's property. He has a
15 condominium. So we have to get access. So regarding that
16 complainant, the reports that I read, because I wasn't there
17 at the time, apparently, he was not available each time we
18 went out to do it. And I think, also, the Department policy
19 at that time was, also, to contact the complainant to try to
20 work something out instead of just going to the complainant
21 residence and take the noise level. So every time our
22 investigators go there, the complainant -- to take a sound
23 level at the complainant residence, licensee already see our
24 complainant there -- I mean our investigators, so they turn
25 down the volume. And, apparently, when our investigators

1 leave, the volume goes up.

2 COMMISSIONER UMEMO: You know that for a fact?

3 DIRECTOR MUKAI: Yes, from the reports.

4 MR. KUSHI: Mr. Chair, if I may, question for
5 staff. You know, all these conditions you're talking about,
6 they adhered to the previous license, right?

7 MR. LAYNE SILVA: Yes.

8 MR. GENE SILVA: Yes.

9 MR. KUSHI: And the previous license has been
10 terminated or expired?

11 DIRECTOR MUKAI: Expired.

12 MR. KUSHI: So we're here today for a new license?

13 DIRECTOR MUKAI: Yes.

14 MR. KUSHI: So these conditions don't mean -- I
15 mean, you, the Commission --

16 MR. LAYNE SILVA: Well, these conditions are not
17 placed on the application, yes.

18 MR. KUSHI: Correct. Right. Right. But the
19 Commission could attach these conditions to the new license
20 if that's the case. Correct?

21 MR. GENE SILVA: Yes.

22 MR. LAYNE SILVA: Yes. It's being presented as a
23 reference. Yes.

24 MR. KUSHI: Correct. And what, they're operating
25 on a temporary license now?

1 DIRECTOR MUKAI: No. They asking for a temporary
2 license now.

3 MR. KUSHI: They're asking for?

4 DIRECTOR MUKAI: Yes.

5 MR. KUSHI: So they haven't been open since July
6 1?

7 DIRECTOR MUKAI: Yes.

8 MR. KUSHI: But the temporary license, you guys
9 can do it administratively, right?

10 DIRECTOR MUKAI: Yeah, we can, but, because of the
11 complaints and concerns of the neighbors, we feel it's
12 better for the Commission to address this because the
13 Department cannot put any conditions. If we allow them to
14 operate on a temporary, automatically they can -- no
15 barriers, like closing the door. We cannot put that on
16 their --

17 VICE-CHAIR LOPEZ: Well, I have a concern for
18 public safety. And that incident with that violent action
19 bothers me, that the establishment allowed that to happen.
20 And the incident where the guy got hit because of one
21 person -- was that -- my question is, was that person from
22 that bar last that created that incident?

23 MR. KAWAGISHI: At this time there is no evidence
24 where this person came from because if that was -- if the
25 person was inside of the premises, there should have been a

1 violation for disorderly person in the premise.

2 The other thing is that there -- there are no
3 violations, that I know of, that the Department has against
4 the premises for loud music. Everyone is assuming that they
5 were guilty, but there's no evidence that there was ever a
6 violation -- for violation of the noise code.

7 MR. BROWN: Their lawyers wrote up a --

8 VICE-CHAIR LOPEZ: Is that true, Glenn?

9 DIRECTOR MUKAI: Yes. Because every time our
10 investigators go out, either we cannot get access to the
11 property, or the licensee sees our investigators, turn down
12 the music.

13 COMMISSIONER BICOY: I think my biggest concern is
14 that they had a permit with all of these conditions and
15 we're hearing that, even though there were conditions to try
16 to mitigate some of this stuff, it was not being followed.
17 So what's the point of putting -- putting all of these
18 conditions if the bar is not going to follow these
19 conditions?

20 MR. KAWAGISHI: Evidently, they were following the
21 conditions because there are no violations in regards to
22 this permit.

23 COMMISSIONER BICOY: Well, and -- and I -- I
24 understand some of that.

25 COMMISSIONER UMENO: We just got a -- he just

1 explained why.

2 COMMISSIONER BICOY: But I also understand, you
3 know, you have to -- like you have to be caught red-handed,
4 you know. And I see that there are people here that are
5 extremely concerned that this permit was not complied with.

6 DIRECTOR MUKAI: (Inaudible).

7 MR. KUSHI: Mr. Chair, if I may? So let me be
8 clear on this. We're here for a preliminary hearing on a
9 new application, but we're also here for -- is the
10 Department asking the Commission to allow the issuance of a
11 temporary license?

12 DIRECTOR MUKAI: Yes. They also applied for
13 temporary license.

14 MR. KUSHI: Okay. So that's before us, also.

15 DIRECTOR MUKAI: Yes.

16 MR. KUSHI: And the temporary license will last
17 for how long?

18 DIRECTOR MUKAI: 120 days.

19 MR. KUSHI: So the Commission could take action on
20 the preliminary hearing, and, in addition, issue a temporary
21 license with conditions?

22 DIRECTOR MUKAI: Yes.

23 MR. KUSHI: In the alternative, the Commission may
24 deny both?

25 DIRECTOR MUKAI: Yes.

1 COMMISSIONER UMENO: So if we deny the temporary
2 license, what occurs then?

3 DIRECTOR MUKAI: Then if you guys carry over for
4 the public hearing, then they will not operate until the
5 public hearing.

6 COMMISSIONER UMENO: And which is 90 days?

7 DIRECTOR MUKAI: No. It's January. We'll hear
8 the public hearing in January.

9 MR. KUSHI: Could the temporary license be
10 conditioned on hours of operation, also?

11 DIRECTOR MUKAI: I believe the Commission can put
12 any condition on any license.

13 MR. KUSHI: In addition to the other conditions
14 that the previous license had about smoking and all that
15 other nonsense, right?

16 DIRECTOR MUKAI: Yes.

17 MR. KUSHI: Let me ask, why -- why did the license
18 expire?

19 DIRECTOR MUKAI: They failed to renew.

20 COMMISSIONER BICOY: Because?

21 DIRECTOR MUKAI: Because one of the key points was
22 that the application for renewal, the signature did not
23 match what was on file, Mr. Kash. And when we questioned --
24 I believe we brought this up on the renewal. When we
25 questioned the lady that brought the stuff in, she said she

1 didn't know why, but she signed Mr. Kash name.

2 COMMISSIONER BICOY: So is there a possibility of
3 reducing the hours of operation in this temporary license?

4 VICE-CHAIR LOPEZ: I'm going --

5 COMMISSIONER BICOY: As well as I would want them
6 to monitor the parking lot better.

7 VICE-CHAIR LOPEZ: You know, I think we need
8 to further this-- let's go into Executive Session and let's
9 discuss this more on a -- so motion to go into Executive
10 Session.

11 COMMISSIONER BICOY: Second.

12 COMMISSIONER SOUZA: Second.

13 VICE-CHAIR LOPEZ: Moved and second. Thank you.

14 (Executive Session, 9:55 a.m. to 10:14 a.m.)

15 VICE-CHAIR LOPEZ: Liquor Commission meeting back
16 in session. Discussion.

17 COMMISSIONER BICOY: I just want to thank
18 everybody for -- for their testimony and for being receptive
19 to the Liquor Commission.

20 VICE-CHAIR LOPEZ: Thank you. Can I have a
21 motion?

22 COMMISSIONER SOUZA: Okay. I move to approve
23 Application Number 09 for public hearing and to process the
24 application for publication. And at this time the
25 Commission recommends to the Department that we do order a

1 temporary license allowing them to operate up to 10:00 for
2 all services. Closing at 10:00 for the temporary until our
3 next meeting.

4 COMMISSIONER BICOY: And to request --

5 COMMISSIONER SOUZA: And, also, if we can have
6 Mr. Kash here, Michael Kash. If he can also be here on the
7 next meeting. Would that be possible?

8 MR. KAWAGISHI: I'll try to have him here at the
9 next meeting.

10 COMMISSIONER SOUZA: Thank you. We really want to
11 talk to him.

12 COMMISSIONER UMENO: Second.

13 VICE-CHAIR LOPEZ: Second the motion?

14 COMMISSIONER UMENO: Second.

15 VICE-CHAIR LOPEZ: Okay. Moved and second. All
16 in favor, say "aye."

17 (Response.)

18 VICE-CHAIR LOPEZ: Opposed?

19 (No response.)

20 VICE-CHAIR LOPEZ: Seeing none, motion carried.

21 Thank you.

22 MR. KAWAGISHI: Thank you.

23 MR. BROWN: Thank you.

24 VICE-CHAIR LOPEZ: Okay. Going to Application
25 Number 10, Paddlers Restaurant. State your name, position,

1 please.

2 MR. JORGENSEN: Good morning, Chair Lopez, Members
3 of the Commission and staff. My name is Dave Jorgensen.
4 I'm the attorney for Paddlers Restaurant and Bar LLC dba
5 Paddlers Restaurant and Bar. With me this morning are
6 Heather and Rob Gegoux who are the members of the LLC.

7 VICE-CHAIR LOPEZ: Thank you. Mr. Silva.

8 MR. GENE SILVA: Application Number 10, applying
9 for Dispenser General C(ii), the applicant is Paddlers
10 Restaurant and Bar LLC, a registered Hawaii limited
11 liability company, doing business as Paddlers Restaurant and
12 Bar applying for a Dispenser General License, Category
13 C(ii).

14 Members and agents of the member-managed LLC is
15 listed in the investigator's report.

16 Applicant has submitted a commercial lease by and
17 between Paddlers Aina LLC, landlord, and Paddlers Restaurant
18 and Bar LLC, tenant, dated September 1st, 2016. The lease
19 term will begin on September 1st, 2016, and will terminate
20 on September 1st, 2017. Tenant may terminate this lease
21 before full execution of the term by providing 60 days
22 notice in writing to the landlord. Tenants shall be
23 entitled to possession on the first day of the term of this
24 lease and shall yield possession to the landlord on the last
25 day of the term of this lease unless otherwise agreed upon

1 by both parties in writing.

2 The proposed premises is a single-story structure
3 located on the ground floor of the Ainoa Building, which
4 includes a covered patio and adjacent outdoor space
5 consisting of approximately 6,900 square feet, located 10
6 Mohala Street, Kaunakakai, Molokai, Hawaii.

7 There are no schools, churches or licensees of the
8 same class and kind located within a radius of 500 feet.

9 There are two Retail General licenses located
10 within a radius of 500 feet. There are 111 licenses of this
11 class and kind currently issued within Maui County.

12 Applicant initially plans to be open seven days a
13 week, from 8:00 a.m. to 2:00 a.m.

14 A site inspection was conducted of the proposed
15 premises on October 12, 2016.

16 Information contained within the DLC-008 Form
17 submitted by Robert Quentin Gegoux indicated that he had
18 been convicted for violation of law other than minor traffic
19 violation. Robert Quentin Gegoux has submitted a letter of
20 explanation. Information received during the criminal
21 history background check revealed that Robert Quentin Gegoux
22 had not been convicted for violation of law other than a
23 minor traffic violation.

24 All documents necessary for the issuance of a
25 liquor license have not been submitted. Those items are

1 listed in the investigator's report.

2 VICE-CHAIR LOPEZ: Thank you. Anything else you
3 want to add to that?

4 MR. JORGENSEN: Just that my clients, particularly
5 Heather, have connections on -- I mean, have family
6 connections with Molokai. They've been operating under a
7 temporary, and everybody in the community seems to be happy
8 that Paddlers is open again, and they're anxious to move on
9 with the process. And they're both available if there's any
10 questions.

11 VICE-CHAIR LOPEZ: Thank you. I'm going to open
12 the floor for public testimony for the applicant. Anybody
13 out there? No. Against? Seeing none, public testimony is
14 closed. Any questions by the Commission?

15 COMMISSIONER BICOY: I just want to say that I do
16 know your family, Heather, and they are wonderful people in
17 the community. So I know you come from a wonderful family.
18 And I know that you will take this responsibility seriously,
19 being -- reopening Paddlers and being probably now the bar
20 on Molokai. So -- and good food, by the way.

21 MS. GEGOUX: Thank you.

22 COMMISSIONER BICOY: Thank you.

23 VICE-CHAIR LOPEZ: Anybody else? No.

24 MR. KUSHI: Question. Jorgensen, the lease is
25 only for one year?

1 MR. JORGENSEN: Yeah. Well, the -- the current
2 lease is for one year. Mr. and Mrs. Gegoux own the property
3 as well.

4 MR. KUSHI: Oh.

5 MR. JORGENSEN: And so they're not going to cancel
6 it on themselves. That was -- the initial lease was drafted
7 to be a one-year lease.

8 MR. KUSHI: So the lessee and the lessor, related
9 entities?

10 MR. JORGENSEN: Related entities. Not the same
11 entity, but related entities.

12 VICE-CHAIR LOPEZ: Oh, okay. All right. So no
13 more questions by the Commission, can I have a motion?

14 COMMISSIONER SOUZA: I move to approve Application
15 Number 10 for public hearing and to process the application
16 for publication.

17 COMMISSIONER KENNISON: Second.

18 VICE-CHAIR LOPEZ: Moved and second. All in
19 favor, say "aye."

20 (Response.)

21 VICE-CHAIR LOPEZ: Opposed?

22 (No response.)

23 VICE-CHAIR LOPEZ: Motion carried. Thank you.

24 MR. JORGENSEN: Thank you very much.

25 MS. GEGOUX: Thank you.

1 VICE-CHAIR LOPEZ: Okay. Moving on to Other
2 Licensing Matters, Kimo's Partnership, LLC dba Kimo's
3 Restaurant. Please step up, state your name and -- no. No
4 show.

5 MR. LAYNE SILVA: Nobody's here.

6 VICE-CHAIR LOPEZ: Okay. Moving on to Savio MBH
7 Owner LLC, Maui Beach. State your name, your position.

8 MR. NAKAMURA: Good morning again, Mr. Chair,
9 Members of the Commission. Craig Nakamura, attorney on
10 behalf of the applicant. And with me is Mr. Peter Savio,
11 who is the principal behind the applicant. Also, Craig
12 Shaneer who works for Savio and Greg Peros, who is the
13 General Manager of the Maui Beach Hotel.

14 VICE-CHAIR LOPEZ: Thank you.

15 MR. LAYNE SILVA: Okay, to begin. Savio MBH Owner
16 LLC doing business as Maui Beach Hotel ordered to show cause
17 why the Commission should not cancel License Number TEM-03
18 as well as not further process its pending license
19 application pursuant to Section 281-96 HRS and Section
20 08-101-35 of the Rules of the liquor Commission.

21 Applicant: Savio MBH Owner LLC, a registered
22 Delaware limited liability company, doing business as Maui
23 Beach Hotel applying for a Hotel license.

24 The Commission granted Savio MBH Owner LLC a
25 temporary liquor license at the August 10th, 2016 meeting,

1 providing that an acceptable floor plan be submitted within
2 30 days.

3 Temporary liquor license issued to the applicant
4 on August 12th, 2016, TEM-03, valid August 12th, 2016
5 through December 9, 2016.

6 Members of the member-managed limited liability
7 company is Savio Maui Mezz LLC as the member; Savio EA
8 Growth Venture LLC as member; Savio Manager Inc. as member,
9 with Peter Bernard Savio as 100 percent stockholder as well
10 as President, Secretary and Director.

11 On November 7th, 2016, the Department returned
12 liquor license application for Savio MBH Owner LLC doing
13 business as Maui Beach Hotel to the applicant pursuant to
14 the Rules of the Liquor Commission, Section 08-101-30(e)(g).

15 (e), The Director may reject, refuse to accept, or
16 return any application or request that is incomplete,
17 illegible, or does not meet any requirements of or not in
18 compliance with any rule of the Commission or section of
19 Chapter 281 HRS. Excuse me.

20 (g), All applications, forms or documents, and any
21 information submitted to the Department shall be true and
22 accurate, and shall not contain any false or misleading
23 information. Applicant shall provide any documentation
24 requested by the Department to verify any information
25 submitted on any application, form or document.

1 Through investigation, liquor license applicant
2 Savio MBH Owner LLC doing business as Maui Beach Hotel is
3 found to have submitted a liquor license application that is
4 false and misleading. Generated by an inquiry from an
5 outside governmental agency, the Department learned that a
6 company by the name of D.H. Investments [sic], Inc. was
7 currently operating and managing the food and beverage
8 operations for Savio MBH Owner LLC doing business as Maui
9 Beach Hotel.

10 Upon the request of the Department, Attorney and
11 Authorized Agent Craig Nakamura confirmed the above and
12 submitted a lease agreement to the Department for review.
13 The restaurant lease, by and between Savio MBH Owner LLC
14 doing business as Maui Beach Hotel and D.H. Investment,
15 Inc., was dated April 1st, 2015.

16 Savio MBH Owner LLC doing business as Maui Beach
17 Hotel had entered into this lease agreement giving the use
18 and exclusive control of the premises described in the lease
19 to D.H. Investment, Inc.

20 The premises described in the lease is
21 approximately 12,393 square feet, comprised of 5,488 square
22 feet of kitchen and dining room space and approximately
23 6,905 square feet of banquet room space, at the Maui Beach
24 Hotel, located at 170 Kaahumanu Avenue, Kahului, Maui,
25 Hawaii.

1 In addition, Savio MBH Owner LLC doing business as
2 Maui Beach Hotel and D.H. Investment, Inc. was found to be
3 operating illegally under the previous hotel liquor license,
4 License Number 105, from April 1st, 2015 to June 30th, 2016.
5 License Number 105 expired on June 30th, 2016.

6 A violation/incident report has been generated
7 into the alleged violations for both Savio MBH Owner LLC
8 doing business as Maui Beach Hotel and D.H. Investment, Inc.
9 The Department will be referring the matter to the
10 Prosecuting Attorney's Office for review and possible
11 prosecution.

12 Through investigation, it is also found that Savio
13 MBH Owner LLC doing business as Maui Beach Hotel had entered
14 into a hotel management agreement with Hotel Management
15 Services LLC as the operator, dated June 30th, 2014. The
16 hotel management agreement gave the operator full power,
17 authority and responsibility to take all actions and do all
18 things necessary or reasonably proper to manage and operate
19 the hotel.

20 Savio MBH Owner LLC doing business as Maui Beach
21 Hotel did not have the use and exclusive control of the
22 entire licensed premises under the hotel management
23 agreement.

24 When questioned about Aqua Aston, Authorized Agent
25 Nakamura responded that Kyoko Kimura worked for Aqua Aston,

1 and Greg Peros, General Manager of the Maui Beach Hotel,
2 works for Savio. In a follow-up conversation with
3 Authorized Agent Nakamura, he admitted that he was not aware
4 of the restaurant lease to D.H. Investment, Inc. and the
5 hotel management agreement by and between Savio MBH Owner
6 LLC and Hotel Management Services LLC until the Department
7 had inquired into the relationship of both businesses with
8 Savio MBH Owner LLC.

9 Investigation further revealed that the business
10 structure of the limited liability company under the
11 previous liquor license, Number 105, for Savio MBH Owner LLC
12 doing business as Maui Beach Hotel was inaccurately reported
13 in their liquor license application, and there were two
14 individuals who were not cleared by the Department to hold a
15 liquor license pursuant to Hawaii Revised Statutes, Section
16 281-45.

17 Based on the findings of the Department, the
18 previous liquor license was found to not have been legally
19 operated under the requirements of the Rules of the Liquor
20 Commission and the Hawaii Revised Statutes. The applicant,
21 Savio MBH Owner LLC, submitted an application that is not
22 true, accurate, and the information contained within was
23 false and misleading.

24 VICE-CHAIR LOPEZ: Thank you, Mr. Silva. Anything
25 you want to add to that?

1 MR. NAKAMURA: I'm sorry. Yeah, sorry. Again,
2 Mr. Chair, you know I'm a visual guy, so I want to pass out
3 some information. And, basically, these are -- these are
4 copies of some of the management agreements pertaining to
5 this operation.

6 And this is kind of a technical legal issue, so I
7 want to apologize in advance if it's confusing. It is
8 confusing. And as I -- as I, you know, go over it, if there
9 are any questions whatsoever, please -- please feel free to
10 ask.

11 So, basically, just to go over what -- what is
12 being sought here, you know, we have -- I'm sure the
13 Commission is well familiar with the background of this Maui
14 Beach Hotel matter. You know we've been here before, their
15 license was not allowed to be renewed. So we're applying
16 for a new license. And we were also issued a temporary
17 liquor license. So after some time when there was no
18 service allowed at the Maui Beach Hotel, we were finally
19 given the temporary liquor license which we're currently
20 operating. And we have the application for the permanent
21 liquor license pending. Okay.

22 What happened was during -- I guess the Department
23 discovered that there was this lease arrangement between
24 the -- I'm going to say Savio, which is the owner of the
25 hotel, and D and H [sic] Investment, basically, to operate

1 the food and beverage service at the hotel. You know, when
2 they discovered it, they asked me for a copy of the
3 document. Okay. Every -- every request that they've asked
4 for, I've been very -- we've been very forthright, we
5 provided the information that they requested. And in this
6 situation, there was a lease between -- between the two
7 companies for the food and beverage operation. So I
8 provided them with a copy of the lease. That -- you know, I
9 know that they felt that that took away the -- the catch
10 words here are exclusive control, you know, because the
11 licensee -- or for the service of alcoholic beverages, the
12 licensee has to control the operation. Okay.

13 Whether or not a lease does that or not, I think,
14 is subject to interpretation. I don't -- the only way we're
15 going to be really, I think, assured of whether or not a
16 lease does that or not is to go to court. I don't think
17 there's any court decisions that have rendered, you know,
18 that opinion that, in fact, a lease does not give you
19 exclusive control.

20 For all intents and purposes, you know, Mr. Savio
21 is the owner of the hotel. He's not going to allow anything
22 to occur at the hotel that's not going to be in compliance
23 with all laws and rules and regulations. So to that extent,
24 you know, Mr. Savio still has control over the hotel.
25 There's no -- there's no question about that. If there's

1 any violation, he's going to -- he's going to make sure that
2 it's corrected.

3 But I understand the -- what we've done, what we
4 always do -- and I've been doing this for a long time --
5 what we do is, if there's concerns raised by the Department,
6 okay, we don't necessarily argue about whether or not their
7 position is correct or not. If they -- if, in this
8 situation, they thought a lease was not appropriate, what we
9 did was we prepared a management agreement to replace that
10 lease, which wasn't -- it's not referenced in your report,
11 but we did provide them with, in fact, the management
12 agreement, you know. And they're -- they're more --
13 probably more familiar with and more accepting of a
14 management agreement rather than a lease.

15 So we provided -- we have provided them with a
16 management agreement for the food and beverage operation.
17 It does give -- you know, we did use the magic words, you
18 know, about controlling the premises. And it's -- it goes
19 back to the time that the lease was -- was started. So we
20 feel that this does give -- now does give Savio control over
21 the premises.

22 There's some -- I guess just to alleviate any
23 concerns about how this occurred initially, you know,
24 Mr. Savio is here and I'd like to give him a few minutes to
25 kind of just describe what occurred when he purchased the

1 hotel.

2 MR. SAVIO: Yeah. First, I want to apologize
3 because I feel bad that I may have structured something that
4 unintentionally kind of messed everybody up.

5 When I bought the hotel -- I'm purely an investor.
6 I own a number of hotels and I hire management companies to
7 manage the properties. Aqua does not do food and beverage.
8 When I bought the hotel, they were already managing it.
9 Food and beverages was losing two to three hundred thousand
10 dollars a year. So we decided we would split off food and
11 beverage and bring in a separate operator, just as you have
12 someone to operate. Being a realtor/developer, the easiest
13 way for me to subdivide a property is either do a
14 condominium or use a lease or something so you can, you
15 know, make specific areas.

16 The reason we had a little bit of problems with
17 this is I would not allow someone to take over food and
18 beverage unless they kept all of the employees, kept them at
19 their present wage scale, would not release anyone without
20 my permission. So I, basically, controlled that portion of
21 the employees. I was not there to operate daily. I am not
22 an operator. If I operate a restaurant, we would go
23 bankrupt. I -- I don't drink, so I don't think I would help
24 in a bar because I don't even know how to mix a drink.
25 But -- so the whole structure was done to preserve the jobs,

1 to make sure none of the people were left.

2 Because of that, the first five or six companies
3 that wanted to lease the restaurant canceled. So when we
4 closed on the hotel, we did not have an operator. So the
5 only thing I could do is say, okay, I'll operate the food
6 and beverage, which is what I did, and I had Aqua on-site to
7 sort of watch everybody. And it was to protect the
8 employees.

9 When I buy properties, I do not put any of the
10 burden on the employees. I do not release employees, I do
11 not fire. I usually give 'em two to three years where I
12 guarantee the wages so that I subsidize. Whoever buys, they
13 don't have to take the burden; I do. But, again, being a
14 local boy, I think it's the right way to do it. And all of
15 my properties have operated that way.

16 In this case I kind of stepped into a little bit
17 of quicksand, I think, but it was not any attempt to
18 circumvent the law. The intent was to preserve the jobs so
19 that they didn't get fired, they weren't first -- forced to
20 take lower wages, et cetera. Okay. We gave them two years.

21 And the two years, by the way, runs out -- or has
22 run out, I think, already, because we reached an agreement
23 with David to take over everybody.

24 But that's kind of what happened, just as a
25 history.

1 MR. NAKAMURA: So, I mean, I think it's -- it's
2 clear, I mean, we've been very forthright. We haven't been
3 trying to hide anything. We haven't been trying to mislead
4 anyone. You know, yes, maybe the appropriate documentation
5 was not done, but, clearly, you can understand that the
6 reason that these things were done the way they were. And,
7 again, we apologize. We believe we've corrected the error
8 with this management agreement.

9 There is, as mentioned, a management agreement,
10 also, with Aqua, which we have. And that's for the hotel
11 room side, the hotel room operation. We have provided that
12 management agreement as well.

13 So at this point, you know, we would be happy to
14 answer any questions that you may have.

15 VICE-CHAIR LOPEZ: I have a question for the
16 Department. Glenn, that agreement you're talking about,
17 lease agreement, explain that, how it complies to what you
18 guys --

19 DIRECTOR MUKAI: Well, the lease agreement is in
20 front -- each Commissioner have a couple of lease agreement,
21 where Mr. Savio leased out the premises. In a sense, he
22 gave up the control of the premises. He controls the
23 Rainbow Room, the kitchen, all that stuff, it was under D.H.
24 Enterprises -- Investment instead of under Mr. Savio.

25 VICE-CHAIR LOPEZ: So when you have this lease

1 agreement, do you recommend a transfer of license to the new
2 lease -- who is leasing or -- to have control legally, or
3 can they operate under that agreement?

4 DIRECTOR MUKAI: No, they cannot operate on the
5 lease agreement. So that's why they trying to change it to
6 a management agreement.

7 COMMISSIONER SOUZA: So now does the management --
8 management agreement suffice?

9 DIRECTOR MUKAI: We received the management
10 agreement. We reviewing it. And according to our rules,
11 also, the management agreement, we have to clear those in
12 the management agreement to make sure they're fit and proper
13 and all the things that required. Like they applying for
14 like their own, according to the rules. And so under
15 management agreement, they still have to submit personal
16 history of those in the management agreement, criminal
17 history. And we haven't received those. So what we did, we
18 returned the application.

19 MR. NAKAMURA: So I think that's a second issue,
20 you know, as to whether or not the -- the manager, in this
21 case D and H Investment [sic], has to provide all the
22 personal history information and everything else which is
23 what the Department is requiring. I think that's a second
24 issue. The first issue is -- you know, is the -- the fact
25 that there was a lease and now we have a management

1 agreement, and is that sufficient, you know, so that we can
2 proceed.

3 COMMISSIONER KENNISON: I want to ask Corp Counsel
4 a question. So with this management agreement, you can
5 continue the temporary lease?

6 MR. KUSHI: Well, in my mind, I'm wrestling with
7 the issue as to what's the difference between a management
8 agreement or operator's agreement between Savio and D.H. and
9 Savio hiring Dana Souza to operate the restaurant as an
10 employee. And if Dana Souza individually is hired by Savio
11 to operate the restaurant and the liquor license premises,
12 does he need to be checked out, you know.

13 COMMISSIONER SOUZA: Still his control.

14 VICE-CHAIR LOPEZ: Before we go on --

15 MR. KUSHI: Still under their control.

16 VICE-CHAIR LOPEZ: Before we go on -- before we go
17 on, it's my bad, I need to open this up to public testimony.
18 Anybody who want to speak for the applicant? Please state
19 your name.

20 MR. JORGENSEN: Hi. My name is Dave Jorgensen.
21 And it's just a bit of -- a little bit of historical
22 perspective. The -- the rules used to have a section, a
23 specific section, that required management agreements to be
24 approved by the Commission. And a lot of it was the hostess
25 bars, actually, had a lot of management agreements

1 originally. And as counsel mentioned, you know, something
2 like Monkeypod, if they hire a general manager, does that
3 person have to be reviewed. When the rules were amended in,
4 I think it was, 2012, that section was taken out of the
5 rules specifically. And I remember the former Director and
6 Mr. Kawagishi mentioning that they were taken out because
7 the Department didn't want to review them, didn't feel they
8 needed to review them. And so this is kind of a big issue
9 because there are many licensees out there who have hired
10 somebody to manage their business, whether on a management
11 agreement or an oral contract, which is still a management
12 agreement. And so I just wanted to mention that, that there
13 was a specific rule that required they be reviewed and
14 approved by the Commission. And that rule was deleted from
15 the rules. I think it was rule -- I think it was 42.

16 MR. NAKAMURA: 42.

17 MR. JORGENSEN: So, anyway, there's just a bit of
18 historical perspective on the question of the management
19 agreements. Thank you.

20 MR. NAKAMURA: This is kind of getting into that
21 second issue that I was mentioning, you know, is whether or
22 not -- okay, we've got a management agreement in place. So
23 the first issue is, is that good enough. The second issue
24 is now they're requiring that we provide information on all
25 of the individuals for the manager just as if we did for the

1 original application. So, for example, if this was a
2 corporation, we have to provide for all officers, directors
3 and shareholders owning 25 percent or more of the stock, we
4 have to provide a personal history statement,
5 fingerprinting, consent to criminal history background
6 checks, two IDs, guaranty and that kind of thing. So
7 there's a lot of requirements for an individual operating a
8 liquor license, which we understand. In this case, they're
9 requiring the same thing for the manager.

10 As Dave mentioned, you know, there was a rule, I
11 have it here, it's 08-101-42, I think, that specifically
12 required this stuff, that required all of this information
13 for management agreements. It required that management
14 agreements be provided and, basically, approved by the
15 Commission.

16 That wasn't the policy of the Department at the
17 time. At that time, they were telling us they didn't really
18 care about management agreements. It's the -- it's the
19 operator, it's the licensee, who's responsible for the
20 operation, you know. So that's what we were interested in,
21 not the manager. So they eventually did away with that
22 rule. I believe the purpose of doing away with that rule,
23 revoking that rule was to meet with their policy that they
24 didn't want this stuff.

25 I tried to get the information pertaining to why

1 that rule was revoked back in 2012. I don't know if maybe
2 some of these Commissioners were present at the time, but I
3 don't -- I don't recall the reasons why. But to -- I
4 couldn't -- I couldn't get it in time for today's meeting.
5 You know, it's a long time ago.

6 Nowadays, in order to get any kind of documents
7 from the Liquor Department, we have to submit a written
8 request, it has to go -- be approved by the Corporation
9 Counsel's office, and then it comes back to the Department,
10 and they will process it, if it's been approved. So it
11 takes a while to get those documents.

12 But as Dave mentioned, I believe the reason that
13 rule was rescinded was because the Department didn't care.
14 Okay.

15 There are some provisions that are kind of
16 leftovers in some of the rules. One that says that it can
17 be read to say that this type of information is required. I
18 think that was an oversight. I can't see why the Department
19 would revoke the specific rule on that issue and then still
20 leave remnants that would require the same requirements that
21 they just revoked. So I think that's -- you know, it's kind
22 of a remnant that probably needs to be cleaned up. But
23 that's what the Department is relying on now in saying that
24 we need to provide all of this information, you know.
25 It's -- and because I was not able to provide that

1 information in four days, they returned the application to
2 us and, basically, stopped our application process.

3 Now, I want the Commission to understand, you
4 know, from some perspectives, it's easy to get this
5 information; otherwise, it's not. D.H. investment is -- the
6 principal behind that is a guy by the name of David Huang --
7 H-U-A-N-G. And we did ask him -- as soon as we received the
8 request, we asked him to provide the information. It turned
9 out that -- and the things that we need to provide are a
10 current and valid Social Security card and a government ID,
11 a current government ID. Okay. The names of the documents
12 need to be identical to the -- period. If -- if they're
13 not, then we're gonna have problems, okay, they're not gonna
14 be accepted.

15 So, in this instance, Mr. Huang is a naturalized
16 U.S. citizen. At the time that he became naturalized, he
17 changed his Chinese name to David. And -- and so I'm not
18 sure of the details yet, we're trying to get it corrected,
19 but his IDs don't match up. Okay, his IDs don't match up.
20 You know, his Social Security card right now still says Lin
21 Huang, I think, you know, it's got some -- a Chinese name,
22 which is understandable.

23 But that's the kind of issues that you face when,
24 you know, you need to do this. And it's -- it shows that
25 it's -- it's just not that simple. It's not, you know, we

1 can turn around get this information. I mean, if it was --
2 I mean, I don't have my own Social Security card, I got to
3 admit. Okay. If somebody asked me for one, I would have to
4 go apply for a duplicate. It takes 10 days to two weeks to
5 get it. I don't know how many of you, you know, have your
6 Social Security card, but, you know, that's the first thing,
7 when we get a new application, I tell the guy, "You have
8 your Social Security card," because, usually, most people
9 don't.

10 But in any event, that's the second issue, I mean,
11 I think we feel very strongly that -- and we would ask the
12 Commission to look at that and -- and not require that
13 information for this individual.

14 So, anyway, the -- what -- just to kind of
15 summarize, we would like -- we believe the management
16 agreement that we provided is sufficient as far as the food
17 and beverage operation. We believe that meets the
18 requirements of the Department. We would like to re-submit
19 the application as-is and not have to redo it again, you
20 know. The Commission should understand. I don't know
21 specifics as far as this application, but there's certain
22 documents in the application that go stale if they're not
23 provided within a certain period of time, you know, by the
24 time that they're signed, there are documents that need to
25 be notarized. So the fact that they've now been returned

1 may require that we re-submit or redo some of the
2 application documents.

3 So we would like to just have it approved -- I
4 mean, or submitted and reviewed as-is right now. We would
5 ask that the -- they're asking that the temporary liquor
6 license be -- be canceled because this -- the hotel has
7 already gone through a very difficult period without the
8 service of alcohol. Its employees were affected, its
9 customers were affected. You know, we ask that not be --
10 happen.

11 They're talking about a criminal prosecution. You
12 know, I mean, I think it's clear that anything we did was --
13 was not intentional. I mean, this is all by, basically, not
14 knowing what the rules were. So we ask that that not be
15 done. And that we ask that we not have to submit again that
16 personal history information for the manager.

17 Be happy to answer any questions.

18 I know this is a very technical thing. We
19 apologize, really, for the misunderstanding. You know, we
20 tried to do what the Commission has required -- or the
21 Department has required in every instance. You know, they
22 ask us for information, we provide it as soon as we can.
23 But that's kinda brought us to where we are.

24 VICE-CHAIR LOPEZ: Before we go into further
25 discussions, I would like to close public testimony. So

1 anybody else for or against the applicant? Okay. Seeing
2 none, now public testimony is closed. Okay. Now discussion
3 with Commission.

4 COMMISSIONER KENNISON: One thing I would like to
5 say -- one thing I would like to say is that I -- through my
6 employment -- previous employment -- I have known Mr. Savio
7 through a previous employment and -- until I retired. I
8 haven't worked with you personally, but, through my previous
9 employers. And I've known and most of the things that he's
10 said is very true. He has tried very, very hard to keep all
11 the employees working. He has gone above and beyond.

12 Even in Honolulu, you helped us to operate the
13 housing projects in Honolulu so people wouldn't lose they
14 house. And if he didn't come to the aid of the workers,
15 they would have lost their houses, plantation houses.

16 And at Maui Beach, he has come through to save the
17 employees, because, if he didn't come through, the employees
18 would have lost their jobs, too. So statements that was
19 made by Mr. Savio, and Mr. Nakamura regarding Mr. Savio is
20 very, very true. I can vouch for that through my personal
21 knowledge.

22 With that in mind, I go back to Junior. Would the
23 management agreement suffice?

24 MR. KUSHI: Well, as I understand it, the
25 applicant has complied with what the Department wants, but

1 the Department is saying that that's not good enough and
2 they want to check out the individuals listed under the
3 operator's agreement. When and how long that takes, I'm not
4 sure, but it seems like a compliance issue. I don't see
5 attempt to evade the process.

6 Nakamura, Attorney Nakamura, did bring up a valid
7 point about whether the Department should be even looking
8 into these operating agreements. And I think that's for
9 another day and time.

10 But as far as the instant application, what the
11 Department is asking for is to, one, as I understand it,
12 Silva, revoke the temporary license and stop the process of
13 the new application. Is that right?

14 MR. LAYNE SILVA: Yes.

15 MR. KUSHI: That seems, in my mind, a little
16 drastic. In terms of the possible prosecution, I don't
17 think it's a criminal violation. It may be a violation
18 under the liquor rules, which would go to the Board, but,
19 again, that was under the old license, and the old license
20 has expired. Example, the Spanky's issues, all those prior
21 bad acts, I think, goes away when the license expired. But,
22 again, that's another point to the -- to talk about.

23 In the Commission's discretion, you may think
24 that, you know, the acts up to now are so bad that you
25 should just stop all the operations. That's your call.

1 COMMISSIONER UMENO: I don't think that should
2 happen.

3 COMMISSIONER BICOY: So -- so what you're
4 explaining is that this management agreement -- how will I
5 say this?

6 MR. NAKAMURA: Let me -- let me -- let me
7 interrupt. What happened was there was a lease. Okay.
8 When they asked for -- when they found -- when the
9 Department found out about the food and beverage service
10 being operated by this company called D and H Investment
11 [sic], they asked me for the document by way of which D and
12 H [sic] was allowed to do that. Okay. So what -- I asked
13 Mr. Savio's assistant, and he said it was a lease. So he
14 provided me with a copy of the lease. So, again, we're not
15 trying to hide anything.

16 COMMISSIONER BICOY: Right.

17 MR. NAKAMURA: I provided a copy of the lease.
18 Okay. And then I know there were concerns about the
19 exclusive control issue, whether or not control was gonna be
20 taken away because of the -- because of the lease. So what
21 I did was I -- I did what I knew was -- the -- the
22 Department would be comfortable with. I replaced that lease
23 with a management agreement, which is the document I gave
24 you today.

25 So what we're -- so that kind of explains the

1 scenario, but, as Mr. Savio explained, at the time that --
2 you know, there were a lot of things going on at the time
3 that the -- that the hotel was being purchased. And, of
4 course, a primary concern was the employees. And it was
5 difficult for him to find an operator for the food and
6 beverage. When he finally found one, he prepared the
7 document that he's most familiar with in this situation,
8 which was a lease. And that was done for D and H [sic], you
9 know, not knowing that that document may not fly or be
10 approved by the Liquor Department. Okay.

11 And, again, you know, I think -- I don't know that
12 it's expressly clear that a lease takes away that control.
13 That's the position that the Department has taken. You
14 know, rather than argue with the Department on that issue,
15 I -- I did -- did the management agreement and replaced that
16 lease with a management agreement because I know they're
17 comfortable with that.

18 COMMISSIONER BICOY: So I guess, to me, what I'm
19 trying to understand -- and it seems like that there's a
20 conflict between what our policy and -- the requirements
21 that we demand of the applicant, and then the policies then
22 dropped the management agreement.

23 MR. NAKAMURA: Okay. So let me explain that. So
24 we have this management agreement. So the first issue is --
25 is -- is the -- is it a lease or management agreement,

1 that's the first issue. Okay. We addressed that by giving
2 the management agreement. So that's -- that's over. The
3 second issue is, now that you have a management agreement,
4 okay, do you have to report all of the individuals that are
5 the operators under that management agreement. So for D and
6 H [sic] Investment, Inc., it's a corporation as -- just as
7 if we applied for a new license, all of the officers,
8 directors and shareholders holding 25 percent or more of the
9 stock have to report. They have to provide the IDs, the
10 criminal history background, the fingerprinting and all
11 these things. Okay. What we're saying is that there used
12 to be a specific rule that required that information.
13 Because the Commission had a rule that said, yes, for
14 management agreements, we had to provide all this
15 information. That wasn't the policy of the Department at --
16 back in 2012. And we believe the reason that rule was
17 revoked was because that wasn't the policy. Department told
18 us they didn't care about that stuff, management agreement,
19 they didn't care as long as the licensee -- they felt the
20 licensee was responsible for all the operations. So they
21 don't care about managers. Okay. So they revoked that
22 rule. Now --

23 COMMISSIONER BICOY: But they left you holding the
24 ball now because there's certain requirements that
25 they're --

1 MR. NAKAMURA: Now they're --

2 COMMISSIONER BICOY: -- asking.

3 MR. NAKAMURA: -- saying that even though that
4 rule was revoked --

5 COMMISSIONER BICOY: Yeah.

6 MR. NAKAMURA: -- there's another rule that
7 mentions management agreements, so you got to provide all
8 that information. To me, it doesn't make sense. Why would
9 we, on the one hand, revoke the rule that specifically says
10 you got to provide it, and then, on the other hand, have
11 rule that they I think says that you -- you got to provide
12 that. So those two are --

13 COMMISSIONER BICOY: Yeah.

14 MR. NAKAMURA: -- conflicting --

15 COMMISSIONER BICOY: Yeah.

16 MR. NAKAMURA: -- as you mentioned.

17 COMMISSIONER BICOY: Yeah.

18 MR. NAKAMURA: So what I'm trying to do is -- I
19 mean, I am trying to find out -- it doesn't make sense, I
20 think it's just an oversight, you know, why the remaining
21 rules were left. I'm trying to get that legislative
22 history, basically, we call it, which is the, you know,
23 the -- the summary of why this rule was revoked back in
24 2012. Okay. I was not able to get that in just a few days
25 because, again, we have -- there's this procedure we now

1 have to go through, we got to submit a written request, it's
2 got to be sent to the Corp Counsel's Office and reviewed and
3 approved and it's sent back to the Department, and then they
4 can start processing it.

5 So -- but I hope you answered your question.

6 COMMISSIONER BICOY: Yeah. No. I just think that
7 the -- the onus lies on -- on, I think, the Department at
8 this point for us to be clear.

9 DIRECTOR MUKAI: Well, we are required to -- like
10 the Commission rules has cause and effect of law, right,
11 according to HRS? And the rule states, on a management
12 agreement, on 08-101-30(i) -- I mean, in 30, there's a lot
13 of things that refer to my -- on that specific rule, in
14 part, says management agreement shall be subject to all
15 requirements in holding liquor license in their own right.
16 So whoever's in management, like they have same
17 qualification pursuant to Section 281-45 HRS or the Rules of
18 the Commission. So that's what we required them to submit
19 by rule. We cannot say because it was a policy that -- it
20 doesn't count, policy. Rules, law counts. That's what we
21 have to enforce. We cannot ignore that.

22 COMMISSIONER BICOY: No. I -- thank you, but I
23 also think we need to make things clear to the applicants.
24 I think, otherwise, we're -- we find ourselves in this
25 position. So I understand that, but I also see the dilemma.

1 COMMISSIONER KENNISON: No, we cannot have it two
2 ways.

3 COMMISSIONER BICOY: Yeah. So I think there has
4 to be some clarity moving forward.

5 COMMISSIONER UMENO: Are other licensees under
6 management agreements? And do they -- did we always require
7 them to do the same type of --

8 DIRECTOR MUKAI: I think, yeah, they came before
9 the Commission.

10 MR. NAKAMURA: I'm sorry?

11 DIRECTOR MUKAI: I think (inaudible) that
12 Sheraton?

13 MR. LAYNE SILVA: Oh, yeah. Sheraton, yeah.

14 MR. NAKAMURA: I don't -- I could tell you that,
15 you know, again, this is a change in policy. Okay. I mean,
16 up to this point, we did not provide management agreements
17 for review and approval. And we did not provide all of this
18 personal history information for the managers. I think
19 Mr. Jorgensen, you know, also represents some clients who
20 can tell you that. And if -- if they're gonna require this
21 because of this rule, which I think is an oversight, it's
22 gonna put a tremendous burden on the licensees. I mean, I
23 don't even know how you can find all the licensees which
24 operate under management agreements, much less have to
25 provide all of this information for them. Maybe the rule

1 provides that, but, again, you know, I think it was an
2 oversight. The specific rule that provided it was deleted.
3 I mean, that was because that -- I mean, I know you're
4 saying you can't look at policy, but that was the policy,
5 you know. And up until last week, the policy of the
6 Department was they didn't -- they still didn't care. As of
7 last week, they care again. Okay. So --

8 MR. KUSHI: Can you make a copy of that old --

9 COMMISSIONER BICOY: Yeah.

10 MR. KUSHI: -- rule?

11 MR. NAKAMURA: Yes.

12 COMMISSIONER BICOY: I would like to see that,
13 too.

14 COMMISSIONER KENNISON: I like move into Executive
15 Session.

16 VICE-CHAIR LOPEZ: Okay.

17 MR. KUSHI: Before you go into Executive Session,
18 questions, what about the hotel rooms, the room service?

19 MR. NAKAMURA: There is no room service.

20 MR. KUSHI: No room service? And in the future,
21 assuming Savio --

22 MR. NAKAMURA: You know, I think in the future --
23 I mean, this is a really unfortunate situation. Again, we
24 apologize. We think it's a technical situation. Probably
25 the best thing to resolve this is if we have D and H

1 Investment [sic] apply for their own license.

2 MR. KUSHI: That was my question.

3 MR. NAKAMURA: Yeah. So that's -- that's probably
4 what we'll be working towards. I need to discuss that with
5 Mr. Huang. But I think that's probably what we're going to
6 be looking at. But, again, you know, it's not a -- it's not
7 a simple thing, as you can see from the issue pertaining to
8 Mr. Huang's ID. I mean, that's going to take us, you know,
9 weeks to address just that. And then to redo the
10 application and go through that process again, you know,
11 it's going to take some time.

12 COMMISSIONER SOUZA: For me as a Commissioner, I
13 don't want nobody shutting down or losing money.

14 COMMISSIONER KENNISON: Yes.

15 COMMISSIONER SOUZA: I mean, I --

16 COMMISSIONER BICOY: What is this again, is this a
17 temporary application for a temporary license?

18 VICE-CHAIR LOPEZ: Let's go -- let's go in
19 Executive Session.

20 COMMISSIONER BICOY: Yeah.

21 VICE-CHAIR LOPEZ: Okay.

22 DIRECTOR MUKAI: One -- one information. Like
23 Starwoods, you know, Starwoods, they own a lot of hotels on
24 Maui, they themselves do not hold any license, it's all on
25 the operating agreement. The operating agreement on a

1 management agreement, they are the one that holds the
2 license.

3 MR. KUSHI: Well, you know, if you say that -- if
4 you say that, could you issue a temporary license to D and H
5 [sic] right now?

6 DIRECTOR MUKAI: If they (inaudible) hotel room
7 and qualify license and they submit their application.

8 MR. NAKAMURA: I -- sorry. Mr. Kushi, I think
9 that's the issue, whether or not you can issue a -- you
10 know, another temporary when there's no existing license or
11 application.

12 MR. KUSHI: Oh, yeah.

13 (Executive Session, 11:02 a.m. to 11:17 a.m.)

14 VICE-CHAIR LOPEZ: Liquor Commission meeting back
15 in session. So back to discussion, Commission. Any
16 discussion? No discussion?

17 COMMISSIONER KENNISON: No. Ready.

18 VICE-CHAIR LOPEZ: Okay. Can I have a motion?

19 COMMISSIONER SOUZA: Okay. I move that the
20 temporary license be not -- not be canceled, allow them to
21 operate under temporary license, and, also, the application
22 that has been returned to be submitted to the Department and
23 further process it in that manner.

24 Mr. Nakamura, I think, on your temporary, you have
25 30 days left. Do you need more time? Can we do that now?

1 You need an extension, or is that --

2 MR. NAKAMURA: I believe we can get an extension
3 administratively --

4 COMMISSIONER SOUZA: Okay.

5 MR. NAKAMURA: -- for 120 days.

6 DIRECTOR MUKAI: Yes.

7 MR. NAKAMURA: So we'll probably ask for that at
8 that time. If we need more, we'll come back.

9 COMMISSIONER KENNISON: Yeah. Yeah, because we
10 was thinking with that hundred -- further extension, maybe
11 that give you time for D and H [sic] to get their --

12 MR. NAKAMURA: Yes.

13 COMMISSIONER KENNISON: -- act together.

14 MR. NAKAMURA: Yes. Yes. Thank you.

15 COMMISSIONER SOUZA: So we're clear on the motion?

16 MR. NAKAMURA: Yes.

17 VICE-CHAIR LOPEZ: Okay, we have a motion on the
18 floor.

19 MR. KUSHI: Mr. Chair, to clarify the motion, this
20 is the recommendation of the Commission to the staff.

21 COMMISSIONER KENNISON: Recommendation, yeah.

22 MR. KUSHI: Now, if the -- if it plays out that
23 the staff does not follow the recommendations and issues a
24 decision to the applicant, then the applicant has recourse,
25 Mr. Nakamura, you know that, to appeal that written decision

1 to the Commission.

2 COMMISSIONER KENNISON: To the Commission.

3 MR. KUSHI: But, again, it's a mere
4 recommendation -- not mere, but a recommendation from the
5 Commission to the staff at this point in time.

6 MR. NAKAMURA: Thank you.

7 VICE-CHAIR LOPEZ: We have a motion on the floor.
8 We need a second.

9 COMMISSIONER UMENO: Second.

10 VICE-CHAIR LOPEZ: All in favor, say "aye."

11 (Response.)

12 VICE-CHAIR LOPEZ: Opposed?

13 (No response.)

14 MR. NAKAMURA: Thank you. Thank you very much
15 for your time and understanding.

16 MR. KUSHI: One footnote, Mr. Nakamura, as well as
17 Mr. Jorgensen, between the two of you, we'd recommend that
18 you do a petition for a rule amendment to clear this thing
19 up.

20 MR. NAKAMURA: Thank you.

21 MR. SAVIO: Thank you.

22 MR. JORGENSEN: I'll bring that up at the next
23 troublemaker's meeting.

24 VICE-CHAIR LOPEZ: Okay. Moving on to
25 Administrative Affairs.

1 MS. CORDEIRO: Mr. Chair?

2 DIRECTOR MUKAI: Director's Monthly Report. Small
3 business review and advisory committee met on September 26,
4 2016, and conducted the final review and discussion of the
5 proposed rules and its amendments. The committee requested
6 the rule amendments to be submitted for consideration and
7 processing since they may greatly assist the licensees. The
8 amendments will be submitted for -- to Corporation Counsel
9 for review and formatting.

10 Office of Prosecuting Attorney received an
11 advisory opinion of -- from the Office of Attorney General
12 regarding liquor-infused ice cream products that is
13 available on Maui. Advisory opinion is within the
14 Commission packet.

15 The Department conducted an interview of
16 applicants for the Liquor Control Officer Trainee position.
17 Lacey Kaholokula was selected to fill the position. She'll
18 be starting on the 16th of this month.

19 The Department conducted its minor decoy operation
20 October 20, 2016, the premises check were from the
21 computer-generated list of licensee. 11 premises were
22 checked, one premises was closed. Two retail premises sold
23 liquor to the minor decoys. The first licensed premises,
24 the employee did not request the minor identification, but
25 did ask the minor age, the minor answered truthfully and the

1 licensee still sold to the minor decoy. The second licensed
2 premises, the employee did request the minor decoy to
3 present the identification, checked the minor decoy driver's
4 license and sold liquor to the minor decoy.

5 The Department submitted a budget amendment to the
6 Mayor to purchase a portable electronic fingerprint scanner.
7 The Mayor forwarded the request to County Council for
8 approval. Lisa Paulson, Executive Director from the Maui
9 Hotel Association, indicate she'll be present to provide
10 testimony in support.

11 COMMISSIONER SOUZA: How much will it cost?

12 DIRECTOR MUKAI: \$13,000. But that would greatly
13 enhance and speed up the process --

14 COMMISSIONER SOUZA: Yeah.

15 DIRECTOR MUKAI: -- of licensing.

16 VICE-CHAIR LOPEZ: So you take 'em out in the
17 field?

18 DIRECTOR MUKAI: No. No. We --

19 VICE-CHAIR LOPEZ: Oh, over here. Oh, okay.

20 DIRECTOR MUKAI: And the last thing on the agenda
21 is Adjudication Board was held on November 3, 2016. The
22 results are within the Commission packet.

23 That's all we have.

24 MS. CORDEIRO: Mr. Chair? Sorry, just checking.

25 On Other Licensing Matters, Item A, no action was taken?

1 COMMISSIONER SOUZA: No one showed, yeah.

2 VICE-CHAIR LOPEZ: Yeah, no-show.

3 MR. KUSHI: Defer.

4 VICE-CHAIR LOPEZ: So we defer to the next
5 meeting. What happens when they don't show up a couple of
6 times? Just --

7 DIRECTOR MUKAI: Just defer it and request --

8 VICE-CHAIR LOPEZ: Just keep deferring them until
9 they -- how long do they have before you say enough.

10 DIRECTOR MUKAI: Well, we can issue them a written
11 caution or something.

12 VICE-CHAIR LOPEZ: Okay. Okay. Okay. Well, is
13 there any more things we need to talk about, Glenn?

14 COMMISSIONER SOUZA: I move to adjourn.

15 COMMISSIONER UMENO: Second.

16 VICE-CHAIR LOPEZ: Okay, move and second. Meeting
17 is closed. Thank you very much. (Gavel.)

18 (Meeting adjourned, 11:23 a.m.)

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

I, TONYA MCDADE, Certified Court Reporter of the State of Hawaii, do hereby certify that the proceedings contained herein were taken by me in machine shorthand and thereafter was reduced to print by means of computer-aided transcription; and that the foregoing represents, to the best of my ability, a true and accurate transcript of the proceedings had in the foregoing matter.

I further certify that I am not an attorney nor an employee of any of the parties hereto, nor in any way concerned with the cause.

DATED this 5th day of December, 2016.

Tonya McDade
Certified Shorthand Reporter #447
Registered Professional Reporter
Certified Realtime Reporter
Certified Broadcast Reporter