KAUA'I PLANNING COMMISSION
REGULAR MEETING
November 25, 2014

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair Jan Kimura at 9:19 a.m., at the Līhu'e Civic Center, Mo'ikeha Building, in Meeting Room 2A/2B. The following Commissioners were present:

Chair Jan Kimura
Vice Chair Angela Anderson
Mr. John Isobe
Mr. Wayne Katayama *(entered 9:58 a.m.)*
Mr. Sean Mahoney
Ms. Amy Mendonca

Absent and Excused:
Mr. Hartwell Blake

The following staff members were present: Planning Department – Michael Dahilig, Leslie Takasaki, Dale Cua, Marie Williams; Office of Boards and Commissions – Cherisse Zaima; Deputy County Attorney Ian Jung; Deputy County Attorney Jodi Higuchi-Sayegusa

CALL TO ORDER

Chair Kimura called the meeting to order at 9:19 a.m.

ROLL CALL

Planning Director Michael Dahilig noted there were five commissioners present.

APPROVAL OF THE AGENDA

Mr. Dahilig recommended the Subdivision items be right after the Agency Hearing, immediately followed by Item F.2.a., then the South Kaua'i Community Plan, holding the Contested Case last.

On the motion by Sean Mahoney and seconded by Angela Anderson to approve the agenda as amended, the motion carried by unanimous voice vote.

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APPROVAL OF THE MINUTES

Meeting of October 28, 2014
Meeting of November 12, 2014

On the motion by Sean Mahoney and seconded by Angela Anderson to approve the minutes of the October 28, 2014 and November 12, 2014 meetings, the motion carried by unanimous voice vote.

RECEIPT OF ITEMS FOR THE RECORD

Mr. Dahilig noted there is a supplemental agenda concerning testimonies on the action items before the Commission, which has been circulated.

On the motion by Sean Mahoney and seconded by Angela Anderson to receive the items for the record, the motion carried by unanimous voice vote.

HEARINGS AND PUBLIC COMMENT

New Agency Hearing

Class IV Zoning Permit Z-IV-2015-7 and Project Development Use Permit PDU-1015-6 to convert an existing warehouse into a general commercial/retail facility with 46 off-street parking stalls on a parcel located along the western side of Kōloa Road in Lāwa'i situated approx. 500 ft. west of its intersection with Lauoho Road, further identified as 3540 Kōloa Road or Tax Map Key 2-5-004: 0067, and containing a total area of 35,152 sq. ft. = ***Ty E. & Ariana M. Owen.*** [Director's Report received 11/12/14.]

The Commission received testimony from Camellia Crosby who stated she and her husband are homeowners in the Lāwa'i Hillside subdivision, and is voicing her concern regarding the proposed project. They are retired seniors who purchased their home there after Hurricane Iniki, which at the time was a quiet, restful place. They are concerned about noise and traffic that will be generated from both the construction, and subsequent operation of this project. Another concern is with the overflow parking once the business is open as well as the possibility of people walking through their neighborhood, and theft. Sound travels loudly both day and night in Lāwa'i Valley, and additional auto traffic as well as patrons of the proposed project will disturb the peace. Additionally, there are many pet dogs in the neighborhood that will be constantly barking. Mrs. Crosby questioned aside from what was noted in the newspaper, what other businesses will be proposed, and how is parking going to be enforced on the roadside as it is only a two lane road that is already heavy with traffic, and dangerous for both pedestrians and bicyclists. They acknowledge that the owners of the property have the right to use it following the law; however, as property owners themselves, Mrs. Crosby stated they have the right to the quiet enjoyment of their property. There is much medical information concerning how seniors' health is affected when living near highways among a lot of noise, which is of great concern to them, and is their motivation for making their concerns known. Lastly, Mrs. Crosby stated there

are several businesses encroaching in their area, which is zoned residential, noting their home is directly across from those businesses, and they experience much noise. She questioned how she is supposed to sleep with all the noise keeping her awake, and is unsure how they can stop it as she knows they have the right, but wanted to express her concerns.

The Commission received testimony from Pastor Tom Iannucci who stated he feels the previous testifier, as a resident, expressed valid concerns. However, he feels this is a good revitalization project for the current eyesore in the community, and is very similar to what they did as a church in the Rice Shopping Center with the old Big Save warehouse that they renovated without changing the footprint. He explained they added to the interior of the building, and made it a better place. He feels this proposed project is in line with the Mayor's young entrepreneur project, noting many of the businesses wanting to come in are young men and women from our community, who were born and raised here, and this is an opportunity for them to start something. The Cannery is already zoned for commercial use, and most of the parking will be in the back. He noted the way buildings are currently constructed, he feels the noise will be limited. He pointed out this proposed project is taking the existing structure, renovating and revitalizing it for use, which will serve veterans as well as young entrepreneurs who will have businesses there, such as KUGA (Kaua'i UnderGround Artists) who works with the youth on the island. There are many positive things about the project, which he wanted to express his support for as a community member, and as a leader. Pastor Iannucci commented he had looked at that building in the past for his church, but it's very run-down and this project will beautify it, and bring in some business. He does not feel the traffic will increase, as that is just what the traffic is like on Kōloa Road, and will always be there. He reiterated his support for the project, noting it is a good thing for the community, and the types of businesses that are planned to be there will not incur loud noise-making situations, or roadside parking.

The Commission received testimony from Lila Metzger who is the Director for Kaua'i UnderGround Artists (KUGA), which is a local, non-profit here on Kaua'i and was established in 2005 in Kalāheo, serving the community ever since. KUGA has been based in Kalāheo this entire time next to the 76 gas station, but have since given that space to another business, and have been anxiously looking for a new location to set roots down. Ms. Metzger is personal friends with the applicants, and has been helping with the vision of this project, noting there are many places they could rent, but they chose to be within the community they live in, and are active in to ensure they are accessible to the kids and families there. 80 percent of the businesses going into this project are owned by women, such as Organic Functional Fitness. KUGA will be offering art classes, music classes, and piano and voice lessons as well as dance instruction in hip hop, modern, contemporary, and ballet; these classes will serve ages 4 through adult. They will also have a children's bookstore that will offer book readings in the morning, hot cocoa in the evenings, and potentially other positive, educational activities in a safe environment for parents to drop off and have their children participate in while they check out some of the other businesses there. They do not intend to do business into the late hours as they are parents themselves, and do not want to be out working until the late hours of the night. Ms. Metzger commented with the development going on in Po'ipū that was previously brought up at Subdivision, there were concerns about not being able to get the project going, but these

applicants are ready to work, they have the funds to build out and beautify the place, and will not be adding anything extra to the building aside from clearing out the area for parking, and setting up a space for sustainable gardening classes around the property. All they are looking to do is take this existing structure, infuse life into it through the creative arts, and provide opportunities for children to be exposed and educated in a positive, safe environment. Ms. Metzger stated having been born and raised on Kaua'i, and growing up in Brydeswood, the one thing she felt deprived of as a child is the exposure and education in creative arts. She thanked the Commission for their time, and reiterated that Kaua'i UnderGround Artists is in favor of the applicant's project in Lāwa'i.

The Commission received testimony from Ron Soderstrom who expressed his support for the project, noting he greatly appreciates Mrs. Crosby's concerns, but believes this project will increase the safety of that whole area. He commented that structure has been there for years in severe degradation, and has problems with vermin, which the previous owners had spoken of in the past. He is here on behalf of the youth on the island, noting he knows many of the businesses that will be present in that facility are for the children, and have great concern for them. What they offer to the children is something very limited on Kaua'i, an opportunity to experience the arts in a different way not offered anywhere else on the island, rather than being left to their own devices to wander around and occupy their time. KUGA and OFF (Organic Functional Fitness) have been able to find resources within themselves that are not offered anywhere else, noting he moved here specifically to raise his children because of the beauty of Kaua'i and what it offered, but this was something not offered anywhere else. KUGA having to step back from the facility they were in has left a huge void for many children on the island leaving them nowhere else to go, and to find other avenues to express themselves in a meaningful way, which is something definitely needed here on Kaua'i. Mr. Soderstrom stated he strongly supports this project.

The Commission received testimony from Shannon Hiramoto-Rude who stated she and her husband are residents of Kōloa. She grew up in Kalāheo, and is in support of this project. She noted that most of the new economic activity on the south side has been in Po'ipū where rents are very high because you're paying to be near the tourist market. Lāwa'i makes sense for this project because these businesses are focusing on the local economy. The south side lacks affordable and available commercial spaces for emerging small businesses, and it is very difficult. Ms. Hiramoto-Rude stated she is a business owner herself, and her business is in Hanapēpē because it is more affordable there than in Kōloa or Po'ipū; this project will offer a unique opportunity. The Lāwa'i Cannery building, which is derelict and an eyesore, has been there as long as she can remember, and she feels this is great thing for the County to support as it will be privately funded to restore it, will be something interesting and useful, novel and great for families, adults and children. These businesses have proven track records with community oriented goals, and will be a positive force for the south side and the island as a whole.

The Commission received testimony from Kalanikumai Kamaka O Na Alii Hanohano who stated he is seventh generation on Kaua'i, and knows this area intimately. He knows this area as the Lāwa'i Stables, which existed until the 1930's – 1940's. He commented the noise in

the area can be a great impact, it is a flood zone, and he does not think it is appropriate to have such a volume of businesses at that intersection so close to the Trading Company and church, noting the traffic backs up toward the light that was installed a few years ago; that intersection used to be the most dangerous intersection on Kaua'i. He feels increasing the volume of commercial, evening traffic in that area is a hazard, and he asks the Commission to reconsider, and take a deeper look at the community, and residential area of Lāwa'i Hillside.

The Commission received testimony from Brianna Cobe who expressed strong support for the project, noting her parents own the Hawaiian Trading Post, and has brought a lot of positive attention to Lāwa'i. She stated she grew up in Lāwa'i, and wished there was somewhere for her to go when she was a child, and she feels this project is going to be good for the community in bringing fresh new people, support jobs, and everyone on this side seems very supportive and wants to see it move forward.

The Commission received testimony from Tessie Kinnaman who wished the applicants well, but expressed concerns with some of the potential impacts that she feels needs to be addressed. She stated Kōloa Road is a major road, and asked whether a traffic study had been done on the section of road approaching the stoplight, noting the speed zone there from the warehouse up to the subdivision is 20 mph; people do not go 20 mph as it is very hard to do so, and they go as fast as 30 – 35 mph. She feels this project will create congestion in that area, and questioned if there is any consideration for a bus stop there. Ms. Kinnaman expressed parking concerns as half the parking will be taken up by staff resulting in overflow parking to be located across the street, where an existing business is currently allowing their employees to park. Referencing Exhibit K, she noted occupancy for each business amounts to at least 150 people in that structure at any one time, which will create parking issues. The restaurant hours and coffee shop will create a lot of noise, and she requested a noise buffer be included to avoid affecting the neighbors across the street; she lives on the corner of Kōloa and Lauoho and can hear everything as it echoes in the valley. She requested conditions be set for the hours of operation, especially considering the numerous families across the street. Ms. Kinnaman pointed out the building is two floors, and asked if an elevator will be installed. She explained that Lāwa'i Stream floods when there is heavy rains, and she has seen the water rise to the underside of the bridge a few times.

The Commission received testimony from Summer Dillberg who is a current south side resident born and raised on Kaua'i. She thanked the Commission for listening to all the testimonies this morning, and expressed her support for the warehouse project. She is friends with people who have small businesses, and has seen them run into problems with unaffordable overhead; everywhere is too expensive resulting in them having to charge a higher price for their services and merchandise, which is often more than Kaua'i residents can consistently pay. Of two of the businesses wanting to go into this project, one is run by Sunday Allen that has brought so many positive things to many women on Kaua'i. Ms. Dillberg stated Ms. Allen is a single mom, and has often provided complimentary services to clients who have run into hardships, something you cannot do if you have high overhead. The other is KUGA who is a non-profit

organization that wishes to offer affordable dance classes, and art classes for our children. She encourages this project as it is much more affordable, and still fairly close to the Kōloa/Po'ipū area. She can see how traffic on that road could be of concern, noting the speed limit of 20 mph, which people do not abide by, but her hope is that once the businesses are established, and people know there are active businesses there, they will be more likely to slow down in that area.

Mr. Dahilig noted a testimony received in support of the project from Randall Francisco of the Kaua'i Chamber of Commerce.

On the motion by Sean Mahoney and seconded by Angela Anderson to close the agency hearing, the motion carried by unanimous voice vote.

Special Management Area Use Permit SMA(U)-2015-4 for development involving the construction of new administration building, swimming pool, fitness center, and maintenance baseyard facility situated within the Kiahuna Plantation Resort parcel along the makai side of Po'ipū Road in Po'ipū, further identified as 2253 Po'ipū Road Tax Map Key 2-8-017: 009, and affecting approx. 1.5 acres of a larger parcel = ***Kiahuna Plantation Resort.*** **[POSTPONED BY APPLICANT.]**

Mr. Dahilig noted that this application has been postponed by the applicant, and has been posted for notification.

Continued Public Hearing

ZA-2015-1: A proposed ordinance to implement the South Kaua'i Community Plan, which is an update to the existing Kōloa-Po'ipū-Kalāheo Development Plan, and includes the communities of Kōloa, Po'ipū, Kalāheo, Ōma'o and Lāwa'i. The proposed ordinance will amend Chapter 10, Article 6 of the Kaua'i County Code to identify potential special planning areas to accommodate future growth and to establish new special planning areas for the town cores of Kōloa and Kalāheo, and an area adjacent to the Po'ipū Road roundabout, and exceptions, modifications and additions to Chapters 8, 9 and 10 of the Kaua'i County Code. The Special Planning Areas will provide development standards and guidelines to help achieve the goals and objectives for the South Kaua'i Planning District that were created through a public planning process and with assistance from a Citizen's Advisory Committee.

Mr. Dahilig noted there were eight individuals signed up to testify as well as twelve items of testimony that have been distributed as part of the accepted supplemental record, and two additional written testimonies.

The Commission received testimony from Jay Furfaro who stated he is there to speak on the concept of expanding the vacation district on the South shore, for which he provided testimony at the first hearing NOT to support the expansion of the VDA boundary. He is here

again to express his great concern, noting the boundary extensions were set up based on an ordinance that was set up through the Council, followed by a complete study of the vacation rental units. That analysis was done between 2002 and 2004 by him and Councilwoman Yukimura, and reflected many of the concerns that were in the Kobayashi legal opinion. He was on the Planning Commission from 1999 to 2001, and he believes just before he left, the Planning Commission did an inventory of multi-family, single-family, hotel and resort zoning on the island, which he has been tracking in the years since. In 2001, it was anticipated about 2,100 homes would be available for owner occupied residence, which was revised in another key data sheet in 2005 that brought that number down to 1,200 units. In speaking with Mr. Cua of the Planning Department, only about 690 of those units have been realized for owner occupant, which is a concern. As president of Kaua'i Humanities for Housing Issues, they have acquired a 180 unit subdivision, and ended up at the first application round with 600 applicants for affordable housing. He pointed out the importance of the owner occupied housing need on Kaua'i, which will be affected as you take inventory out of existing density to convert to the VDA. That makes less available for rental, or long-term ownership. He feels it is very important NOT to expand the VDA area without looking at the current inventory. He noted the Council has been successful in retracting about 1,900 units in density for hotels, but of the housing units meant to be for owner occupants, they have only approved about 690 units, which he feels is very discouraging. He stated there is a huge demand for housing, which cannot be altered by cutting density toward vacation rentals. There is an obligation to our residents, especially with regard to workforce housing. Mr. Furfaro reiterated that he is not in favor of any expansion of VDA boundaries as they are now.

Chair Kimura thanked Mr. Furfaro for his six terms of service as a Council member, stating his leadership will be truly missed.

(Mr. Katayama entered the meeting at 9:58 a.m.)

The Commission received testimony from Sam Lee who stated he is a resident of the Hoona, Kaheka, and Puuholo Road neighborhood. He acknowledged and thanked the Planning Department for the recommendation to the Commission to preserve the residential zoning for the neighborhood as well as the Commission's support of that recommendation. He expressed his gratitude, and asked that support be continued as they move forward with the plan. He noted yesterday new letters were filed to the attention of the Commission from residents supporting continued residential use, of which several of those were from owner occupants of homes at the Whaler's Cove condominiums. Three of the letters are from long-time residential occupants, land owners, and full-time residents within the neighborhood who have lived there for 47 years, 66 years, and 70 years respectively. He read a portion of the written testimony submitted by Sueko Ishibashi into the record. (On file)

The Commission received testimony from Sam A. Lee who stated the two previous speakers summarized much of what he wanted to say. He apologized for expressing his irritation regarding this subject, but wished to put a face to this issue. He is in opposition to the expansion

of the VDA, especially in their neighborhood, and stated his desire for the Commission to understand the TVR law as it was passed is ruining the neighborhood, noting when it went into effect it was essentially a roadmap giving people the okay to come and build large houses, and charge exorbitant amounts of rent. Mr. Lee stated he grew up in that neighborhood, and wishes he had more time to explain how things were when he was a child compared to how it is today, stating it is sad that these older people have to fight for their right to live there; it is wrong. He stated it is the Planning Department's function to plan for things like that, but it has failed. He challenged the Commission to look at the TVR ruling, and change it to allow our neighborhoods to turn back into neighborhoods where people live and raise their children. He commented that this is the neighborhood he was raised in, yet when he goes there now, he feels it is a horizontal hotel. These older residents don't know who the people are that come and go in the neighborhood, which is very stressful for them, and should not be like that. He again apologized for expressing his irritation, acknowledging that the Commission is there on their own free time, which he really appreciates, but he wanted to put a face to the frustration with this issue. Mr. Lee stated he cannot afford to live in that neighborhood, and lives on the North shore; however, when people ask him where he is from, he says he is from Po'ipū.

The Commission received testimony from Sheila Lee who expressed her appreciation for the Commission being there to help them work through those situations. Mrs. Lee shared two stories, the first of which involved large, heavy, unripe Hawaiian oranges being hurled at her house by unknown persons heard laughing somewhere out of her sight. They left her with 17 oranges to clean up; no apology, no help. Another incident involved an uninvited visitor accompanied by a group of people entering into their yard without permission, speaking so loudly they awoke Mrs. Lee's sick daughter-in-law. When asked who she was and what she was doing on their property, the woman stated she was a returning visitor, and wanted to show her friends the bonsai, and that she had done this before. This scared Mrs. Lee, as they must not have been home at the time. The visitor was asked to leave, and to please always ask before taking upon herself to come onto their property, and that she had scared Mrs. Lee's daughter-in-law. The visitor left with no apology, which is not the local style. The owner behind them complained about their son's two dogs, which are kept in an enclosed run, and are not excessive barkers; they are well trained. That neighbor told them the dogs should be kept in the garage during the day so she and her guests do not have to hear them running on the gravel. The garage faces the sun and gets very hot during the course of the day, and is not a place they would ever consider putting the dogs. Mrs. Lee stated entitled people are on Kaua'i to make money, noting her son's dogs have been a blessing, especially with the number of robberies on the South shore, one of which occurred right next door as well as at various vacation sites in their immediate neighborhood. The dogs bark at strangers, and did so the night their neighbor's car was broken into. Because of the two previously mentioned incidents, the Lee's have since put up a gate at their own, great expense, to the entrance to their home to avoid any unwelcome visitors, and to provide safety for their family, especially their young grandchildren. Mrs. Lee stated currently there are people from Aspen building a two-story home that will block their view, and are starting construction at 7:30 in the morning, which she finds disrespectful. She kindly asked the Commission to NOT allow for more vacation rentals in their neighborhood as she feels Kama'āina are becoming lost in the shuffle.

The Commission received testimony from Norma Doctor Sparks who read her written testimony into the record. (On file)

The Commission received testimony from Steve Sparks who read his written testimony into the record. (On file)

The Commission received testimony from Greg Peters, a resident of Kōloa, and the Director of the non-profit Malama Mahaulepu. He stated for the past 40 years, his group has advocated for compatible land uses for the Mahaulepu area, and would like to thank the Department and the Commission for their willingness to engage with community groups to address concerns. He echoed the concerns of the two previous speakers with respect to agriculture, and expressed appreciation for the increased language and stronger protection language, and openness to consider other protection models, and including it in the most recent draft of the community plan. They feel the current language for Mahaulepu protection accomplishes the goals of making increased efforts to protect critical lands and its resources. There are concerns about agricultural uses, and appreciates the opportunity to engage, and work as community partners in addressing those issues.

The Commission received Kalanikumai Kamaka Uliuli O Na Alii Hanohano who stated he is a native descendent with vested interest, and standing with regard to this moku. He represents na 'ohana of the Feather Cloaked clan of Na Alii Hanohano o Kaua'i Nei. His related 'ohana is extensive, and present today through his appearance. Many of the 'ohana of Kaua'i and Hawai'i are connected to him, and through him to this area of south Kaua'i. He thanked the Commission for reviewing and taking another look at the concerns on Mahaulepu, and its effect on the whole south shore. He urged them to look deeper, noting the issues of Waita Reservoir and its associated dangers are still unaddressed though it has been brought up in a meeting with the Mayor, the community, and Don Cataluna in 2006 following the Ka Loko disaster; those dangers are still not even considered by this plan. He noted the earthenwork dam, the largest in the State, discharges directly into the ditch system designed to discharge into the ocean, which is what it was planned to do to efficiently carry effluent from Waita through the valley, and discharge into the bay. Contrary to the recent State Water report, there are two discharge outlets: one being the Waiopili ditch, the other at the top of Kawailoa Bay. The two issues with Waita are safety precautions to prevent catastrophe and protect the public, and finding alternatives to effluent discharge causing disastrous contamination, threatening the economy of the south shore with potential closure of all beaches, and the collapse of the real estate. Just word of the dairy has cause property values to drop up to a half a million dollars. Mr. Hanohano stated Weliweli Road extends as a public access thoroughfare in two directions through Paa to Mahaulepu, which is a game changer. He challenged the Commission to please review Fifth Circuit Court docket 694, dated July 27, 1896, which proves the establishment of public access under Hawai'i Statutes, and the road all the way to the beach may be owned by Grove Farm on both sides, but it is public access. He stated 34 native kuleana claims are still unresolved, and unsettled in joining lands affected in Mahaulepu Valley. These claimants still have legal claim to have their kuleana established. The final issue is with the lack of consideration of the cultural heritage of their oiwi.

Mr. Hanohano stated he is enrolled with the State Historic Preservation Division as a lineal descendent of the stewards of this land, which gives him standing to intervene. He noted the Wahipana Waiopili heiau, the taro loi, the burial dune, the salt pans, the punawai, and the past gathering rights as well as present threats to these protected resources are not taken into consideration by this plan. He asked the Commission to please respect the traditions of the people of this land, and the Kama'āina.

The Commission received testimony from D'lissa Iannucci who stated her family owns the Rocking W Ranch near the tree tunnel in Kōloa. She was born and raised on Kaua'i, and knows the Lee family very well with whom she has had many beautiful times in Po'ipū and Kōloa. She stated she went down to Po'ipū wanting to show her children where her Uncle Sam Lee lives, but nothing looks familiar, and she could not find the house. She asked the Commission to consider the residents, and the Aloha of Kaua'i. While they love the tourist industry that is so important to our island, she questioned whether we really need any more vacation rentals.

The Commission received testimony from Beryl Blaich, board member of Malama Mahaulepu, who stated when the first draft of the plan came out she testified that they hoped the South Shore Development Plan would better express in language, and on the map, the community's long standing aspects of conservation for that area. She expressed her gratitude for the work that has been done. She commented as a result of the work done by the Planning Department and PBR as well as questions, observations, and insights she feels the South Shore Community Plan is much more accurate about this particular area's history and assets, and helpfully lays out some of the methods of fair and feasible land conservation. She feels a transfer of development rights program would expand conservation opportunities for so many important cultural places, and for open space in general as well as natural resource areas throughout the South shore, and our whole island. She hopes the Commission will continue to support NOT expanding the VDA in the Kōloa residential area, and also near the Hyatt. She shares many of the concerns expressed today, but she also understands that the community development plan has a large, but limited scope. Looking at the plan as a whole, she feels it could be great, and will be able to come back to the area that feels familiar, that offers cultural history, the presence of Native Hawaiians, and is vibrant because of sound, controlled growth offering livability and affordability, which this plan is trying to achieve.

The Commission received testimony from Pastor Tom Iannucci who stated he has been here for 27 years, but his wife's family are long-time westside residents; his children were born and raised here. He is concerned about the vacation rentals, and whether or not his children will be able to live in the Po'ipū area because all that is left is a little part of Mr. Lee's neighborhood; it's going by the minute. He added Weliweli tract is really the only place left for the residents. He noted a development like Kukui'ula comes in and is required to build affordable housing, but that affordable housing is located in 'Ele'ele. It seems like the residents are getting pushed out. He feels Mr. Furfaro made a good point in that we are providing infrastructure for new local, working families to come in, but you're letting this little neighborhood get choked out. His main

concern is for his children as he would like to see them all come back and live on Kaua'i, which they should be able to do. But if we overdevelop with timeshares, and allow wealthy people to do whatever they like, it pushes the residents out, and pushes neighborhoods out. One day, there will no longer be a Weliweli tract. He commented this area is a wonderful place, and he hopes his grandkids can spend time there, which means they cannot let everything get pushed out. They need to protect the Kama'āina, and the people and neighborhoods that are already there.

The Commission received testimony from Sarah Deserega regarding the Lopaka Paipa connector road. She stated the President of the Kōloa Estates Association, Ray Gordon, has testified before, and he had a phone meeting in which he made several points that Ms. Deserega would like to reiterate. She stated the Association's position is that there are not very good reasons why it should be a through street. To have the traffic flow connect to a bypass road defeats the primary purpose of a bypass road, which is to limit cross traffic, and ease traffic around potential congestion points. Opening the street will also increase the number of turning points on both ends of Lopaka Paipa between Po'ipū Road and the Western bypass. Additional turning points increase the potential for accidents caused by turning vehicles. Limited sight lines at the potential intersection at the western bypass causes issues with pedestrian safety. Ms. Deserega referenced the issue with storm drains, stating the bypass is higher than where the connector would be, and having a paved road would cause flooding into Kōloa Estates. She pointed out that there are no sidewalks in Kōloa Estates where many people, including children, walk their dogs, and ride their bikes. Another strong point made that she agrees with is that a traffic study states that the interconnectivity of local roads is important, but she feels there is no need for vehicles to use a through street version of Lopaka Paipa to reach any destination. Ms. Deserega referenced a phone discussion that Mr. Gordon has written the following response to:

We don't see how development of an additional 9 -12 units of housing should trigger the need to open up Lopaka Paipa, and we are not aware of any members of the community that want this.

Ms. Deserega stated she thinks there is also thought that all the people in Kukui'ula would need to have a connector in order to get up to town, but the Kukui'ula Development would not justify the need for this.

The Commission received testimony from David Deserega, resident of Kōloa, expressing concern about Lopaka Paipa, noting that in 2007 a study was done from which the words "any connectivity" originated. Mr. Deserega objected to the wording at that time, but it stayed in the report; subsequent to that Mayor Baptiste nixed the report. Later on, the County did the transportation study, and again, the word "connectivity" appeared as they wanted to connect Kipuka Street to the western bypass, and Po'ipū Road to the eastern bypass. Never has anyone from the community espoused it, and he does not understand how it has remained in. He stated the people that most need a connector are the people in Paanau Village because that's where the densest population is and would help for evacuation purposes. He would appreciate the Commission's consideration of all those factors.

The Commission received testimony from Tessie Kinnaman who wished to speak about the dairy, stating she was born and raised in Kōloa, and when the sugar mill was in operation you could smell the odor. She is sure they will be able to smell the odor from the dairy down in Po'ipū. Another concern she has is the environmental and ecological impacts to Waiopili stream, and the proposed location of the dairy, which she feels will be a great disservice to the culture, environment, and ecology because there is no way to control the runoff. When there are major storms, the stream is overbearing, and the water at Mahaulepu becomes filthy, which goes all the way down past Po'ipū to the harbor. Ms. Kinnaman stated they will not be employing as many people as the Lāwa'i project, which is sad. Lastly, she would like to see more roundabouts in the Kōloa area.

The Commission received testimony from Jeri Di Pietro who is a board member with Malama Mahaulepu, but is speaking as a private citizen. She thanked the Commission for their comments at the last meeting regarding stronger language in favor of conservation in favor of the Mahaulepu area. She sees so much growth on the South shore, and the value of the open space there is immeasurable as there is such limited beach, and coastal areas. There are so many exceptional sites at the Mahaulepu area, and this is their opportunity to put some conservation ideas into the plan for this last remaining undeveloped coastline.

On the motion by Sean Mahoney and seconded by Angela Anderson to close public hearing, the motion carried by unanimous voice vote.

COMMITTEE REPORTS

Subdivision

Planning Commission Subdivision Committee Vice Chair Amy Mendonca read the Subdivision Committee report into the record. (On file)

The following General Business Matters were approved 3-0:

Transmittal of the Agriculture Master Plan, pursuant to Condition No. 1.f. of the Tentative Approval Letter dated July 29, 2013, relating to a 2-lot consolidation within the Open (O) Zoning District and Agriculture District (A), Subdivision Application No. S-2013-21, Tax Map Key: (4) 4-7-007:002 & 003, Keālia, Kawaihau, Kaua'i = **Ross L./Cynthia K. Link**

The following Tentative Subdivision Action was approved 3-0:

S-2015-05 = ***Moloa'a Bay Land Co., LLC***, Proposed 2-lot Subdivision

The following Subdivision Extension Requests were approved 3-0:

S-2007-38 = ***SVO Pacific, Inc./Kaua'i Blues, Inc.***, Proposed 4-lot Consolidation
S-2011-16 = ***Cameron K. Burgess, et.al.***, Proposed 4-lot Subdivision

On the motion by Sean Mahoney and seconded by Wayne Katayama to approve the Subdivision Committee report, the motion carried by unanimous voice vote.

(The meeting recessed at 10:45 a.m.)

(The meeting reconvened at 11:07 a.m.)

NEW BUSINESS (For Action)

Class IV Zoning Permit Z-2015-7 and Project Development Use Permit PDU-2015-6 to convert an existing warehouse into a general commercial/retail facility with 46 off-street parking stalls on a parcel located along the western side of Kōloa Road in Lāwa'i, situated approx. 500 ft. west of its intersection with Lauoho Road, further identified as 3540 Kōloa Road or Tax Map Key 2-5-004: 0067, and containing a total area of 35,152 sq. ft. = ***Ty & Ariana M. Owen.*** [Director's Report received 11/12/14.]

Staff Planner Dale Cua read a brief summary of the project, and Department's recommendations into the record. (On file)

Jonathan Chun representing the applicant was present along with applicant Ty Owen. He thanked the Commission for considering this proposed project, and briefly addressed some of the concerns raised by the public. He noted that he spoke with two other people in the area who had concerns about potential noise, and whether access to their industrial use would be blocked. Mr. Chun reassured them that no, access will not be blocked. The most often mentioned issue of noise was also discussed, and it was confirmed by an individual in the area that most of the noise problem comes from a retail liquor store down the road from the proposed project, and that people are purchasing liquor at all hours of the night, and stay outside to drink. This individual was concerned that the proposed project would have the same type of operation, which Mr. Chun reassured they have no plans to do so. He added the project is more family oriented, and they do not want to have any kind of retail liquor store there; there is a possibility they will have a pizza restaurant there, but they will not have anyone drinking outside of the establishment as it would be unlawful. Mr. Chun addressed the concern about potential noise, stating the interior and exterior walls will be fire rated walls, and within those walls the applicant plans on adding insulation, which will further attenuate potential noise problems. Another concern was with parking. Mr. Chun explained the CZO requires 44 parking spaces, and the applicant has put in 46. Referencing comments made that most of the parking will be taken by store owners and employees, Mr. Chun stated he does not believe that is correct, and feels the public may have misinterpreted the calculations for the parking stalls, noting that not all of the total amount of employees will be there at the same time; they will be working in shifts. Concerns about the

project being in a flood zone were addressed with Mr. Chun explaining that the Department of Public Works indicated this property is zoned "X" which means it is outside of the flood zone, and there are no requirements or concerns regarding flooding. In viewing the report, and facts of the plan in what the applicant has done to take care of any community concerns, this is a worthy project that will give the community the opportunity to grow, and will support the local businesses on Kaua'i.

Mr. Owen thanked the Commission for their time, and acknowledged the issues that have come up, noting they are really taking their neighbors into consideration, and have personally contacted a few of them to explain the proposed project. He stated the conversations he had were very positive, and people seemed excited about it. He noted they will be doing soundproofing to keep the noise to a minimum. When they purchased the building, and looked at the amount of industrial type use that could go in there such as automotive use, they decided not to do any of that. Their primary objective was looking at how they could rehab the building to better the community in Lāwa'i.

Mr. Mahoney stated he feels the applicant has addressed some of the concerns raised such as the noise, and respecting the neighbors in those established areas, especially the older neighbors. He asked the applicant to keep the "good neighbor" policy in mind as they move forward as they are near a residential area, but ultimately he feels it is a good project. The amount of community members, and children that came by shows it is a good project, but they must maintain a mutual respect.

Ms. Anderson referenced concerns raised about the traffic impacts, and asked whether the applicant has consulted with transportation experts on the expected traffic that would be generated. Mr. Chun stated they did not receive any concerns from the Department of Public Works Engineering Division regarding traffic. If there were concerns by Public Works, they would have met with them to address it. He surmised the reason they may not see a problem with traffic is because the location is away from the main intersection itself. He added when comparing the potential uses they are proposing with the existing uses down the road on Lauoho and Kōloa Roads, the number of cars and potential traffic is very minimal in comparison. They acknowledge it will have a small impact as it will add to the traffic generated from the establishments previously mentioned, but he does not feel it will be a major impact.

Mr. Katayama asked for an explanation of the proposed restaurant operations. Mr. Owen stated there is a previously existing commercial kitchen there, and they are requesting to continue to operate as such with Pastor Tom Iannucci possibly making pizza there. There is approx. 1,800 sq. ft. of commercial kitchen space, and the application shows they have more than enough exits for customers.

Mr. Katayama asked if they envision having an alcohol license for those operations. Pastor Iannucci explained they are planning to have an Italian wood fire stove to make fresh, artisan pizza, and have a beer/wine permit only with the intent to pair with local breweries on Kaua'i. They will not have a full bar, and will only offer beer, and glasses of wine. Mr. Katayama asked how they will address issues related to noise to which Chair Kimura asked what the hours of operation will be. Pastor Iannucci stated the hours will be similar to any other

restaurant such as Kalāheo Brick Oven; 5:00 p.m. to 10:00 p.m. to start, and possibly do lunch hours eventually. It is a family restaurant, and he does not foresee going into very late hours, at the most possibly 11:00 on weekends or during the summer. He doesn't have an exact answer, but it will not be a sports bar, or late night/early morning establishment. Mr. Katayama stated normally the application on the alcohol license would determine that. Chair Kimura stated he thinks the Commission would determine the time as well. Mr. Dahilig stated that alcohol consumption related issues would be referred to the Liquor Commission. Looking at the commercial element, and whether or not the commercial use is going to impede upon the quiet enjoyment of the neighborhood, those are the general types of uses that are considered by the Commission, and should be based off of overall commercial use, not just because beer and wine are being served.

Mr. Katayama stated he agrees there are other rules in place to address that, and wanted to ensure the applicant was aware that they are in a neighborhood, and following "good neighbor" practices should minimize any nuisance. Mr. Chun added the Liquor Commission has very strict rules about noise, hours of operation, and control over any guests or customers both on the premises, and off.

Mr. Katayama asked what is envisioned for the second floor, noting the ground floor is detailed quite nicely in the plan. Mr. Owen stated the second story will be a continuance of what is below whether it be art classes or demonstration rooms for athletic equipment, depending on which space. There may also be some office usage. Mr. Katayama pointed out it is deemed retail store, and asked if 104 and 105 is on the second story, or is it on the bottom to which Mr. Owen stated yes, they are upstairs, and will be either additional exercise space, retail space, or office space depending on the particular business.

Ms. Mendonca referenced the upstairs area, and asked whether that shows an inclusion of sufficient parking space, and is included in the calculations. She also asked about ADA, and whether there is an ADA ramp or elevator to access the top floor. Mr. Owen stated whatever is being provided in the downstairs space will be continued upstairs, and there is no ramp or elevator to the upper section. Mr. Dahilig explained there are a number of ways to meet ADA compliance, and an elevator is not the only means of doing so. ADA requirements are not something enforced from a zoning standpoint as they are Federal laws, and are put upon the applicant to ensure compliance. Ms. Mendonca questioned is that not part of the Commission's requirements that the building should be looked into to which Mr. Dahilig replied the applicant is obligated under Federal law to meet that standard.

Ms. Mendonca asked whether the commercial kitchen previously mentioned is currently in operation to which Mr. Owen replied no, it is not. Ms. Mendonca commented that it is really not a kitchen because the building as she sees it is wide open, and when they make a reference to commercial kitchen, what are they relating to if there was no kitchen there. Mr. Owen stated there was a kitchen to which Ms. Mendonca stated no, it is not in operation because there is nothing in there. Mr. Chun stated the applicant stated there WAS a kitchen there, and they are trying to now improve what was previously there. He is unsure when it shut down, but because one did exist there in the past, they are not changing what it was used for. Ms. Mendonca questioned because it was a commercial kitchen, is the sewer system, grease trap, or oil factoring

already in existence to which Mr. Chun replied yes, noting what the applicant has done as required by the Department of Health was to change and relocate the septic system.

Ms. Mendonca stated she knows where this building is, and she sees the need to have something of that nature done; however, she is concerned for the surrounding residential area, noting a comparison was made to the "tourist trap" near the church, which is one story, and beautifully landscaped. She is concerned about this proposed project's traffic impacts, commenting that road is very busy; making a left turn out of the property may be problematic. She does not dispute that they have good intentions with the type of shops they intend to have there, but many of them are for children, and she questioned what kind of safety impacts that will result in with two stories, 44 parking stalls, and people coming and going. It's a concern for both the people patronizing the shops as well as the neighboring area, and she would like to see a study done on the traffic control, as the Commission has asked from other applicants.

Mr. Dahilig stated the Planning Department does not have traffic engineers on staff, and traffic issues are deferred to the judgment of Public Works. Mr. Cua explained in reviewing the comments provided by all the reviewing agencies, the Department of Public Works has requested that the applicant prepare a traffic impact analysis report for their review. Ms. Mendonca stated she feels that is something the Commission should wait for. Mr. Dahilig replied that is something included in the conditions of approval that the applicant follow up with DPW on this matter. Ms. Mendonca stated she feels the intent is great, but traffic during afternoon rush hour is bad, there are children in that area to participate in activities as well as patrons rushing in and out to get pizza. She is very concerned, and hesitates to take action without studying a bit more because she would like it to be successful. She does not feel comfortable that they did not do a further study on it.

Mr. Isobe stated he feels the project is really good, and much needed, and hopes it is successful with a growing customer base over time. However, his only concern is if the parking fills completely, how do they propose to accommodate the overflow? He understands they are meeting the requirements under the law, but if they should have an exhibit of some kind in the second floor area, and 100 people show up, where will they park? Mr. Chun referenced Exhibit G, which shows a parking plan that provides 46 stalls. There is space for more stalls on the southern side of the building, which can be used for parking. They do not foresee having any special events, but should there be any in the future, they will have to make arrangements with neighboring land owners that may have space available during off hours. If that cannot be done, more than likely they could have some type of valet parking situation to utilize more of the space. However, currently, should there be a need for overflow parking, the south side of the building has space available as well as space for tandem parking on the north side of the property. Mr. Isobe referenced Exhibit G, and asked to clarify where people would be able to park on the north side of the property, which was pointed out on the map by Mr. Chun. Mr. Isobe asked for clarification that it would not be common practice that people will be parking along the road shoulders to which Mr. Chun stated no that would not be allowed.

Chair Kimura stated he personally feels it is a great plan having young entrepreneurs come out, and make things happen for themselves. It is something the Mayor enforces, and he supports it.

Chair Kimura asked whether or not the Commission would set the time of operations to which Mr. Dahilig stated they could, but it is a mixed use facility in terms of the type of use, and couching hours of approval would have to encompass the variation of the uses. He pointed out the findings should be along the lines of timelines being appropriate for the usage of the whole building given the surrounding area. Chair Kimura asked if they could state operations only until 10:00 p.m., but if they want to have a special event they must return to the Planning Department to receive a permit for that specific event. Mr. Dahilig stated in situations where they have put a timeline on the permit concerning operations is to do a general notification using the phrasing "occasional, special events", and that the Department shall be notified in advance of the special event. Generally, the language included in previous permits at the request of the Commission is for some type of follow up where hours of operation are set, allowing for variation in the hours based on the type of business.

Ms. Anderson referenced the fitness and dance aspects, noting that the applicant testified to the use of insulation, but she questioned for areas where music will typically be played louder than normal whether there is sufficient insulation to reduce the sound. Mr. Owen replied yes, absolutely, and offered to have Sunday Dilberg, who currently operates a dance studio, to come and speak to that. Ms. Anderson also commented she applauds the proposed types of businesses in having entrepreneurs local to the area, but as a Planning Commission they must foresee changes, and whether the building itself is appropriate for any future use.

Sunday Dilberg-Allen explained the material used in her current location in the Kukui'ula Shopping Village in Po'ipū is very minimal between her side-to-side neighbors, but they have been able to work with them to address those problems, and has learned a lot in the process. They are working with a great sound specialist who has come up with solutions that they will be utilizing to insulate sound, and ensure they do not disrupt the neighbors. Until recently, she lived right across the street from the Lāwa'i Cannery site, and has a lot of understanding of the neighbors' concerns, but it is something they will absolutely ensure they handle properly in the beginning stages of the planning. Ms. Dilberg stated she has been able to adequately contain the noise from her studio, noting she does not play mellow music, and has learned a lot about how to address those issues.

Ms. Anderson stated she may have some comments on introducing conditions regarding the implementation of sound barriers. Mr. Chun stated that would be fine, and the applicant is already looking at doing that. If the condition is worded that the applicant must work with experts in designing soundproofing measures, that would be acceptable for the dance and exercise areas.

Chair Kimura stated he has always been in support of any activities for kids, and young entrepreneurs using a vacant building to start something new.

Mr. Dahilig stated there are a few conditions of approval that could be considered by the Commission as amendments to the motion. The first, regarding the hours of operation, would read:

The facility shall establish commercial hours of operation from 6:00 a.m. to 11:00 p.m. Should special events need to occur outside these hours, the Planning Department shall be notified seven days in advance in writing.

The second would read:

Noise abatement shall be required for uses involving amplified music utilizing more than a simple stereo.

Mr. Chun suggested clarifying the wording that states "amplified music". Ms. Anderson suggested the wording relate to dance or fitness classes, and be based on activity, rather than the noise application. Mr. Dahilig suggested the following language:

The applicant is advised that noise abatement should be utilized to mitigate noise impacts should noise impacts occur via complaint. The Department reserves the right to revisit this and bring it before the Commission for additional regulation.

Ms. Mendonca asked whether the retail space upstairs is 1,090 sq. ft. that will be used for special functions; what is the intent for that space? Mr. Owen stated it is not intended to be used for special functions, but just a continuance of the downstairs area of the business such as storage, office space, art displays, and things related to the business. Ms. Mendonca asked if it is possible to have a designated parking number included for such space with no identifiable purpose, can they include a condition that it could change as it is a wide open space, and its use could change to anything down the road. Because the upstairs space is included in the parking stall determination, and if they will have a display, or function, it adds to the number of people that will be there that goes beyond the number of parking stalls. Chair Kimura stated the upstairs area is going to be part of an art store to which Ms. Mendonca replied that they are currently not using it; it is an open space. Mr. Dahilig stated the parking counts are based on if the space IS activated. Ms. Mendonca replied that if they use it for a special function, how does that apply? She is very concerned about the parking spaces because a special event would increase the number of people that go there.

Mr. Dahilig stated that was a concern brought up previously by Mr. Isobe on the location of parking overflow. It is difficult to anticipate what the exact parking impact will be should that space be used for a special event, making it difficult to require a specific number of spaces, which is why they generally rely on the Code to determine the parking exactions levied during permit approval. Ms. Mendonca stated the overflow parking they are proposing is really tight to which Mr. Dahilig agreed, but it is based on what is required under law. He expressed his hesitancy to suggest that it is within the bounds of constitutional nexus to increase the parking requirement. Ms. Mendonca stated she is not asking for the addition of spaces, but because the upstairs area is included in the total count of 46 spaces, her concern is that the upstairs space is given a certain amount of stalls based on retail use; however, they are not using it as retail space, and may have art displays, or dance recital, which would increase the volume of traffic coming to the building. She asked if they can include a condition to have the applicant notify the Commission if they are going to have such special events that will go beyond the normal occupancy amount. Mr. Dahilig used the example of a popular celebrity going to Macy's for a one-day sale, which is a situation that may result in a mass of people that could not be anticipated. Already identifying a space, and requiring additional parking based off of an

unidentified use borders on constitutional nexus issues. Beyond what the Code prescribes, it would be difficult to concur with a recommendation to add additional spaces without stating what that space will be used for beyond what is already disclosed under law.

Chair Kimura asked to clarify that whenever they have a special event, they have to inform the Planning Department to which Mr. Dahilig stated right now it would just be anything outside the regular hours of operation. They do not want to split hairs as it begins to get into enforcement absurdities. Chair Kimura suggested if they do have a special event, and anticipate more cars than they can accommodate, can they discuss with the County having a special shuttle service to which Mr. Dahilig suggested a condition be designed as a disclosure to state if complaints are made concerning parking, those can be brought back before the Commission to address.

Pastor Iannucci stated as a former Police Commissioner he is aware that people cannot just park where they want, and will be notified by the business owners immediately. This is only if there is additional usage, but it is not a free-for-all where law enforcement will allow people to park wherever they want.

Mr. Katayama asked as a matter of form when an applicant calculates the number of parking stalls as required by square footage, how is that reconciled with the occupancy limits of the structural floor plan? He noted the occupancy of each unit as submitted in the application, and asked how those two numbers correlate. Mr. Dahilig stated he has never questioned the formulas that were already folded into the CZO when it was adopted. Mr. Cua added based on experience, the off street parking calculations and building occupancy don't parallel one another. He used the example of a shopping center where building code would specify the particular amount of people, but at the same time land use requirements specify the parking calculations based on the use. The ratio for building occupancy as opposed to land use are kind of incompatible, which is why at a shopping center you may see a lot of unoccupied parking stalls. Mr. Cua stated an applicant can only forecast so far, but they cannot really project who the tenant will be 30 years from now, and often times demands change as well as usage. He pointed out what is happening at Po'ipū Shopping Village where the initial design was to accommodate a bunch of retail uses, but when there is a mixture of retail and food establishments there is often not enough parking stalls to accommodate the uses at a particular facility. To answer the question of whether there is a correlation between calculating off street requirements from a land use standpoint versus a building code standpoint, they don't connect, and are totally different types of calculations.

Mr. Mahoney stated he feels they are starting to split hairs on all these potential what-ifs, but the applicant is trying to start up a business, are meeting the requirements, and the attitude is that they will adjust as they go along. He is satisfied that they meet the current requirements, noting they could potentially go on endlessly; there's a lack of parking anywhere we go. He feels they have shown good faith, and will continue to do so, and if they have met the requirements, the Commission should move on. Mr. Cua added that the zoning ordinance provides in the event that a particular facility or use generates unusual traffic congestion, the Planning Director can revisit those particular permits and redo the parking calculations. That is a condition that has been imposed on previous projects that this Commission has approved.

Mr. Katayama stated what he is trying to do is vet an issue that will become a community concern, but at the same time he does not want to inhibit the ability of the operators of the business to be successful. It is not a question of overburdening, but rather striking a balance between allowing these businesses to establish themselves and becoming successful. However, that usually means that there is a conflict or some change in the surrounding community. At this point he is trying to strike a balance between what is required by statute versus what kind of traffic is anticipated for these businesses. He feels seven parking stalls for the pizza restaurant are not enough. He agrees that they will not have 100 percent of the stalls occupied 100 percent of the time, but there will be peak periods. He feels this Commission has an obligation to vet the impact to the neighbors as they have done with all their projects. He would like to know the applicants point of view of what their plans are in the event they are wildly successful to minimize the impact on the neighbors.

Chair Kimura expressed the Commission's desire to amend the Director's report to include the two additional conditions.

Mr. Isobe stated he does not want to belabor the point, but this particular area has been slated for future commercial use, and as past practice the Commission has attempted to mitigate impacts with noise barriers, etc,, but then go a step further to limit the business hours of operation as an additional layer to ensure noise abatement. He is concerned that at some point they begin to infringe upon the success of the commercial use because if they continue down the road of limiting how businesses operate, and when they can open and close in a commercial district, beyond having the business incur expenses to abate noise through physical means, he is unsure that is necessarily sound planning practice. He respects the concerns of the residents and surrounding community, but at the same time they need to recognize that this is a commercial area, and they need to help the businesses succeed, especially projects like this. Mr. Isobe acknowledged that he did raise the concern about parking, but his only concern is that the applicant is cognizant of potential areas that need to be mitigated in the future. At no time is his intent to limit the applicant's ability to be successful, and he hopes they are wildly successful. He cautioned the Commission on not considering the fact that this is a commercial use in a commercially recognized area. He noted they are going to be considering the South Kaua'i Community Plan shortly, and asked what the plan proposes for this area; he assumes it is some kind of commercial mixed use, which is the future of what this area should be. Compatibility is always an issue, but the Commission needs to recognize that they need to support commercial use in a commercial district.

On the motion by Sean Mahoney and seconded by Angela Anderson to approve the Class IV Zoning Permit and Project Development Use Permit with conditions as amended in the Director's report, the motion carried by unanimous roll call vote.

(The meeting recessed at 12:21 p.m.)

(The meeting reconvened at 1:26 p.m.)

ZA-2015-1: A proposed ordinance to implement the South Kaua'i Community Plan, which is an update to the existing Kōloa-Po'ipū-Kalāheo Development Plan, and includes the communities of Kōloa, Po'ipū, Kalāheo, Ōma'o and Lāwa'i. The proposed ordinance will amend Chapter 10, Article 6 of the Kaua'i County Code to identify potential special planning areas to accommodate future growth and to establish new special planning areas for the town cores of Kōloa and Kalāheo, and an area adjacent to the Po'ipū Road roundabout, and exceptions, modifications and additions to Chapters 8, 9 and 10 of the Kaua'i County Code. The Special Planning Areas will provide development standards and guidelines to help achieve the goals and objectives for the South Kaua'i Planning District that were created through a public planning process and with assistance from a Citizen's Advisory Committee.

The following special planning areas are proposed:

1. Special Planning Area "H", also known as the "Kōloa Town Walkable Mixed Use District"
2. Special Planning Area "I", also known as the "Kalāheo Town Walkable Mixed Use District"
3. Special Planning Area "J", also known as the "Po'ipū Roundabout Walkable Mixed Use District"

[Director's Report received and hearing continued 10/14/14, Supplemental No.1 Director's Report received and hearing continued 10/28/14.]

Staff Planner Marie Williams, and Kimi Yuen of PBR Hawai'i presented an overview of the revised plan based on guidance from the Commission, and information received from the public testimony throughout the public hearing process. (On file)

Ms. Anderson stated a concern had been raised on existing public access, which was a case that had been taken up by Commission's counsel, and asked for an update, or information in that case that would be relevant. Mr. Jung stated he will review the case, and has provided copies of the case for the Commissioners to take home and review. Ms. Anderson commented there is language regarding different kinds of access, and she feels it is sufficient, but she would like to make clear that this document does not state whether there are existing access rights that have not been specified.

Ms. Anderson referenced Page 3 of Exhibit 1 in the suggested changes, and commented that the wording of the first sentence under potential park and protected areas seems to be a bit confusing, and reads: *In addition to securing permanent public access is the more ambitious goals of protecting coastal areas, natural, cultural, and recreational resources in perpetuity.* She suggested adding a comma after the word *access* and change *more ambitious* to *ultimate*, or some other word that can better clarify that sentence.

Mr. Katayama commented on Section 4.7 Agriculture, and community concerns regarding types of agricultural activities permitted in the future, stating he assumes the second to the last paragraph is trying to reflect whatever current laws are in place at the time the agricultural activity is put in place. Ms. Yuen replied yes, that is the intent.

Ms. Anderson referenced Section 4.1.7 regarding the Hoona Road neighborhood, and the additional resort growth, acknowledging that the CAC originally slated this area as being prime

for resort growth, but subsequently that particular area is going to remain in agriculture. Because that language is in there without an explanation of the public sentiment to reduce the resort growth capacity, she recommends either not including this particular language, or having additional language to explain why this growth is not being recommended at this time.

Ms. Williams clarified that this language is being proposed in concert with the removal of the potential for resort growth in that area on the land use map, which really represents the official stand of the plan. She asked if they would prefer language be included that explains the Commission did not feel that this was a suitable location for future resort growth at this time to which Ms. Anderson replied she would be okay with that type of language because she feels there needs to be an explanation of why they are removing it from the map. Mr. Dahilig stated he feels the desire is to make it very clear that the Commission does not want this as a resort area. The challenge is they do need to memorialize what the CAC process entailed, and what their rationale was, but the Commission decided not to go along with that. Ms. Williams suggested they change the last sentence to read: *If changes in visitor demand or growth should arise, or the number of unbuilt, entitled visitor units remain high, the former nursery infill site behind the Paa dunes COULD be considered a candidate for visitor units as it is surrounded by compatible uses, but bounded by the existing golf course and resort.* Ms. Yuen stated they could also add in a statement to say *at this time the Planning Commission did not support...*
Ms. Anderson stated changing "should" to "could" will be a positive change as it makes it a bit softer, and also agreed with the closing statement. Mr. Dahilig suggested to make the statement more definitive, it should read *the Commission DECIDED to hold off on a resort designation.*

(Mr. Jung left the meeting at 1:56 p.m.)

(Attorney Jodi Higuchi-Sayegusa resumed as counsel for the Commission at 1:56 p.m.)

Ms. Mendonca stated she is unclear why there is a need for all the verbiage, noting the designation was Open Agriculture, not just Agriculture. If it needs to be memorialized, she questioned why it cannot just say that the Commissioners' comments, and testimonies received expressed it was not a good idea to change the existing zoning to R-10, and leave it at that. She does not feel the need to verbalize all of this as it implies that it is still a possibility. She feels if in the future the demand justifies the need, they can come back before the Commission and put in a request like everyone else. Making innuendo that it could possibly happen, leaves the danger of eventually allowing something like this that is not needed. She feels adding too many explanations opens a whole can of worms; keep it simple.

Ms. Williams clarified that the final land use map in the plan does state that very clearly, but the text accompanies the plan to describe the process. Ms. Mendonca stated she understands that, but adding the last part of the sentence implies they are saying no for now, but it may be allowed later. She does not want to be responsible for making a statement like that, and realize later it was not necessary. Mr. Dahilig stated given what the technical studies are showing from a growth demand basis for resort units, they are essentially deviating from what that projection is. The best they can do at this point is make a best guess on growth trends, and all the consultant is saying is there is a deficit in the projection that they need to be cognizant of. However, if the demand does meet the projection, this is meant to show what the rationale was at

the time. He stated the Commission generally thinks there is an unbuilt demand they should satisfy first, which the Department agrees with. That's what the language intends to express. He feels they are rightfully deviating from what that projection is because the Commission feels there is a lot of unbuilt demand, and they need to satisfy those unit counts first.

Ms. Mendonca stated she agrees down the road they may need to expand the resort area, but questioned why they would look at doing it in an area that is so close, and so pristine. It is Open Ag, and should be left as such. She clarified that her argument was to build and fill it up first, and then look at different areas for a resort, but as far as this 13 acres, since it is Open Ag, leave it that way. Mr. Dahilig expressed his understanding, and explained all they are saying at this point is if 20 years from now there are a bunch of policy makers wanting an expansion of resort uses there if all the units have been built out, this is where they should start. It is not a pre-disposition to say this is consistent with policy, but rather to say this area was studied, and it should be looked at, which is why the phrase "considered as a candidate" is included. Ms. Mendonca's response was like all the others that come before the Commission for extensions, if it is necessary, the applicant can always come back to the Commission for rezoning. She does not feel it is proper at this time to look to the future up to 2035, noting they repeatedly find that decisions made 20 years ago make things difficult for them now. Mr. Dahilig stated it is a question of whether they should be definitive at this point to say no, absolutely not, we will never consider this again to which Ms. Mendonca replied it's because this is the area that has been the most controversial, the most protected area, and if they say they might need it, or we don't need it, it's talking out of two sides of the mouth. Mr. Dahilig stated 20 years from now, there will be different people sitting around the room having this deliberation, and if the desire of the Commission is to totally foreclose on this area from ever being talked about again, that is a very large policy discussion since at that point they are foreclosing any discussion for any future changes to the code. That is within the province of this Commission to do, but the philosophy behind this plan is to be as flexible as possible to encompass as many of the community desires as possible. The language they are proposing states "the Commission decided to hold off designation."

Ms. Yuen stated she is happy to include that the Commission did not support the change in land use designation in an effort to make it very clear. Ms. Anderson acknowledged that the request was made to make the language more definitive to state "the Planning Commission decided"; however, they have not made the decision yet, and that is part of this current discussion. Ms. Anderson stated she would concur with Ms. Mendonca for the desire to see stronger language, and rather than say "holding off on resort designation", because that implies they are holding off now, but it could be considered in the future, they instead say "the decision was made to keep the property as Ag and Open due to the proliferation of resort, and the lack of open spaces and shoreline areas"; something that is more of an affirmative statement that they are trying to preserve opens spaces and shoreline areas.

Ms. Williams explained one of the reasons this particular site was selected as a potential future resort area is because there truly was no other place that was deemed acceptable by their CAC, or the public at large for any type of resort growth. She asked the Commission to consider that it is hemmed in by the golf course, and directly adjacent to an existing, rather intense resort as well. She noted, as included in the initial proposal in the first draft, if they had moved forward

on the development if it was supported in the plan, it included a requirement to expand the Shipwreck's beach parking lot to provide more access for the community.

Ms. Anderson commented the assumption is that there will be a deficit of resort space in the future as far as the year 2030, but her recollection is based on the projected numbers in which the plan was calling for 140 additional units. She asked for clarification on the changes in the projected numbers based on the changes that have been proposed. Ms. Williams replied this is a long range plan, therefore their planning horizon is 20 years, which they project for. Just because there is a projection does not mean they expect it to occur 100 percent. What they are meant to do is use the best available science at the time, which they did by hiring a consulting firm to develop these projections outside of this process. She explained the process for determining these projections, and all the elements that were factored in.

Ms. Yuen stated she understands that it is not supported by the Commission at this time, but it was part of the discussion they had with their CAC, and she feels it should be memorialized considering it is a former nursery site that has already been used for other purposes. She suggested a revision to the second to the last sentence to state *The Planning Commission decided to preserve the area for open space and agriculture on the land use map, and to have periodic reviews...*, and at the end, have it state *If changes in demand growth should arise and the number of unbuilt visitor units remain high, the former nursery infill site behind the Paa dunes could be considered a candidate...but the Planning Commission did not support the change in land use designation at this time.* That makes very clear what the Commission's position is, but she feels it is important to acknowledge the whole process they went through, and the input they received in working on this plan.

Ms. Williams clarified that just because there is language in this plan, a land owner would still need to go through the process of rezoning the land.

Chair Kimura referenced Ms. William's previous statement that this area was the last ideal area for the resort, and asked why it could not be more inland, commenting that if a resort needed to be put up it does not need to be along the shoreline; does it have to be next to the beach? Ms. Yuen stated based on some of the discussion they had, and some of the earlier testimony, the mixing of primary residential with resort or visitor units is not necessarily a great thing. If they are looking outside the shoreline area where most of the resort designation is, that is what you will run into. The other major growth area they had is sought for primary residential. So going further inland will result in hitting either Agriculture land, or primary residential neighborhoods. Chair Kimura stated what he has been saying is that there is more high end residential areas in Po'ipū, which the locals cannot really afford, and if the resort conflicts with high end homes, it is what it is.

Ms. Anderson stated the question seems to be if we needed resort growth where would it go. The testimony presented today by Councilman Furfaro is that there are other housing priorities for the island as well, and the recommendations for this area went from resort to R-10, but that would then be considered a VDA. She feels that the decision they are moving toward is to move away from expanding VDA areas. It is not that the Commission is deciding this outside the public process, but there are various public processes that have taken place through this

community plan; the CAC process as well as the public hearing process that is going on here. That is something she would like to include as part of the language.

In response to Ms. Mendonca, Ms. Yuen clarified the proposed language again. There was further discussion to clarify the proposed language. Ms. Yuen stated the revised sentence would read: *The Planning Commission decided, based on further public hearing testimony, to preserve the area for open space and agriculture on the land use map.* The rest of it would read the same followed by the sentence: *If changes in visitor demand or growth should arise, or the number of unbuilt entitled visitor units remain high, the former nursery infill site behind the Paa dunes could be considered a candidate for visitor units as it is surrounded by compatible uses, but bounded by the existing golf course and resort, but the Planning Commission did not support the change in land use designation at this time, or the expansion of the VDA along the shoreline.*

Ms. Mendonca asked why it has to be in the front along the shoreline. She hopes that property is never developed into any kind of tourist resort, or condo, and hopes that in 2035 they will be there discussing the same thing, that it will never happen. Much respect needs to be given to the people who came here today in looking at the areas of Mahaulepu.

Mr. Isobe stated listening to the discussion makes it clear that there is a need to preserve as accurately as they can everything that has transpired up until this point. However, he is also hearing from members of the Commission that it does not appear the wordsmithing they are attempting to do on the fly is necessarily addressing all of the concerns of some of the Commissioners. He asked whether it is the intent to adopt the plan today, and if it can wait until another meeting, given the level of discussion on this particular issue; he does not think it is wise to rush the wordsmithing. He feels the Commission has a responsibility to try and make it the best they can. He acknowledged and expressed appreciation for the hard work the Department and the consultants have put into the plan, but the Commission has no way been given the same amount of time and opportunity to comment on the plan. They have seen it for three or four meetings, where the Department has been looking at it for over a year. Additionally, he thinks it prudent for the consultant and the Department to work with the Commissioners that have concerns to try and get the wordsmithing to the point that people are comfortable, noting the ultimate approval at the Commission level is with this body. He would like to get to a point where the Commission is also comfortable, and not just the Department and consultants. Mr. Isobe pointed out he is not intending to be disrespectful, but he feels there is a disconnect in that the Department has a lot of knowledge, and the Commission is reacting to what is presented. But ultimately what is said here becomes something this body needs to approve. He is unsure they can do the wordsmiting here, and get to that point without going through numerous iterations. He feels they need to just sit and talk it thorough outside of the meeting to get to that level.

Mr. Dahilig stated the difficulty is that they are working with six independent minds around the table, and there is uncertainty as to where the concurrence is, even with the general idea of memorialization. If there is direction from the body, he would like to identify that so that they are able to get the wordsmithing done correctly. Not having a clear decision from this body on this particular item is going to be problematic to resolve efficiently. He suggested the Commission take a directive vote to make it clear whether or not they want it memorialized first,

and also whether or not to defer the item based on the current language. As much as Ms. Anderson is attempting to work with Ms. Mendonca's desire, he is still hearing the desire to NOT memorialize it in that fashion. If they need more time, that is fine; however, they need to be efficient about it.

Mr. Isobe stated he may have misunderstood, but he does not recall hearing anyone state they did not want it memorialized. What he is hearing is how clearly, and how strongly do they say this area is out of play. Mr. Dahilig noted the difficulty in that the factual basis for what is going on is intertwined with the language. The memorialization is intertwined with the policy element, and has to be.

Ms. Anderson stated she is confident they can come up with some language as she does not want to rush it either. What she has heard as a concern is the open door, which she does not feel has to be memorialized as what they are trying to memorialize is the process. She suggested just the second portion can be deleted from the language. Mr. Dahilig suggested a poll from the Commissioners to ensure they are clear on whether that is the issue, and if so they will remove it.

(The meeting recessed at 2:17 p.m.)

(The meeting reconvened at 2:24 p.m.)

At the request of Mr. Dahilig, Ms. Yuen read the revised language based on the Commission's recommendation into the record: *The Planning Commission decided, based on further public hearing testimony, to preserve the area for open space and agriculture on the land use map, and to have periodic reviews to track the number of visitor units being on entitled land, and to compare them with the demand for additional units.* She noted the last sentence would be stricken.

Mr. Isobe expressed concern with the agricultural uses in the agricultural district, noting he understands some of the community concerns regarding specific uses in the IAL, particularly with the area above the coast at Mahaulepu as it relates to the proposed dairy use. However, he does not think enough is being said about the fact that the area is in Ag, and that area has more recently been designated IAL by the State and County. Whether we agree whether a dairy should or should not be developed in that area, it is still a permitted use within the agricultural district, and he believes the language should be strengthened to point that out. Not enough is being said about the fact that the area is designated Ag; more importantly IAL, meaning it has been recognized that the land should be in Agriculture, and the uses currently being proposed are permitted uses. He feels that if they are going to begin discussion as a Commission on what is compatible Ag, he questioned whether there is such a thing next to residential, and resort areas. He stated that growing up it used to be canefield, and cattle; cane was burning in the middle of the night, and tractors running during the harvest. By today's standard that would not be compatible, but that is what happens when you live next to an agricultural area, such as when you live in a rural area where you will have chickens crowing and dogs barking. He reiterated that there needs to be stronger language to state that it is IAL.

Ms. Williams clarified the actual plan does mention Ag and IAL several times, and contains some details about the existing IAL lands. There is also a policy statement and description about how they do support Ag. She feels the intent of the agricultural district is quite clear in this plan, and they do refer to HRS and the County General Plan as well.

Mr. Isobe commented that he does support the preservation of Mahaulepu, but he thinks that needs to be done in recognition of the fact that the adjacent lands are Ag.

Ms. Mendonca referenced the last sentence under Permanent Vehicle Access that reads: *Not only is the cost of constructing a two mile road very high, but a paved road might conflict with the natural qualities of the area, would likely dramatically increase use of the area.* She asked to clarify if they are discouraging those things. Ms. Williams cannot determine how it would be interpreted, but the intent was not to be discouraging. They were asked by the Commission to dig deeper into it, and attempt to separate out the issues, one of which was preserving the coastal area, the other regarding how to protect and support permanent access to the area given that a private land owner owns the area, and the road. Ms. Mendonca stated it may be the way it is written, which she interprets as they might consider construction, but a paved road may conflict. Ms. Williams pointed out the sentence before it that reads: *If through fair valuation the land owner is willing to dedicate the roadway to the County, the road would have to be constructed to County standards.* That sentence relates to the idea of how to take a currently used, private road, and have the owner be responsible for maintaining the road. Ms. Mendonca stated for clarification that sentence lists the pros and cons of what could be, and the bottom line is that if it is not easy access, they will have to "rough" it, and should really take time to investigate the area. Ms. Williams explained they just wanted to separate the issues out instead of having a blanket statement.

Ms. Williams stated she feels they have addressed all the issues in making amendments on the floor to two other sections of Page 3 of Exhibit 1, and she believes everyone was satisfied with the language.

Mr. Isobe stated if the Commission is planning to move forward with approving the plan today, he would like to make a suggestion. Referencing Page 11, he would like to propose striking the last sentence that begins: *While the plan process and outcomes did not specifically engage, the Commission would consider striking the last sentence.* Ms. Yuen stated she is fine with that, noting she was thinking of adding another policy statement at 4.7.1, which talks about agriculture lands. She read one policy statement: *Preserve Ag lands to maintain open space and rural character of the area,* and stated they could also add a second policy statement that says: *Commissioner Isobe's concern is to protect Ag lands for Ag uses,* or something to that effect. Mr. Dahilig stated he takes ownership of that last line, noting they are trying to balance the memorialization with what is going on versus what ends up being the policy direction. They may be indirectly saying the Commission should be facilitating these discussion, which he agrees is not the appropriate role for the Commission; he would concur with the removal of that language.

Ms. Williams read the language to be removed from Exhibit 1, Page 11 of 11 contained in Section 4.7 Agriculture of the South Kaua'i Community Plan: *While the plan process and*

outcomes did not specifically engage in a discerning exercise identifying compatible and incompatible agricultural types in Mahaulepu other than present concerns regarding a proposed dairy, such discussion is appropriate and further regulatory efforts may be necessary both at the State and County levels. The sentence that will be kept in reads: *The community also raised concerns about further refining the types of agriculture compatible with the Mahaulepu area particularly given the sensitive cultural, and scenic resources surrounding those agriculturally zoned areas.*

On the motion by Angela Anderson and seconded by Sean Mahoney to approve the South Kaua'i Community Plan as amended on the floor today, the motion carried by unanimous voice vote.

(The meeting recessed at 2:44 p.m.)

(The meeting reconvened at 2:55 p.m.)

GENERAL BUSINESS MATTERS

Special Management Area Use Permit SMA(U)-2015-2, Class IV Zoning Permit Z-IV-2015-3 and Use Permit U-2015-3 to allow conversion of an existing residence into a bed and breakfast operation on a parcel located along the mauka side of Weke Road in Hanalei Town, situated at its intersection with Pilikoa Street, further identified as Tax Map Key 5-5-010: 032 and containing a total area of 7,568 sq. ft. = ***Ed Ben-Dor and Joan Ben-Dor.*** [Director's Report received 9/23/14, Applicant's Response to Planning Director's Report received 10/8/14, hearing closed 10/14/14, discussion and action on procedural matters agreed upon 10/28/14.]

(Attorney Ian Jung represented the Planning Department in this matter; Attorney Jodi Higuchi-Sayegusa represented the Commission in this matter)

The Commission received testimony from Carl Imparato who lives in Hanalei, and is speaking on both his own behalf as well as on behalf of PONO (Protect Our Neighborhood 'Ohana), which is a group that is focused on protecting neighborhoods in Wainiha and Hā'ena from the impacts of Transient Vacation Rentals. He stated their support of the Director's recommendations to deny the requested permits for what is essentially a TVR by a different name located outside the VDA. He stated the Commission needs to give in-depth consideration to public policy on whether or not it should permit more commercialization because if these permits are approved, he is concerned that there will be a flood of similar applications as well as many future residential properties being purchased with the intent of converting them into concierge TVRs under the guise of B&Bs in Hanalei, which is not a VDA. The policy issues raised by this application are important and precedence setting, and should not be considered on a case-by-case basis; a general rule making process must first take place to clearly define criteria for the approval of any B&Bs, any necessary limitations and requirements be incorporated, and the cumulative impacts be considered. Mr. Imparato feels opening the door to this type of B&B without a rule making could be devastating to Kaua'i's neighborhoods. He reiterated their strong support to deny the requested permits.

The Commission received testimony from Maile Ben-Dor who thanked the Commission for taking the time to listen to their side of the story. She stated she was representing her parents Eddie and Joni, and her sisters Summer and Marla. She stated she and her sisters were born and raised in Hanalei, and growing up she only had two friends in the neighborhood as they were surrounded by vacation rentals. Over the years as property values went up, her friends' families moved elsewhere as Hanalei became less affordable. She is in support of making Hanalei a local neighborhood, and dreams of raising her kids there one day, but the reality is that Hanalei is far too expensive for local residents to own a home, noting in her immediate area there are no homes for sale under $1 million; homes like theirs with ocean views in close proximity to the beach are worth considerably more. It is highly unlikely a local family will be able to afford to live in Hanalei, and she believes home stays are the best solution to this problem as it will allow residents to live in their home, renting out a portion of it to make enough money to supplement their income. Additionally, the resident has the opportunity to make money off of cleaning the home, booking activities for visitors, etc. She acknowledged the Commission's desire to do the right thing for local residents in limiting the number of vacation rentals allowed in one area, which she feels is a great thing. However, she feels each situation must be looked at on a case-by-case basis to evaluate how a particular location conforms to other homes within the area. Ms. Ben-Dor stated as part of their application, they were required to notify residents within 300 foot of their home, and feels that the Commission should use the same 300 foot criteria to decide whether a home conforms to the neighborhood. Looking 300 feet out from their house they are surrounded by vacation rentals. She pointed out on a map where their home is, and shaded areas representing vacation rentals around them, noting the location of the beach park as well as the only one neighbor that they know. Ms. Ben-Dor pointed out they are not the average vacation rental, noting they bought their house over 28 years ago over which time they have always shared their home with tourists and friends, and by not allowing them to continue to do so is taking away one of their rights as home owners. They will be unable to afford to keep their home if they are not allowed to rent it out, and if they do not get these permits they will have to sell the house. She believes these permitting laws were originally intended to help residents of Kaua'i; however, broad rules that do not look at each case separately has the opposite effect, and because of these actions they know of people who have decided to sell their homes to live elsewhere. If the Ben-Dors do not receive their permits they will also sell their house resulting in another resident moving out of Hanalei, their home likely being sold to someone from the mainland who will only stay in the home for a few weeks out of the year. She understands there are more than 300 current cases of people who appear to be in violation of the rules, and many people being fined simply for being late in renewing their TVR licenses. Ms. Ben-Dor feels many of these violations would not have occurred had they sent out renewals or notifications, and is likely just the tip of the iceberg as they are forcing many people to go underground just because they share a part of their home, and do not want to be caught in the enforcement efforts. The average citizen has been turned into a criminal because of a flawed policy. Ms. Ben-Dor stated she has read the County rules, and could not find anywhere that states home stays have to be in a visitor destination area. She noted that just because the Commission approves this application does not mean they must approve every, single application as they should look at each application on a case by case basis with an open mind. She feels something is wrong when someone with the integrity of her father has been made to look like a criminal simply because he was not aware of a new policy that he was not notified about. She pointed out their attorney informed them that the Planning Director feels they are trying to trick or deceive the County,

which she stated is completely untrue. It is her understanding that the County wants some level of assurance that the ownership of the house will be held by the Ben-Dor children who will be managing the property and providing concierge services. They have met with an attorney in Princeville, and if they are granted this home stay permit, title of the home will be transferred to her and her sisters, who will be taking care of all the utilities, on-going maintenance costs, and providing concierge service to their guests. Ms. Ben-Dor assured the Commission that no negative impacts will occur if they are allowed to keep their home, and share it with others. She urged the Commission to do the right thing and vote yes.

Attorney Ian Jung on behalf of the Planning Department, and Gregory Meyers on behalf of the applicant were present.

Mr. Meyers explained all the Ben-Dors are asking for is permission to use their home in a way consistent with the majority of homes in their neighborhood, and want to be able to keep the home they grew up in. The intent is for the Ben-Dor children to stay home, and run this operation that their parents have been running for all these years. He is assuming the Commission has read all related documents, and feels it is clear that there is no law in the County of Kaua'i that precludes home stays, which is not a TVR. The Planning Department seems to be under the impression that this is a bait and switch to try and get around the TVR law, which is not the case as the Ben-Dors were meant to be included in the ordinance though they failed to apply through no fault of their own; they were not there at the time, and had someone else managing their property. They are not here to ask for a TVR permit, which continues to be referenced by the County, they are asking for a home stay permit, which is defined in the CZO, and has not yet been regulated. The TVR bill specifically states they are not addressing bed and breakfasts, and home stays as that will be done later. He reiterated there is no regulation on home stays, which is a crucial aspect, noting they are using their home for a business. Mr. Meyers outlined the definition of home businesses in the CZO, noting that it states it cannot have frequent visits by the public, which Mr. Jung determined deemed this application not eligible for a home business as it will have frequent visits by the public. Mr. Meyers argued that a child care center, which qualifies as a home business in the CZO, has much more frequent visits by the public than a family staying at the house for several nights. He again reiterated there is nothing in the County Code that precludes this body from granting this request. The applicants' position is that they do not necessarily need a permit, but they understand that the County's position is that they do, which is why they applied, and comes down to the definition of a permit.

Mr. Meyers stated the main issue is whether or not it is compatible with the neighborhood, which was shown to have a majority of vacation rentals, all of which Mr. Jung has argued are non-conforming uses. Regardless of that, they are all vacation rentals, and what the applicants are proposing is definitely compatible with the rest of the neighborhood; the majority of the other lots are vacation rentals. Testimony from Douglas Blackburn states he is one of the only lots that does not have a vacation rental, yet he was not complaining, but was in support of the applicants' request because he knows when they are there the pavilion is safe as they watch out for criminal conduct occurring there, alerting the authorities as necessary. If the applicants are no longer there, he feels Mr. Blackburn would likely be concerned. Mr. Meyers noted there is no one else present opposing this because everyone else is using their properties

for the same thing. Exhibit 7 of the applicants' response is two pages of signatures from the neighbors who are all in support of this application. He thinks the request for denial from the Planning Department is based on the fear of getting a flood of applications, or setting a precedence. While he cannot control what will happen in the future, Mr. Meyers knows his clients have done everything they are supposed to do in applying for these permits. They do not care about the TVR permit; this is a request for home stay as defined in the CZO. He noted the Planning Department has allowed home stays in the past; this is not the first time and does not have to be precedence setting. He reiterated that it comes down to what is in the CZO, which states: *A use permit may be granted only if the Planning Commission finds that the establishment, maintenance, or operation of the construction, development activity, or use in the particular case is a compatible use, not detrimental to health, safety, peace, morals, comfort, and the general welfare of persons residing in the neighborhood.* He noted the only person who objected to this application does not live in this neighborhood, and represents an organization that is in Hā'ena and Wainiha, not Hanalei. The CZO goes on to state: *or detrimental, or injurious to property and improvements in the neighborhood, or to the general welfare of the community, and will not cause any substantial, harmful environmental consequences on the land of the applicant, or on other lands or waters, and will not be inconsistent with the intent of this Chapter, and the General Plan.* Mr. Meyers stated he has not seen any evidence of such, noting that Mr. Jung can point to parts of the General Plan he believes supports the Department, but Mr. Meyers can point to just as many he believes supports the applicant, which he pointed out in their Proposed Findings of Fact Conclusions of Law.

Mr. Jung stated they made reference to children wanting to have the availability to stay home and engage in work, and for his own children he has a desire for them to stay home and work in appropriate areas that are slated for development, and work. Looking at this particular situation, the idea is skirting the TVR ordinance as it is an illegal TVR that is attempting to now be a bed and breakfast. The applicants blame the Department for not notifying them of a change in the text of the CZO, but the Department is only required to notify when there is a change in the zoning, and not the text of the CZO; ignorance of the law is no excuse. In this situation, the applicants want to move into a concierge-type boarding house, with frequent references to home stay, and home business, noting a long and storied past of how TVRs originated in this County. The eight permits Mr. Meyers referenced were all issued prior to the 2000 General Plan when they were being contemplated by this body. The reality is there has been a broad policy shift to move these transient type uses outside of the residential corridor into the VDA. He noted the General Plan is a policy-setting document, and not intended to be law, but it tells the Planning Department, and the Council what the next steps are. The implementing action that took place was only to address TVRs, the reason being as the General Plan and the Council contemplated in enacting Ordinance 864, they recognized there was an historical interpretation that bed and breakfasts are similar uses to boarding houses or guest houses. He feels this is a good lesson in how the use table in the CZO is looked at, which contains slated, listed uses for what is allowed outright, or allowed with a use permit. He stated what is critical to this analysis is determining what happens when there is no specified use, noting that if there is any other use similar in nature to the above listed uses the Director can make an interpretive call, and can determine that a boarding house or guest house is similar in nature to a bed and breakfast, and therefore requires a use permit. When the Council recognized this, they decided to only deal with TVRs at that point, and let the Planning Commission and the Planning Department deal with use permits. The

General Plan lists the traditional notions of bed and breakfasts, which call for a home owner proprietor living there, and serving guests in their own home. In this particular case, this is not a traditional notion of bed and breakfasts as their daughter, who is not currently the owner of the property, come in to be a manager or concierge for transients. He further explained for clarity that you have transients staying in the home with no potential linkage to the other neighbors who may be impacted by the constant in and out use, which is exactly why the Council saw to regulate TVRs.

Mr. Jung stated looking at the compatibility test of a use permit, these uses are no longer compatible within the non-VDA areas. County Code and State law recognize non-conforming, but moving forward, once it is delegated and recognized as such, it does not automatically mean they are compatible because they no longer conform. The further induction of transient uses will be detrimental to what the County is trying to do to bring back an established neighborhood. The Council and the General Plan recognized there are adequate facilities and infrastructure within the VDA to deal with transient uses. To encourage more transient uses outside the VDA destroys the vision set forth. It is the Department's vision that these uses are not compatible, especially in a situation where an illegal TVR that was cited is now coming in for a use permit that is not an owner occupant.

Referencing the home business issue, Mr. Jung cited two clauses in the CZO of critical importance. The first prohibition in the definition of home business in Section 1.5: *The first prohibition addresses uses that are clearly incidental and secondary to the use of the dwelling for dwelling purposes.* He noted the applicant has a single family dwelling unit, and should it become a bed and breakfast, that unit no longer serves a single family, but serves people boarding, or guests of the family, and becomes secondary to the main purpose of the structure because there are multiple families co-habiting for a short period of time. The second concern deals with an exclusion, and states: *No activity involving, encouraging, or depending upon frequent visits by the public. No shop or clinic of any type shall be deemed to be a home business.* Mr. Jung stated dealing with a home business such as ceramic studio, you are just making products to be sent elsewhere to be sold. However, when you have a bed and breakfast that is advertised, you are actively engaging in an act that encourages people to frequent your home as is the goal of the operation, and is clearly not a home business. This particular application is confusing in that they say they do not need a use permit, yet they have applied for one, whereas a home business would be outright permitted. As it stands right now, the question before the Commission is whether or not the proposed conversion of a TVR to a bed and breakfast is a compatible use with a now existing, non-conforming use area where there are other TVRs that went through the proper protocol to be recognized as grandfather uses.

Mr. Jung stated it is the Department's position that these uses are not compatible, and if these types of permits are approved outside the VDA we would be creating a detrimental situation to the long term vision.

Mr. Meyers asked if he could include his client in his 5-minute rebuttal to which Chair Kimura stated they will only be hearing from the attorneys today. Mr. Meyers stated Mr. Jung cited the General Plan for this ideal that it does not want this type of use until it is regulated. However, in reviewing the General Plan Section 4.2.6.2 states: *Single unit uses could be*

permitted in a fashion similar to the current permitting of a home business. He stated this is exactly what they have been saying that the General Plan accounts for, adding Mr. Jung is right in saying that the applicant's position is that it is a home business that doesn't require a use permit, but they are trying to comply with what the County asked of them, and move forward. This is a home stay that is applying for a use permit because the County is not recognizing the bed and breakfast as a home business; the applicants do not want to keep fighting about it. Mr. Meyers noted Mr. Jung did not put forth anything in his presentation to show a use permit should not be granted. There is no definition of compatibility in the CZO, yet he is trying to say it is not compatible because these other uses are non-conforming. He questioned if someone in his neighborhood is doing something illegal, does that mean if he wants to use his neighborhood the same way all his neighbors use it, then it's not compatible. He does not think that is ideal in this use issue of compatibility. He pointed out this is not a residential neighborhood anymore, it is full of vacation rentals, and has been that way since the applicant's children have grown up there since the 1980's. Though that was before the TVR law passed, that does not change what the neighborhood is all about, noting that Ms. Ben-Dor testified that she had only two friends in the neighborhood as a child because all the rest of the homes were vacation rentals. Mr. Meyers stated he frequents the area, and has even rented one of the vacation rentals there, noting there are no regular neighbors, they are all tourists; that is the compatibility of the neighborhood. The applicants are seeking to continue on with renting their place as they have been while their children are able to live there.

Mr. Meyers mentioned Mr. Jung referenced the findings and purpose of Ordinance 864, which is all about ocean front, or other places of premium real estate value, and states: *second and third homes and vacation rentals are displacing traditional neighborhoods where people of low and moderate income have been able to live in the past.* He pointed out that this is not what this neighborhood consists of as it is made up of wealthy home owners who rent them out as vacation rentals. The applicants are not attempting to do that, but are trying to live there, and use the property to generate income like a home business to allow their children to remain in their home. Ordinance 864 goes on to read: *Besides contributing to a lack of affordable housing in the community, this is changing the social character of neighborhoods where neighbors used to know each other. This has tended to make these neighborhoods more vulnerable to crime.* Mr. Meyers pointed out again that is not the nature of this neighborhood, and the applicants wish to be there to take care of those types of issues as they have always done. *While regulating single family vacation rentals will not guarantee more affordable housing, it will dampen speculation and bring a halt to uncontrolled growth and cumulative impacts of vacation rentals which have affected the traditional neighborhoods of 'Anini, Hā'ena, and which could and are also beginning to affect neighborhoods such as Waimea Valley, Kekaha, and the makai side of Kapa'a Town.* Mr. Meyers stated the TVR bill itself was not addressing Hanalei as that is not where the issue was, and is not what the Council felt the issue was; Hanalei is not part of the discussion. The final point Mr. Meyers made was the County continuing to state that the applicants want to use this place where someone could live and provide concierge services, but he pointed out it would not be just anyone. If the Commission feels the applicants children need to have part of the ownership, they are willing to work that out, and put the property in a trust to allow the children to be home owners. They want to assure the Commission that they are not just trying to skirt the TVR issue; they are legitimate home owners who consider their children as part of their home, and if they need to put them on title they are willing to do so.

Ms. Anderson stated what she does not see in the Findings of Fact is any reference to the children of the applicants being owner occupants. She understands that is not the current status, but it is difficult to make a condition if they are banking on something that will happen in the future, and not allowing a permit to go forward regarding home stay when there isn't a current owner occupant of the residence. Mr. Meyers stated the issue was with the purported illegality with regards to operating this property as a TVR, and they reached an agreement with the County to halt anything going on at the house until this issue is resolved; they are in the process of establishing a trust so the children's name could be placed on title. It has not happened yet, which may be an oversight on their part as they are waiting for this Commission's ruling. Currently, no one is living in that house though they are staying there from time to time, but because they had to deal with the Department regarding the TVR, they agreed to stop everything until the home stay permit application was addressed.

Mr. Katayama asked who the resident of that home is historically, and currently. Mr. Meyers requested his client be allowed to answer as they would better be able to answer. Joni Ben-Dor stated her family has been residents of Kaua'i for 30 years, and residents in that home for 28 years. When they do not feel like driving to their home in Hā'ena, they spend nights there as do their daughters; they take turns. The house has been occupied by their family for 28 years, and they have always shared it with friends, family, and guests both when they were in the house, and when they were away. Currently, there is always someone there coming and going.

Mr. Katayama clarified his question, and asked whose permanent place of residence is that home. Mrs. Ben-Dor stated their permanent residence is in Hā'ena, and this is their secondary residence, which all of the daughters share; there are always humans in the home. It's not just left as a business, it's always been shared.

Mr. Katayama asked how many applications the Department has received for home stays historically to which Mr. Jung replied they know of eight as referenced in the General Plan, and there are a few more coming in now. Mr. Katayama stated the eight were approved, but how many in total were processed by the Department, and not approved. Mr. Jung know of one in Kīlauea that was denied an ADU use for a bed and breakfast. It would take significant, detailed research to find out how many applications were actually processed in total.

Mr. Katayama asked what criteria the Department uses when granting a permit for a home stay, and where has this applicant not met the criteria. Mr. Jung stated it falls under the use permit standard, and the compatibility test in whether or not the proposed use is compatible with the uses in the neighborhood, and whether or not the proposed use would be detrimental to the neighborhood or the environment. In this particular case it is the Department's position that because the conversion of an illegal TVR that was rectified wanting to become a bed and breakfast, this proposed transient use is not compatible because those existing TVRs are now grandfathered uses, which become non-conforming. All the transient uses are intended to now be designated to be located in Visitor Destination Areas; the Department views it in a similar nature as TVRs.

Mr. Katayama asked whether it has been acknowledged by the applicant that this is being called an illegal TVR to which Mr. Jung stated it has been acknowledged in their submittals that they were cited, and it was rectified by paying a fine, and ceasing operations. He explained Ordinance 864, which subsequently became Ordinance 904 provided two opportunities for single family transient vacation rentals to fulfill the prior use requirement to allow the business to continue. However, because there is only a one year window of time, that opportunity had since foreclosed, and this applicant did not take advantage of that process.

Mr. Katayama asked how the applicant will fulfill the terms and conditions for a use permit as a home stay going forward, noting it is currently designated as a second home. Mr. Meyers stated the plan is for the children to live in the home, and manage it. He acknowledged that the Department is saying that the children do not own the home, but the applicant always saw their children as part of this procedure throughout this whole process. Technically, it is accurate to say that the children are not on title to the home, but the applicant was not looking at it that way when they made the application. The plan is for their youngest daughter to live there, and run the home stay operations, also allowing their other daughters to live there from time to time. He reiterated that the plan is to turn the home over to the children to run the business; his clients are the applicants because their name is currently on title. Mr. Katayama asked for clarification that whoever is on title will become the permanent resident of the home to which Mr. Meyers replied yes, that is the plan; it is intended for one or more of the children to be residents of that home, and run the bed and breakfast. If the Commission wishes it to be a single unit bed and breakfast, they are okay with that.

Ms. Mendonca asked to clarify that the applicants cleared up any violations from previous applications, and asked whether they were given prior notice to take care of it. Mr. Jung explained notice was provided through a zoning compliance notice, and ultimately a notice of violation; they paid the fine and rectified that. Ms. Mendonca asked if they did it almost immediately in good earnest to say they were not aware of a violation. Mr. Jung stated his understanding is that their position was that they were not aware of the TVR Ordinances, but the applicants' attorney can answer that.

Mr. Meyers stated yes, the applicants did act promptly and have been working with Mr. Laureta in the Planning Department, and negotiated a resolution themselves, which called for them to stop all advertising, cease and desist operations, refrain from taking any more bookings and collecting money, and pay a fine to the County; they have done every single thing asked of them by the County. Ms. Mendonca asked why the applicant was not aware of the change in the regulations to which Mr. Meyers replied the applicants were building their home in Hāʻena at the time, and had a property manager for the house who never told them about the change. However, they did notice other TVNC permit signs going up around the neighborhood, but they did not think they needed to do that as they had always been running it as a vacation rental.

In response to Ms. Mendonca, Mr. Meyers explained Ed and Joan Ben-Dor, the applicants, live in a home in Hāʻena, and have lived there since 2009. The plan is for the children to live in the subject property. Ms. Mendonca asked if the children live here on Kauaʻi to which Mr. Meyers replied the youngest daughter is transitioning back to Kauaʻi from Oʻahu, and the other two daughters are also relocating here.

Mr. Isobe stated he heard that the operation would be conducted by a third party, which does not appear to be true as it will be conducted by the owners, and asked for clarification on that. Mr. Meyers stated there is a technicality with the children not being owners of the house in the same way his children do not own his house. However, the applicants have always considered the children as owners though they are not on title, but it is not a third party they will be hiring, their children are going to run it, and are in the process of becoming owner occupants of the home. That has been discussed with the County, and if the Commission would like to make that a condition, the applicants are already in the process of doing so. He thinks it was an oversight when they filed the application as they saw their children as being owners of the house being that they grew up there. Technically, the children are not on title, but are in the process of making that happen. Mr. Isobe stated he understands that, and again asked to clarify that it is the children who will become the owners once they get on title that will be operating the home stay use.

Mr. Kimura asked if these permits are granted, and sometime down the road the daughters decided to move, what then? Mr. Meyers replied that is something they have talked about, and suggested conditions can be placed to assuage the County that they will not be hiring a third party. It could be that they may have to sell the house as it would no longer be owner occupied. He noted that it would be all three daughters on the title, so if one daughter moves away, one of the other daughters could step in. They have taken turns managing the house in the past, and will do whatever necessary in order to keep this home.

Mr. Kimura asked to clarify the dates that the applicant had a TVR previously running there. Mr. Meyers replied they had a property manager, and were renting, sharing, and/or operating it as a bed and breakfast since 1987. Mr. Kimura stated what he is hearing from the Department is that a cease and desist notice was sent for a TVR; not a bed and breakfast, a TVR. Based on that, he asked for the date they began advertising for a TVR to which Mr. Meyers stated he may not be understanding the question, but they have been renting the house in one form or another since 1987. He does not think they ever advertised it as a TVR. Mr. Kimura asked was it not just mentioned that Staff Planner Mike Laureta discussed it with the applicant, asking them to stop advertisement to which Mr. Meyers replied they were not advertising it as a TVR, and perhaps he is confused by the term being used, but they did not consider it a TVR, reiterating they have been renting it out since 1987, paying taxes, had a property manager running it at some point, running it themselves at other times, sharing the home with family and friends, and renting to short term vacation renters. Mr. Kimura expressed his confusion, and asked for clarification that if the applicant built their second home in 2009, but they bought their first home in 1987, where were they living from 1987 to 2009? Mr. Meyers stated they lived both in the Hanalei house, and were going back and forth to the mainland to take care of family issues; however, while they were on Kaua'i up until the house in Hā'ena was finished, their primary residence was the house in Hanalei. Mr. Meyers pointed out there is an upstairs, and a downstairs, which allowed them to rent out a portion of the house while they were living there.

Mr. Kimura asked to clarify that there was no advertisement of the property for the TVR rental at the time to which Mr. Meyers stated they had a property management company who was renting it out for them at the time. Mr. Kimura restated his question for clarification, asking whether whoever was managing the property had advertisements for it to which Mr. Meyers

stated his client does not recall specific advertising, noting the property management company had their own clients that knew of the house.

Mr. Isobe stated based on the testimony presented it is his understanding that this particular use being requested is necessary for the children to maintain ownership of the property into the future. He asked if this is the only alternative, and whether or not they could put the property into a long term rental given that the children are not currently on island, especially if there is that sort of demand in the area. Mr. Meyers stated it would not be financially solvent for the family to offer a long term rental for that property; they would not be able to pay the mortgage that way.

Mr. Kimura commented that he has always been against TVRs outside of the VDA, and has never changed his stance on that, and he will continue to vote against it as he feels operations like that belong in the VDA. He stated his statement is nothing personal, and it is how he has felt about issues like these since Day 1. The idea of trying to save a family home is one thing, but he does not believe this belongs outside of the VDA.

Mr. Kimura asked how the applicants envision the bed and breakfast to be, and what are the plans for operations. Mr. Meyers replied as he previously stated, it can be a single unit bed and breakfast where the children live in one story of the house, and rent out the other story to vacation renters. They would live there as residents as well as provide concierge services, and will do all the advertising and property managing themselves.

Ms. Anderson stated based on the reference to a single unit bed and breakfast, what would the occupancy be? How many rooms are available, and what security factors will be present for the daughters living there. Mr. Meyers replied there are two bedrooms upstairs, and the applicants are willing to limit the rentals to one family at a time to lessen the perceived impact at the property, and to the environment. Any security issues have already been addressed as this is something they have been doing for years already.

Mr. Katayama requested at some point going into executive session to discuss some questions he would like to pose to counsel before asking any more questions of the applicant, and the Department. He will withhold any questions until he receives clarification on interpretations of the General Plan as well as the points made by both counsels.

Mr. Isobe echoed Mr. Katayama's request, noting he also has concerns and questions he would like addressed by Commission's counsel.

Ms. Higuchi-Sayegusa stated should they receive enough votes to go into executive session, the Commission can do so today. They also have the option to defer the matter to be placed on the agenda for the next meeting.

Mr. Katyama stated his preference of having the executive session today considering all parties are present.

Ms. Sayegusa cautioned the Commission that the executive session should be limited to legal questions, and should there be any factual questions it should be asked in open session.

Ms. Anderson supports going to executive session today, and noted a follow-up question she has. Going back to the reference to a single unit bed and breakfast, she asked whether the two rooms available would be limited to one family, which would comprise of two adults. Ms. Ben-Dor replied it would likely be two to four adults as they could put two people in each bed. Ms. Anderson stated she understands that, but for the purposes of a single unit bed and breakfast, she would think that would refer to one unit being rented for one family. Mr. Meyers replied yes, the idea is for one family, noting the bedrooms are not separated by a wall or by separate entries, but a family comprised of two adults, and two kids they would be able to use both bedrooms. When they talk about single use, they envision one family at a time. Ms. Anderson clarified her question, asking whether it would be limited to two adults. Ms. Ben-Dor stated sometimes there are two couples that stay together.

Mr. Jung stated his objection to what is happening, noting the applicants have a representative present, and they are bombarding the Commission by constantly coming up to the microphone to testify. He pointed out they agreed to a limited contested case in this particular matter, and feels the representative should be doing the talking. Mr. Meyers apologized, stating he has no problem with that.

Mr. Meyers responded to Ms. Anderson's question, stating there are families that have two adult children, but the idea is for only one family, with one vehicle, whether it is two people, four people, or five people.

On the motion by Wayne Katayama and seconded by John Isobe to enter into executive session to clarify point of law relating to this application, the motion carried by unanimous roll call vote.

Deputy Attorney Jodi Higuchi-Sayegusa read the Hawai'i Revised Statutes provision as detailed on the agenda to take the Commission into Executive Session

(The Commission entered into executive session at 4:06 p.m.)

(The meeting resumed in Open Session at 4:50 p.m.)

Ms. Higuchi-Sayegusa stated it appears the Commission has further legal questions that she will be doing additional research on, and noted that the parties have waived the formal contested case hearing, and any strict timelines. She asked whether the parties had any objections, or preferences as to when the next hearing date should be. Mr. Meyers replied sooner rather than later.

Mr. Jung stated the Department would prefer a formal waiver executed on the record. Mr. Meyers stated he thought they just waived the ability to present evidence, not the timeline, noting the intent was to shorten the proceedings. Mr. Jung stated there has not been a formal waiver since they are still within the 60 days of the close of the hearing.

Mr. Meyers asked if it was possible for the Commission to ask the legal questions they may have of the applicant's counsel to see if they could answer them to which Mr. Kimura replied no.

Mr. Isobe asked assuming the waiver of the timelines are not granted by the applicant, what is the 60-day deadline to which Mr. Jung replied the Department's perspective is the December 9 meeting; however, the calendar for that day is pretty significant. Mr. Isobe asked to clarify that at this point in time there is no need for a waiver, and the Commission could defer it, and should they need additional time beyond the December 9 meeting, at that point the applicant can decide if they want to grant a waiver.

Mr. Katayama asked if the Commission does not take action before the deadline, what would be the default action of this contested case hearing. Mr. Jung replied in this particular case they stipulated to receiving submittals on the 18th, and holding the hearing on the 25th. Just to be safe the Department would prefer to have action taken today, or get a waiver from the applicant.

Mr. Isobe asked whether or not December 9th is a deadline to which Mr. Jung stated in his view the 9th would be the meeting date, but should the applicant appeal this matter they will raise every possible procedural element in the book. Therefore the Department wants to ensure the Commission does not open itself to procedural defaults. Mr. Isobe asked at what point would the procedural default kick in to which Mr. Jung stated it is hard to gauge because they engaged in the limited contested case proceeding.

Mr. Meyers stated they are not trying to prevail on any procedural defect, and requested to speak with Mr. Jung to try and figure it out.

(The meeting recessed at 5:01 p.m.)

(The meeting reconvened at 5:06 p.m.)

Mr. Meyers stated in the interest of cooperation, his clients are willing to waive any potential deadline until the December 9 Planning Commission meeting. Mr. Jung added before doing that they would like a declaration from the Commission that because they are in a limited contested case, the timelines have not been waived at this point. To clarify, he restated the hearing can be held on the 9th, but because they are in a limited contested case matter, they do not believe the timelines have run at this point as they are still in the contested case.

Ms. Higuchi-Sayegusa stated Mr. Jung requested a statement from the Commission to clarify whether the timelines have run or not. Mr. Jung made an oral motion for the body, stating because they are in a limited contested case program, the deadlines do not apply at this point because they are making arguments, and proposed Findings of Fact. When the applicants are coming up, the representative is getting spots of information from his clients spouted into the microphone, and the Department would like to reserve the right to go into full contested case if the applicants are going to try and proffer more evidence rather than making arguments of the briefs.

Mr. Meyers stated he does not necessarily agree to that characterization, noting they were responding to questions for which he attempted to obtain frank facts. He restated that his clients are willing to waive any deadlines until the December 9 meeting.

Mr. Jung reiterated he would like the Commission to recognize they are currently in the contested case program, and there are no specific deadlines to act on the permit as they are still taking oral arguments. Under Rule 1-6-18 allows for the matter to be referred back for evidentiary hearing.

Ms. Higuchi-Sayegusa stated for clarification that being it was formerly a stipulated limited contested case in that the parties formally decided on a certain procedural course of action, the Department is asking the Commission to recognize that they have the power to have it referred back for evidentiary hearing due to the additional testimonies proffered today. It is up to the Commission to take it out of the stipulated procedure, and send it back to allow for further evidence and testimonies to be proffered by both parties. The other option would be to defer the matter for decision making, and that could be set on the 9th at which time Ms. Higuchi-Sayegusa could schedule an executive session to answer any legal questions, and the Commission could take up decision making at that point.

Mr. Meyers stated they are not in agreement to reopen the limited contested case hearing; as far as they are concerned the hearing was closed, and today was strictly for arguments. They are agreeing to the extent that deadlines will be missed in continuing to defer to December 9, which they are fine with.

Referencing Mr. Jung's request for declaration from the Planning Commission, Ms. Anderson stated she feels it is apparent that today was not just a matter of closing arguments, noting they were receiving additional information, which has instigated more legal questions. Mr. Katayama stated they have asked for some clarifications of law, and asked when that would be presented to the Commission. Ms. Higuchi-Sayegusa replied she could be ready by December 9th if that is preferable. Mr. Katayama asked if at that time the Commission can pose the questions related to those interpretations to either party, or has the fact finding been closed. Attorney Higuchi-Sayegusa stated she believes what was motioned and seconded was to allow for further evidence to be heard at the next scheduled agenda.

Ms. Anderson clarified that her motion was just recognizing what occurred today in that they were not simply hearing closing arguments, and additional factual information was presented directly related to determining whether or not this is a home stay.

On the motion by Angela Anderson and seconded by Wayne Katayama to recognize that the contested case is ongoing due to additional factual information being presented, the motion carried by unanimous voice vote.

Mr. Katayama asked what the next step in the process is; are they now limited to closing arguments, or are they open to fact finding. Ms. Higuchi-Sayegusa stated the Commission could send it back to request any additional evidence that could assist in decision making, or they could

set it for decision making at the next meeting date. She suggested the Commission decide what they would like to do to allow the parties to prepare.

Mr. Katayama noted the Commission has asked the attorneys to stipulate on the timeline, which they have agreed to; however a comment was made that they viewed today as being for closing arguments, and any questions for facts would not be addressed. If that is where we stand, there may be issues. Mr. Kimura allowed counsel for both parties as well as Commission's counsel to meet and discuss a possible agreement.

Mr. Isobe commented that he is still unclear as to what has happened up until this point to which Mr. Katayama agreed, and stated fact finding needs to be kept open.

(The meeting recessed at 5:18 p.m.)

(The meeting reconvened at 5:22 p.m.)

Mr. Jung stated based on discussion with the applicant's counsel, and the Commission's counsel, his understanding is the approach will be to agree to have the Commission defer it to the 9th, and reserve arguments on the next procedural elements when they get to the hearing on the 9th. Mr. Meyers agreed, noting the intent is to have a decision on the 9th, and not have to go any further.

On the motion by Sean Mahoney and seconded by Wayne Katayama to defer to December 9, 2014, the motion carried by unanimous voice vote.

ANNOUNCEMENTS

The following scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter at the Līhu'e Civic Center, Moikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Līhu'e, Kaua'i, Hawai'i 96766 on **Tuesday, December 9, 2014.**

ADJOURNMENT

Chair Kimura adjourned the meeting at 5:24 p.m.

Respectfully submitted by:

Cherisse Zaima

Cherisse Zaima
Commission Support Clerk

( ) Approved as circulated (add date of meeting approval).

( ) Approved as amended. See minutes of _____ meeting.