

**LANA'I PLANNING COMMISSION
REGULAR MEETING
JANUARY 16, 2019**

A. CALL TO ORDER

The regular meeting of the Lanai Planning Commission (Commission) was called to order by Ms. Caron Green, Chair, at approximately 5:00 p.m., Wednesday, January 16, 2019, in the Lanai Senior Center, Lanai City, Hawaii.

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

Ms. Caron Green: Good everyone. It is now five o'clock, and this is the January 16th, 2019 meeting of the Lanai Planning Commission. And so without further ado we will begin. As always we will permit public testimony before the individual items come up. However we would prefer that testifiers wait until after that individual item has come up on the agenda, we've had the presentation and some discussion before there is testimony. So having said that I have two people here who have signed up for public testimony. Butch Gima and Myles do you, Butch do you want to wait until your individual item comes up or do you want to testify at this time?

B. PUBLIC TESTIMONY - At the discretion of the Chair, public testimony may also be taken when each agenda item is discussed, except for contested cases under Chapter 91, HRS. Individuals who cannot be present when the agenda item is discussed may testify at the beginning of the meeting instead and will not be allowed to testify again when the agenda item is discussed unless new or additional information will be offered.

Mr. Reynold "Butch" Gima: Good evening. My name is Butch Gima. You have in front of yourself my testimony letter. I'll just kind of summarize it. I won't read the whole thing. But the five things I'm asking you guys to take specific action on is No. 1 like I said the last time suspend action on short-term rental permit applications till you or the County establishes a cap and density regulations. No. 2 I'm recommending that you establish a total cap of 40 short-term rentals and B&Bs. No. 3 I'm asking that you establish a density restriction to one short-term rental or B&B per block in Lanai City. I am also recommending that you establish language where you reevaluate the cap and the density restrictions every three years. And I'm also suggesting as I said the last time allow unpermitted homes operating a short-term rental six months to meet County regulations.

Below that I provide some reasons for my recommendations. I won't go into every one of them except for, except for the last one. And it's in bold. And again as I testified the last time I think our community is very special and unique because many, of the many relationships that we form with neighbors for decades and for some you know close to a century in Lanai City I think this in turn has led directly to the aloha we have in our community. And I think one reason why people want to move here and come and visit you know our community. And I don't think you can develop, maintain, or foster these types of relationships with absent owners with neighbors who are not here all the time. And in fact it can mean the opposite if

the users of the short-term residences rentals destroy the ambiance of the neighborhood and, or neighbor relations. So again I ask that you establish you know some rules, regulations or policy to help preserve the values you know of this community that have been fostered through the close relationships we have with our neighbors you know over the last almost 100 years now. And as I've noted previously policy needs to be developed for the greater good and must not be developed based only on current need or selected individual applicants. So look long-term but also look at historically what brought us to this point. I trust that you'll do what is right and what's best for our community. Thank you.

Ms. Green: Thank you Butch. Commissioners, do you have any questions for Butch? Does anybody? Butch I do. On your first point here we have talked about this before kind of suspending any approvals. County can do some approvals without coming to the Planning Commission and we've asked that. Apparently according to Counsel and if she wants to address this and she can but my understanding is that this has to be a decision by the Council, so we would have to ask them to make this a condition. Am I understanding correctly?

Ms. Richelle Thomson: Thank you Chair. Yes. So the Commission does not have the independent authority to suspend processing applications that meet the law. So the Commission would have to continue to process the applications, and if the moratorium which is what that would be is suspending an active ordinance is a moratorium that would have to be done by Council. It's by Council action.

Ms. Green: So I guess what you would be suggesting then is that the Commission request the Council to put a moratorium in effect. Is this -- would that work for you?

Mr. Gima: Yes, and I think I, I said something to that effect at the last meeting by taking a real affirmative action about doing so. I recognize that the Commission could not do that on its own. And individually we can contact our Council Member to do this, but I, I strongly feel that the Commission needs to take a strong stand on this because it puts you in a tough position to make decisions on applications when you don't have a criteria to say yes or no that you know we have too many in our town or too many in a small 500 foot radius.

Ms. Green: Okay, I have two other questions. Restrict to one per block. How are you seeing a block? Are you saying from say Fifth to Fourth, and then behind you know one block behind and around? Or are you just saying on say since we're talking Lanai Avenue today, on Lanai Avenue between Fifth and Fourth. Is that a block for you? Or is a block for you know also going a block each direction from the street? Do you understand my question?

Mr. Gima: I view block as being surrounded by four streets...in most. In the dead end and the cul-de-sac obviously it's a, it's a little different.

Ms. Green: Okay, but you have also across the street you have four streets, so you just --? Do you understand what I'm saying?

Mr. Gima: No.

Ms. Green: If I'm, if I'm on say on the north side of the street then you do the block there. But across street is there another block there or --?

Mr. Gima: Yes.

Ms. Green: So that's really two blocks. It would be --. Do you understand what I'm saying?

Mr. Gima: For example where I live I'm bordered by Lanai Avenue, Nani Street, Fifth Street, and Sixth Street so that would constitute one block. It would be different in the dead end streets and in the cul-de-sacs. I mean it can be easily remedied. I mean you can get a map and just draw out each block.

Ms. Green: Okay.

Mr. Gima: So it doesn't have to be decided here but the concept being --

Ms. Green: Rather than the 500 foot radius, you're thinking more neighborhoods.

Mr. Gima: Yes.

Ms. Green: Okay. And my last question is why are you interested in allowing unpermitted homes operating a short-term rentals another six months? I don't understand. Because there was a rule that went into effect last fall that people had -- if they owned it for less than five years they could apply within a certain period of time. After that they couldn't. But people who have owned their places for more than five years I think they can apply at any time is that not correct? So why this, allow unpermitted homes operating a short-term rentals six months. You mean illegitimate. I mean illegal ones.

Mr. Gima: Yes and I remember the discussion about the terminology, but this came about following the concerns about homes that were being used for hunters. So in recognition of the fact that there are, I think, some homes that are not approved or unpermitted give them an opportunity to follow the policy, the regulations. And separate from that you have the hunting homes which as I testified at the last meeting that historically they don't advertise as a short-term rental. They don't charge and have rental agreement like short-term rentals. So that's how I made the differentiation.

Ms. Green: So really what you would like to see is all these people who are renting to hunters is get legal.

Mr. Gima: No, that's not what I'm saying.

Ms. Green: Okay, well then I don't understand.

Mr. Gima: The ones that are hunting providing rooms for hunters are not operating. My impression is they are not operating as short-term rentals because they're not advertising on VRBO or Airbnb, nor do they charge people per room with a rental agreement with a specified rate.

Mr. Gerald Rabaino: Butch I know where you're coming from because I do that myself when I have friends that come from the neighbor island for hunting. And hunting, Caron, is only seasonal okay so we not going ad, restrict the hunting homes or put them in short-term rentals. Because when my friends come or family members come, and their friends come because they cannot find house to stay, I can understand why Butch put this here. So just leave this out and then only concentrate on the short-term rentals as well as the bed and breakfast.

Ms. Green: Okay, anybody else have questions? Okay, thank you Butch. Myles did you want to speak at this time or do you want to wait? Okay, thank you.

C. UNFINISHED BUSINESS

1. **ALICIA ALCANTARA BRANDT requesting a Short-Term Rental Home Permit in order to operate 444 Lanai, a three-bedroom short-term rental located in the R-1 Residential District at 444 Lanai Avenue, TMK: (2) 4-9-010:014, Lanai City, Island of Lanai. (STLA T2018/0003) (J. Burkett) (The Lanai Planning Commission conducted a public hearing and acted to approve the permit request on October 17, 2018.) (Deferred from the November 28, 2018 meeting.)**

(Commissioners: Please bring the materials that were previously distributed in prior meeting packets.) [Exhibit](#)

The Commission reviewed the application because there are at least two permitted short-term rental home operations located within 500 feet of the subject property.

Related to the approval of a Short Term Rental Home Permit for 444 Lanai Avenue, Lanai City, STLA T2018/0003, on October 17, 2018, by the Lanai Planning Commission.

The Lanai Planning Commission is being notified of an apparent error made by the applicant in the certified mail notices required pursuant to Sections 19.65.050.B and 19.65.050.D.4, which relate to notification of the owners or lessees of record within the 500 foot radius of a proposed short term rental home. The Planning Department recommends that the Lanai Planning Commission rescind its approval of said permit.

The Lanai Planning Commission may consider rescission of the STRH permit approval for STLA T2018/0003, related to 444 Lanai Avenue, Lanai City.

With reference to this agenda item, one or more executive meetings are anticipated pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County and the Commission.

Ms. Green: Okay, we have some unfinished business tonight. So the first agenda item is Alicia Alcantara Brandt requesting a short-term rental home permit in order to operate 444 Lanai, I assume Lanai Avenue, a three-bedroom short-term rental located in the R1 Residential District at 444 Lanai Avenue, etcetera. The Commission conducted a public hearing and acted to approve the permit requested on October 17, 2018. However there were some issues after that and we had to ask the parties concerned here to send out letters to all people within the 500 foot radius and then come back to have this reviewed. If I consolidated to say that. All right so Clayton do you want to address this?

Mr. Clayton Yoshida: Good evening Madame Chair and members of the Lanai Planning Commission. Happy New Year. This matter was last dealt with by the Lanai Planning Commission on November 28th following a lengthy discussion and lengthy public testimony on the Koele Adventure Center project. At the end of the meeting the Commission deferred the matter to the January meeting and instructed the applicant's consultant to send out a notice of the January meeting to the property owners within the 500 foot radius. We have Jared Burkett, staff planner, here from the Department and also Debbie Mitchell, consultant for Alicia Brandt here, and they can confirm that the notice was sent to the property owners within the 500 foot radius notifying them of tonight's Lanai Planning Commission meeting. I don't know if the consultant wants to add anything.

Ms. Debbie Mitchell: Thank you Clayton. Debbie Mitchell, consultant for Alicia Brandt. Just wanted to confirm what Clayton said we sent out a letter that was approved also by Corporate Counsel and let everyone know the process and what happened. And we wanted to make sure that if anyone's voice, felt that their voice was not heard that they would have an opportunity to do today. So we did receive two pieces of mail on it. One was a very -- I'm sure you have copies of the letter from Henry Richardson who is within the 500 feet radius saying that he gave the application his support, did not want to see it rescinded. And then there was a protest letter from Riki Hokama basically saying he opposed it since there were three approved permitted homes within that 500 foot circle. So that is the extent of everyone has been properly notified of this meeting. And Alicia although she could not make it is standing by by phone if you have any questions to ask of her.

Ms. Green: Thank you Debbie and Clayton. Commissioners, does anybody have any questions for Clayton or for Debbie?

Ms. Shelly Preza: I was just wondering --. Thank you for being here. I was just wondering when the letters were sent out. Just to make sure there was enough time for people to consider.

Ms. Mitchell: There was. Jared do you have that information?

Mr. Jared Burkett: Staff planner Jared Burkett. The post mark on all of the certified mail receipts was December 14th.

Ms. Preza: And can you confirm that those were all the correct addresses within the 500 radius. I'm so sorry I don't mean to you know like question that if it is but because there were so much confusion in the past couple of months. I just want to confirm.

Mr. Burkett: Yes, she used the correct addresses when printed the mailing labels.

Ms. Preza: Thank you.

Ms. Green: Okay thank you very much. Commissioners, again, any other questions? Jerry?

Mr. Rabaino: How many letters from the time we last met, how many letters came in for opposition? Two? One. Okay, with the last time we met we had a lot of people that were testifying. If you count those letters in, add it to the one, what is the total that opposed?

Ms. Preza: Thank you. We appreciate you taking the time to do that. I know we received all those letters as well.

Mr. Burkett: There I think there are three. There were a few letters that came in the same day as the last hearing and that was support letters. But I'm not including the testimony.

Mr. Rabaino: Okay, so three plus this one, with Richardson, is that what you're saying? From the last meeting is three, opposing, and Richardson is opposing.

Ms. Mitchell: No, he's supporting.

Mr. Rabaino: He's supporting now. So the last meeting it was three.

Mr. Burkett: The last meeting was two.

Ms. Preza: Sorry Jared just to remind you there was also that letter that had multiple signatures on it.

Mr. Burkett: Correct.

Ms. Preza: So just because there's --. I mean, yeah.

Mr. Rabaino: I understand. But I'm trying to get the calculation to see before I make my personal mana'o and decision. Okay so Clayton they use the term block. In the County Code language you guys use radius okay. A block is a square. Radius. I don't like to word block. That's a radius within 500 feet. Same as a square but the thing is in the circle you can more or less see the acreage of each property. I prefer the circle of 500 feet limited to short-term rental. That is my mana'o.

Mr. Yoshida: Well Commissioner Rabaino, I believe the requirement is 500 feet from the property's boundaries. So depending on how the lot is shaped will determine what kind of shape the amount of people if it's a circle, or it's a square, or --.

Mr. Rabaino: I understand where you're coming from. I just want more clarity. Thank you.

Ms. Green: Okay, does anybody else want to say something? Did you have something to say Richelle?

Ms. Thomson: Thank you Chair. So I just wanted to remind everybody procedurally where we're at. So the application has been granted. What's before you today is -- so there's the discrepancy in the mail of notice. That is only one of the types of notice that's required by the County Code. So an applicant has to mail by certified mail. They also have to post a yard sign. Because this application required a public hearing it was published in the newspaper and it was also published on a regular commission agenda, so there are many different forms of notice that the public would have had access to. And so your decision today would be whether you feel that the application and the approval should stand or whether you feel that such a grave error was made that the community wasn't properly advised and that the approval shall be rescinded. So that's where we stand today.

Ms. Green: If I may say maybe I look at it slightly differently. We approved it under the circumstances at the meeting in October, or was it November? October, okay. And at that time we took into consideration all people who were for and against. The problem was that we hadn't notified certain people that according to County regulations should have been notified. We have now -- you have now done that and it has produced one more opposed and one for. The one who opposed it doesn't even live there I believe. He is our council member. And so I think where we are on our decision is do we let the decision stand given that they have now completed everything that were required to do and it has only produced one objection. Or, do we want to rethink it? So that's kind of where I think it stands. Sherry did you want to say something?

Ms. Sherry Menze: You know at our November meeting we were also given the opportunity again to either rescind it or to delay it, and we delayed it. So I don't know what you were getting at Chairman but we already approved it. We did not rescind it in the November

meeting, we delayed it. And so from what I am understanding for Corporate Counsel is our job now is to decide if she's fulfilled what was required. Am I getting that right?

Ms. Thomson: Thank you. Yes. I think that it's the Commission's decision today either you know make a new decision, rescind what you have already decided or just let it go as it has already been decided in October.

Ms. Green: If --. You have more comment?

Ms. Menze: I have more comments. And you know how life is. It's always a learning curve and I think as a Council we have learned a really valuable lesson here from the very beginning and that maybe we shouldn't have approved it because it really doesn't go with the rules but we've already given her that opportunity. She's already spent money. We've already approved it. We pretty much approved it again in November by not rescinding it. And I personally think we should move forward from this. Never again do we make a decision that is quasi about against the rules. You know we've all done this before. I've worked State jobs before and every time you try and give someone a chance that pushes the rules a little it always comes back to bite you. And that's what we have right now. We're biting our decision that we made originally.

Ms. Preza: Thank you. You know I was just going to say that, my understanding, I'm not sure if this is everybody's one, but kind of in response to the pushing the rule bit was that we approved her permit with the concern that maybe not everyone was notified but we were told that there was nothing that we could've done, right? We were asking about the certified mail and I asked you Jared if they had to -- if they were required to send out things again and you said that oh she has all the certified things here. So I, it was my understanding that well okay they did what they were supposed to and then later it came out oh actually yes there was some mix up. I think there was a lot of confusion that happened with this application and so I don't think we were trying to, as a Commission, we're trying to you know push the rules for Alicia. I think there were just a lot of maybe miscommunication that happened and that's a good lesson for us I think.

Mr. John Delacruz: I don't think we pushed the rules at all. We had approved the application based on the information given to us and based on what the presentation, how the presentation was made. However because the County reminded us that two people within the 500 foot radius were not officially notified because the owner had put the wrong addresses it was decided to delay the decision. And then on the November or December meeting the County recommended rescinding because those people had not, two people had not been notified which in the meantime the owner had been doing the proper thing to notify those people and they were notified. So unless people on the Commission or people in the audience can give a good reason why specifically and in general this application should be rescinded, I would move --. And first I will give opportunity for testimony but at this point I am in favor of moving along and I will make a motion to stand by our decision in October of 2018.

Ms. Green: Okay, thank you. We do need to have public testimony before we can do that so at this time I'm going to open it up for public testimony. And Myles was this the one you wanted to testify on? Yes? Okay, would you like to come forward and testify?

Mr. Myles Saruwatari: Thank you. Myles Saruwatari. Now as far as the original application's vote, okay, personally I think you guys dropped the ball on it. Because the Maui County law is clear. Two short-term rentals in a 500 foot radius. That's what the law says. I don't know if there's an exception or a provision to amend that you know by Council. I don't know that. But as far as I know the law says two short-term rentals within a 500 foot radius.

Mr. Yoshida: Yes, if there are two permitted short-term -- at least two permitted short-term rental homes within the 500 foot radius it is a trigger for Planning Commission review. Otherwise if there wasn't -- if there was only one let's say and they didn't have a significant amount of protest the permit would be approved administratively by the Department if it met the criteria for issuance of the short-term rental home permit.

Mr. Delacruz: So to clarify what Clayton had just said is the two homes within the 500 foot radius is not the limit. It is a trigger to notify other short-term rental homes that the application is coming forward and it is up to the Lanai Planning Commission to consider it.

Ms. Green: Thank you. Okay, just a second. Myles did you want to continue with your testimony?

Mr. Saruwatari: Yes. Second of all a lot of the letters that she presented, the signatures itself that she presented are not people living in that particular 500 foot radius. So my question is given that how many of the people actually within the 500 foot radius were for or against? You know because --. Okay, their place is on Fourth and Lanai Avenue, right? So why would somebody living on Fraser and Eleventh why would their signature on you know have any significance for supporting that? Yes, maybe personally they support, but as far as for the neighborhood within a 500 foot radius that should have no bearing on their application.

Ms. Green: Okay, so is that the end of your testimony?

Mr. Saruwatari: Well no I just want to finish off by saying okay right now I say that you approve it. Why? Because you've already approved it, period. And it would be totally unfair to her, totally for her with what she has invested because of what you did. She invested time and money to finish, you know to continue to do what she had to do to get the application. So if you do not okay this application it's, it's morally wrong first of all. So that's all I have to say. But I think you should have you know --. And personally you know I have no, no -- I don't know how to put it. But anyway like I said I told her before too nothing personal against her but I was just based upon what was presented the first time when she made her application. But like I said now that you have approved it and you made her jump through more hoops to finish off what she started I believe you have to finish it and let her have that application.

Mr. Delacruz: Like I said thank you Myles. You have managed to whip us and pat us on the back at the same time.

Ms. Green: Myles I don't know if we can say that that whole list of names none of those people live within the 500 foot radius. I mean we didn't go through the --.

Ms. Menze: . . . (Inaudible. Did not speak into a microphone) . . . their post office box so it's really hard to know where they live when you have a post office box.

Ms. Green: Right. Right.

Ms. Preza: I just wanted to add just the top off my head from all of the letters and the support that we did get I do remember quite a few of them were within the 500 foot, like some of her neighbors and so I don't --. I mean I understand what you're saying about people living outside of that like how does this affect them, but yes I agree with you know we should move along.

Ms. Roxanne Catiel: Well Chair I've got something.

Ms. Green: Yes.

Ms. Catiel: So I would, I would say that people who are in support but they're not within the 500 radius, I would think their signature is invalid because it's not -- you know they're not in that 500 radius neighborhood so they won't know the effect you know. And then I did track, last night I was going through all the list, majority lives down Lalakoa and Olopua Woods.

Ms. Green: Okay, thank you. We need to find out if there's any other public testimony and close public testimony before we can go on with the discussion. Yes, did you want to?

Mr. Bart Baldwin: My name is Bart Baldwin, and it's a question, not a testimony if I can ask the question. And it's because John you said two people were not given the notice, but thought in November you had said it was 40 or maybe 50. Did I mishear on the addresses? So it's 40 or 50.

Ms. Mitchell: . . . (Inaudible. Did not speak into a microphone.) . . .

Mr. Baldwin: Okay, so two is not accurate in the 500?

Ms. Mitchell: In the 500 foot radius, I think there were 30.

Mr. Baldwin: 30. Okay thank you I just wanted to clarify.

Ms. Green: Clayton, could she put the answer into the mic please?

Ms. Mitchell: Sure Debbie Mitchell. Yes I believe when we added them up there were 30 individuals in that 500 foot radius that did not receive the initial notices, but then did again when we did the last notification.

Ms. Green: Thank you. Wait, wait, wait. I just want to find out about public testimony first okay. Are we done with public testimony? Is there anybody else who would like to testify? Okay, I'll close public testimony and then John you may have the floor.

Mr. Delacruz: I have a very heartfelt comment to make. People make testimony and they always say this is Lanai, this is Lanai. Lanai is a special place. Lanai is a special place. This thing about not being in the 500 foot radius and you don't count. Let me relay to you when I was living Citrus Heights, California. There was a housing development going up two blocks from my house. And in Sacramento they delineated those areas very strictly. And one of the things was traffic because there's this thing where when you go to work this main street everybody cuts off everybody and that was before road rage. But I think road rage is every place. So I went up and I said you know I drive that road every day and you're going to put up you know a multi-building housing unit there and increase the traffic, and blah blah this and sewage this and whatever that. And the councilman said where do you live? I live at Citrus Heights. Oh that's outside the area so sit down. So I'd like to remind all of you that say this is Lanai, remember this is Lanai. You can live in Olopuia Woods and know somebody who lives in Iwiole and vice versa. So remember that. Thank you.

Ms. Green: Okay, thank you John. Do we have further discussion here? Any further discussion or would --? Jared.

Mr. Rabaino: Jared, on your map and the address that you have how many people in that 500 radius with the petition that you have that have said that they approve that are residents in that block where Alicia is going to put her STR? In other words Roxanne lives close to her okay so she's one that has been notified okay. You go within the circle, Lanai Avenue -- I mean Fraser Avenue, yeah that's Fraser Avenue, okay. And then you get Lloyd Cockett's house, the next house, the other two houses and then get her house. How many letters were sent to those on Fraser and the back of Fraser where the house is located that responded when you gave out the notification by mail within that 500 radius? So how many located in your area? You get across the street from you guys, you get Richardson from you guys, right, so that's two. Okay now you come back and you going to where Charles Palumbo them live, I mean Palumbo live. Okay you come to Tanigawa house okay. Were those people in that front row got letters saying that they was going have a short term rental in that block of the 500 radius? Because everybody that I look on that letter is not within that 500 radius. They're supporting her technically.

Ms. Green: Jerry, we've been down this road. The first letter didn't go to everybody. The second letter they have said went to everybody within the 500 foot radius. No one wrote a letter. Nobody living within that 500 foot radius wrote a letter against the short-term rental.

One person wrote a letter in favor of it. There was one other letter written against it and that was written by our Council Member Riki Hokama.

Mr. Rabaino: That's recently?

Ms. Green: That's recently. And if I recall we already made a decision based on the testimony in October when the original letters went out and our decision at that point in time was in favor of this short-term rental given the current testimony at that time. So I think we don't need to go back and find exact numbers because we made a decision at that time.

Mr. Rabaino: Okay I got you. So my proposal and my motion is and you guys can deliberate, we accept this and we move forward to put a cap on the 500 radius how many homes. If you folks, the eight of you folks agree to accept and not rescind. End of motion. Well you guys can discuss it.

Ms. Green: Jerry can we have a clean motion? And just address the --

Ms. Preza: So you're moving to --. Yeah without the thing about the short-term rental home you're moving to just leave the decision as we made it in October for approval and we do not want to rescind. Is that what you're --?

Mr. Rabaino: Right, that's good enough.

Ms. Preza: Okay I second that.

Ms. Green: Okay is there any further discussion on this? We've discussed it to death.

Ms. Catiel: Okay so I know I'm the only one who was against so my vote is --

Ms. Green: Roxanne we're going to vote again. We're going to vote again on the new motion.

Ms. Catiel: It's a new vote?

Ms. Green: Yes. It's a new vote.

Ms. Catiel: Okay.

Ms. Green: And the new vote is to let our decision of October stand okay. So we are -- so the motion is to approve the short-term rental, period.

Mr. Delacruz: . . . (Inaudible. Did not speak into the microphone) . . . a condition on it.

Ms. Green: But I'd like to take the condition off. We're taking the condition off Jerry.

Ms. Preza: Okay wait. So we have to kill that motion real quick? I think everyone was confused because you said oh so we can proceed to put a cap on the --. I know but --. So what was the --? Sorry I'm confused. Can I just make a motion? Can you just withdraw your motion?

Mr. Rabaino: For the record I'll withdraw and somebody can make a new motion.

Ms. Preza: I move to let our October decision to approve Alicia Alcantara Brandt's permit stand.

Mr. Delacruz: I second that motion.

Ms. Green: Okay, do we have any further discussion? All in favor raise your hand. Opposed? I guess it's unanimous now. Are you voting for it this time Roxanne?

It was moved by Ms. Shelly Preza, seconded by Mr. John Delacruz, then unanimously

VOTED: To let the October decision to approve the STHR permit stand.

Ms. Catiel: Yeah, I feel sorry for her . . . (Inaudible. Did not speak into the microphone.) . . .

Ms. Green: Okay thank you. Let's move on. Congratulations. Okay, I would like to make a comment at this point in time because we are going to move on to the short-term rental issue and that is if you take into consideration what Butch Gima said and that was looking at blocks instead of the 500 foot radius, actually she would have been only the second one within that area. So if we were to adopt a new set of regulations that went more or less block by block this would not have even come to us. Just a, just a point of discussion. Actually hold on second.

2. **Discussion of establishing caps for [Short-Term Rental Homes and Bed and Breakfast Homes on Lanai](#). (Previously scheduled for the November 28, 2018 meeting. Discussed at the December 12, 2018 meeting and deferred.) *(Commissioners: Please bring the copy of the [September 28, 2016 Lanai Planning Commission meeting minutes](#) and the materials previously distributed in prior meeting packets.)***

The Commission may determine whether a cap(s) should be established and if so what the suggested cap(s) should be proposed in future legislation. The Commission may then direct the Planning Department and the Department of the Corporation Counsel to draft such a bill for public hearing at a future Commission meeting.

Ms. Green: Okay I would like to move on to no. 2 here which says the discussion of establishing caps for the short-term rental homes and bed and breakfast homes on Lanai. This was previously scheduled for November 28th, 2018 meeting. It was discussed at the December 12th, 2018 meeting and deferred. So Commissioners may determine whether a cap or caps should be established and if so what the suggested cap or caps should be proposed in future legislation. The Commission may then direct the Planning Department and the Department of Corporate Counsel to draft such a bill for public hearing at a future Commission meeting. So again what we decide today is not going to be final. It will be a recommendation and then there will be a public hearing on top of it. So having said that, Clayton?

Mr. Yoshida: Thank you Madame Chair and members of the Commission. This matter was brought forth or discussed by the Lanai Planning Commission on December 12th after lengthy discussion on the three bills that were presented proceeding that. And I think the only recommendation from the Commission was that they wanted to review all future short-term rental home permit applications but that would require an amendment to the ordinance of 19.65.

So we're here to see if the Commission wants to establish a cap for short-term rental homes, and what the suggested cap should be. And then the Department would work with the Corporation Counsel Office to draft a bill that would go to public hearing at a future Lanai Planning Commission meeting.

Ms. Green: Thank you Clayton. Jared do you have anything to recommend here or to say at this time? No? Okay. Commissioners, all right, we had a lot of discussion last time and had some time to think about this. I think we were hoping that there would be more community participation at this meeting but I don't see any at this point in time. So what is the current feeling of the committee?

Mr. Delacruz: I have a question for Clayton. Besides the cap are there any other conditions we can impose for considering transient accommodations? That's bed and breakfast, short-term rental homes, and is there a -- what's the third one?

Ms. Green: Well at this point in time it's an administrative decision if there aren't two others within the 500 foot radius. And I think there's been some discussion that we wanted all short-term rental permits and B&B permits to come to the Council.

Mr. Delacruz: Yeah, can we ask for the Clayton?

Mr. Yoshida: By Chapter 19.65 all B&B Permits have to come to the Lanai Planning Commission so there was one by Kepa and Onaona Maly. They were the first B&B Permit application on the island of Lanai. But even if they were the first they still had to go before the Lanai Planning Commission.

If the Commission wants to propose amendments to certain standards or criteria in the ordinance you know we could try to work on drafting that for the Commission's consideration and public hearing. But again that would require action, final action by the County Council.

Mr. Delacruz: And the reason I asked this is question is in the timeframe of October 2018 and January 4th, 2019 three short-term rental homes had been approved that never came to the Lanai Planning Commission because they didn't set off any triggers. So absent any other limits or whatever that we can impose the only way we can get a handle on this short-term home thing is caps which would be a trigger. And that's the start of my discussion.

Mr. Yoshida: Well again I believe the Council took an action in March of last year to require a five year durational ownership requirement which took effect in, on September 27th, six months later. Of course there was sort of when you establish a deadline then there's always that urge to try to get in before the deadline. So those that have come in before the deadline are noted on the open Lanai Permit application. So if you take out Alicia's application I believe there are six that are pending on Lanai in addition to the 17 that are approved. Since then, since September 27th we have not received a Lanai short-term rental home permit application to date.

Mr. Delacruz: But there's also ways around that five year thing. If, if you purchase, if you purchase a short-term rental home from somebody that already has like you can't transfer the license, but you can apply within two years for a short-term rental home.

Mr. Yoshida: Well, they have to show us at the time of application that, one, the structure is at least five years old, and two that the applicant has owned the property for at least five years. They didn't have to show that five year ownership requirement to us prior to September 27th of last year, but now they do.

Mr. Delacruz: But there's no exception on the two year thing. If you purchased a short-term rental home from somebody who had a license whether it expired or not, if you owned that property for two years you could then apply for a short-term rental home license?

Mr. Yoshida: No because the short-term rental home permit is nontransferable, No. 1. And No. 2 depending on when they came in, if they come in after September 26th they have to show us, the new applicant has to show us that they have owned the property for at least five years, or we will return their application because they didn't meet one of the permit, the application's requirements.

Ms. Green: Just a quick question Clayton. When you say there's six pending, in addition to 17, is it now 18?

Mr. Yoshida: Yeah, there's now 18.

Ms. Green: And six more pending?

Mr. Yoshida: Yeah because of 444 Lanai Avenue was . . . (inaudible) . . .

Ms. Green: Yeah. So the six pending did not include that one.

Mr. Yoshida: Again, some of them may be located within --

Ms. Green: No, no, no. What I mean is when you said there were six pending you weren't counting Alicia's property.

Mr. Yoshida: I wasn't counting.

Ms. Green: All right. So it's six more coming up, add the 18. And these are all people who applied within that deadline of September 27th of last year, yeah, and none since then. All right so folks do we --? Is there anybody in the audience that would like to do public testimony at this time so we can take your thoughts into consideration as we have our discussion?

Mr. Baldwin: A short one. I think the third type John that you were asking for is TVR. Is that right that Maui has transient vacation rental?

Ms. Thomson: I'll answer the question really quickly. So TVR's were a prior type of short-term rental, but that's been phased out and taken over really by B&B's and short-term rental homes.

Mr. Baldwin: So just the two types now.

Ms. Thomson: Right.

Mr. Baldwin: Okay. I don't envy a decision that you guys have to make because as a realtor it's about supply and demand. And someone selling their house wants to sell it for as much money as they can for someone who's lived on Lanai for long time or who's lived here for a few years. And yet someone wanting to buy it has a particular reason for why they want to buy it; owner occupied, as an investment property, to rent to long-term or to do a short-term. So you're kind of in a Pandora's Box and other communities have figured it out or have created limits and I just encourage you to be wise about it. That's all. Thank you.

Ms. Green: Thank you Bart. Does anybody have a question for Bart? Okay, do I have anybody else in the audience who would like to do public testimony? Myles, you want to speak again?

Mr. Saruwatari: Thank you. Myles Saruwatari. Now as far as the cap goes, okay, right now I believe Clayton said there was like 17 or 18 short-term rental, blah, blah, blah. So before you decide to set a cap I think you guys ought to look and go out in the community and talk to people to see who in the future might want to do this. Because if you set too low a cap

you're going to have to adjust it. You know five years down the line you may have to adjust it, and you can't be doing that every couple of years because then it's a moot point of setting a cap.

Okay, and the other thing is you know Butch brought up this thing about the block. There already is a density cap. It's built in. Two per 500 foot and more can be added coming to the Council. So going by block is really kind of another moot point because like if you count a block as a square, I mean, the rectangle or whatever. Okay now some of the streets going this way the blocks are one house deep and maybe what 60-80 feet. So you can go five or six blocks and have a short-term rental on each one if you count it by blocks. So what's going to take precedence? Your definition of density of a block or the County's 500 foot? See that's where I see a little bit of conflict. I suggest that you do not even consider the block definition for density. Like I said because here on Lanai the way the streets are built some of the blocks are one house, maybe two houses deep. So within a 500 foot radius by definition that the County has you can have eight, 10 houses. And if you count on the other side of the street, that's 14, 16 houses. So I would just recommend that the County disregard the definition of for density, disregard the block definition and just stick with the County because it's something that's consistent. You know even if you have four houses, six houses, 10 houses, it's still a 500 foot radius. Thank you.

Ms. Green: Thank you Myles. Good point. Anybody have a question for Myles? Jerry? Pardon? Okay, we're doing public testimony right now so if you can wait for just a minute. Is there anybody else who's wanting to do public testimony? There being none, I'm going to close public testimony, and Jerry you may ask your question.

Mr. Rabaino: Clay, on your paper over here, okay, clarity, it says short-term rentals operation may have up to total of six bedrooms distributed over two licensed short-term rental housing dwelling. Why is that language there when Lanai, yeah, on the bottom it says the County's permit database short-term rental home permits approved. All these homes that you have on this list is approved already by Maui County or it refers to the squares on this map? Approved, okay. So clarity, this line over here that I read earlier, a total of six rooms. Majority of the homes over here is two bedroom and three bedrooms. You lucky if you have four.

Mr. Yoshida: I believe the ordinance allows up to six bedrooms. If it's more than six bedrooms then it's not used for short-term rental home, short-term rental purposes, then it's not a short-term rental home. It then becomes a conditional permit that has to go to the Council.

Mr. Rabaino: Okay Clay because I met three people, Sunday and Saturday, walking around the city, okay. One bought a home in Lalakoa III, three bedroom. He's been over here one week trying to get that new house going in Lalakoa III. Okay so I asked him are you going to turn this into one rental, he said no residential. I said good because we don't need any more short-term. Okay, is there language that we can use besides the caps? Okay within the radius of 500 tell me if I'm right or wrong. If we propose that we have within the 500 radius limited on a case by case does the Lanai Planning Commissioners will allow only two homes

per applicant within a month within the 500 radius? Because if this is approved then we got to start moving on this.

Mr. Yoshida: Well again if there's two permitted short-term rental home operations within the 500 foot radius of the application it automatically comes to the Planning Commission. That's a trigger.

Mr. Rabaino: Okay, but then again, yeah, just within the city limits okay because old folks are selling their houses, the pensioners and those that want to move away from Lanai. Okay I would like to hear a language in there that when they sell, when the realtor and the homeowner sells their home regardless if it's three bedroom or two bedroom, yeah, that the unit itself is going to be rented as short-term as a whole not individual rooms with parking onsite as you claim over here. That's the language that I would like to create and maybe you guys can agree.

Ms. Green: Jerry I think that this is off topic. We are deciding on whether or not we want to put limits on the number of short-term rentals that can be here, not the rules for those rentals at this time. Okay? Can we keep on topic? Okay, thank you. Okay, so --

Mr. Rabaino: . . . (Inaudible. Did not speak into the microphone.) . . .

Ms. Green: Well, I don't know. We had, we had some discussion and I think --. Sherry, do you want to say anything here today?

Ms. Menze: Well I've said so much already that last few meetings that I can reiterate. But personally I don't think we should have a cap at all because the five year ownership really is the rule that takes care of the fact that you can't have a short-term rental unless you've owned the house for five years. If we set a cap now do we know, have we really researched, have we really talked to people, have we really like Myles said gone out into the community and really figured it out? You know we do have five years before we really need to set a cap because the rule itself has taken care of that for us.

Mr. Rabaino: Well I agree with Sherry.

Ms. Green: Well Sherry but I mean somebody could have owned the house for four years already and next year is five years and they can apply, so we don't have five years.

Ms. Menze: I just think knee jerk reaction to rules create more problems than you can think of in the next two years. At least let's give it six months of a decision before we come with a hard core cap so that we can like Clayton said whenever you put a date on something everybody rushes you know to it to get to that date. Like he had said before there's 17 now, there's six more on the list, three had applied right by that deadline. Was that right? Something like that.

And I just, I just worry about people like if you know your father dies and you have the house and it's a family of five. There's five kids. One lives here, the rest lives on the mainland. They all five got to share the house, they don't want to sell it. They want to keep it. They can't afford the taxes. There's always one in every family you know who wants --. You pay, one's that's paying for it, one's that's not paying for it so they want to do a short-term rental to be able to pay the taxes, pay the insurance, and they can't rent it full time because they've got the one brother who wants to be there three months, four months out of the year. So I think we really have to give a lot more conversation to this topic, and really think about how we as Lanai people want to move forward with this instead of having a knee jerk reaction to -. Now if we didn't have that five year rule already in place, I would be going right now let's make a cap. The first meeting we had in was it in October? I was so into a cap. But really and truly when you really give it more thought and look at it from every single side and not just our own view point it makes it very difficult.

Mr. Rabaino: Okay. Okay. Can we change the five years just for Lanai and make it longer?

Ms. Green: No.

Mr. Rabaino: With no caps?

Ms. Green: No.

Ms. Menze: Excuse me. The thing about regulations are in my opinion and experience that a rule is made. To get a variance for that rule can take you up to two to three years because of all the hoops that you have to step through. If like let's say we make a cap today of 20 all right? So it's going to take us three years to get that through the Commission, minimum. Don't you think Clayton? Because by the time you get all of your paperwork in you got to have the County Council, you got to get on the agenda, and that's not just us deciding. Okay then in two years you go oh well gees we just made that now I want to change it because it wasn't enough and I want my friend over here and I want my cousin and your own family want to change it so that you can rent your papa's house with the five kids. And so -- then it's going to take you another three years to get through that. Changing legislation is not an easy process.

Ms. Green: Does somebody else want to say something here? I have. Chelsea, did you want to say something? Sure. Sure please.

Ms. Chelsea Trevino: Previously you mentioned you know with in a cap situation that when there were --. I don't know maybe we were one or two percent away from the cap the Commission would be notified. I think it was something like that you said. In the situation of a cap, I thought that was --

Mr. Yoshida: If we're within 10% of the cap.

Ms. Trevino: 10%. Okay.

Mr. Yoshida: We have to notify the Council.

Ms. Trevino: Okay.

Mr. Yoshida: That we're at -- there's only 10% of the cap left and then the Council has to -- would act on it or deal with that notification.

Ms. Trevino: Okay so that was my first question to make sure everyone understood. So if a cap is say decided on when we're up to 10%, there's 10% left of that cap then we get notified right? So that gives us some numbers to look at. Because also I was looking at -- we have to think about --. So we have the new rule with the five years. So we know right now from this point forward you have to own a home for five years before you can even hope to apply for a short-term rental. We also need to look at the next five to 10 years and the plans for the island because we do know that there's the County affordable housing that's going to be built which is a limited number. But I believe also Pulama is also building some sort of subdivision as well. So that's going to be an increase in homes as far as availability for residents to have home. So that's something for us to consider as well. And looking at that when we talked about how many permits we currently have approved. Or I mean how many permits are currently approved, how many are on the list to be approved or whatever or are in the application process. If we even look at this list that was given to us you can see that in 2017 out of 17 of these permits 10 of them came in 2017. So what is the reality of how many more possible people might be buying homes and asking for short-term rentals?

And then we have to also weigh in the fact of yes as Bart mentioned you know when you're selling a home or buying a home -- well I guess more when you're selling a home -- you want to make some money off it right like that's kind of part of what you want to do. Whereas in some cases it's just you need to get rid of the home because it's a burden for you and you can't, can't manage it. Now we have to take into consideration say a short-term home rental cap, is that a benefit to our community? Because this is what we're weighing. We're weighing the material or the monetary amount that somebody can get for selling a home versus I don't know if quality is the right word, but how, how we would like our community to be whether it's having a lot of different people owning homes or knowing the people who live next door to you. Now you know when you talk about like the lifestyle of Lanai. So I think those are all things that like come into the factor of deciding whether you want a cap or not because in reality the 17 that we have now --. How many homes are there for sale on Lanai right now anyways outside of that?

Mr. Baldwin: 14.

Ms. Trevino: So 14. There's on 14 homes for sale, up for sale right now versus the company buying homes too right if somebody sells a home and what not. But I just wanted to put these

things out there because --. And then what are we thinking in the next 10 years. To be honest I am for a cap because I'm one of those Lanai people who doesn't feel like it's fair for those of us who live here and can't afford the amount of money that people who don't live here can afford. Yeah they got to wait five years. I understand. That's a good -- that is absolutely wonderful because then that makes them rethink do I really want to buy this as an investment. However as a Lanai resident and knowing the limited incomes that we have here are we trying to help contribute to bettering our community and the people who live here or raising the value of our land. You know what I mean?

So I think those are things that we have to think about too and figuring out like you said the cap, if we have the cap and this 10%, how many have we already gotten in the last five years. How many more do we think we're even going to get in the next five or 10 years, and is the five year thing enough? But I just wanted to throw some of those things out there for us to think about because I think the reason for a cap is different for everyone. And that was I think the comment about going out in the community and finding out. I asked people. I have my own opinion but I asked people what I think and I feel like at this point it's almost and the people I talked to it's almost 50/50. Half don't want, half do want. But I think it depends on, on who you talk too and what they have and what their you know -- what their families have and what they don't have and how long they want to be on this island and so forth.

So math wise if we're looking at a cap we're going to figure out how many applications have we had in the last five years, how many homes do we anticipate being built in the next five to 10 years, how many homes we just asked are for sale and kind of go from there and decide you know. So that's, that's what I wanted to give.

Ms. Green: Thank you Chelsea. That was very well thought through. Anybody else have comments?

Ms. Menze: Clayton when you have an affordable housing development how many years is it before somebody can sell their house once they buy it? I mean can rent it or not live it? Okay let me start over again. When you buy an affordable home are they generally owner occupied or can you buy an affordable home and speculate?

Mr. Yoshida: Well I guess depending on how it's, how it got its entitlements. If they went through a 201H fast track process probably they have to retain it as affordable. Because that's the exchange that you're on the fast track.

Mr. Delacruz: My answer to Shelly's question -- Shelly? Sherry? Okay -- is, is yes. Lalakoa III had buy back conditions. Let me finish Jerry. And none of the houses were bought back. So a house that was bought for \$60,000 when they sold it -- just a few cases, yeah -- went for \$300,000, \$365,000 because the County did not, does not, will not have the money to exercise this buyback clause. And the company I think their numbers was almost close to zero also. So let me reiterate the reason why I recommend we have cap is because the social conditions, the economic conditions will change so fast on Lanai. The only way we can

monitor the trends is when Clayton notifies us that we're reaching the 10% point. Because otherwise you know we'll be gone. All of us here will be gone when they hit the limit. Yeah. But at least the new members two years from now when none of us are here and Clayton if he isn't retired will say you know Lanai Planning Commission members you're hitting your limit what are going to do about it? At least maybe he'll give them the history and they can say more than "duh."

Ms. Green: Okay. Did you want to say something Jerry? No. I'd like to say something and that is in response to some of the comments. This is not a new discussion. This if you all remember we got something from September 28, 2016 when this whole subject was broached at that time and people were making recommendations on caps. And the whole thing came up again because we kept on saying everybody else had caps. We kept on saying where are our caps and these never made it through Council for approval so it's not like this is just a new issue. And I guess I'm a little frustrated with the community because we've had two meetings now on this and where's the community you know? They haven't shown up. So I don't know I was just doing some figures myself here and the last time they told us that there are 929 non-Pulama Lanai homes in Lanai City. Okay. So of those homes now 18 are short-term rentals with another six up for approval. And Clayton by the way one of them looks like it's got to come to the Planning Commission because it looks like it was near two others. Is that true? That is true? Is it only one of them is going to be coming here? More than one? Could you, Jared, could you tell us how many?

Mr. Burkett: I can only speak for the ones that I've been assigned to. There's another planner that have been assigned to some of them but I have two that will have to come before you for sure. And I believe there's one more application that hasn't been turned in that the consultant is working on.

Ms. Green: Okay thank you. So of the six coming, three we will be having a chance to hear the testimony and etcetera and make a decision on that. So I guess we better have our house in order this time around.

So anyhow going back to what I was looking at and Chelsea you bring up a good point about this proposed project by Pulama Lanai for 200 houses. 102 of those are going to be affordable and the other 98 will be I guess people will buy and over five years could probably turn into a short-term rental. One of the things that was mentioned in the September 28th, 2016 meeting was there were numbers that were thrown out and also a 5% was thrown out. So I did a little math on the 929 that are there and that's about, putting a limit of about 45. If you say 5% of available housing would be 45.

Ms. Menze: . . . (Inaudible. Did not speak into the microphone.) . . .

Ms. Green: Were you? Okay. And then if you have, well you have another five or so with the affordable housing but that would be like eight, 10 years out down the line. When I was thinking about this before coming this evening have a question for you Clayton. Could we

make a cap with a provision that the Lanai Planning Commission has the discretion to increase it without the County approval up to a certain number? In other words one of the discussions that we had last time was that okay you're getting near the cap now, it's going to take three years to go through the County before we can increase it. But if we put language in ours and they accepted it we could have that cushion in there to short circuit it so that it would come straight to the Lanai Planning Commission to increase the number rather than having to go back to the County Council.

Mr. Yoshida: I guess I would ask for comments from the Corporation Counsel. But I believe if the Council is relinquishing that authority to the Commission I believe they could do that. But it's going to be the Council's decision.

Ms. Thomson: Thanks and I agree with Clayton that if the Council change the short-term rental home ordinance to leave the caps up to the individual islands or communities they could make that choice. I don't know that it would be likely that they would relinquish that authority but you know the Commission could ask.

One of --. I'll just keep it very brief but caps are one control over the number of short-term rental homes in a community. But the ones that come to the Commission and this is both the Director from the Department and also the Commission has to look at the various criteria for approving or disapproving. And a lot of them have to do with the effects on the community, and the community input, adverse impacts, noise, traffic, garbage, the number of permitted short-term rental homes and the distance from the properties, the number and substance of protest. So you have, you have criteria. If they're coming to you it's not a rubberstamp that you have to approve every single one that comes. There's going to be ones that just don't, they don't fit, and you can find the reasons specific to that application that they just don't work and you would deny those. So you're not left without power. A cap can be sometimes a pretty broad sledgehammer and it could even act you, you know, get a little rushed to try to fill those slots by people who might be holding off now for whatever reason. So just some brief comments. Thanks.

Ms. Green: How often does the County reject one for the various reason she was just stating?

Mr. Yoshida: Well I would say on Maui, Maui Planning Commission has denied short-term rental home permits.

Ms. Green: But I think I'm thinking more about the ones that are done administratively that don't come to us so it just comes to the County to vet and then approve. And so how often does the County really take all of these things into consideration and reject a request for a short-term rental?

Mr. Yoshida: Well I guess if we find out later that there were misrepresentations made by the applicant we could move to revoke the permit. It may not be that often but then the permit is for a limited duration up to three years. And we do look at Request for Services complaints

that have been generated against the property as well as police reports or complaints, noise complaints, whatever that have occurred during the time of operation, and we may decide not renew the application based on those factors.

Mr. Burkett: Staff planner Jared Burkett. So I just wanted to also comment that while we're reviewing the application if it's not being triggered to go to the planning commission for approval there's still many obstacles usually that the applicant has to go, get through such as proving ownership. There's -- or something that doesn't have a building permit on the property. So there's many things that keep applications from being approved. But it's not like just a no. They have the opportunity to correct things while the application is open so it's kind of a hard question to answer in that way.

Ms. Preza: Thank you. I had a quick question about you know how you mentioned and we've talked about how there's a three year limit on short-term rental homes, right? So does that mean when it comes up for okay I have a short-term rental home I would like to renew. Does that just goes straight to the Planning Department and it doesn't --. You know for example -- . I'm sorry what I'm trying to say is you know the ones that were already approved within a radius and they didn't need to come to the Commission before because there weren't short-term rentals around them. Now there are after three years. When it gets -- when they apply for renewal does that mean it has to come to the Commission or is it just going through you folks?

Mr. Yoshida: Typically the renewals are handled by the Department looking at compliance and also complaints. However we've have had occasions with say with bed and breakfast home permits where the Commission approved the initial permit and they specifically required as part of the condition that they approve any renewals.

Ms. Preza: I have two questions but the first is why is it different for a bed and breakfast -- if every bed and breakfast has to come to the Commission, what makes a short-term rental home different? I know the ordinance doesn't say that but is there a reason?

Mr. Yoshida: I believe the bed and breakfast home permit ordinance came first in 2009. At that time given the composition of the Council for Molokai and Lanai applications the Council Members from those areas wanted the Commission to review all B&B permit applications. The short-term rental home permit ordinance became effective in 2012 and there were not those restrictions at that time that all short-term rental home permit applications come before the Molokai and Lanai Planning Commissions.

Ms. Preza: Is there a reason for that though? I know you're just saying it happened later. Okay. Maybe -- it's okay. I guess I'm just asking because you know I think we've expressed that we would like applications to come to us and maybe that's because I know there are a lot of checks but you know I think we just like to be involved in what's happening in our community and giving people ample opportunity to share their opinions. And obviously with Alicia's applications people had a lot of feelings about that. But I guess what I'm asking also

about the renewals is because I understand what everyone is saying about you know if we have a cap then maybe a lot of people will be rushing to try to get a permit before that cap happens. But if there's a process where if you're going to renew after three years and then it has to come to the Commission then it wouldn't be just like oh well if you have a short-term rental home permit already then you just probably can keep it indefinitely and then nothing can change. Because I think everyone, I think everyone has these really thoughtful comments about how our community is an evolving one. And you know I agree with Chelsea, what Chelsea was saying about how we do have look forward and about you know what changes are going to happen to Lanai. But I also feel like a lot of people here want to keep the character and the integrity of this community and I think that's why this discussion has been so difficult because I think it's just people don't want to see too many but while also understanding that we want like what Sherry was saying about we want to give people opportunity to rent their homes if they want.

Sorry back to my question about the renewals. Would it be possible for you know if a house is up for renewal for them to come back to the Commission just so we can reevaluate?

Mr. Yoshida: If it's so specified as a condition of their original permit that you know the renewals be granted by the Planning Commission that they come back to the Planning Commission. Now again when you have a short-term rental home permit application you have to send out a notice of application to the owners within a 500 foot radius. And if 30%, at least of 30% of the properties are in protest that's a trigger for Planning Commission review. So it may not have at least two permitted short-term rental home permits within the 500 foot radius. But if 30% of the properties are in protest at least they would have to come -- it will kick it up to a high level of scrutiny which will be a public hearing before the Planning Commission.

Ms. Green: Am I understanding correctly here. When my permit is up in three years I have to send something, a letter --? Or what's this five people within 500 foot radius, who sends out a letter asking or is it just if you've just accumulated protests or --?

Mr. Yoshida: For the original permit application part of the requirement is that you send out a notice -- besides putting up the sign -- you have to send out a notice of application to the owners within a 500 foot radius of the subject property saying that you have 45-days to file a written protest letter. If 30% or more of the property owners within the 500 foot radius are in opposition or filed that protest letter it kicks it up to a higher level of review which is by the Planning Commission.

Ms. Preza: Sorry so that's for the original application for a permit.

Mr. Yoshida: That's correct.

Ms. Preza: I think our Chairperson is asking about the renewal. If they're applying for a renewal do they have to send out notice to their 500?

Mr. Yoshida: No, they do not.

Ms. Preza: Okay, thank you. I think I only brought this up because you know to just address one of the many concerns we have about if we establish a cap then you know everyone who already has them gets to keep them unless there's some kind of issue and then you know are people are going to rush to be --? I don't know. Or are people are going to be trying to rush to fill that cap and then is that fair? Does that kind of answer of what you were saying about the renewal?

Ms. Green: Do we all want to take a couple of minute break to think about this or are we happy to just continue? All right why don't we take a five minute break and we'll kind of come and see if we can conclude this.

(Lanai Planning Commission recessed at 6:30 p.m. and reconvened at 6:38 p.m.)

Ms. Green: Okay could I begin the meeting again? Commence? All right I think this discussion has gone on for quite a while and we do have a, a suggestion here that in, in the interest of not wasting time, how many of us are interested in looking to establish a cap? So can we have hands raised? So we have --. So you don't know yet. So you want to continue the discussion. Because at the end of the day if we're not going to vote on caps we might as well just quit right now.

Ms. Menze: Personally --. I'm sorry.

Ms. Shirley Samonte: Yes, I have a comment. So just wanted to clarify. We already have triggers in place that would bring the applicant in front of the Commission when they're applying for the short-term rental. So the triggers we have in place is that if the initial application, when they send out the notices 30% of the individuals that receive the notices oppose right, and write an opposing letter, that would bring them in front of the Commission even if there is no two short-term rentals within that 500 radius. Correct. So that's one trigger.

The other trigger that we have is that if there's, if there is going to be more than two within the 500 foot radius it comes in front of the Commission.

Mr. Yoshida: Yes if there's already two permitted short-term rentals.

Ms. Samonte: If there's already two it would come here. And then the other, I guess, the other factor that would help control it is that we have that five year ownership.

Mr. Yoshida: Yes, part of their application they have to show us that they've owned the property for at least five years.

Ms. Samonte: For at least five years. Yes and then in the renewal process you would take into account if there's been any complaints towards that short-term rental.

Mr. Yoshida: Yes. Correct.

Ms. Preza: I'd just like to add on one thing to answer because Richelle made us aware of it during the break. But another trigger is if during the original application if any household adjacent or across the street from the applicant, if two -- sorry -- if two of those people adjacent file a protest with the County Council then it comes before us also. But that's just --. So 30% of the general 500 foot radius or you know that -- or immediately, two letters immediately adjacent or across the street.

Ms. Samonte: And that's for the initial application.

Ms. Preza: So I didn't know that but Richelle told us that.

Mr. Rabaino: Is that an existing policy?

Ms. Preza: That's an existing policy that we're not -- you know that is just there.

Mr. Samonte: So just my personal opinion is that I feel that we have triggers in place that would limit or bring it in front of the Commission. And that I personally am not comfortable in putting a cap on it in which I don't know or haven't really studied what the projection of our community or economy is going to be within the next few years. And putting a cap on it would maybe to me be more difficult to adjust or revise if we already have that cap in place.

Ms. Green: Okay thank you Shirley. Anybody else?

Ms. Menze: Yes I would really like to recommend actually that we give this -- think about the caps and think about how we would apply that. But why don't we give ourselves you know we're going to be here awhile at this Committee. But if we give ourselves like six months and come back and revisit it after we've really thought hard about maybe the caps, maybe have a little more idea about future like Shirley was saying you know future economy. Maybe we could instead of deciding today on what cap we're going to make because how do we just come up with a number. I know Butch Gima has really thought hard about this and he's got that 40 that he wrote on his list as for public testimony. When you, just for math sake, let's say we have 1,000 homes. You said we 900-and-some. So if we did 40 that's 4% of the homes that we have here. You know if we did 50 that's maybe 5% with the math. And it's really hard to decide. It's really hard to know what cap you would put if you were going to put a cap.

Ms. Preza: I have a question -- sorry -- kind of in relation to that because I think you're expressing that you know you would like more time to think about it and maybe talked to

people in the community. But since we're tonight only really talking about if we would like to recommend to the Council or to the Planning Department to create legislation that we would again need to talk about. How long would it take hypothetically to create that piece of legislation? Would it take six months? Because then we would be able to discuss. I don't know.

Ms. Green: No what I think what she's saying is if we propose something here, they'll go back, they will write it up. You will write up something. Then it will come back here and we have public testimony on it. So what we're saying whatever we decide today is really just a beginning of the dialogue. I mean even though this dialogue has been going on it would be getting to a point where perhaps our audience would be a little larger.

Ms. Menze: So in that case if we --. Go ahead.

Ms. Preza: Oh sorry. But do you know how long it would take for the Planning Department to draft that kind of legislation just so we can think about it?

Mr. Yoshida: Well, I guess we, you know, we would be working in conjunction with the Corporation Counsel's Office so --. Well I guess it would probably be at least several weeks.

Ms. Preza: So minimum several weeks, but up to like a few months or --? Okay, okay.

Ms. Green: So in other words we could be, it could be the February meeting or maybe we say if we do this we want to defer it until March. In other words to give enough time in the community for the community to get engaged. Yeah so if, if we did that then say we made a proposal today, say we took Sherry's number of 50 and we made that and it gets written up and we have the public testimony and everybody says no, no, no, we want 60. At that point in time we could tweak the figures before it went to the Council. And then once it left here it would probably several years before it would actually go into effect. Is that correct?

Mr. Yoshida: It's hard to speak for the timeline of the Council. It could take a while. I mean depending on how much they have on their plate, whatever committee is handling this type of legislation. But then it could be faster. I mean it's just hard to, hard to say what their priorities are.

Mr. Rabaino: So we're the last island to design one for our community. Because Molokai and Maui's already established right?

Mr. Yoshida: Well as far as the community plan updates, yes they've been adopted.

Ms. Trevino: So I'm just thinking about because us not seeing people here in regards to discussion of the cap versus us seeing people here when someone has an application that's in front of us for us to take a look at. I think a part of it has to do with the personal connection to whatever the application is and that might be why. I wondering if because you know we

talked about all these triggers and there are things that will bring things to the Planning Commission. Are we putting a cap because our community isn't educated and that's what I'm wondering at this point is because there are these triggers. Does our community know that if one or two people receive a letter that there's going to be a short-term rental next door to them and they can oppose it and bring it to the Council. Do they know that? Do people know that if 30% of the people around that house that's asking for an application sends a letter in saying "I no like" signature that it will come to the Council? So I'm wondering if we're creating a cap because we actually have a community that doesn't -- because I wasn't aware -- that isn't aware that they do have power in their hands to bring something to the Council that they may or may not want in their neighborhood. And I think a part of establishing a cap is that whole worry of, oh well all they got to do is buy a house over there and there is no short-term rental. They can put in the application. It's approved and they got it and we didn't even get to say anything. Because I think that's part of possibly that panic issue with the cap thing. So I'm just wondering like is that a community thing that we have to advocate for education? Is that a County thing like how are we helping to...to make this decision? Because that's why people aren't saying they want a cap or not, or some are. I mean definitely there are people who are saying that they do and some who say that they don't, and other who don't even know. But they don't know how it's going to affect them or they you know have no idea or they don't think in the terms that some community members think about the future. And some people are just living today, and this is where I am today, and this is what I'm doing today. So I just want to make sure that we understand that what is the purpose of the cap, how is it going to be used. Because just because we put a cap, say we say 50, which right now we're at 23, so that's not much more. Half. That doesn't stop 50 short-term rentals on different little blocks that don't have short-term rentals around them to put in their application and be approved. You're still going to have 50 short-term rentals that some people may not want in their neighborhood. So what I'm saying is, is it really more a thing of education and understanding the process and making sure people know that if you want it to come to the Commission and have it heard. And even us as Commission, it's not about our opinion of things, it's what we listen to the testimony, positive, negative. What are the positives? What are the negatives? You know we have different ways as to how we want to help again built up community members as well, right? I mean that was the whole thing with Alicia's thing was she's a Lanai person who owns a home who rents it to businesses on Lanai who need it, local families who need it. You know, so that was --. You know when people are complaining that oh there was already two there, why did you guys approve it? We approved it because she's doing what we want short-term home owner rentals to do for Lanai; give Lanai people something that they can rent.

So I think that my, my speech here is just to say that we really need to think about why are we creating a cap and what is its purpose and how is going to affect things versus do we really -- we might already have some stuff in place that actually is, actually quite wonderful. And so maybe it's more a matter of who takes the responsibility of sharing with the community this is the process so that they're given the tool to that need to take hold of their own thing. Yeah.

Ms. Green: Okay so where are we?

Mr. Delacruz: I think we spent too much time on this. I would have at minimum prefer a cap but it's not going to pass so I move that we defer this item until at least April of 2019. And in March of 2019 whoever shows up to this meeting can decide whether we need to take it up or not. Otherwise just let it go away. And I won't be here for the March meeting.

Mr. Rabaino: Is that a motion John?

Ms. Green: I believe that's a motion.

Mr. Delacruz: I move that we defer this discussion of caps for short-term rental homes to April 2019 meeting on the condition that during the March 2019 meeting the Lanai Planning Commission will decide whether or not to actually take it up during the April meeting. That gives everybody some time to think about it and whether or not they want to do it.

Ms. Green: Do we have a second?

Mr. Rabaino: I have a second.

Ms. Green: Okay John has moved and Jerry has second a motion to defer this until the April meeting on the condition that Commissioners agree to continue this discussion at the March meeting for April. Okay all in favor?

It was moved by Mr. John Delacruz, seconded by Mr. Gerald Rabaino, then unanimously

VOTED: To defer the discussion of caps for short term rental homes to the April 2019 meeting on the condition that during the March 2019 meeting, the Lanai Planning Commission will decide whether or not to continue discussion at the April 2019 meeting to allow the Commissioners time to think about it and whether or not to establish a cap.

Ms. Green: Okay, we're kicking the can down the road a little longer. Yeah is there any way we can get notice out so maybe we get a little more community involvement? Because at this point in time --.

Mr. Rabaino: Yeah we should. Yeah put it in Lanai Times and post it on the store because majority of the younger generation don't know about all these triggers. Okay because for me when I --

Ms. Green: Jerry?

Mr. Rabaino: -- got into my house, 10 years this trigger not going help.

Ms. Green: Jerry, apparently when people get these letters -- Richelle just showed me -- in the letter it tells them how they can object. So they can do it you know by fax, by text, by letter, whatever and the conditions on which they do it. So when they receive the letter that somebody within 500 feet of their house --

Mr. Rabaino: I know where you're coming Caron, but the people that I associate in this community a lot of them don't want to do text. A lot of them don't have access to fax. Some of them don't even know how to operate a computer.

Ms. Green: Let them call the County. I don't know. Along your lines though and in response to what Chelsea was saying is I just kind of sometimes wonder how many people are reticent to speak against a neighbor you know to say I don't want this in my neighborhood or something. So while the triggers are there, I don't know how many people feel comfortable using the triggers.

D. DIRECTOR'S REPORT

1. Reports from members who attended the Native Hawaiian Law Training on December 7, 2018.

Ms. Green: Well, okay, it's coming on seven o'clock and yeah we have...the Director's Report and I believe is that you Clayton?

Mr. Yoshida: Yes, there was a Native Hawaiian Law Training conducted by the Ka Huli Ao Center for Excellence from the William Richardson School of Law on December 7th. We had good representation from the Lanai Planning Commission. And before we get started with their input I would note that we recently received the power point slides of the presentations made by the various presenters at the training: Davianna McGregor, Melody Mackenzie, Malia Akutagawa and others. So we will transmit those to the Commissioners for their reference. And they just took a while. I mean staff and Commissioners were interested in getting copies of the power point presentations but our County e-mail system can only handle a certain volume before it starts to reject the e-mail. So they had to figure out a way of getting the electronic information to us. But we will get it to the Commissioners. With that I guess if any of the members, Planning Commissioners who attended the training want to report on what they got out of the training.

Mr. Delacruz: Well thank you Clayton for arranging to get those power point presentations. The training was very good for those without professional legal training. However it was aimed heavily towards lawyers, and that's why some of us asked for the power point print outs because we couldn't remember all of the percentages of how many acres to royalty, how many acres to local chiefs, and how many acres to Kanaka Maoli, the ones that attended the

land. And it gave me an understanding of why so few Kanaka Maoli ended up getting land. Only 5% of eligible males, and I don't know if females were eligible to apply for land. But only 5% of eligible farmers those who actually worked the land got land. And I think a lot of it was because no one explained to them the transition from royalty being responsible for the land and private ownership. And that had a lot to do with it. That besides the overthrow where the foreigner plantation owners thought they were in danger of losing their land so they just took it basically.

Ms. Menze: I was at that meeting, the training. I thought it was fantastic. I did get the print outs and I got the books because I thought each presenter was really terrific except for one was a real lawyer and he was really dry. But it really hard to --. He was a nice man. I really liked his stories until he started to talk about what he was supposed to be talking about and then it was so dry you could hardly stand it.

But the other ones, the girl from Molokai about the Iwi where it was just she was just so fantastic in her presentations and really explained why there's so much need of the archaeological parts of building permits just to protect those bones.

The water presentation was equally as fascinating. The girl was really terrific. She linked it to the story, the Hawaiian stories of water so it made it very easy to understand. Of course we got the print outs and the booklet for that.

What else did we talk about? The land again. I really enjoyed that. I thought it was so worthwhile and learned a lot.

Ms. Mililani Martin: I think what was interesting for me I mean just to learn about that and being Hawaiian made it more prevalent for me to know. Also what really peaked my attention was the Iwi because it was so the whole island that's all we have is that. Every time they start a construction site or something that comes up. And the protocols that they have to do rebury the bones and put them to their rightful place. That really touched my heart more I think was that out of anything. So I paid attention at that part. But it was really interesting. I'm glad we have something like that to be able to share because you really don't learn things like that in schools especially here in Hawaii. We don't learn. We learn all about government, American government. We don't learn about Hawaii and what happened to it so I found it pretty exciting. Thank you.

Mr. Yoshida: Thank you to those who attended the training. Again the Council requires the Commissioners to attend the training such a training during their course of their tenure on the Commission. Ka Huli Ao Center for Excellence conducts these training twice a year so probably there will be another set of trainings in June and we can send up to four more of you to that training. So thank you for that.

Commissioners Roxanne Catiel, Sherry Menze, Mililani Martin and John Delacruz attended the Native Hawaiian Law Training and provided their input and takeaways to the Commission.

2. [Open Lanai Applications Report](#) as distributed by the Planning Department with the October 17, 2018 agenda.
3. [Open Lanai Applications Report](#) as distributed by the Planning Department with the November 28, 2018 agenda.
4. [Open Lanai Applications Report](#) as distributed by the Planning Department with the December 12, 2018 agenda.
5. [Open Lanai Applications Report](#) as distributed by the Planning Department with the January 16, 2019 agenda.

Mr. Yoshida: The next item is our, if there aren't any questions, our open Lanai applications report that been circulated with the agenda. If there are any questions on those items. If not --

Ms. Preza: Do you have any idea when the --. So we were talking about the affordable housing projects that are happening. Do you have any idea when those are going to come to us?

Mr. Yoshida: I believe the affordable, the affordable housing project that Pulama is considering will be a 201H project so that goes, it's transmitted either from the State Housing Agency or the County Department of Housing and Human Concerns to the Council. And then they may have to go through a District Boundary reclassification with the State Land Use Commission as much as Castle & Cooke Resorts did for their proposed housing project a little further out of town. So it may not come, it will not come to the Lanai Planning Commission. It will probably come to the Council. Council will probably have meetings here on Lanai to hear from residents.

Ms. Preza: Thank you. I just wanted clarification because I feel like a lot of people are interested in that.

Commissioner Shelly Preza questioned when the affordable housing project would be brought before the Commission. Mr. Yoshida responded that the affordable housing projects that Pulama Lanai is considering will be 201H, and it will be transmitted from the State Housing Agency or the County of Maui Department of Housing and Human Concerns to the Council. It may also need to go through a District Boundary reclassification with the State Land Use Commission. Therefore it will not be brought

to the Lanai Planning Commission, but will probably go to the Council who will probably have meetings on Lanai to hear from the residents.

E. NEXT REGULAR MEETING DATE: FEBRUARY 20, 2019

Mr. Yoshida: The next meeting is scheduled for February 20th, five weeks from now. There's still some items that were deferred from the last meeting. One being the enforcement penalties for illegal short-term rental home which the Commission wanted to see the written legislation or the bill.

Another one was the setback or no setback for accessory dwelling, I mean accessory structures in Lanai City. That was the one that I believe Mr. McOmber testified about at the beginning of the last meeting.

And then there's a third item possibly is the Lanai Adventure Park which the Commission deferred from the November 28th meeting. So but I have to check with staff to check in with Pulama Lanai to find out where they are in terms of getting that information, additional information the Commission had requested.

So if we do the short-term rental home fines, the illegal short-term rental home fines bill and the no setback for accessory structures in Lanai City the Planning Director, or Acting Director now, Michele McLean, intends to attend the Planning Commission meeting. So we probably won't know till about two weeks out before the meeting as to if Pulama will be ready to bring the Lanai Adventure Park back.

Mr. Delacruz: . . . (Inaudible. Did not speak into the microphone.) . . .

Mr. Yoshida: Yes. So but I believe -- probably Michele wanted to be at this meeting but I guess she's tied up with the transition with the new administration so she couldn't make this meeting. But she had said that she planned to be at your next meeting.

Ms. Green: Clayton if you recall there was a motion to have a visit to the site of the proposed activity center or sorry Adventure Center. So would this be something that we would do prior to the meeting? They're supposed to come up with a proposed second site and the current site.

Mr. Yoshida: Yeah I guess for purposes of efficiency we would have the site inspection earlier in the afternoon and then follow that up with the planning commission meeting.

Ms. Green: I just wanted to make sure that we realize that this request had been made and -
-

Mr. Yoshida: Yes.

Mr. Rabaino: . . . (Inaudible. Did not speak into the microphone.) . . .

Tentatively scheduled for the February 20, 2019 meeting are the enforcement penalties for illegal short-term rental home, the no setback for accessory structures in Lanai City, and the Lanai Adventure Park which were deferred from previous meetings.

F. ADJOURNMENT

Mr. Yoshida: So the Department heads are kind of going through a new process because of a Charter Amendment in 2016 that a lot more Department heads have to be confirmed by the Council. So I guess Michele and the others are up for review by the Council Policy Committee on Wednesday morning so any public testimony or whatever will be accepted by the Council. And that concludes our report if there aren't any other questions.

Ms. Green: Any questions? No? Then I call this meeting closed.

There being no further discussion brought forward to the Commission, the meeting was adjourned at 7:10 p.m.

Respectfully submitted by,

LEILANI A. RAMORAN-QUEMADO
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

PRESENT:

Roxanne Catiel
John Delacruz
Caron Green, Chair
Mililani Martin (from ~ 5:05 p.m.)
Sherry Menze
Shelly Preza, Vice-Chair
Gerald Rabaino
Shirley Samonte (from ~ 5:12 p.m.)
Chelsea Trevino (from ~ 5:05 p.m.)

OTHERS:

Clayton Yoshida, Planning Program Administrator, Current Planning Division
Jared Burkett, Staff Planner
Richelle Thomson, Deputy Corporation Counsel