

**BOARD OF VARIANCES AND APPEALS  
REGULAR MEETING  
JANUARY 24, 2008**

**A. CALL TO ORDER**

The regular meeting of the Board of Variances and Appeals (Board) was called to order by Chairman Randall Endo at approximately, 1:34 p.m., Thursday, January 24, 2008, in the Planning Department Conference Room, first floor, Kalana Pakui Building, 250 South High Street, Wailuku, Island of Maui.

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

**B. APPEALS**

- 1. STEPHANIE RAGER appealing the Planning Director's notice of violation (NOV 20070002) for operation of a transient vacation rental in the R-2 Residential District for property located at 2626 Mikoi Place, Kihei, Maui, Hawai`i; TMK: (2) 3-9-014:048. (BVAA 20070008)**

Chairman Randall Endo: Would the Planning Department staff please read the first item on the agenda?

Ms. Trisha Kapua`ala read the agenda item into the record.

Chairman Endo: Thank you, Ms. Kapua`ala. Would the parties please make their initial appearances? Please come to the podium and speak into the microphone. Identify yourself.

Ms. Stephanie Rager: I'm Stephanie Rager.

Chairman Endo: Good afternoon. And you are the appellant?

Ms. Rager: Yes.

Chairman Endo: Okay. And for the County?

Ms. Mary Blaine Johnston: Yes, Mary Blaine Johnston and Madelyn D'Enbeau representing the Planning Director, the County of Maui.

Chairman Endo: Good afternoon.

Ms. Johnston: I had filed my exhibits and sent Ms. Rager copies of them. She's informed me today that she did not get the first set which was mailed out on January 11<sup>th</sup>, but she did get the second batch. So we might want to give her just a minute to look through them although I think most of the documents will be familiar to you.

Chairman Endo: Okay, what we can do is open it up for public testimony before we go into the contested case in earnest. Oh, okay. I take that back. Since this is a contested case, we don't need to take public testimony on this particular agenda item. And since there are no other agenda items – well, is there anybody from the public who wishes to speak on other agenda items for today's meeting? I don't think so. Seeing none, we'll close public testimony as to other agenda items.

Okay, so moving back to the Rager or Rager appeal – Rager, sorry. While you're looking at that, maybe I could have Corporation Counsel give us their proposed procedure, and then we can discuss it and approve it prior to moving forward.

Ms. Johnston: Ms. Rager's notice of appeal was filed in September 6, so technically it was filed under the old rules. Talked to Counsel, to Mr. Giroux, and we believe that this hearing should be under the old rules. I have looked at the rules – the new rules for the way the proceedings, the appeals, will go. And I think following those rules would also be consistent with getting a fair resolution of this matter which is that the witnesses – Ms. Rager's going to – I talked with her about two weeks ago, and explained that she be – have the opportunity to give her statement, her position, that I'd be asking her questions, and that – then I have four other witnesses that I will be putting on. Two will be very brief witnesses. And I believe I explained to her that she has the right to ask questions of those people also, cross-examine those people. So that's what we proposed that we just open it up basically with the spirit of the new rules are, but letting her go first since I already indicated that that's– Ms. Rager, is that acceptable to you?

Ms. Rager: Well, I don't know what I'd be going first about. (Inaudible)

Chairman Endo: Yeah, actually, if it's okay, we'll probably flip it around, and let the County go first so that you can set forth what the violation is, give us all the background, and then allow the appellant to make her case based on that as background. We just found in the past that it sort of worked out better that way, but we would still give the appellant one last time to present her case also—last chance.

Another procedural item is that we could, under the old rules, appoint a hearings officer rather than taking the matter up today, but based on your description of the number of witnesses, and you think we can get this all done in about two hours, hopefully, or less, I believe that the Chair feels comfortable that we can take this matter on today by ourselves without the need for appointing a hearings officer. I will just ask members if they have any concerns or objections to that to going in that manner. So there's no objection, then we will proceed in that manner. We will not hire a hearings officer, and we will proceed to conduct the contested case hearing by the entire panel or Board.

Okay, we will do this one similar to the last one we did many months ago. To the Board again, I'll ask if you have any objections. What I'll do is as the Chair, I'll rule on

evidentiary matters and procedural items, but keep in mind that we are actually acting as a Board, so anytime you disagree with my ruling, you can appeal it, and then we'll vote on the decision as a Board. So is that okay? Any objection to that procedure? Seeing none, we'll proceed in that manner.

Ms. Johnston: Yes, if I could just give just a very brief opening statement so the Board will understand how we will be proceeding. Ms. Rager was issued a notice of violation by the County of Maui for running a transient vacation rental in an area where that use was not permitted. She lives in – has property in Keonekai Heights Subdivision in Kihei which is not zoned to permit transient vacation rentals. She has appealed the notice of violation, and if you have the exhibits that were provided to you, her notice of appeal is Exhibit L. And she states as a basis, page 2 of that, that there's no – she had no website advertising. That after the first warning given by Inspector Villalon in April of 2007, she removed the website. She refers to a picture that was taken by Mr. Villalon and claims that nobody was at her house on the date the picture was taken. And she also states that there's been no money or other compensation given to me by family and friends who have been at the house. We will show today that, in fact, Ms. Rager did not remove the website advertising it, continued on as early – as late as January of this year. That there are constant flows of renters on the property up until the beginning of this month, and that she has not complied with either the notices of warning that were given to her, and she is in violation, and the fine should be assessed.

So briefly, I will be calling first, Barbara Roark, who is Ms. Rager's neighbor, and who will give her personal observations and information about what she's observed. I will then call Inspector Villalon who dealt with Ms. Rager, issued the two warnings of the notice of violation. I will also be calling Frank Krau to give a very brief testimony on some participation he had in the investigation. And I will be calling Ms. Rager.

Chairman Endo: Okay, we'll consider what you just provided as your opening statement. And so before you put on your witnesses, we will allow Ms. Rager to do the same thing. Just not testimony or anything, but if you want to give us just an introduction similar to what we just heard, it's your option.

Ms. Rager: Okay. I did – I'm absolutely mystified by any allegation that the website is still up. I have indications from VRBO that it was taken down and when it was taken down. It was changed from a – And I was had intended to rent the house. And this was prior to Maui stopping the house rentals. And that – and I did have some rentals in there. Then I stopped. I changed the listing which I don't know if anyone's familiar with how VRBO works. You upload your own pictures. And because I'd already paid for it for a year, the number stays active, but I changed the pictures and the description, and everything on that number to reflect a condo at the Mana Kai Maui which is a legal vacation rental. And I have proof from VRBO via an email, which is in here somewhere, I don't know which number it is that I did take it down. So I don't know what is being

referred to as still being up as early as January of this year.

Now, the listing number expired because the annual membership expired. I didn't renew it because I would have two listings for the Mana Kai. So I let it lapse. But it was at no time afterwards indicating that it was the house that was being advertised. I tried to explain that to Mr. Villalon, and he just didn't seem to want to understand it.

As far as the list of people coming and going, I know them. So I don't know – should I wait and–?

Chairman Endo: Yeah, we just want your introductory statements because you're going to be put under oath later on, and everything you testify will then become part of the evidence to be considered. So we just want your introductory statements, just general.

Ms. Rager: Okay. Well, I guess just generally, I had planned on using it as a vacation rental. And when Maui changed the rules– In fact, I got a phone call from Mr. Villalon before I even knew that Maui had changed the rules. And that's when he told me to take it down. I did. I have proof I took it down. And then I can go into further detail how VRBO works as far as the number still being active, but the pictures and the description were not of a vacation rental. So I guess that's it for now.

Chairman Endo: Okay, thank you. I think what we want to do now is, it's at our discretion, but we will use the witness exclusionary rule. So if you have your witnesses, other than of course if you're a party, but for witnesses who are non-parties, we would like you to stay outside of the room until it's your time to testify in order to improve the– It's basically a court rule that we're simulating which helps to keep the testimony more– It's not to taint the testimony so, you know, you don't hear what everybody else is saying. You just come up fresh and speak your mind, and you don't pick up things on the side. So is that okay with both parties? We're going to use the witness exclusionary rule. Okay, so you can call your first witness.

Ms. Johnston: Okay, I want to call Barbara Roark.

Chairman Endo: Oh, let me ask. Ms. Johnston, are any of the County staff people going to be called as witnesses?

Ms. Johnston: Trisha is going to be called. (Inaudible)

Chairman Endo: Then I guess we should ask–

Ms. Johnston: She's going to testify . . . (inaudible) . . .

Chairman Endo: Okay, but we should apply the rule. Okay, if there's no objection, we

will not use the rule for Trisha since she's actually needed here to help run the process.  
Okay.

Okay, Ms. Johnston and Ms. Rager, one other preliminary item: have both sides had a chance to review all of the other side's exhibits at this point?

Ms. Johnston: I received no exhibits from—

Chairman Endo: Oh, okay, so the appellant— Okay, so we're talking about the County of Maui's exhibits.

Ms. Johnston: County of Maui's Exhibits A through P.

Chairman Endo: Because what I would normally want to do, if there's no objection, is have a stipulation from both sides agreeing to the introduction of these documents as exhibits for the contested case.

Ms. Rager: I'm sorry. I wasn't following . . . (inaudible) . . . I was trying to see if I had seen all these.

Chairman Endo: Do you have any objection to all of these exhibits proffered by the County of Maui as being admitted into evidence?

Ms. Rager: Will I be able to question people about these?

Chairman Endo: Certainly.

Ms. Rager: Well, then I have no . . . (inaudible) . . .

Ms. Johnston: Let me make one comment: on the packet that was — the first exhibits, Exhibit I, you know, Exhibit I has a picture of a dog on it, that page actually should've been with Exhibit H as part of the listing agreement. Exhibit I is actually the two photographs, so I just want to correct that. It was — the package was put together incorrectly.

Chairman Endo: Okay. So Exhibit—

Ms. Johnston: I as the two photographs.

Chairman Endo: The first page of Exhibit I should actually be part of Exhibit H.

Ms. Johnston: H, right, correct.

Chairman Endo: Okay. And then there's a supplemental document: Exhibits O and P.

Ms. Johnston: Correct.

Chairman Endo: Okay, seeing as there's been no objection, the Board will accept all of the County's Exhibits A through P with the change as described by Ms. Johnston. So you can proceed.

Ms. Johnston: Okay. You're going to swear--?

Chairman Endo: Sure. What's your name?

Ms. Barbara Roark: Barbara Roark.

Chairman Endo: Okay, Ms. Roark, will you please raise your right hand? Do you swear or affirm that the testimony you're about to give is the truth?

Ms. Roark: Absolutely, yes.

Chairman Endo: Okay, thank you.

Ms. Johnston: Okay. Ms. Roark, could you state your name and your address, please?

Ms. Roark: I'm Barbara Roark at 2611 Mikoi Place.

Ms. Johnston: And how long have you lived at that address?

Ms. Roark: We bought the property August 15<sup>th</sup> '06.

Ms. Johnston: Okay. And have you owned other property in Hawai'i?

Ms. Roark: Yes, I've owned property in Hawai'i since 1979.

Ms. Johnston: Okay. And this -- your house is on the same street as Ms. Roark's, is that correct?

Ms. Roark: Rager's, yes.

Ms. Johnston: I mean, Rager's. I'm sorry. Ms. Rager's, correct?

Ms. Roark: Yes.

Ms. Johnston: Okay. And what is the proximity of your house to her house?

Ms. Roark: Two houses to the left.

Ms. Johnston: Okay. So you can – you pretty much have a view of her property, is that correct?

Ms. Roark: All the front of our house, yes.

Ms. Johnston: You said you had been in your home since 2006, correct?

Ms. Roark: Yes.

Ms. Johnston: Okay. Why did you buy this particular piece of property?

Ms. Roark: We had owned a property which was extremely nice in Kamaole Sands, which is a vacation rental. And we had decided that the noise factor and people coming and going all the time and partying was just more than we wanted to deal with at our age. And we wanted a nice, quiet neighborhood. We looked at over 65 houses. I am a Broker so we had access to just about everything. And we wanted something on a very quiet street without the vacation rental noise. And so we were very serious about looking at our CC&Rs. And that was stated on the first page.

Ms. Johnston: Okay. If you could look at Exhibit M that's in the packet of exhibits, you referred to CC&Rs. This is what you were referring to?

Ms. Roark: Yes.

Ms. Johnston: Okay. And at page 8 of that document, so the section called "Restrictions," paragraph 6, prohibited is "Periodic and noncontiguous habitation of a dwelling (rentals and short-term leases being a duration of less than 30 days) shall not be permitted," is that what you were referring to?

Ms. Roark: Correct.

Ms. Johnston: Okay. So this was an important factor to you in making your decision to buy this property, correct?

Ms. Roark: Yes.

Ms. Johnston: When did you first become aware that Ms. Rager's property was being occupied by people other than her?

Ms. Roark: Probably around the first of February 2007.

Ms. Johnston: Okay. And how did you become aware?

Ms. Roark: We were working out in the front of the yard, and there had been a red car there all week. And the man left and we were talking to him. He stopped and said, "Hi." And I said, "Oh, are you our new neighbor?" because it seemed like – I mean that was my first thought that he bought the house. There had been a lot of construction going on before that. And he said, "Oh, no, I'm just renting. I'm here on vacation for five days." I went, "whoa." So that was my first indication that– I said, "Do you know these people?" And he said, "No."

Ms. Johnston: Okay. Alright. After that conversation, did you notice other people that were using the property?

Ms. Roark: Absolutely. It was rented the majority of the time.

Ms. Johnston: Okay. At some point did you make a complaint to the County of Maui?

Ms. Roark: Yes, we did. My husband called.

Ms. Johnston: Okay. And do you remember approximately when that was?

Ms. Roark: Probably the end of February, about the end of February, '07.

Ms. Johnston: Okay. And do you recall what was in that first complaint that you made to the County of Maui that you told them?

Ms. Roark: Well, we had discussed it because there was so much coming and going in there. And I said, you know, this was the main reason we bought here is because we didn't want this vacation rental. And so we called and asked the County if they could do that, and they said, "No, it's six months and longer," because we have an ohana also. We don't rent it, but all the houses have one. And it's long term rental only they said, so that was our complaint.

Ms. Johnston: Okay. Did you – were you able to track down any information about the rentals on this property?

Ms. Roark: We called again about June because nothing had been done. It was still being rented. And I don't know the inspector. I believe it was Charles. I don't know. I never met with him. And he asked us to keep track of the license plates.

Ms. Johnston: Okay. Could you look at Exhibit G? Okay.

Ms. Roark: G? Yes.



Ms. Johnston: Exhibit G. Okay. And could you explain what this document is to the Board?

Ms. Roark: I have never done rentals very much, but this came off of the vacationrental.com website. And it just shows the house and tells everything that's in it. I went in it at an open house one day.

Ms. Johnston: Okay. And the date on the right-hand corner says "2/10/2007." Is that the date that you printed this out?

Ms. Roark: Yeah, this is off of my computer.

Ms. Johnston: Okay. And the handwriting on the first page, is that your handwriting?

Ms. Roark: Probably. (Inaudible) . . . and everything. Yes, it is. The handwriting is – I called the agent that had a listing out there. She had it on multiple listings . . . (inaudible) . . .

Ms. Johnston: Alright. And this is Ms. Rager's house, is that correct?

Ms. Roark: Yes.

Ms. Johnston: Okay. If you look at the last page of this exhibit, there's a calendar.

Ms. Roark: Yes.

Ms. Johnston: Okay. And you also printed this out at the same time?

Ms. Roark: Yes, I did. The date on the bottom matches when I did it.

Ms. Johnston: Okay. And I noticed that this – the first pages say, "www.VRBO," and this page says, "www.rentors.org."

Ms. Roark: I see that.

Ms. Johnston: Okay. But this all came out at the same time?

Ms. Roark: Yeah, I had not noticed that until you mentioned it to me the other day.

Ms. Johnston: Alright. And it's a little hard to read, but there are dates that are crossed out beginning in February, March, April.

Ms. Roark: Right.

Ms. Johnston: Okay. Your – when did you start keeping track of the license numbers?

Ms. Roark: July, July 21<sup>st</sup>, actually.

Ms. Johnston: Okay. Can you tell by looking at this calendar and the dates that are indicated on here that the place is not available whether those coincide with people coming and going during the timeframe: February to June—end of June?

Ms. Roark: I didn't keep records at that point in time, but it was – it seemed to me like it was rented a couple of weeks, and then it would be vacant four or five days, and then it was rented again. I don't have records of that, though.

Ms. Johnston: Okay. Did you have occasion to talk to any of the other people in the neighborhood about the situation?

Ms. Roark: Yes, I did. We have one neighbor that's directly across the street from me. And they have since moved to Vend, Oregon. So they were not available to make any comments. And then Charlie Rodrigues and his wife, her bedroom is directly over the pool on – if you're looking at the house, the right-hand side. And then my neighbor next door who was concerned over the noise, and coming and going, but he's a renter, and he didn't feel like that he could make any comment.

Ms. Johnston: Okay. And when you talked to the – you talked to both Mr. And Mrs. Rodrigues?

Ms. Roark: Yes.

Ms. Johnston: Okay. And were they also unhappy about the—?

Ms. Roark: Extremely so.

Ms. Johnston: Okay. You said that you called the County again in June to complain about the continuous rentals, and you were instructed by Mr. Villalon to keep track of license plate numbers?

Ms. Roark: I never knew his last name. He said, "Charlie." And, yes, that's what he had instructed us to do.

Ms. Johnston: Okay. Could you look at Exhibit K?

Ms. Roark: Okay.

Ms. Johnston: Okay. Is this the list that you kept after you had talked to Charlie?

Ms. Roark: Yes.

Ms. Johnston: Okay. And these lists the date – the approximate dates, and vehicles, and license plate numbers of the cars you saw at the house?

Ms. Roark: Yes, it is.

Ms. Johnston: Okay. And when – when was the most recent time that there were people staying at the house?

Ms. Roark: Last week.

Ms. Johnston: Okay. So, the beginning of January?

Ms. Roark: Yes, the date on that – they came in 1/7, and there was approximately seven to eight people, and they departed 1/11.

Ms. Johnston: Okay. Could you look at Exhibit N, please? Okay. This is another calendar page, “4BR/3BR A Beautiful Maui Home” starting January of 2008. Yeah.

Ms. Rager: (Inaudible)

Ms. Johnston: N.

Ms. Rager: N as in Nancy?

Ms. Johnston: N as in Nancy, yes. And it shows just January, the first week, and towards the end of the second week, and the third week of January. So your – what was your testimony as to when the most recent people were there?

Ms. Roark: The 7<sup>th</sup> through the 11<sup>th</sup>.

Ms. Johnston: Okay. Okay, do you recall in July, a large party being at the Rager’s property?

Ms. Roark: Yes, they came in July the 21<sup>st</sup>, and left the 29<sup>th</sup>. And one night they had over 90 people in there. They were parked all down our street all the way up to Keonekai. And all week long, they would – they were all in jeeps or SUVs. They would get in a jeep, and why do people do this? They all yell, “yahoo.” And they would go out, come home somewhere around two o’clock extremely loud with their radios going, and then get in the pool and party some more until maybe four o’clock.

Ms. Johnston: Okay. And did you provide some of the license plate numbers for those

people?

Ms. Roark: Yes, there were five cars there.

Ms. Johnston: Okay. And are you aware of whether or not Ms. Rager has a vehicle?

Ms. Roark: Yes, she does. I was told it was hers. I've never seen Ms. Rager till today.

Ms. Johnston: Okay. Have you seen a vehicle, though, that was there?

Ms. Roark: Yes.

Ms. Johnston: Okay. And what – can you describe it?

Ms. Roark: It is a – I took it down yesterday because I thought maybe that might come up. It's a Chrysler company. I don't know what kind of car it is. It's a blue SUV with the license plate number MFN 977, and it is always there.

Ms. Johnston: Okay. Okay, I have no further questions for this witness.

Chairman Endo: Okay, at this time we'll allow the appellant to ask questions of the testifier. And then after that, I'm going to allow the Board to ask any questions of the witness. So, Ms. Rager, could you please stand up and speak into the mic as we're making a record of everything?

Ms. Rager: I don't know where to get started here. Did you ever speak to any of my friends or family who were there?

Ms. Roark: I spoke to the man in the red truck, and he – I asked him if he knew you, and he said no.

Ms. Rager: And what was his name?

Ms. Roark: It was a red truck. It was when we first became– It was in February–the first person. He was on the way to the airport.

Ms. Rager: And that would be February of '07?

Ms. Roark: '07.

Ms. Rager: Okay. And that was prior to my knowing, or there being anything about stopping vacation rentals, or prior to the County being involved, is that correct?

Ms. Roark: I don't know. I don't know when you received notice.

Ms. Rager: Well, let's see. I received notice on 4/12 of '07. And so did you speak to anyone else who's been at my house?

Ms. Roark: I was advised not to do that.

Ms. Rager: Then how do you know they were renting?

Ms. Roark: Oh, come on. They were coming and going. You couldn't have hundreds of friends and relatives that are there all the time.

Ms. Rager: I have a whole list of people, friends and relatives, and – that are there all the time, and my relatives on Maui who come there.

Chairman Endo: Okay. Excuse me. Hang on one second.

Ms. Roark: Yes?

Chairman Endo: Ms. Rager, just so you know, in order to keep things orderly, the purpose of your cross examination is to ask her questions, not to testify yourself, because later on, we'll put you under oath, and then you can testify and provide your statements. So at this time, please limit your – the procedure as asking questions to the witness.

Ms. Rager: Okay. So you did not speak to anyone after February of '07?

Ms. Roark: I didn't. My husband went over one day because the alarm had been going off every minute or two all night long. And he went over to try and help. And it was the water fountain, I think. And I did not go over.

Ms. Rager: And do you know who he spoke to at that time?

Ms. Roark: No, he didn't know either. He was just trying to help.

Ms. Rager: Okay. Can–?

Unidentified Member of the Public: It was me. I'm the Realtor. I was over there . . .  
(inaudible) . . .

Chairman Endo: Okay. Again, we can only have one person asking questions, Ms. Rager, and one person answering the questions. And, Ms. Roark, can you try and speak into the mic a little bit? The air-conditioning is getting a little noisy on this side.

Ms. Rager: The – so you didn't see the person in the yard that your husband helped with the pool equipment?

Ms. Roark: No, I did not.

Ms. Rager: Okay. Well, it was my Realtor. It was not a renter. And other than that, I— The list of cars—did you ask anyone in the cars who they were?

Ms. Roark: I was advised not to do that. All they wanted me—

Ms. Rager: Can I ask who advised you not to ask so you'd know?

Ms. Roark: The Inspector Charles because I'm not a policeman. I try to stay out of other people's business.

Ms. Rager: Oh, really?

Ms. Roark: Really. And he asked me only to keep track of the numbers of the license plates. And he said it's probably wise you do not talk to anyone that's there. So I have no knowledge of who was there except numbers.

Ms. Rager: So you have no knowledge of who was there or what their last names were?

Ms. Roark: I'm sure they could find them from the rental cars.

Ms. Rager: I have them. I know who they are. So I don't think I have any more questions, but if something else comes up, am I able to ask again?

Chairman Endo: No, you're not. Only if something comes up from further questioning, and it's related to that, then you might have an opportunity to ask a rebuttal question based on what's the new testimony.

Ms. Rager: I do have another question. I am really, really confused as to how you could've printed off anything from VRBO as of this date on this unless it had been saved down to your computer, and then printed off, because I removed everything from that website. You cannot go to VRBO. But had you saved it down to your computer while it was an active listing, it would've printed off with the current date. But I have verification from VRBO that this listing was changed, taken off, and then changed to reflect—

Ms. Roark: Is that your question?

Ms. Rager: Yes, my question is, did you save this down to your computer?

Ms. Roark: No. The only thing I have I printed out 2/10/07. That's all I did. I printed out four pages off of VRBO. And this is the only copy I have. And I went back in months later, and it was not there. But I did not go into the other website that you have.

Ms. Rager: Oh, I'm sorry. I was looking at this as February of '08. It's February of '07.

Ms. Roark: Correct.

Ms. Rager: That is accurate. That was prior to me being notified or knowing that there was a problem using it as a vacation rental. This is the website that was then later changed on it. So you're right on '07. I had the year wrong on that. Okay, I don't think I have anything.

Chairman Endo: Okay. I'll open it up to the Board. Board members, any questions? James?

Mr. James Shefte: Yes, I have a question. Is there a community association and do they have a board of directors?

Ms. Roark: There used to be. It expired two years ago and hasn't been reinstated.

Mr. Shefte: So in other words, then the CC&Rs are not enforceable?

Ms. Roark: I don't know how to answer that because CC&Rs run with the land. So as far as enforceability, I think the County has the ability to do that. As far as getting a letter of reprimand from the association, there is none.

Mr. Shefte: Thank you.

Chairman Endo: Okay, other members, any questions for this witness? Okay, any redirect?

Ms. Johnston: (Inaudible)

Chairman Endo: No? Okay, thank you. So, Ms. Roark, thank you. You may step down. Oh, okay. Ms. Rager, do you have any followup questions only pertaining to the testimony that was just given in response to Mr. Shefte's question?

Ms. Rager: Yes. (Inaudible)

Chairman Endo: Yes, you do.

Ms. Rager: When I purchased the property, I was told that the CC&Rs were no longer

enforced.

Chairman Endo: Okay, it's just questions. You can testify to anything you want later on when you're on the stand, when you'll be sworn. Right now we're just asking if you have any questions of Ms. Roark related to the testimony that she gave in response to Member Shefte's question.

Ms. Rager: No, because I think she said that there is no association in force.

Chairman Endo: Okay.

Ms. Rager: Am I – should I ask her that direct?

Chairman Endo: If–

Ms. Rager: I think she answered that. I think she said there is no–

Chairman Endo: Yeah, she already answered that, so I think we're fine.

Ms. Rager: Okay. There is no association.

Chairman Endo: Okay. Ms. Rager, is – do you have a witness that you're planning on calling?

Ms. Rager: No.

Chairman Endo: No? Okay. Just checking. Okay, Ms. Johnston?

Ms. Johnston: Ms. Roark . . . (inaudible) . . . would it be okay since she's testified if she could remain?

Chairman Endo: Yeah, since she's not going to be called any further, that's fine, as a witness, right? Yeah.

Ms. Johnston: At this time I'd like to call Inspector Charles Villalon.

Chairman Endo: Mr. Villalon, please raise your right hand. Do you swear or affirm that the testimony you're about to give is the truth?

Mr. Charles Villalon: Yes.

Chairman Endo: Thank you.



Ms. Johnston: Okay. Can you state your name, please, for the record?

Mr. Villalon: Charles Villalon.

Ms. Johnston: Okay. And what is your job with the County of Maui?

Mr. Villalon: I'm a Zoning Inspector for the Enforcement Division, Planning Department, County of Maui.

Ms. Johnston: And how long have you been in that position?

Mr. Villalon: Approximately, 12 years.

Ms. Johnston: Okay. Just very generally, can you describe what your job duties are?

Mr. Villalon: Yeah. Basically, I enforce the Titles – with the County Title 16 which is the sign law, Title 19 which is the County use laws on typical zoning descriptions. I do the Special Management Area Section Chapter 202, which is the shoreline management area, as well as Chapter 205A, the coastal zone management districts on Maui.

Ms. Johnston: Okay. Were you the inspector for the County assigned to handle the matter with Ms. Rager?

Mr. Villalon: Yes, I was.

Ms. Johnston: Okay. Can you start to tell us first how you became involved in investigating Ms. Rager?

Mr. Villalon: Well, actually I was not the sole inspector. The calls that came in prior to me being assigned were documented. And other inspectors, we rotate districts. And there was another inspector that was assigned. If I may? What I did was I downloaded the amount of reports called into that specific address, as well as the neighboring resident which included three separate residents on that street that was adamant about the change in that neighborhood. So if I may, I can--? There's separate calls, different dates, so it's not like it was one call. It's numerous calls.

Ms. Johnston: Okay. Were there other calls for the – specifically for Ms. Rager's property?

Mr. Villalon: Yes, there were.

Ms. Johnston: Okay. Before you took over as inspector?

Mr. Villalon: Yes.

Ms. Johnston: Okay. Okay, why don't you state – tell us when you first had contact with Ms. Rager?

Mr. Villalon: It was subsequent to the first call that I received as the specific inspector for that complaint. And that took place on April the 27<sup>th</sup>, 2007. Actually, April 13<sup>th</sup>. Excuse me.

Ms. Johnston: Okay. And what went on? What was the nature of that contact that you had with her?

Mr. Villalon: A typical transient vacation rental complaints: numerous vehicles parked in the driveway, noise during the weekend, different people witnessed going in and out of the residents for a period of time. And specific, it was during that weekend of the April 13<sup>th</sup> and prior to April 13<sup>th</sup>.

Ms. Johnston: Okay. And did you issue a notice of warning to Ms. Rager at that time?

Mr. Villalon: Yeah, the first warning was issued. The first warning was issued on April 12<sup>th</sup>.

Ms. Johnston: Okay. Could you look at Exhibit B in the exhibits, in the packet of exhibits? Excuse me, Exhibit D.

Mr. Villalon: D as in Delta?

Ms. Johnston: D and E, yes. And can you identify what those are?

Mr. Villalon: Yeah, these were the written warnings sent to Ms. Rager via certified mail.

Ms. Johnston: Okay. Okay, and what were the violations that these were issued for?

Mr. Villalon: Violations were as listed: transient vacation use, Maui County Code for a use violation, and served on – oh, written on April 12, 2007.

Ms. Johnston: Okay. And did you have a phone conversation with Ms. Rager about these notice of warnings?

Mr. Villalon: I did.

Ms. Johnston: Okay. And can you describe what was said in the conversation?

Mr. Villalon: Well, initially on the first warning, and we hope that we can resolve things on the first warning, but I mentioned that the site reveals that there is – besides the evidence that we received and witnesses that she should remove her advertisement on the web regarding that residence on Mikoi – on the Mikoi address. And she has several. She has one on Big Island, one in – two units at Mana Kai, as well as the Keonekai Heights. And she agreed. “I’m gonna do it.” “Okay, fine.” I closed it. “Don’t do it anymore.” That was the first warning.

Ms. Johnston: Okay. Okay. And then what happened after that? When was your next contact with her?

Mr. Villalon: And then we had a subsequent contact on approximately, July 18 in which another neighbor besides Ms. Roark called, and indicated it’s happening again, numerous cars, and more evidence to show that it was continuing, which I was dismayed that it was continuing again.

Ms. Johnston: Okay. Could you look at Exhibit F? Okay, you said July. This was the second notice of warning issued, correct? End of June?

Mr. Villalon: Yeah.

Ms. Johnston: Okay. And did you have further conversations with Ms. Rager at the end of June?

Mr. Villalon: That was the second warning that we’re talking about. I got June 29 as the issuance. And the second warning was issued because she claimed that she cleaned it up. Basically she had three separate properties listed on one page. And although she modified it and showed that the allowed short term rental units were still available, there was a photograph that still showed the Keonekai, Mikoi Place address. And I said, “Look, Stephanie, take them off. You take that off, I got no problems. But you got to take–?” “But it doesn’t say anything about it–” “No.” “About the listing,” I said, “No. If someone calls and they look at the photograph, and they say what about this two-story structure with the pool, I know you’re going to say, yeah, it’s available. But you take it off, I got no problems. Just take the listing off. Take it completely off the site.” And then she says, “Okay, okay, okay, okay, I’m going to do it.”

Ms. Johnston: Okay. And then you were saying you talked with her again in July? Or what was your next contact about this case in July?

Mr. Villalon: That was when we had enough information. We had a call from another complainant indicated that he witnessed and he was able to get detailed information of occupants in the home again.

Ms. Johnston: Okay. And who was that that you talked to?

Mr. Villalon: It was a neighbor: Mr. Charles Rodrigues.

Ms. Johnston: Okay. And what did he tell you about what he observed?

Mr. Villalon: He said he was observing – prior to actually calling, he said he observed occupants, different occupants, different vehicles in the home. And finally, he peered out of his window and he said, “I know that guy.” And he actually went outside on the street. This guy, he’s same age, was with a child, a grandson. He said, “I don’t know you?” And they were classmates. He said, “Yeah, Ribao, howzit. What you doing here?” “Oh, we’re here for a party and we’re staying short term in the house.” “They not supposed to be doing that.” “Oh, I don’t know. My wife–“ I mean “My daughter got the reservations and, you know, we’re just here for a party. We going leave this weekend.” He go, “Not supposed to be doing–“ But he identified the guy as a classmate, and he said, “I know I can testify. That was my classmate staying in the house, and he admitted short term.” So I said, “We got enough – we should have enough for the violation.”

Ms. Johnston: Okay. And then when was the notice of violation prepared? If you look at Exhibit A, this is a notice of violation that’s being yield from.

Mr. Villalon: Well, actually, to be honest, I had to review this case because it’s, you know, it’s been a long– It’s a year old. But when I reviewed the case, the violation was already written for that probable cause on Rodrigues. But it happens a few day – not more than a week later, it happens again. Rodrigues and me were in conversation. I gave him my cell phone number. And I told him “Anything happens, just call me.” And I was ironically doing other inspections in Kihei when he called me again. He said, “Brudda, come again. Get three guys in the house. I heard them talking. They checking in. They gonna be shopping and they gonna be coming back to the house.” I said, “I’m in the area. I’ll come by.”

And then I pulled onto the street, and these individuals parked in front of the home—three adult males. And I approached them. “What’s up?” Blah, blah, blah. “Well, these are two Chinese Nationals. They don’t talk English, but I’m an Australian, and I can give you information.” And he said, “I saw it on the Internet, and I paid for it.” And I said, “Fine.” That’s – you know, “Have a nice weekend. I’m just advising you that it was an illegal inquiry, and they shouldn’t be doing this.” Blah, blah, blah. “Have a nice weekend. It’s not your fault.” So I thought, I got’em. I got more than enough information that she’s continued to violate. And then after that violation we issued, we met. We set a time to meet.

Ms. Johnston: Okay. Could you–? You took photographs of these gentlemen, correct?

Mr. Villalon: Yes.

Ms. Johnston: Okay. Could you look at Exhibit I? And ignore the page with the dog on it, and go to the photographs. So these are the pictures that you took?

Mr. Villalon: Yeah, not as clear as mine, but these are the pictures.

Ms. Johnston: Okay. And these were taken on August 2<sup>nd</sup> about 10:00 in the morning? 10:20?

Mr. Villalon: Yeah.

Ms. Johnston: Okay. And it showed there were two vehicles, the two Chinese gentlemen, and the other Australian, correct?

Mr. Villalon: Right.

Ms. Johnston: Did you have any conversations with Ms. Rager after the notice of violation was issued?

Mr. Villalon: Yeah, we, you know, we set a meeting. We wanted to resolve it, get some resolution on it. So we set a date for her to meet with us in the Planning Director's office on August 21<sup>st</sup>, 2007.

Ms. Johnston: Okay. And who was present at that meeting?

Mr. Villalon: Myself and Inspector Jay Arakawa.

Ms. Johnston: Okay. Alright. And can you describe what went on at that meeting?

Mr. Villalon: Well, basically we had prior conversations with her on the phone, Ms. Rager, and she said, "Well, I have a list of people that I allowed to stay in the house. And I don't know. Maybe they stayed." I said, "Well, you know, it would be good if you can render us the names so we can check with those individuals if they can verify who was in the house the time we took the photos." And so she met with us. She had a list. She wrote out a list. And we asked her, "Well, who's the party on the list that can verify the individuals that were staying on this particular date?" And she said, "Well, I don't know. There's two other people I should be adding to the list." And, you know, she started crying and everything. So we said, "Look, wait, wait, wait. Just go get the names. We'll end this meeting. Get the names of the two other people that you allowed – you're allowing to have people come and stay at the house. And then we can check with them and verify if these individuals allowed to stay." And that never happened.

Ms. Johnston: Okay. Can you look at Exhibit P, please?

Mr. Villalon: P as in papa?

Ms. Johnston: Okay. P as in papa.

Mr. Villalon: Yes.

Ms. Johnston: Okay. Is that the list that she gave you at the time when you met with her?

Mr. Villalon: A copy of the list.

Ms. Johnston: Okay. And there's a second page. Were those the two other people that she remembered that was supposed to contact you?

Mr. Villalon: No, this was on the back page.

Ms. Johnston: Back page, yeah. Okay.

Mr. Villalon: This is not the additional names. These were the original names. Then she claimed that this list, there were actually people that should be added to this list, including that – back.

Ms. Johnston: Okay. So you asked for the people that were there on August 2<sup>nd</sup> to call you and verify that they were friends and family?

Mr. Villalon: Right, right.

Ms. Johnston: Okay. And no one ever called you?

Mr. Villalon: No.

Ms. Johnston: Okay. Since the notice of violation was issued on August 2007, have you had any further discussions with any of Ms. Rager's neighbors about the situation?

Mr. Villalon: Unfortunately, they called again at the beginning of this month. And they said, "You guys gotta stop this. This is a—" They said, "What, Charles? Same guy, "Charles, they're here. Man, they've been – you know, for the last three weeks through the holiday season. And this party has kids and adults. They're at the swimming pool." And I said, "Okay, I can respond." I'll make – I made the time. I went down. I took photographs of the vehicles. And I didn't want to be intrusive. There's a family around the pool. I didn't want to come out with cameras and – so I just called the adult male

over. And he – to be honest, it seemed really quued and choreographed. When he came up to me, he said, “Well, I was told something like this was gonna happen.” I go, “Like what?” He goes, “Well, anyway, my parents knows Rager.” I said, “Oh, who do they know?” “Oh, Rager’s mom. My parents know Rager’s mom, and we’re here for a party, and that there was no room. And we made arrangements to stay at this house. My wife is a Naluai.” And I go, “So who are you?” So I identified Bresenden, and mentioned that his parents, he, himself, and the children were staying there for a short term for that weekend—the first week of this month.

Ms. Johnston: Okay. You said you took photos of the cars. Could you look at Exhibit O and identify? Those are the photos you took?

Mr. Villalon: Yes, three vehicles.

Ms. Johnston: Okay. And you took these on the 7<sup>th</sup> of January?

Mr. Villalon: Yes.

Ms. Johnston: Okay. And there was a date stamp. What is that for?

Mr. Villalon: That’s the time I got back to the office and stamped it.

Ms. Johnston: Okay. And is it your understanding that one of these vehicles belong to Ms. Rager?

Mr. Villalon: I’m not sure. I didn’t run the registered owners.

Ms. Johnston: Okay. So since January 7<sup>th</sup> when you took those photos, have you had any further contact with her or with the property?

Mr. Villalon: No.

Ms. Johnston: Okay. I have no further questions.

Chairman Endo: Ms. Rager?

Ms. Rager: Okay. Let’s see. You contacted me via phone regarding the – on April 13<sup>th</sup> for the – ‘07 for the first one. And on the first warning, it also, and my copy’s a little – it’s really hard to read, it’s D, Exhibit D. I don’t know if you guys can read it any better, but at the bottom, if anyone has a better copy, it says to remove the website. Do you acknowledge it says that even though it’s kinda not–?

Mr. Villalon: Yes, yes.

Ms. Rager: Read – legible. Okay. And you also told me to take the Mana Kai down too?

Mr. Villalon: No.

Ms. Rager: You said– Yes. On the phone you told me to take down all my websites. And also, I do not own two Mana Kai. I own one Mana Kai unit. Earlier you said I owned two. I don't. I have 50% ownership of–

Chairman Endo: Excuse me, Ms. Rager.

Ms. Rager: I'm just correcting–

Chairman Endo: Yeah, but everything just has to be a question. You can correct him in your own statement when you're testifying.

Ms. Rager: Okay. Alright. So on the next time you called me and told me take down the website, did I not tell you I had taken down?

Mr. Villalon: You told me you took it down but you modified it. You didn't take the specifics on the Mikoi Place completely off the website.

Ms. Rager: Okay. Didn't you tell me the only thing left up there that referred to Mikoi at all was the word "Keonekai Heights" – two words?

Mr. Villalon: Along with the photographs.

Ms. Rager: There were no photographs at that time. You called me specifically because you said the VRBO was still up. And didn't I tell you, yes, but I've changed it to the Mana Kai condo because I don't know how to take the whole thing down?

Mr. Villalon: I didn't tell you to take all of your lots – your websites down.

Ms. Rager: No, sir. No, sir. I mean, I didn't know how to absolutely take the VRBO listing – me, myself, did not know how to take it down. Technically, I did not have the ability to move it, to take it off, so I changed all the pictures and everything to the condo. The only heading I couldn't change were the words "Keonekai Heights," but all the pictures were changed. And I asked you to go in and check it.

Mr. Villalon: So what are you asking me?

Ms. Rager: Did you go in and check it?



Mr. Villalon: Yes, and I saw that there was a reflection of a swimming pool and a two-story building with the hedges.

Ms. Rager: Okay. Can I show you this from the webmaster from VRBO which says "help us better serve you?" I asked them for what dates – "I need you tell me what dates I changed the listing from the house. All pictures and descriptions changed to the condo. The County of Maui is fining me for advertising the house which I stopped doing on 5/1."

Chairman Endo: Ms. Rager, are you referring to an exhibit?

Ms. Rager: This was part of the package that I had submitted originally.

Chairman Endo: Is that Exhibit J?

Ms. Johnston: There is a copy: Exhibit J.

Chairman Endo: Exhibit J? Okay. Okay, so what is your question?

Ms. Rager: Okay. Have you seen this Exhibit J?

Mr. Villalon: Yes.

Ms. Rager: Can you explain why VRBO says it's gone and you said you could still see it?

Mr. Villalon: It's the same listing. The listing didn't change. Like I said, what you did was you modified it, but what I wanted was the specific listing for Mikoi Place to be totally taken off, then I had no problem.

Ms. Rager: It was totally taken off, and that's what this exhibit says.

Chairman Endo: Ms. Rager, again, if you could limit yourself to questions on what he's saying. I mean, if you have a disagreement – and you're at a complete disagreement already. We've already heard it already. So there's really no need to keep going over and over. And you can make your statement, your full statement. You can describe everything when you're on the stand and give your side of the story. But we don't want to – we want to – we don't want to have repetitive testimony, and we don't want you testifying. We want you to ask questions at this point.

Ms. Rager: Okay. Do you have any proof that this statement from VRBO is incorrect? And I'm referring to the first line after, "Hi, Stephanie."

Mr. Villalon: It's not specific in that they're speaking of the Mikoi photographs. It doesn't say that. So I'm not refuting what it's saying. I'm just saying what was actually on the website was not removed. And that's why I spoke to you on the second warning: "Stephanie, just take it off, and I got no problems."

Ms. Rager: But do you have any proof it was not taken off because I contend it was? And you're sitting there saying it was still there, yet there's no pictures of it after the date of 4/23. There's nothing after that date. So what proof do you have that that was still up? Because on the phone we spoke about it and I said, "It's down. It's showing pictures of the condo."

Mr. Villalon: Well, the reference to Keonekai Heights is enough. Even if you say there was no photos, I told – you know, it doesn't take that long. But to remove the "Keonekai Heights" would've been enough, but you're admitting that was still on there.

Ms. Rager: That was something I couldn't change. That's what I told you. And I – which is why if you could – would you please read the second sentence in it?

Mr. Villalon: "I can?" Is it that one?

Ms. Rager: No.

Mr. Villalon: Or "The County of Maui's fining me for advertising?"

Ms. Rager: No. "And we changed the location."

Mr. Villalon: "To help you better—" "I can tell you that we received the request from you to take the listing offline and we changed the location from Keonekai Heights to Keawakapu."

Ms. Rager: And what date was that?

Mr. Villalon: 7/6/2007.

Ms. Rager: Okay. So you have no pictures to present of that listing being up?

Mr. Villalon: No, I don't.

Ms. Rager: Okay. The listing that– I'm sorry if I'm jumping all over. I'm not as organized. On our meeting on August 21<sup>st</sup>, I offered to give you a list of people who have stayed at the house. And I e-mailed that list to you, and I can't read the e-mail date on my copy. I don't know if it's visible on yours. Did you call any of those people?

Mr. Villalon: The only list that we received was at the meeting itself—the written, handwritten list.

Ms. Rager: The handwritten list was e-mailed— Oh, I can't find it. Do you know which number it is? As you can see, the top of it, it was e-mailed to you. I'm sorry, not e-mailed—faxed.

Mr. Villalon: What exhibit was that again?

Ms. Rager: P.

Mr. Villalon: Correct. Correct.

Ms. Rager: It was faxed. It was not presented at that meeting.

Mr. Villalon: Right. We had that present during the time we spoke.

Ms. Rager: Right. And the — have you called any people on this list?

Mr. Villalon: No, we — I haven't. I haven't used that unless we were given the entire list that we could go through and check all the—

Ms. Rager: Okay. When I spoke to Aaron, and I don't believe you were there, he said—

Chairman Endo: Ms. Rager, again—

Ms. Rager: Okay, okay, right.

Chairman Endo: Questions.

Ms. Rager: The second page of that list which says, "Linda Wilson, Michelle Phillips, and sisters," with 9/16, with a question mark, do you remember what I told you about these people?

Mr. Villalon: This is the one that was added on when we met, right?

Ms. Rager: Right.

Mr. Villalon: Okay. That's why I'm confused because you did give us something at that meeting. And it couldn't be faxed on the two sides.

Ms. Rager: I believe I wrote this on the back of— Do you remember what I told you about these people?

Mr. Villalon: No, I don't.

Ms. Rager: Does it refresh your memory if I said maybe I should tell you all my friends who are coming in September, too, so we don't have this problem?

Mr. Villalon: You told me that there were people that you needed to add onto the list. And that was the key gist to the closure of that meeting was you're going to give us names, more names that you related that should've been on the list.

Ms. Rager: No, these people— Do you remember me saying my friends were coming and I was joining them later in September? And I'll— That's when I flipped over the list and wrote these names down. I said they're coming before I am. I'm coming after there — get here. And I said, "Believe me. You'll get a call in September that I have renters?"

Mr. Villalon: There was much dialog on who and how much people that was—

Ms. Rager: This was very specific. I was very concerned because we were having a meeting, and I said, "I'm having friends come in, in mid-September, and then I'm joining them here." Do you remember me telling you that?

Mr. Villalon: To be honest, I don't. I don't remember . . . (inaudible) . . .

Ms. Rager: So you did not call anyone on the list even though you had the list?

Mr. Villalon: Yes, because we wanted to clarify the entire list and check them all to verify the names that we — of the photographs.

Ms. Rager: I was asked for a list, not an entire list, not for specific dates. And is that not what you asked me for? You did not give me specific dates, did you?

Mr. Villalon: We told you that we have evidence and that we wanted to correlate evidence with the list that you gave us. And you made the comment that, "You know what? There's other people that should be on this list."

Ms. Rager: Right. I didn't — I never represented this as a total list of everyone I know. Did I?

Mr. Villalon: No, and that was the end of the meeting. "Okay, get us the names so we can verify who was . . . (inaudible) . . . "

Ms. Rager: Oh, I disagree. That was not the end of the meeting. There was never anything said more—

Chairman Endo: Ms. Rager?

Ms. Rager: You're right. I'm doing it again. Okay. Okay, Tim Bresenden?

Mr. Villalon: Yes?

Ms. Rager: Did he mention Kay and Hank?

Mr. Villalon: He mentioned Kay.

Ms. Rager: Okay. Do you know who Kay is?

Mr. Villalon: On the list, it's your mother.

Ms. Rager: No, it's my sister-in-law who has a house in Wailea. Her son, did he mention Hank?

Mr. Villalon: No.

Ms. Rager: Hank is her son. Here's a – how do I put something in?

Chairman Endo: Why don't you mark it as "Appellant's Exhibit 1," and show it—?

Ms. Rager: I don't have 20 copies.

Chairman Endo: That's okay. Show it to the other side. While they're doing that, I got a little bit lost. This last thing you were just talking about? Could you—? What was the setting of that conversation? You're kind of jumping around so just to—

Ms. Rager: My guest – is Tim Bresenden the person you're referring to as having been at the house in January of this month?

Mr. Villalon: Correct.

Chairman Endo: Okay. So you're talking about January '08?

Ms. Rager: January '08.

Chairman Endo: Okay.

Ms. Rager: Now what do I do with this?

Chairman Endo: Well, now we ask if there's any objection from either party as to the

admission of this exhibit.

Ms. Johnston: No.

Chairman Endo: Okay. Yeah, what – can you describe it?

Ms. Rager: This is an e-mail from Tim to me when I asked him– It says, “I’m sorry about all this.” Well, I’m sorry, Jana wrote that.

Chairman Endo: Well, just tell us the date of the e-mail.

Ms. Rager: The date of the e-mail is January 21<sup>st</sup>. I printed it out while I was here. I came to Maui on January 21<sup>st</sup>.

Chairman Endo: So it’s a January 21<sup>st</sup> e-mail. We’ll accept it as “Appellant’s Exhibit 1.”

Ms. Rager: It’s from Tim describing his meeting with Charles stating that he didn’t have – he didn’t know Charles’ name. “I told him that we were friends of the family and that you allowed us to stay because of our relationship with Kay and Hank,” which is true. I know Tim and his wife Jana and their three kids because he is a friend, and that’s what he told you–relatives. Did Tim indicate he paid any money to stay at my house?

Chairman Endo: All he said was that his parents knew Kay, your mother.

Ms. Rager: No, he wouldn’t have said my mother. He knows my – or both. Did he say he paid anything to stay at my house?

Mr. Villalon: He didn’t want to answer that question. He said, “I just – I’m just here with my wife and kids. We went to a baby luau in Haiku.” He was willing to say that, and not willing to say anything else. He said, “You know, I got my family waiting.” And that’s why I thought it was really orchestrated the way he commented, initially commented to me. “I was told that somebody was going to be – something like this was going to happen.”

Ms. Rager: Yes, I told him that, so he – so it happened, but here’s his e-mail. Where do I–?

Chairman Endo: You can give it to the Planning staff. During our break, maybe we can have copies made.

Ms. Rager: Has anyone told you that they’ve paid money to stay at my house?

Mr. Villalon: Yeah.

Ms. Rager: And who would that be?

Mr. Villalon: That would be an Australian National with two Chinese Nationals when I took the photographs on Exhibit I. And actually when I got the call from a complainant resident on the street, Charles Rodrigues, he said "If you can come now, Brudda, they checking in. I heard they going buy groceries and they'll be right back." So I waited on the street and I saw the vehicle pull up. So I waited. They were opening the trunk. They were pulling groceries out. And I just drove my County car right behind them, and I just introduced myself. And he said, "Yeah," when I asked him, "Are you staying here?" "Yeah, we're staying here. Why? Is something wrong?" I said, "No, nothing's wrong, but it's an illegal – there's complaints on illegal activities at this house—short term rentals." He said, "Well, we're just staying for the weekend." "How did you find out about this?" "I went online. I paid with my credit card. And we didn't know. We were told just to keep the noise down." "Well, have fun. Enjoy yourselves. I'm not going to – you're innocent with this, but just be advised there's complaints on this house so keep the noise down." And I got – I identified the individual that could speak English from Australia.

Ms. Rager: He said he paid with a credit card?

Mr. Villalon: That's what he said.

Ms. Rager: I don't have credit cards. I've never been able to take credit cards. In fact, that's quite clear. It should've on this – it was printed down. I have Annette Pablo and her wedding. And it's – the Chin Family were at my house for her wedding. And I have no idea who all she invited there. But here is an e-mail from her, including pictures of her – of the wedding. And she is a friend of my daughter's.

Chairman Endo: Ms. Rager, are you asking questions?

Ms. Rager: Well, yes, I would like Mr. Rodrigues to identify the people. I can't tell–

Chairman Endo: You mean Mr. Villalon?

Ms. Rager: Mr. Villalon, yeah.

Mr. Villalon: Identify the people that were occupying and using the residence at a particular time? I don't even know when this is.

Ms. Rager: Well, this is when you said there was an Australian gentleman there.

Mr. Villalon: I got photographs of them in the front yard.

Ms. Rager: And what number again?

Mr. Shefte: I.

Ms. Rager: Okay. These are the people– What do I – and mark it?

Chairman Endo: Again, Ms. Rager, you can ask him questions. Then you can mark that as proffered “Exhibit Appellant’s 2.” But if it’s basically your side of the story and he has no familiarity with it then, you know, basically if you want to make a statement, you should save that for your turn up on the stand. Okay?

Ms. Rager: Well, these are the dates he’s referred to.

Chairman Endo: But if he has no familiarity with the document, there’s no foundation. If he has–? You know what I mean? It’s just your story of the case. It has nothing to do with what he observed. Or if it does, then that’s fine. But if it’s just something completely separate, then we won’t go very far on this. So – but go ahead.

Ms. Rager: Well, I don’t know how I can basically disprove what he’s saying.

Chairman Endo: Well, that’s what I’m saying. Your chance is when you testify on the stand. You can say whatever you want–your entire story. You can lay it out in a very comprehensive–

Ms. Rager: I mean, now a credit card’s coming up, and I could prove that I don’t have credit card capability.

Chairman Endo: And you would have your opportunity when you take the stand to state exactly that. But I don’t – but it’s not good for you to be making statements interspersed when it’s supposed to be cross examination of the witness.

Ms. Rager: Okay. Then will I be able to bring this up at a later date?

Chairman Endo: Yes.

Ms. Rager: Okay. And let me see. Let’s see what else. On Exhibit N, on what days on the January calendar did you encounter Tim at the house?

Mr. Villalon: I believe it was Monday, the 7<sup>th</sup>.

Ms. Rager: Does this calendar indicate that someone’s at the house?

Mr. Villalon: I don’t know. There’s x’s and clear. I mean, I don’t know. I can’t say what



they are. It's obviously a calendar for reservations, but I can't tell you that because there's x's on it or crossed out that-

Ms. Rager: Well, can you read the top of it right under "4 Bedroom/3 Bath Home" what the dash means versus the-?

Mr. Villalon: "Night unavailable" and "Available."

Ms. Rager: So if I were renting this house, I would've - if this was an active calendar that really meant anything, would it have showed the house being occupied?

Mr. Villalon: All the way up to the 19<sup>th</sup>.

Ms. Rager: Was there anyone in the house on the 19<sup>th</sup>?

Mr. Villalon: I didn't check on the 19<sup>th</sup>.

Ms. Rager: Was there-? When did Tim tell you he was there for?

Mr. Villalon: He was there for the weekend, so it would've been the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup>.

Ms. Rager: I don't think that were his dates. I thought he was there through the 9<sup>th</sup>, but I'd have to check with my sister-in-law. Okay. And let me see if there was something else I was supposed to-

Chairman Endo: Ms. Johnston, how many more witnesses do you have after this?

Ms. Johnston: Well, I'm going to be asking Ms. Rager some questions and Mr. Krau, a very short testimony.

Chairman Endo: Okay. I was just checking.

Ms. Johnston: So you might want to take a-

Chairman Endo: We'll take a short break after Mr. Villalon.

Ms. Rager: Okay, to sum it up, do you have any cashed checks of anybody that's rented from me?

Mr. Villalon: I wish I had. No, I don't.

Ms. Rager: But you don't. Do you have a receipt?

Mr. Villalon: No.

Ms. Rager: Do you have a billing of any kind?

Mr. Villalon: No, I don't.

Ms. Rager: Do you have anyone's sworn statement other than your interpretation of how they were behaving at the house?

Mr. Villalon: No affidavit.

Ms. Rager: Do you have any unsworn statements?

Mr. Villalon: Yeah.

Ms. Rager: In somebody's own written hand?

Mr. Villalon: No.

Ms. Rager: So you really don't have anything other than people being at my house?

Mr. Villalon: I've got witnesses that confronted me, called me twice on separate occasions that resulted in—

Ms. Rager: And – well, where are they so that I can confront them?

Mr. Villalon: On vacation at this time.

Ms. Rager: Can I ask who that would be?

Mr. Villalon: Charles Rodrigues.

Ms. Rager: Charles Rodrigues picked up his newspaper this morning. He's in Kihei.

Mr. Villalon: (Inaudible) . . . vacation.

Ms. Rager: Well, he's vacationing in his own house. I don't think I have anything further.

Chairman Endo: Okay. Board members, do you have any questions? Yes?

Mr. Ajmani: I have a question about this Exhibit N that was given to us at this time, and the calendar that everybody's referring to. And this shows another website:

homeawayconnect.com/calendar and so on. So does this mean that there is something like this on the website still for this place? It says "4 Bedroom/3 Bath Beautiful Maui Home" on the calendar. So is this some other website now or--? I just want to understand.

Chairman Endo: Okay, I'm not -- yeah, that's the thing, though. I think, Hari--

Mr. Ajmani: Who made this copy?

Chairman Endo: Well, let's ask -- well, we can first ask Charles, but if he doesn't have any familiarity, he probably can't answer. If he can answer, we'll try that first. Otherwise, we'll go to the parties.

Mr. Villalon: Well, this is a problem you guys are gonna be facing in the future when we start, you know, to aggressively enforce that. The consensus with all the TVRs is they're switching their sites. And it's really a task to track them down. And they are -- they're switching their sites. They're modifying them. They're on two or three different sites. And some of them, they actually don't know. What I found out there was this holistic provider, people getting over cancer and sickness, terminal illness, that they wanted places for their patients to stay, and therapists, and all that. And I called them. And they said, "Yeah, you know, we just call guys and said, you know, we need the listing. We need to put people in." And they listed their places without the knowledge of the actual occupants -- owners.

Chairman Endo: Yeah, okay. But as far as Hari's specific question, are you familiar with -- did you print this out?

Mr. Villalon: No, I didn't, but I know it's an active site. It's an option. That's one of the optional sites that they can get on to.

Chairman Endo: Okay.

Mr. Ajmani: Okay, thank you.

Chairman Endo: Any further questions from the Board? Redirect?

Ms. Johnston: Okay. No, I don't have any further questions.

Chairman Endo: Okay. Thank you, Mr. Villalon. So does the Board need a short break, or are you guys okay? So a very quick bathroom break--five minutes. Okay, we'll reconvene at three o'clock.

(A recess was then taken at 2:55 p.m. and the meeting reconvened at 3:04 p.m.)

Chairman Endo: It's now 3:04 and we will call the meeting back to order. We were just handed the County of Maui second supplemental exhibit list: Exhibits Q and R.

Ms. Johnston: I apologize for the lateness, but you'll see it's information we just got on Tuesday of this week. And Mr. Krau is going to be testifying to it. So it's pretty straightforward. And I provided Ms. Rager . . . (inaudible) . . .

Chairman Endo: Does Ms. Rager have a copy of it?

Ms. Johnston: She does. I just gave her a copy.

Chairman Endo: And, Ms. Rager, do you have any objection to the introduction of these Exhibits Q and R into evidence.

Ms. Rager: (Inaudible)

Ms. Johnston: Let me describe. Q is a copy of a letter that Mr. Krau sent to the DMV to obtain the owners of the vehicles that Ms. Roark had recorded in the list. Her list is also Exhibit K which is already in evidence. The DMV moves very slowly, and we didn't – this printout was on January 22<sup>nd</sup> listing the different owners. And Exhibit R is the calendar that's already part of an exhibit that I made some notes on. And mostly I'll be arguing from that exhibit and asking Ms. Rager some questions. And that calendar's already part of Exhibit – part of Exhibit G. It's already in evidence.

Chairman Endo: Okay, seeing as the parties have stipulated to the admission of Exhibits Q and R, we'll accept those into the record. So you may call your third witness.

Ms. Johnston: Okay, Frank. I'm going to call Frank Krau.

Chairman Endo: Mr. Krau, could you spell your name for us?

Mr. Frank Krau: K-R-A-U. First name: Frank.

Chairman Endo: Frank. Please raise your hand, Mr. Krau. Do you swear or affirm that the testimony you're about to give is the whole truth?

Mr. Krau: Yes, I do.

Chairman Endo: Thank you.

Ms. Johnston: Go ahead. You can be seated. You've already said, but go ahead and state your name, and what your – explain what your job is with the County of Maui.

Mr. Krau: My name is Frank Krau. I'm the investigator for the Corporation Counsel for the County of Maui, State of Hawai'i.

Ms. Johnston: Okay. And can you – you were asked to participate in part of the investigation of this case, correct?

Mr. Krau: Yes, I was.

Ms. Johnston: Okay. Can you explain what you did as part of your investigation?

Mr. Krau: As part of the investigation, I went out. I re-interviewed some of the witnesses. And I obtained some information from Ms. Roark in the form of a list of motor vehicles that she had been taking – writing down through the various months that this incident had occurred. I requested from the Department of Motor Vehicles, County of Maui, that they provide us a printout of the owners of said vehicles.

Ms. Johnston: Okay. If you look at Exhibit Q, this is a letter dated January 3<sup>rd</sup>, 2007. Is this a letter you wrote to the DMV?

Mr. Krau: Yes, it is.

Ms. Johnston: Okay. And the following page is – two pages are a copy of the list that Ms. Roark provided, correct?

Mr. Krau: That's correct.

Ms. Johnston: Okay. You mailed that also to the DMV?

Mr. Krau: Actually, I hand-delivered this all to DMV.

Ms. Johnston: Okay. Alright. Okay. And then the pages that are the printouts that received dated 1/22/2008, can you explain for the Board what these are?

Mr. Krau: These are printouts of the various – from the license plates of the various vehicles on the list that . . . (inaudible) . . .

Ms. Johnston: Okay. And then the very last page of it Exhibit Q is a chart that I actually prepared, but does this accurately reflect what the information was you received from the DMV?

Mr. Krau: Yes, it is.

Ms. Johnston: Okay. And just – of – I think – I believe there are 23 different cars. Of

that number, how many are owned by rent-a-car?

Mr. Krau: I'd have to count them. (Inaudible) Approximately, 17 of the vehicles were owned by rent-a-car companies.

Ms. Johnston: Okay. There's one listed 11/30/07, Kathleen and Henry Rager. And then you don't have printouts for the cars listed in the last box—the January dates. Did you get any kind of verbal information?

Mr. Krau: Yes, I did a check through some sources I have at the Maui Police Department very quickly to determine who owned those vehicles.

Ms. Johnston: Okay. And in – and 9/7/7 is owned by Stephanie Rager, correct?

Mr. Krau: That is correct.

Ms. Johnston: Okay. And also in the printouts, the first page, the vehicle that's MRY 432, license plate, indicates "Rental Car Finance Corporation." What is – did you find out what Rental Car Finance Corporation is?

Mr. Krau: Yes, I checked to find out what Rental Car Finance Corporation is. It's corporations established in Delaware, and it has many subsidiaries one of which is Alamo Rent-A-Car.

Ms. Johnston: Okay. Alamo or Dollar?

Mr. Krau: Oh, I'm sorry—Dollar Rent-A-Car. I also checked Alamo.

Ms. Johnston: Okay. Right. Okay. Because this reflected in the chart that I prepared as Dollar.

Mr. Krau: I'm sorry, it was Dollar. I'm sorry.

Ms. Johnston: Okay. Alright. You said that also you talked to some of the neighbors of Ms. Rager?

Mr. Krau: Yes, I did.

Ms. Johnston: Okay. Specifically, who did you talk with?

Mr. Krau: I talked with Ms. Roark, Barbara Roark, and I talked to Charles Rodrigues.

Ms. Johnston: Okay. And what did Mr. Rodrigues indicate to you?

Mr. Krau: In reference—?

Ms. Johnston: To anything having to do with Ms. Rager's property.

Mr. Krau: He indicated that there was quite a few people coming and going, different people at different times, using different motor vehicles. They were having late-night parties. And they were never the same people over a many week period.

Ms. Johnston: Okay. Alright. That's all the questions I have.

Chairman Endo: Thank you. Ms. Rager?

Ms. Rager: I'm trying to think what I have. They're rental cars.

Mr. Krau: Correct.

Ms. Rager: Do most people who come here to visit rent a car with them? I mean, do you find having a rental car on Maui a strange issue?

Mr. Krau: No.

Ms. Rager: I don't think I have any questions.

Chairman Endo: Okay, thank you. Board, any questions? Seeing none, redirect?

Ms. Johnston: None.

Chairman Endo: None? Okay. Thank you.

Ms. Rager: I had one: do you have a statement from Mr. Rodrigues?

Mr. Krau: I've talked to Mr. Rodrigues, yes. I interviewed him.

Ms. Rager: Is there a reason why he's not here?

Mr. Krau: He indicated to me that he would be going on vacation starting on the 20<sup>th</sup> of this month and returning on the 27<sup>th</sup>.

Ms. Rager: So it would surprise you to know he's home today?

Mr. Krau: If he is, yes, it would because he told me differently.

Ms. Johnston: Okay. Thank you. At this time, I'd like to call Ms. Rager as a witness.

You have the exhibits with you? All of them? I'll be referring to— Okay.

Chairman Endo: Frank, if you want to stay and watch, you can, as long as you're not — there's no intention of anybody to call you again as a witness.

Mr. Krau: Thank you, sir.

Chairman Endo: And you're not intending to call him again?

Ms. Johnston: No, I'm not intending.

Chairman Endo: Okay. Okay, Ms. Rager, please raise your right hand. Do you swear or affirm that the testimony you're about to give is the whole truth?

Ms. Rager: Oh, I do.

Chairman Endo: Okay. Thank you.

Ms. Johnston: Okay. Can you state your name and your home address for the record?

Ms. Rager: Stephanie Rager, 31472 Old San Juan Road.

Ms. Johnston: Okay. Can you use—? I'm having— The fan just went on and I'm having a little — something went on, I—

Ms. Rager: San Juan, Capistrano, California.

Ms. Johnston: Okay. Is that your permanent residence in California?

Ms. Rager: Correct.

Ms. Johnston: Okay. How long have you lived at the residence in California?

Ms. Rager: Nine years.

Ms. Johnston: Okay. Are you currently employed?

Ms. Rager: No.

Ms. Johnston: Okay. When you were employed, what was your job?

Ms. Rager: I was an insurance broker.



Ms. Johnston: Okay. In California?

Ms. Rager: Correct.

Ms. Johnston: Okay. And is it correct that you also had your own brokerage company?

Ms. Rager: Yes.

Ms. Johnston: Okay. And what was the name of the company?

Ms. Rager: Solo Insurance Services Inc.

Ms. Johnston: Okay. Do you own other – do you own your home in California?

Ms. Rager: Yes.

Ms. Johnston: Okay. Do you own any other properties in California?

Ms. Rager: Yes.

Ms. Johnston: Okay. Can you describe what they are?

Ms. Rager: We have a condo in Los Angeles.

Ms. Johnston: Okay. Do you rent that condo?

Ms. Rager: No.

Ms. Johnston: Okay. So it's something that you just use for your own family purposes?

Ms. Rager: My husband spends much time up there because he works in L.A.

Ms. Johnston: Okay.

Ms. Rager: So to avoid the commute.

Ms. Johnston: Okay. Alright. In addition to the property located at Keonekai Heights, the one's the subject to this proceeding, do you own other properties in the State of Hawai'i?

Ms. Rager: Yes.

Ms. Johnston: Okay. And can you describe what they are?

Ms. Rager: I own a condo at the Mana Kai Maui, which is in Kihei. And I own 50% ownership of a house in Moana Lani Resort on the Big Island.

Ms. Johnston: Okay. And do you use the Mana Kai apartment as a vacation rental?

Ms. Rager: Yes.

Ms. Johnston: Okay. And you have a separate website that advertises that?

Ms. Rager: They're— What do you mean by separate?

Ms. Johnston: Okay. Do you—? Let me rephrase the question: do you advertise the Mana Kai unit on the Internet for vacation rentals?

Ms. Rager: Yes.

Ms. Johnston: Okay. And how many websites do you advertise that on?

Ms. Rager: Two.

Ms. Johnston: Okay. And what are the websites?

Ms. Rager: VRBO and Home Away.

Ms. Johnston: Okay. And when did you—?

Ms. Rager: Oh, and my own. I'm sorry. Three.

Ms. Johnston: Okay. What is your website?

Ms. Rager: MauioMaui.com.

Ms. Johnston: MauioMaui?

Ms. Rager: Yes.

Ms. Johnston: Okay. And how long have you owned the Mana Kai unit?

Ms. Rager: Five or six years.

Ms. Johnston: Okay. And when did you first start advertising on the Internet?

Ms. Rager: When I bought it, which I think I bought it in 2001.

Ms. Johnston: Okay. And have you had it advertised on all three of those websites since you bought it?

Ms. Rager: No. I don't think it was on VRBO or Home Away until about two years ago, but I'm not positive.

Mr. Warren Shibuya: Can she speak in the mic?

Chairman Endo: Okay. Ms. Rager, we're having a hard time hearing you because of the fan. If you could pull the mic a little closer to your mouth or lean towards it a little?

Ms. Johnston: Okay. I'm going to – I don't know that I'll put this in as exhibit, but I'd like to hand this VRBO printout that I made this morning. If you could look at that and if you can tell from what's printed there when you – that was first listed?

Ms. Rager: I don't know. It might say on the bottom of it. This listing was first published in – it says "06."

Ms. Johnston: Okay. October 11, 2006?

Ms. Rager: Yeah.

Ms. Johnston: Okay. And this is a legal vacation rental, correct?

Ms. Rager: Correct.

Ms. Johnston: Okay. Alright. The property you have on the Big Island, do you also use that for vacation rentals?

Ms. Rager: Yes.

Ms. Johnston: Okay.

Ms. Rager: And personal use. I'm only a 50% owner of that.

Ms. Johnston: Okay. And when did you acquire that property?

Ms. Rager: Two years ago.

Ms. Johnston: Okay. And have you also advertised that on the Internet for rental?

Ms. Rager: Yes.

Ms. Johnston: Okay. And what websites have you advertised that on?

Ms. Rager: I believe it is only on VRBO.

Ms. Johnston: Okay. And do you know how long that's been listed?

Ms. Rager: Probably about a year, a year and a half. Maybe two, but I don't think so.

Ms. Johnston: Okay. And that's also a legal rental?

Ms. Rager: Correct.

Ms. Johnston: Vacation rental?

Ms. Rager: Yes.

Ms. Johnston: Okay. When did you buy your – the Keonekai Heights' property?

Ms. Rager: I think it's been just about two years now. I think December would've been two years.

Ms. Johnston: Okay. So it would be 2005? End of 2005?

Ms. Rager: Yes.

Ms. Johnston: Okay. And when you purchased this property, was it your intent to use it for vacation rentals?

Ms. Rager: It was my intent to use it personally and to use it as a vacation rental.

Ms. Johnston: Okay. And when you say you're going to use it personally, what did you envision your personal use of it would be?

Ms. Rager: Having my family over and using it. The Mana Kai is too small to have large groups over. And it – the house was much bigger.

Ms. Johnston: Okay. Isn't it true that you made considerable improvements to the house after you purchased it?

Ms. Rager: The only considerable improvement was adding a pool. The rest of it was paint which was barely nominal.

Ms. Johnston: Okay. And was it your intention by adding the pool that that would make

it more attractive to potential renters?

Ms. Rager: No, it would make it more attractive for my grandson.

Ms. Johnston: Okay. Could you look at Exhibit H? First of all, you listed this property for sale in May of last year, is that correct?

Ms. Rager: Yes.

Ms. Johnston: Okay. And why did you list the property for sale then?

Ms. Rager: We were having some personal financial issues. And I didn't know if I'd be able to keep it without the supplemental income from being able to rent it.

Ms. Johnston: Okay. The – where it says “Public Remarks” in the middle of the page, it describes the number of improvements that you made: pool–

Ms. Rager: Not that I made.

Ms. Johnston: Okay.

Ms. Rager: Most of this stuff was there when I bought the house.

Ms. Johnston: Okay. Well, this ad says “Pool, landscaping, bamboo fencing, interior paint, tile, and more was all done in 2006.” That's after you purchased it, correct?

Ms. Rager: Well, the paint and the pool – I'm sorry. I'm trying to find your exact spot. The pool, I added. I didn't consider the bamboo fence a huge investment. It wasn't that expensive. And I did air-condition the upstairs, but all the rest of it was there other than paint.

Ms. Johnston: Okay. What was the purchase price you paid for this property?

Ms. Rager: 895 I think.

Ms. Johnston: Okay. And you listed it for sale for \$1,095,000?

Ms. Rager: Correct.

Ms. Johnston: Okay. I noticed on this listing agreement where it says “Realtor Remarks,” it says, “Home may be hard to show so give as much notice as possible.” You see that on there?

Ms. Rager: Okay.

Ms. Johnston: Okay. Why was that included?

Ms. Rager: Because I was over there quite often. I, you know, I didn't write the Realtor remarks.

Ms. Johnston: Okay. Isn't it true that because you had renters in there, it made it hard to show?

Ms. Rager: No.

Ms. Johnston: And you took this property off the market in October?

Ms. Rager: Yes.

Ms. Johnston: Okay. If you could turn to Exhibit G? First of all, this is a listing of your home in Keonekai Heights to rent out as a vacation rental, correct?

Ms. Rager: Yes.

Ms. Johnston: Okay. And this is printed on February 10<sup>th</sup>, 2007?

Ms. Rager: Yes.

Ms. Johnston: Okay. If you go to the last page – I mean, not the last page, the third page, it indicates that this listing was first published on October 11<sup>th</sup>, 2006, correct?

Ms. Rager: I'm looking for you. Where are you?

Ms. Johnston: Third page.

Ms. Rager; Yes.

Ms. Johnston: Okay. And that's the same date that shows up on the Mana Kai listing too?

Ms. Rager: Yes.

Ms. Johnston: Okay. So did you at the same time that you listed Keonekai, also this Mana Kai on the same day?

Ms. Rager: It appears that I did.

Ms. Johnston: Okay. What other websites was the Mana – the Keonekai Heights' property listed on?

Ms. Rager: I think it was on Home Away, and I canceled that also at the same time I changed VRBO would be my recollection.

Ms. Johnston: Okay. If you could look at the last page of Exhibit G which is a calendar? You notice it says "www.rentors.org."

Ms. Rager: Yes.

Ms. Johnston: Is that a different website?

Ms. Rager: No. It is a— Let's see how to explain it. If you look on the page before that, and it's not showing up on this – on my printout, but where it says "Dates Available," under that there's a calendar. It's not showing up here. If you click on that, it brings you to this calendar. It's nothing you sign up for. I've never signed up for rentors.org. It's somehow connected automatically when you do VRBO.

Ms. Johnston: Okay. So if somebody would look at your website, was interested in pursuing to see when dates available to possibly rent the Keonekai Heights' property, they'd click on the calendar?

Ms. Rager: Yes.

Ms. Johnston: And this fourth page would come up?

Ms. Rager: Yes.

Ms. Johnston: Okay. And just so we understand we're all reading it correctly, if the date has a line through it, that means that it's not available that night, correct?

Ms. Rager: Yes.

Ms. Johnston: Okay. Now, this calendar that was run on February 10<sup>th</sup>, 2007 shows a number of unavailable dates in February, March, April, May, June, July and August. Is it fair to say that those were all dates that people had booked in to stay at your – this house?

Ms. Rager: No, they're dates that I was going to use too.

Ms. Johnston: Okay. Which dates were of these dates listed, did you use?

Ms. Rager: Going back to '07, I came over quite a bit. So the August date, in fact, that was when I was meeting with the County. So I know I was here in August.

Ms. Johnston: Now, which part – which date in August?

Chairman Endo: Excuse me, Ms. Rager, we can't hear you because of the fan. If you could put it up about two inches away from the mic would be great.

Ms. Rager: The August dates I was over here. That's when I met, as previously testified by the Inspector. May, I believe, was spring break. I was here with my grandson. June was the end of school. I have not seen this calendar since I stopped this listing. And I have no way – I don't know how to get to this calendar unless you click on the VRBO or the Home Away. They were tied together.

Ms. Johnston: Okay. Let's go back. First of all, you – the testimony from Inspector Villalon was that he met with you on August 21<sup>st</sup>?

(Ms. Rager testified in the affirmative.)

Ms. Johnston: Okay. So in February of 2007, you had no idea that you were making a trip, then, correct?

Ms. Rager: In February– I'm sorry. I've lost you.

Ms. Johnston: Okay. This printout was done in February of 2007.

Ms. Rager: No, I would've been coming over here anyway. I come over here once or twice a month.

Ms. Johnston: Okay. Isn't it correct that you – that once you got the notice of violation, which I believe you picked up on August 17<sup>th</sup> that you came to Maui to meet with the Planning people?

Ms. Rager: No, I was here with my daughter and my grandson. I called him to say I was on island, and I'd like to meet with him, but that is not the reason I came.

Ms. Johnston: Okay.

Ms. Rager: And I'd like to clarify the picking up the violation. It was – the violation itself was mailed to me, but the previous ones, although in here it says it was certified, it was not sent certified mail, the first one.

Ms. Johnston: Okay. Of the dates you mentioned on this calendar, February 10<sup>th</sup> 2007



that you were here in May and June?

(Ms. Rager testified in the affirmative.)

Ms. Johnston: Okay. What about in July?

Ms. Rager: I don't know. I have no memory of this. And possibly, it would've been booked prior and I canceled everything.

Ms. Johnston: Okay. So it's your—

Ms. Rager: I canceled the VRBO listing, but I didn't know how to go in. It never even occurred to me to go in and cancel the calendar because the way to get to the calendar is to click on the listing.

Ms. Johnston: Okay. For the people that had made reservations for the dates, they're indicated on this calendar. Did you contact them and cancel them out as far as their reservations?

Ms. Rager: I moved some of them to the Mana Kai.

Ms. Johnston: Okay. Did you cancel — how many people did you not cancel out that came ahead and stayed at your house according to the reservations they had made as of February 2007?

Ms. Rager: Nobody.

Ms. Johnston: Okay. So it's your testimony as you sit here today that you had no further renters after April?

Ms. Rager: No. No, April, I had people in April, and I don't think I had anyone after that. I didn't book that many renters because it's hard on the house.

Ms. Johnston: Okay. Could you please look at Exhibit R? Just the recent one. Is it your testimony that the only people that stayed at your house subsequent to the issue — the first issuance of the first notice of warning were friends and family?

Ms. Rager: And friends of family.

Ms. Johnston: Okay. And—

Ms. Rager: I didn't know all those people, and I still don't know them all.

Ms. Johnston: Okay. If you could look at Exhibit R, I'll represent that the yellow is just highlighting of the unavailable dates on the calendar we're just looking at. And that the red boxed-in are the dates corresponding to the dates that Ms. Roark indicated in her listing that the different vehicles were at your house with the license numbers. Okay. Could you please identify for the red boxed-in dates which of the friends or family were staying on your property on those dates?

Ms. Rager: From the top of my head, I can't do all of them. September 15 through the 22<sup>nd</sup> was me. My girlfriends arrived on the 15<sup>th</sup>. I arrived on the 17<sup>th</sup>. They stayed and two of them left on the 23<sup>rd</sup>. One left with me. November 17<sup>th</sup>, the 19<sup>th</sup>, I arrived. And Luis Lanza and his family came in on the 21<sup>st</sup>. I left on the 23<sup>rd</sup>. They stayed. On December, I came in on the 17<sup>th</sup>. It's not marked here. Mrs. Burke must've been busy. I came in on the 17<sup>th</sup>. Rene Quinan and her family came in on the 21<sup>st</sup> and stayed. Following that, they came back to California and stayed at our house from that. Tim Bresenden came in on the – I believe he came in the 4<sup>th</sup>. I don't know what's marked on the 1<sup>st</sup>. That doesn't make sense to me. Tim came in, unless I'm wrong on Tim's dates. I got a call from my sister-in-law asking if he could stay. And let's see. Where are we now? We're in January. And backwards, September, August, I was here August with my daughter and my grandson on that. Prior to that, I believe I'd have to go back to a calendar. I did not come prepared to give a day-by-day accounting of friends and family in my house. I called and tried to ask what I would need. And had you – had I known, I would've brought a full-on calendar. I know I was here – let's see. I had a board meeting for the Mana Kai in May, so I would've been here in May. That was spring break in May. June was summer.

Ms. Johnston: Okay. When was the spring break in May?

Ms. Rager: The spring break from my grandson's school was in – on the 14<sup>th</sup>. We came over here. And then I came back at the end of May for a board meeting for the Mana Kai, and I stayed at the house.

Ms. Johnston: Your rates for people to rent the Keonekai Heights' property according to your website printout, Exhibit G, varied according to the season, correct? Some nights were more expensive than others, correct?

Ms. Rager: I would assume. Yeah, I guess.

Ms. Johnston: Okay. You charged a \$300 non-refundable cleaning fee?

Ms. Rager: Yes.

Ms. Johnston: Okay. And a \$250 refundable security deposit?

Ms. Rager: Yes.

Ms. Johnston: Okay. And the 11.42% Hawaiian tax?

Ms. Rager: Yes.

Ms. Johnston: And did you pay the tax?

Ms. Rager: Yes, I did.

Ms. Johnston: Okay. After April of – 23<sup>rd</sup>, when you got the first notice of warning, you indicated you canceled everything. Is it your testimony that—?

Ms. Rager: I don't believe I had that many people booked to do all the canceling like it was a full-on hotel.

Ms. Johnston: Okay. Well, my question is that it shows that there were a number of – there were reservations or were unavailable nights. There were the description of the cars. Did you – these people pay for cleaning units after they've been there?

Ms. Rager: Who?

Ms. Johnston: Your friends and family?

Ms. Rager: No.

Ms. Johnston: They pay for electricity?

Ms. Rager: No. Some of them left me gifts.

Ms. Johnston: Okay. So you – it's your testimony that you got no income at all?

Ms. Rager: Well, some of them might have paid the cleaning fee. I had a gal there by the name of Jody Buckingham, and they might've paid her directly. She would come in and clean.

Ms. Johnston: Okay. So you were having economic problems that required you to rent the property, but you—?

Ms. Rager: No, no, no. I bought the property just to – with the idea of using it and also renting it. I decided to sell it when I couldn't rent it. And we had – we thought we were going to have some economic problems which, thank God, did not occur.

Ms. Johnston: Didn't you know that when you bought the property that you could not legally rent it for short term vacation rentals?

Ms. Rager: No, ma'am, I did not.

Ms. Johnston: Okay. But you were aware that there were restrictive covenants that said that you could not use it for this?

Ms. Rager: No.

Ms. Johnston: Is it your testimony that you were not given a copy of the restrictive covenants?

Ms. Rager: I was told by the seller that the association was not enforced, and the CC&Rs did not apply because there was no active association.

Ms. Johnston: Okay. Did you check any further than that?

Ms. Rager: No.

Ms. Johnston: Did you talk to any of your neighbors before you decided to turn this into a vacation rental to see if they would have any objection?

Ms. Rager: Yes.

Ms. Johnston: Who did you talk with?

Ms. Rager: I talked to Mr. Mock behind me – well, to the immediate right. He knew and so did Charles Rodrigues.

Chairman Endo: Not to make it go any faster than it needs to, I mean, we want you to do a full testimony and speak your piece and everything, but just so you know, several members will probably have to leave at 4:00.

Ms. Johnston: Okay. I'll try to – I'm going to try to be through by then.

Chairman Endo: Okay. I mean, if we have to continue it, we'll continue it. I just wanted – for your information.

Ms. Johnston: Okay. Could you look at Exhibit N? And when you were questioning Mr. Villalon, you indicated that this is a calendar for the Keonekai Heights' property, correct?

Ms. Rager: Yes.

Ms. Johnston: Okay. "4 bedroom/3 bath, beautiful Maui home," and showing blocked out on January, the first week, and 11<sup>th</sup> through the 19<sup>th</sup>, correct?

Ms. Rager: Yes.

Ms. Johnston: Okay. And the number – connect property I.D. on this is 161429?

Ms. Rager: I'm sorry, where are you?

Ms. Johnston: Right at the very bottom of the page.

Ms. Rager: I don't know what connect property I.D. is.

Ms. Johnston: Okay. Well, what I'd like you to do is to compare it with Exhibit G. I realize the calendar there is kind of hard to read. This is the calendar for starting February 2007 on renters.org, and the rental property I.D. is 161429, same property I.D.

Ms. Rager: Okay.

Ms. Johnston: Okay. So you had testified that you took it down, the website down, in April?

Ms. Rager: Yes.

Ms. Johnston: You've provided as part of your appeal, notice of appeal, which is one of the exhibits, an e-mail from VRBO saying that it was taken down, yet clearly, as of January 2<sup>nd</sup> 2008, there is still – this property is still being run on a website.

Ms. Rager: No, that's incorrect. This calendar is obviously somehow can be brought up, but there is no website showing that house anywhere on the website. I, first of all, never even renewed the fee which would've been due. I canceled Home Away. I had them take it down. And VRBO, I had them change it to the Mana Kai. The only thing that they still connect to the calendar is because I have multiple listings under one name. So the calendar might be there, but there is no way of getting to it that I know of, and there is no advertising for this house. There's no description. There's no pictures. There's no nothing. The mechanics, the computerization of how you get this calendar is unknown to me. I don't know how to get back to this calendar. And I don't know why it's showing up.

Ms. Johnston: Okay. But this is the same as the previous one that you claim you took down?

Ms. Rager: I took down the website. I don't know how to take down the calendar. And

it's strictly a calendar. I mean, I don't know the mechanics of going in there to get rid of it. And it's a calendar. It doesn't offer anything. It doesn't have a price to it. It doesn't say who to call. I mean, it doesn't even have a description or an address of a house on it.

Ms. Johnston: Your website, current website for the Mana Kai, people are directed to call you directly, correct?

Ms. Rager: Or e-mail me.

Ms. Johnston: Okay. So you can talk with – ever had people inquire as to whether you had anything other than the Mana Kai to rent?

Ms. Rager: I have a house in Kona.

Ms. Johnston: Okay. And you have the house in Keonekai Heights.

Ms. Rager: I do not rent that.

Ms. Johnston: Okay. In the Exhibit N, how do those dates get made unavailable? How do the markings get on those calendars if you have no way to get to it?

Ms. Rager: I have not touched this calendar since I took down the VRBO site.

Ms. Johnston: Okay. You had people, though, that came and stayed at those dates? You've testified about them.

Ms. Rager: About which dates?

Ms. Johnston: The January 2008 dates.

Ms. Rager: Well, here, I'm looking at January 2008. There's no markings.

Ms. Johnston: No, I'm talking about Exhibit N.

Ms. Rager: I'm in Exhibit N.

Ms. Johnston: Exhibit N is for the year 2008, correct.

Ms. Rager: I don't have any marks on mine. I don't know.

Ms. Johnston: If you look at January 2008?

Ms. Rager: I have N. Okay.

Ms. Johnston: And my question to you is, you had people that came. You claimed that they are friends of friends, friends of your family members. It's marked on the calendar for this property that you claimed to have taken off the website not—

Ms. Rager: But that isn't — it's not marked for the dates they stayed.

Ms. Johnston: But why is it marked at all if this has been taken off—?

Ms. Rager: It had to have been marked prior to me taking the website.

Ms. Johnston: When did you take down the website?

Ms. Rager: In April. I have the VRBO e-mail, which I believe was given back to me as a — well, it's their — it was taken down 4/20 — no, "offline on 4/23."

Ms. Johnston: Okay. But this was printed out in January of this year.

Ms. Rager: I don't how to get to the calendar. And it is just a calendar.

Ms. Johnston: Okay. I have a question about the e-mail which is Exhibit J, if you could look at that? "I can tell you that we received a request from you to take the listing offline on 4/23—"

Ms. Rager: Wait, wait, wait.

Ms. Johnston: Okay. I'm sorry.

Ms. Rager: Okay. Go ahead.

Ms. Johnston: Okay. "I can tell you that we received a request from you to take the listing offline on 4/23/2007. And we changed the location from Keonekai Heights to Keawakapu on 7/6/2007." What does that mean?

Ms. Rager: When I got a call from Charles, I went online and took the website off, offline, made it inactive. You couldn't see it. So then I thought, well, I can't get my money back on the website. It's a one-year subscription. So I went in and I uploaded pictures of the Mana Kai, changed all the verbiage to make it the Mana Kai Maui condo. So I had two ads for the Mana Kai Maui condo. The only thing I could not myself physically change by — through their editing process was the words "Keonekai Heights." I simply could not find a way of getting that off. It said "Keawakapu Beach" and "Keonekai Heights." So I e-mailed— Then Charles called me back, and I said "I've

changed it.” He said “It still says ‘Keonekai Heights.’” And I said, “But it doesn’t say anything about the house. It shows the condo.” He said, “I don’t care. Get Keonekai Heights off of there.” That’s when I sent an e-mail to VRBO and asked them to specifically remove the words “Keonekai Heights.” That’s what this refers to, and they did it on 7/6 because I simply couldn’t do it.

Ms. Johnston: And you disagree with his testimony that you continue to run pictures of the Keonekai Heights’ property?

Ms. Rager: Absolutely. I took down every picture. I put up pictures of the Mana Kai. There were two listings for the Mana Kai condo. And the only thing was “Keonekai Heights,” and I didn’t see that something going worldwide, the words “Keonekai Heights” would signal in on one neighborhood in Maui. So I didn’t get all excited about not being able to remove “Keonekai Heights” until Charles called me and said, “I don’t care what the pictures are. It still says ‘Keonekai Heights.’” Because I asked him. I said, “Go on and look at the website. Put the number in. You’ll see it’s all the condo.” And he said, “Get rid of Keonekai Heights.” So I did, but I had to e-mail them to remove it because I couldn’t do it myself.

Ms. Johnston: Okay. And if you would take a look again at the photos that are Exhibit I, just to clarify, are these friends or family members of yours?

Ms. Rager: These would be friends of Annette Pablo who had her wedding at my house. I didn’t know she was marrying a man whose parents are Ethnic Chinese. I had – that’s the wedding pictures that she sent me.

Ms. Johnston: I have no further questions.

Chairman Endo: Okay, at this point, Ms. Rager, you don’t have to cross examine yourself with questions and answers. You can just make a statement and everything you say will be part of the record as sworn testimony. So you can – you don’t only have to talk about the topics that you were asked questions of. You can just say whatever you want about the whole case.

Ms. Rager: Okay, well, I think, you know, I have tried to do everything that Inspector Charles asked. Some of it, I didn’t do successfully, like removing “Keonekai Heights” from the website, but I didn’t feel that those two words were in effect, a continuous violation, because as I said, with an ad going worldwide, but showing a beach on Maui, and describing a two-bedroom condo, I didn’t think the words “Keonekai Heights” was that horrible of a violation. When Charles called me again and was very rude about it, I then e-mailed and got rid of “Keonekai Heights.” That was the last communication I had with him regarding anything until I got the violation.



I was over here and that's when I called for the meeting with him and with Jay. And I insisted on meeting with someone else besides Mr. Villalon alone, which Mr. Hunt, if he remembers, I spoke to him directly, and said I did not want to meet with Charles alone because he was being extremely rude, and it just didn't seem to go anywhere. So I called Mr. – Mr. Hunt assured me somebody else would take the meeting. So I called Mr. Villalon back. And I said, "I've talked to Mr. Hunt. And he's going to arrange for someone else to be with us." In which case, and I shared this with Mr. Hunt, Mr. Villalon was very disrespectful of Mr. Hunt, and his authority, and everything else. And things were spiraling definitely downhill.

I went to the meeting. And prior to the meeting, I had spoken to Aaron who I believe is above Mr. Villalon. I'm not sure. This was a phone conversation prior to my arriving. He said, "Send us some names of people that we can call to verify that they've been at your house, and they didn't rent." So I did. I handwrote out what is– Well, I want to make sure the right– Okay, Exhibit P, I handwrote that out and I faxed it to Aaron. It even says it, "Attention: Aaron," on it. And they – that was presented at the meeting with Mr. Villalon and Jay. And I said, "Here's the list. You've got it via fax." He said, "We're not calling these people. They're all your friends and family." I said, "Well, that's what I'm trying to tell you–they're my friends and family. Call them. They can verify what dates, who they had with them at the house." I told them at that time, "I do not know everybody who's been at the house." I did not know until today that they've not even bothered to make a phone call, you know, to do it. I also gave them a list on the backside where it says "Linda Wilson, Michelle Phillips and Sister." I said, "I am coming here with these people in mid-September." And I said, "And you will get a call from a neighbor telling you they're renters. They're not. They're my friends and I will be here with them," which is exactly what happened. And the same with Mr. Bresenden, I said, "You're welcome to use the house, but be aware that you're going to end up having some city inspector show up at the door accusing you of being a renter," and that's exactly what happened.

So, you know, so far I've done everything that I was asked. I took down the websites. I've done the best that I could. I'm not renting the house, but it doesn't seem to matter as long as I've got a neighbor who doesn't like me using the house the way I want to, and that's with friends and family.

As for the rental cars, people can't drive to Maui. My car is a 1992 Chevy van with 110,000 miles on it. It will not put up with a lot of driving going up Haleakala. And I tell people they have to rent cars because the car– It's out in the parking lot. It's a hunk a junk. It will not be used as tourism. So people rent cars. As I said, they can't drive here. And I find it just ludicrous that having a rental car in your driveway makes you a lawbreaker.

I don't know what else to say. I – you know, the witnesses are not here. My neighbor

Charlie and I are on good terms. He's never complained about anything about my house. He tells me that he's happy that I'm there because the house looks better than it ever did when the Mills owned it. So, you know, the star witness hasn't spoken to anyone, yet she knows they're renters because they've got rental cars. So there's nothing else I can say.

Chairman Endo: Okay, any questions from the Board?

Ms. Rager: I have one – I'm sorry, there is one more thing.

Chairman Endo: Okay.

Ms. Rager: If I didn't believe I was right, why would I go to this much effort over a thousand dollars? And that's what the fine is. It's just a matter of principle. I've spent my time, and effort, and everything else, and your time.

Chairman Endo: Okay–

Ms. Johnston: Could I have just one–?

Chairman Endo: No, we're going to do questions from the Board and then we can have a redirect. So, Mr. Castro?

Mr. Castro: Just one question here: everyone on this list is family and friends?

Chairman Endo: What exhibit are you referring to?

Mr. Castro: This is Exhibit E.

Ms. Rager: P?

Mr. Castro: E.

Ms. Rager: Yes.

Mr. Castro: Okay. Did anyone of them pay anything to stay at your place?

Ms. Rager: No, and they all rented cars except for Christina Rager. And actually, Kay Rager is on the list of – that's Kathleen and Ray Rager or Henry Rager that's on the list that the other gentleman got from the–

Mr. Castro: Investigation?

Ms. Rager: DMV, yes. Their car is listed as being at my house because it is at my house.

Mr. Castro: Thank you.

Mr. Uwe Schulz: Mr. Chair?

Chairman Endo: I'm sorry. Uwe?

Mr. Schulz: I just want to clarify a couple points. Do you have a mortgage on that house?

Ms. Rager: Yes.

Mr. Schulz: You have a million-dollar asset and a mortgage you pay monthly. And you don't want to have any – derive any income from that?

Ms. Rager: I did when I – well, I thought I was going to, but I've been shut down. And I understand that. I understand the County is working on something, but I have enough income from the Mana Kai that is completely legal without a headache that I can keep the house. And to be honest, the mortgage isn't that high. I put a big down payment on it.

Mr. Schulz: How much is your mortgage?

Ms. Rager: The mortgage on that is I think 450.

Mr. Schulz: So that relates to about \$4,000 to \$5,000 monthly?

Ms. Rager: Oh, no, no, no, no, no, my mortgage on that's \$2,700 a month.

Mr. Schulz: And so you are stating that it has no income whatsoever for a very long period of time?

Ms. Rager: Correct.

Mr. Schulz: Okay, thank you.

Chairman Endo: Member Shibuya?

Mr. Shibuya: I just have – Ms. Rager, I just wanted to confirm with you on the CC&Rs, normally, these are provided to the buyer of a home or property. In your case, did you receive a copy of the CC&Rs?

Ms. Rager: Yes, and I was told that they were not enforced. These would be the CC&Rs that–

Mr. Shibuya: Excuse me. Just answer the question.

Ms. Rager: I'm sorry, yes.

Mr. Shibuya: Yes, you did receive a copy?

Ms. Rager: Yes.

Mr. Shibuya: Okay. On the paragraph, it does say that it does not allow for these types of visitors or at least paid type of individuals other than your family or your guests. Are you aware of that?

Ms. Rager: What are you – where are you, please, sir?

Mr. Shibuya: Okay. On page 8, Subparagraph 6, it says– Exhibit–

Chairman Endo: Exhibit M.

Mr. Shibuya: M. And I quote, "Periodic and noncontinuous habitation of a dwelling unit, rentals, and short-term leases having a duration of less than 30 days shall not be permitted."

Ms. Rager: I was under the impression that these rules and regulations were not enforced, and currently, are still not enforced because there's no association.

Mr. Shibuya: If they're not enforced and non-applicable, then the CC&Rs would not be issued.

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

Mr. Shibuya: Also, the next question is, you're the owner/proprietor of many properties. Do you have accommodation – transient accommodation tax license?

Ms. Rager: Yes.

Mr. Shibuya: Do you also have a general excise tax license?

Ms. Rager: Yes.

Mr. Shibuya: Do you file a Federal Income Tax Schedule E?

Ms. Rager: I don't know what we file, but we file full Hawai'i State taxes, whatever is required. We have a CPA who does that. I do not know what forms are filed.

Mr. Shibuya: On this claim form, you also claim for maintenance, as well as income, as well as for some deductions for the various properties, is it not so?

Ms. Rager: I don't know, sir. I don't see the forms.

Mr. Shibuya: Also on your personal homeowners insurance, you have homeowners insurance, I am assuming, for all of the properties?

Ms. Rager: Yes.

Mr. Shibuya: Does it allow for visitors, continuous visitors, or is it a different type of insurance that allows for liability, personal liability, for those that are occupying that structure or renting?

Ms. Rager: My Mana Kai insurance covers rentals. The rest of my insurance is through my— And the house in Kona has a provision that it is a rental and so does the Mana Kai. My other properties are strictly a homeowners typical form liability policy.

Mr. Shibuya: Okay, thank you.

Mr. Schulz: Mr. Chair?

Chairman Endo: Yeah, Uwe?

Mr. Schulz: You stated quite categorically that you do not have the ability for credit cards. Are you referring that only to your house or to your other properties only?

Ms. Rager: Everything. I do not have any—

Mr. Schulz: Because in our world, it's totally impossible if somebody called from Turkey and says I want to rent your house, and you would say, well, you would have to send me a deposit. Are they sending — all the people who rent, are they all sending you checks and cash?

Ms. Rager: I've never received cash but checks for my Mana Kai and the house in Kona. I don't have any credit card ability.

Mr. Schulz: Well, then you cannot take reservations. I mean, if I go to a hotel, if I go to the Sheraton, and call them up and said I'd like to get a room for the weekend, the first thing they do is say "What's your credit card?"

Ms. Rager: I don't have a credit card account.

Mr. Schulz: But that's impossible that you don't have a credit card because nobody can do business without it.

Ms. Rager: Well, of course you can. I rent the Mana Kai and the house in Kona strictly on a check basis or money order. Or the Canadians who rent the Mana Kai send a check drawn on a U.S. bank. I don't know how they do it.

Mr. Schulz: That seems to be very unusual because in our business world today, I mean, even Burger King takes credit cards now. And if you would wait – if somebody calls you up and says I want to come in two weeks to occupy your condominium or your house in Kona, and you said, well, why don't you send me a check please?

Chairman Endo: Uwe, at this point, you seem to be arguing with the witness rather than asking her a question. I mean, she'd already said she doesn't take credit cards. So if it's unusual to you, you can comment on it during deliberation, but I would like you to limit yourself to questions of the witness, please.

Mr. Schulz: So I–

Ms. Rager: Sir, you can go on my website for the Mana Kai and you'll see it does not take credit cards.

Mr. Schulz: Okay, thank you.

Chairman Endo: Hari?

Mr. Ajmani: Yes, I have a question on this calendar that we have talked so much about, the one on Exhibit G, which was printed on February 10, 2007. And I think something similar was reprinted again on January 2<sup>nd</sup>, 2008. And if you look at the January 2008 on both of these calendars, you notice that on January – on February 10<sup>th</sup>, the 1 through 6 are not crossed out. But on the second one, 1 through 6 are also crossed out as not available. If you had taken the website off as you have claimed to have taken it, how did this calendar change?

Ms. Rager: I have no idea how this calendar is even pulled up, no less, changed.

Mr. Ajmani: Okay, so you have no way of knowing how this changed?

Ms. Rager: Well, it could've changed between 2/10/07 and when I took it down in April of '07. I don't know.

Mr. Ajmani: So it wasn't that – the reservation you made somewhere in-between that made it change?

Ms. Rager: It could've been something I put on the calendar after 2/10/07 before I took everything down on – when was it? 4/07. I don't know. I'm – it's supposition, on my part. I don't even know how to get into this calendar.

Mr. Ajmani: Okay, so you don't recall having done anything that could've changed this calendar?

Ms. Rager: Not since last April.

Mr. Ajmani: Okay, so the other thing you had said that you have all these families, friends, and all renting, or not renting, but staying at your place, and not paying anything. Are they paying anything other than money for these?

Ms. Rager: No.

Mr. Ajmani: Okay, so are you accepting some bartering something with them for these – for them to stay there?

Ms. Rager: I would assume if I wanted to go their house, I could stay there, but no, there's no quid pro quo. There's no–

Mr. Ajmani: Okay, thank you.

Mr. Schulz: Mr. Chair, may I be excused?

Chairman Endo: Forever?

Mr. Schulz: Until the last time.

Chairman Endo: Okay. Let the record reflect that Board Member Schulz has to leave. It's now 4:05 p.m.

Ms. Acks: And I'm going to have to go too.

Chairman Endo: And Ms. Acks will have to leave soon.

Ms. Acks; I'd like to ask one quick question.

Chairman Endo: Yes, Kathleen?

Ms. Acks: I'm concerned. We were hearing in July there was a big group that resulted in a lot of noise. I think the bigger issue for me and one of the reasons why people buy houses with CC&Rs is the idea that if they're buying in a quiet neighborhood irrespective of whether there's income being generated or not, they'd like it relatively quiet. I think the idea of people coming back and making a lot of noise at two o'clock in the morning, and then jumping in the pool, and making a lot of noise until 4:00 would upset me in particular if it was within a block or two of my house. I think my concern is there are a lot of people who appear to be staying at your house when you are not onsite. And there is no oversight or no place for a neighbor to contact to deal with this. And I think that's really the guts of what's going on is people – you know, if there weren't problems, this wouldn't be here. And so evidently, something was causing – you know, when people come in and rent, and they're quiet and they're not disruptive, they don't tend to get a lot of phone calls. If there are phone calls being generated, I think there's a problem. Even if it's not being a rental property, I think it raises a question. I think certainly if there's a rental agreement, there's a problem especially in – and it's probably impossible for us to determine one way or the other what's going on. But I think the noise is – people have a right to be upset.

Ms. Rager: And I would agree. And I have talked to my neighbors on both sides. I've never talked to Ms. Burke before. I've never – I've seen her in the driveway, but other than that – And I tell people who are there, I tell my friends, and I tell Charlie if I'm having young people over to – and I tell them, do not make noise. It's a quiet neighborhood. Consider quiet time at nine o'clock. I've told Charlie if somebody bothers you, call the police. I agree with you. If I've got friends there and family, and particularly, the young group that seems to think that they own the world and it revolves around them, call the police. I would do that. I mean, I'm listening to all these suffering neighbors who have never said a word to me. I've been there. I am there at least once a month, if not, more often. I see Charlie every day, practically, when I'm there. He has never said word one to me about noise, about anything. He's told me that I'd forgot to stop my newspaper. And he's piled them up for me, but he's never said I'm disturbed by – you know, did you know that your son's family just carried on until 1:00 in the morning? I don't want that either. And if that – if it's an issue of noise from family members and friends who are there, then call the police, and tell me, not keep calling the County. And I mean, how much is this costing everybody? I mean, this is crazy. I haven't gotten no complaint from one neighbor, not even Mrs. Burke. Had she come and knocked on my door and said "What's going on?" I would've told her, you know. I mean, this is bordering on – I don't know, crazy time here.

Chairman Endo: Okay, let the record reflect that Kathleen, Member Kathleen Acks has to leave so we're now down to seven members.

(Ms. Acks left the meeting at 4:06 p.m.)



Chairman Endo: And I will have to leave in about five minutes. I had a question, and then I'm going to let Member Castro ask a question. Ms. Rager, do you know approximately what your total gross revenue was for the house in 2006?

Ms. Rager: I wasn't renting it in 2006.

Chairman Endo: Oh, you weren't? Do you know how much you – for 2007?

Ms. Rager: No, not very much. I really didn't have that many people interested in renting it before it got shut down.

Chairman Endo: So you probably have a pretty large number for your other properties which are rented, though, the Mana Kai.

Ms. Rager: The Mana Kai and Kona–

Chairman Endo: I'm not really interested in actually the numbers because – but I'm just–

Ms. Rager: I don't know if this compute to any number that will make sense. I have to pay my taxes quarterly. There's a threshold that you hit when you have to pay a monthly, and I'm not there, but I couldn't tell you what that amount is.

Chairman Endo: Okay. Member Castro?

Mr. Castro: Ms. Rager, Mr. Villalon mentioned that when he spoke to that Australian, he said he paid by credit card. And you state that you don't take credit card. Would you be able to prove how they paid for this?

Ms. Rager: He didn't pay for it.

Mr. Castro: Didn't pay for it?

Ms. Rager: It was Annette Pablo's wedding. I don't know who the Australian is. I know Annette Pablo. She's a friend of my daughter's. I didn't know that her in-laws were going to be Ethnic Chinese. And I didn't know that there was a fellow from Australia showing up. And if he paid for anything via credit card, it was probably his flight there. I don't know. I don't take credit cards. I never have. I don't have the ability to take credit cards.

Mr. Castro: My only concern is his response to Mr. Villalon about paying with a credit card.

Ms. Rager: Well, then there was some confusion as to what the question to the

Australian was. I don't know. I do not take credit cards. I never have.

Mr. Castro: Thank you.

Chairman Endo: Okay.

Mr. Shibuya: Can we move to recess at another time that is more convenient with the applicant?

Chairman Endo: We could do that, or we could maybe try and finish because they did want to have redirect. Or do you mind whether we stop now or later?

Ms. Johnston: I think it would be good if we recessed . . . (inaudible) . . .

Ms. Rager: I have a flight home tomorrow.

Chairman Endo: Okay. Well, let's see. Does someone want to second the motion?

Mr. Shefte: Second.

Chairman Endo: Okay, it's been moved and seconded to recess the meeting. Trisha, do you want to give us suggestions on alternate dates? Okay. Are there any more witnesses that you're going to be calling, Ms. Johnston?

Ms. Johnston: I'm sorry?

Chairman Endo: Do you have any more witnesses?

Ms. Johnston: I was going to put Trisha so I would need a little bit more time.

Chairman Endo: Okay. And, Ms. Rager, how many – did you have witnesses that you were going to call, or are you pretty much done?

Ms. Rager: I'm done.

Chairman Endo: Okay. So hopefully we don't need more than an hour to – at our next meeting.

Ms. Kapua`ala: Would you like to call a special meeting?

Chairman Endo: Not really.

Ms. Kapua`ala: The next available hearing date would be February 14<sup>th</sup>.

Chairman Endo: Okay, to the parties, is February 14 a good date? Ms. Rager, is February 14—? Checking? Okay. Ms. Johnston?

Ms. Johnston: Yes, that would be fine.

Chairman Endo: That date's okay. Okay.

Ms. Johnston: And what time?

Chairman Endo: Pardon?

Ms. Johnson: 1:30?

Chairman Endo: It would be at 1:30 at our regular time, yes.

Mr. Shibuya: That's a Wednesday.

Chairman Endo: No, it's a Thursday.

Mr. Shibuya: Thursday? Oh, okay.

Mr. James Giroux: Trish, can you make sure that the members that left get a transcript of the remainder of this hearing from today?

Ms. Kapua`ala: Yes, sir.

Chairman Endo: If it's not available, can we make copies of the cassette tape? It'll be available? Okay. Yes, Ms. Rager?

Ms. Rager: It appears that February 14<sup>th</sup> is fine, but if I get home and have a conflict, how would I deal with that?

Chairman Endo: Well—

Ms. Kapua`ala: Just notify the department, and we'll reschedule to the next available hearing date which will be the 28<sup>th</sup>, February 28<sup>th</sup>.

Chairman Endo: But it would be better if we don't drag it on too long because we're going to start to forget everything that we've heard.

Ms. Rager: No, I agree. I just have not been home since Monday. I don't want to get home and find out, you know, there's some issue.

Chairman Endo: Sure.

Ms. Rager: I don't expect there to be. I just want to know what the—

Chairman Endo: Okay, so what we'll do is we'll set – well, Warren, is it okay you amend your – your motion will then be restated to recess till the 14<sup>th</sup>?

Mr. Shibuya: Yes, but I—

Chairman Endo: Not recess, but—

Mr. Shibuya: Would like to recess this hearing—

Chairman Endo: Is it a recess?

Mr. Giroux: Well, it's a contested case so it's just going to be a continued hearing.

Chairman Endo: Okay, so the next continued hearing would be February 14<sup>th</sup>. Any discussion from members? No? Seeing none, all those in favor, please say aye. Raise your hand. Okay, opposed? No?

It was moved by Mr. Shibuya, seconded by Mr. Shefte, then

**VOTED: To continue the hearing on February 14, 2008.**

**(Assenting: W. Shibuya, J. Shefte, S. Castro, W. Kamai,  
R. Ball Phillips, and H. Ajmani.)**

**(Excused: U. Schulz and K. Acks.)**

Chairman Endo: **Motion is carried. We will – this matter will be rescheduled to February 14. If the parties have problems that come up with conflicts, they can make a request to the Planning Department for rescheduling.** Okay. I have to go, so I'm going to turn it over to Warren.

Ms. Rager: Am I done? Are we done?

Chairman Endo: Oh, yeah. Sorry, yeah, thank you.

Mr. Shibuya: It is a recess. Thank you, Ms. Rager.

Chairman Endo: Till the 14<sup>th</sup>.

(Mr. Endo then left the meeting at approximately 4:13 p.m.)

Mr. Shibuya: Okay, members, we do have a couple minutes that I'd like to go through and have you either approve or correct.

**C. APPROVAL OF THE DECEMBER 13, 2007 AND JANUARY 10, 2008,  
MEETING MINUTES**

Mr. Shefte: Mr. Vice-Chair, I move that we approve.

Mr. Shibuya: Which minutes would you like to – we have one for December 13<sup>th</sup> Board meeting, and also the January 10<sup>th</sup>. Would you like to—?

Mr. Shefte: I move that we approve the December 13<sup>th</sup>.

Mr. Kamai: Second.

Mr. Shibuya: It's moved and second that we approve and accept the December 13<sup>th</sup> minutes. All in favor, say aye. Any opposed?

It was moved by Mr. Shefte, seconded by Mr. Kamai, then unanimously

**VOTED: To approve the December 13, 2007 meeting minutes as presented.**

**(Assenting: J. Shefte, W. Kamai, W. Shibuya, S. Castro,  
R. Ball Phillips, and H. Ajmani.)**

**(Excused: U. Schulz and K. Acks.)**

Mr. Shibuya: **Hearing no nays, it's been accepted.** On January 10<sup>th</sup>, do I hear a motion on the acceptance or corrections of that minutes, of that January 10<sup>th</sup> meeting?

Mr. Shefte: So moved.

Mr. Shibuya: It's been moved.

Mr. Kamai: Second.

Mr. Shibuya: Second again by Bill. It's been moved and second. Any discussions on this? None?

Mr. Ajmani: I wasn't here so I will abstain from voting.

Mr. Shibuya: We have enough quorum. So we can – so all in favor of accepting the January 10<sup>th</sup> minutes, say aye. Any opposed? None?

**VOTED: To approve the January 10, 2008 meeting minutes as presented.**

**(Assenting: J. Shefte, W. Kamai, W. Shibuya, S. Castro, R. Ball Phillips.)**

**(Abstaining: H. Ajmani.)**

**(Excused: U. Schulz and K. Acks.)**

Mr. Shibuya: **It's been unanimous again.**

**D. DIRECTOR'S REPORT**

**1. Status Update on BVA's Contested Cases**

Mr. Shibuya: Under the Director's Meeting Report, Status Update of the BVA Contested Cases. Staff, do we have any update on this BVA Contested Cases? I believe you have one identified here on January 10<sup>th</sup> that you put in our packet. Are there changes to this?

Ms. Kapua`ala: No significant changes to report on record.

Mr. Shibuya: Okay. Thank you very much. Any questions from members? None. Hearing none, the next meeting is scheduled for February 14<sup>th</sup>. That is Valentine's Day.

**E. NEXT MEETING DATE: February 14, 2008**

**F. ADJOURNMENT**

There being no further business to come before the Board, the meeting adjourned at 4:16 p.m.

Respectfully submitted by,

TREMAINE K. BALBERDI  
Secretary to Boards and Commissions II

**RECORD OF ATTENDANCE**

**Members Present:**

Randall Endo, Chairman (1:34 p.m. - 4:13 p.m.)  
Warren Shibuya, Vice-Chairman  
Uwe Schulz (1:34 p.m. - 4:05 p.m.)  
William Kamai  
Rachel Ball Phillips  
James Shefte  
Kathleen Acks (1:34 p.m. - 4:06 p.m.)  
Harjinder Ajmani  
Stephen Castro, Sr.

**Others:**

Aaron Shinmoto, Planning Program Administrator  
Francis Cerizo, Planning Department Staff  
Trisha Kapua`ala, Planning Department Staff  
James Giroux, Deputy Corporation Counsel