

KAUA'I PLANNING COMMISSION
REGULAR MEETING
April 10, 2018

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair Apisa at 9:07 a.m., at the Līhu'e Civic Center, Mo'ikeha Building, in meeting room 2A-2B. The following Commissioners were present:

Chair Donna Apisa
Vice Chair Glenda Nogami Streufert
Ms. Kanoë Ahuna
Mr. Roy Ho

Absent and Excused:
Mr. Kimo Keawe
Mr. Wade Lord
Mr. Sean Mahoney

The following staff members were present: Planning Department – Director Michael Dahilig, Chance Bukoski, Dale Cua, Leslie Takasaki; Office of the County Attorney – Deputy County Attorney Jodi Higuchi Sayegusa; Office of Boards and Commissions – Administrator Nicholas R. Courson (*left at 11:44 a.m.*), Commission Support Clerk Darcie Agaran

Discussion of the meeting, in effect, ensued:

CALL TO ORDER

Chair Apisa called the meeting to order at 9:07 a.m.

ROLL CALL

Planning Director Michael Dahilig: Commissioner Streufert.

Ms. Nogami Streufert: Here.

Mr. Dahilig: Commissioner Mahoney. Commissioner Keawe. Commissioner Ahuna.

Ms. Ahuna: Here.

Mr. Dahilig: Commissioner Ho.

Mr. Ho: Here.

Mr. Dahilig: Commissioner Lord. Chair Apisa.

Chair Apisa: Here.

Mr. Dahilig: Madame Chair, you have four members present this morning.

ADDITION OF SUBDIVISION COMMITTEE MEMBER(S)

Mr. Dahilig: Given the resignation of Commissioner Lord, the next item on the agenda is the addition of a subdivision committee member to the Subdivision Committee. It is not necessarily immediate, but we need to fill the seat given that Commissioner Lord has resigned.

Chair Apisa: So we need someone to volunteer?

Mr. Dahilig: You can, or you can sit-in that one meeting. I mean, we have an alternate that's why, so it is up to the Body whether or not to appoint another member.

Chair Apisa: To the Sub Committee?

Mr. Dahilig: Subdivision Committee.

Ms. Nogami Streufert: Let's think about it.

Chair Apisa: Okay, I think...

Mr. Dahilig: So we still have two permanent members, plus an alternate, so it is not as if they can't function, but at this point, I think it's just better to point that out.

Chair Apisa: We will defer that.

Deputy County Attorney Jodi Higuchi Sayegusa: I'm sorry. You folks are going to defer it to the end this agenda?

Chair Apisa: Probably to the next.

Ms. Higuchi Sayegusa: To next meeting? Okay.

Chair Apisa: Yes.

Ms. Nogami Streufert: When the other members are here, perhaps.

Chair Apisa: We are deferring it to another meeting when we have a full board [sic].

Ms. Higuchi Sayegusa: Okay. Could you, perhaps, make a motion, I guess, to the next meeting?

Ms. Nogami Streufert: I move to defer the appointment of a sub committee member until the next meeting (inaudible).

Mr. Ho: Second.

Chair Apisa: We have a motion on the floor to defer the addition of subdivision committee members to our next meeting. All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 4:0.

Mr. Dahilig: Thank you, Madame Chair.

APPROVAL OF AGENDA

Mr. Dahilig: Next is Item D, the approval of the agenda. The Department would recommend moving Item L before Item I, which is the Subdivision Committee report for review. It is the only change that we recommend at this time.

Chair Apisa: Do we have a motion to approve the agenda as amended?

Ms. Nogami Streufert: I move to approve the agenda as amended.

Ms. Ahuna: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 4:0.

Mr. Dahilig: Thank you, Madame Chair.

MINUTES of the meeting(s) of the Planning Commission

Mr. Dahilig: We are now on Item E. These are the minutes of any Planning Commission meeting. We do not have any for transmittal this morning for the Commission to review.

RECEIPT OF ITEMS FOR THE RECORD

Mr. Dahilig: Item F – this is the receipt of items for the record. We don't have anything additional other than, I believe...well, we can take care of it at Item G.4. in New Business, so we don't have anything for this item.

HEARINGS AND PUBLIC COMMENT

Continued Agency Hearing

There was no continued agency hearing.

New Agency Hearing

Class IV Zoning Permit Z-IV-2018-6, Use Permit U-2018-5 and Special Permit SP-2018-3 to allow improvements to the Kīlauea Wells No. 1 and 2 facility that includes construction of a new generator shelter, and replacement of an existing pump and motor control center, on a parcel situated on the mauka side of Kūhiō Highway in Kīlauea, approx. 3,500 ft. southwest of the terminus of Kuawa Road, further identified as Tax Map Key: (4) 5-2-002:013, and containing a total area of 2.737 acres = County of Kauaʻi, Department of Water. [Director’s Report received 3/27/18.]

Mr. Dahilig: Item G.2.a. – this a new agency hearing. The Department would recommend opening Class IV Zoning Permit Z-IV-2018-6, Use Permit U-2018-5, and Special Permit SP-2018-3 to allow improvements to the Kīlauea Wells No. 1 and No. 2 facility that includes the construction of a new generator shelter, and replacement of an existing pump and motor control center, on a parcel situated on the mauka side of Kūhiō Highway in Kīlauea, approximately 3,500 feet southwest of the terminus of Kuawa Road, further identified as Tax Map Key: (4) 5-2-002 Parcel 013, and containing a total area of 2.737 acres. The applicant is the County of Kauaʻi, Department of Water. The Department would recommend opening the agency hearing at this time.

Chair Apisa: We will open the agency hearing.

Mr. Dahilig: Madame Chair, we do not have anybody signed up to testify on this agency hearing. The Department would recommend making a final call for any agency hearing testimony and closing the agency hearing.

Chair Apisa: Would anyone else present like to testify on this matter? Hearing none, we will close the agency hearing.

Ms. Higuchi Sayegusa: We will need a motion and a second.

Ms. Nogami Streufert: I move to close the agency hearing.

Mr. Ho: Second.

Chair Apisa: All in favor of closing this agency hearing? (Unanimous voice vote) Motion passed 4:0.

Mr. Dahilig: Thank you, Madame Chair.

Class IV Zoning Permit Z-IV-2018-7 and Use Permit U-2018-6 to allow construction of a new electrical substation on a parcel situated on the makai side of Kōloa Road in Lāwaʻi, approx. 3,300 ft. southeast of the terminus of Aka Road, further identified as Tax Map Key: (4) 2-6-003:001, and affecting an area approx. 2.5 acres in size of a larger parcel = Kauaʻi Island Utility Cooperative (KIUC).

Mr. Dahilig: We are now on Item G.2.b. This is an agency hearing for Class IV Zoning Permit Z-IV-2018-7 and Use Permit U-2018-6 to allow construction of a new electrical substation on a

parcel situated on the makai side of Kōloa Road in Lāwa‘i, approximately 3,300 feet southeast of the terminus of Aka Road, further identified as Tax Map Key: (4) 2-6-003:001, and affecting a total area of approximately 2.5 acres in size of a larger parcel. The applicant is the Kaua‘i Island Utility Cooperative, or KIUC. There is a Supplemental No. 1 to the Director’s Report pertaining to this matter. The Department would recommend opening the agency hearing at this time.

Chair Apisa: We will open this agency hearing at this time.

Mr. Dahilig: Madame Chair, I do not have anybody signed up to testify for this agency hearing. The Department would recommend making a final call for any testifiers for this agency hearing and close the agency hearing at this time.

Chair Apisa: Final call – would anyone like to testify on this matter? Hearing none, we will close the agency hearing.

Mr. Ho: Motion to close the hearing.

Ms. Nogami Streufert: I second.

Chair Apisa: All in favor? (Unanimous voice vote) Motion carried 4:0.

Mr. Dahilig: Thank you, Madame Chair.

Continued Public Hearing

Mr. Dahilig: We are on Item G.3. This is Continued Public Hearing. We have no continued public hearings for this morning.

New Public Hearing

Zoning Amendment ZA-2018-6: A bill (No. 2693) for an ordinance amending Chapter 8, Kaua‘i County Code 1987, as amended, relating to the Comprehensive Zoning Ordinance. The proposal amends Section 8-15.1(d) of the CZO relating to Additional Dwelling Units = *Kaua‘i County Council*.

Mr. Dahilig: Item G.4. – this is a new public hearing on Zoning Amendment ZA-2018-6: a bill, No. 2693, for an ordinance amending Chapter 8, Kaua‘i County Code 1987, as amended, relating to the Comprehensive Zoning Ordinance. The proposal amends Section 8-15.1(d) of the Comprehensive Zoning Ordinance relating to Additional Dwelling Units. This bill came down from the Kaua‘i County Council and there is a Director’s Report pertaining to this matter. The Department would recommend opening the public hearing at this time.

Chair Apisa: We will open the public hearing at this time.

Mr. Dahilig: Madame Chair, I do not have anybody signed up to testify on this particular public hearing. The Department would recommend making a final call for any testifiers for this particular item and close the public hearing at this time.

Chair Apisa: Would anyone like to testify on this? Motion to close the public hearing.

Ms. Nogami Streufert: Move to close the public hearing.

Mr. Ho: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 4:0.

Mr. Dahilig: Thank you, Madame Chair.

All remaining public testimony pursuant to HRS 92 (Sunshine Law)

Mr. Dahilig: We are now on Item 5. This is all remaining testimony pursuant to Hawai'i Revised Statutes Section 92, otherwise known as the Sunshine Law. I do have six individuals signed up to testify on Items J.1. and I.2. If Anne Frederick could please come up regarding Contested Case Hearing No. 2015-20 and Z-IV-2007-1 regarding, again, Kaua'i Springs.

Ms. Anne Frederick: Good morning. My name is Anne Frederick. I am here on behalf of the Hawai'i Alliance for Progressive Action to submit testimony in strong opposition to the Hearing Officer's report and recommendations. Our testimony gives a fairly in-depth legal analysis of the ways in which the Hearing Officer's report does not comply with the Supreme Court's decision. I will do my best to summarize our key points.

Ms. Frederick summarized her written testimony for the record (on file with the Planning Department).

Mr. Dahilig: Three minutes, Madame Chair.

Ms. Frederick: Pardon?

Chair Apisa: Three minutes.

Ms. Frederick: Sorry. I will summarize the rest of the points.

Ms. Frederick continued to summarize her written testimony for the record.

Ms. Frederick: Thank you.

Chair Apisa: Thank you.

Mr. Dahilig: This is on Item I.2. regarding the State of Hawai'i, Department of Education, Waimea Canyon Middle School play court. I have David Walker, followed by Melissa Speetjens, followed by Barry Hashimoto. David Walker.

Mr. David Walker: Good morning. My name is David Walker. I am a retired County firefighter, also a retired track/cross-country/soccer coach at Waimea High School, a volunteer track coach for the Waimea Canyon Track Team for about 15 years or so – I did 30 years in track at Waimea – a past president of West Kaua'i Business Professional Association, and the current president of the Rotary Club of West Kaua'i. We just completed our 73rd annual track meet at Vidinha Stadium; it started in 1946 – some people were alive then, I don't know.

Anyway, I would like to give my support to the building of the covered sports area for the following reasons: it improves the facilities for the students, provides protection from rain and solar radiation, and provides an area for school events, also. Clarification of school districts recently talked about will send students to the Westside and will increase the school population, and this will be an added resource for that population. Student population will also increase due to the housing projects at 'Ele'ele and Waimea – Kaua'i Habitat for Humanity projects. Please note that the school was built in the mid-1970s and the Kikiaola Subdivision above did not begin any construction until around 1984. Residents who built there must have realized the existence of the neighbors and the usual sounds associated with the school, and I am sure many families moved there to allow their children the ability to walk to school, so please allow this project to continue. Any questions?

Chair Apisa: Any questions? No questions. Thank you for all your public service.

Mr. Walker: It's fun.

Mr. Dahilig: Melissa Speetjens, followed by Barry Hashimoto, (followed) by Mr. Mishima.

Ms. Melissa Speetjens: Good morning. I am Melissa Speetjens. I am the principal at Waimea Canyon Middle School, and I am here to provide a school perspective of this truly valuable asset – the covered play court – and how it, in fact, is a valuable asset for the whole Westside community.

Our efforts started in School Year '13/'14 when I first became the principal there 5 years ago in which my students wrote 400 individual letters to Senator Kouchi and Representative Morikawa. They wrote these letters because they wanted equity on Kaua'i where every other middle school has a covered play court; they wanted a play court as well. They want the play court for the heat issue; it is extremely hot, as you know, on the Westside during certain months, and they still want to participate in P.E. and team sports. Just recently you may have noticed there has been a lot of rain on the Westside, too, which prohibits their P.E./team sport activity. And we have no one place on our campus where we can hold a unified open house or assembly to address all the students; our cafeteria is too small to do that. During our band concerts, which only happen twice a year, we have an overflow from the cafeteria that spills all the way out to almost the Admin Building. As a response to these letters that our students wrote, (in) February 2015 they

were then writing “thank you” letters because the money was allocated to build the covered play court.

Throughout the following years, there have been many, many updates and many meetings. Our updates include monthly parent bulletins, updates on our website, and monthly School Community Council meetings. Within these School Community Council meetings we have representation from the community and parents. I also attend the West Side Business meetings. Within this five-year process, I have never had communication from the community regarding any concerns about the above covered play court until just recently.

Approximately 6 months ago in October 2017, our School Community Council, which is community and parents, and our faculty approved the current site location. The rationale for the site location was safety – it is the only safe area on the campus where we can monitor – and also, it is an easy access for Kaua‘i Police Department when they do their nightly tours of the campus to make sure our campus remains safe.

After the hearing that happened and there was a noise concern, we held a community meeting about two weeks ago in our cafeteria. In response to the noise that a handful of the community brought up, we went back to the fact that the original plans of the school designates where we are putting the covered play court as a play area. In fact, it was used as a play area for (Grades) K, 1, (and) 2 while it was still an elementary school, and, of course, the associated noise was small children. There is also the hospital, which is literally a driveway across from us, with associated sirens and ambulances. Our night events do not create a lot of noise; we have very few night events. In fact, it is usually limited to 2 hula performances, 2 band concerts, and 2 ukulele concerts, which typically end by 8:15 at night. We’ve had no prior noise complaints issued at the school and I will–

Mr. Dahilig: Three minutes, Madame Chair.

Ms. Speetjens: –refer back to, also, that the houses were built with full knowledge that the school was located there; they were built after the school was built.

Chair Apisa: Okay. Will you be able to wrap it up fairly soon? We have the three minutes.

Ms. Speetjens: Yes. I’m sorry. We fully intend to be a good neighbor. We value the Westside community. We request going forward with the play court now, in this location. We want what is best for our students, our grandchildren, the future citizens of Kaua‘i, the sound of children playing, the future of the Westside. We ask for equity of our play court as to what Kapa‘a and Chiefess has as well. Thank you.

Chair Apisa: Questions? I have a question. I heard you mention about only a few evening events, and as I recall, there was talk at our last meeting about not having any evening events. How important are evening events?

Ms. Speetjens: Once again, our evening events, basically, are the hula, the band, and the ukulele concerts. We have it currently being held in the cafeteria with an outflow of at least 50 parents,

grandparents, community members who can't sit down because our facility is so small. So we would request that those night events, with proper notification to the surrounding community, be held in that play court, and, once again, they typically end at 8:15 at night.

Chair Apisa: I think hula and ukulele sound relatively low key, but I don't know about the band.

Ms. Speetjens: We have less than 50 students in our band.

Chair Apisa: Okay. Any other questions?

Ms. Speetjens: Could I say one more thing? I also provided a packet for you that documents some of the student letters, proof of the SCC minutes, proof of the faculty minutes, just some documents that you may want to look at, also. Thank you.

Chair Apisa: Thank you.

Mr. Dahilig: Barry Hashimoto, followed by Ray Mishima, followed by Trisha Denny.

Mr. Barry Hashimoto: Hi. Good morning.

Chair Apisa: Good morning.

Mr. Hashimoto: My name is Barry Hashimoto, and I live in Waimea in one of the houses in the back of the new covered play court that is planned to be built. I have lived there for over 30 years and now retired like many of my neighbors, spending most of my time in my garden and my house. I am concerned about the impact that this project would have on us. I am in favor of this project, but not in the location so close to our homes. I have worked my whole life to finally enjoy being retired, and I don't want to be driven from my house because of the problems this project would bring, such as noise and blocking natural air flow. I think moving it away from the residential homes makes a lot of more sense. I respectfully request that you consider that real carefully given the impact that siting the project in its current location would have on me and my neighbors; just a moment to think if it was going to be built in your backyard, just a thought. At a minimum, I would hope that you folks would put strong conditions in place of the use of this court. Thank you for your time.

Chair Apisa: Any questions? No questions. Thank you.

Mr. Dahilig: Ray Mishima, followed by Trisha Denny, followed by Esther Estes.

Mr. Ray Mishima: Good morning. For the record, my name is Ray Mishima. I agree with what Mr. Hashimoto had to say. My concern is...we don't oppose the project. We want to be good neighbors with the school, but we weren't aware of the situation until just recently that they were going to build a complex like that right in the back of my yard, which is something like 40 feet from my backyard. Again, I don't oppose the project. I feel that it is a good thing for the school, but I oppose the location of the project, which is 40 feet from my backyard. Thank you.

Chair Apisa: Any questions? Go ahead.

Ms. Ahuna: When were you notified of this project and how were you notified?

Mr. Mishima: Just (off) the top of my head, this was about...maybe at the most, about a month ago that we were aware that this project was going to be done. When we went to the meeting at the middle school, there was a presentation that this project was ongoing since 2014 to present, which we weren't aware of.

Ms. Ahuna: How were you brought attention to this? By a letter or a-

Mr. Mishima: Huh?

Ms. Ahuna: A letter or something came--?

Mr. Mishima: Yes, there was a letter that was sent by the consultants. As a matter of fact, that letter was not sent to me; it was sent to my daughter because she is the trustee of my place. So when she called me that...hey dad, there is a letter from this consultant firm that they are going to build a sports complex right in the back of your yard. I said, "What?!" So she said okay, I will send it to you. That is when I was aware that...and that letter I got was something like March 1st that she sent it, so that's when I was aware that there was going to be something like that.

You know, we are trying to be good neighbors with the school, but, you know, we only oppose the location, which is 40 feet from the backyard of where we live. We are going to be exposed to all that noise. In talking to Representative Morikawa, there are strict guidelines that they have to follow, such as from certain time in the morning to certain time in the evening. Because Dee Morikawa, who represents the Westside, she said there is...when I did talk to her, there are going to be strict stipulations that they got to follow; whether they are going to do it, I don't know. That's all I got.

Chair Apisa: Question – have you met with the consultant or anyone from the school as far as suggesting a possible other location?

Mr. Mishima: Well, the only time we met with the school was about a week ago – Wednesday – about the location.

Chair Apisa: We had a meeting on this two weeks ago and there was some testimony on it as far as the viability of another location.

Mr. Mishima: Right.

Chair Apisa: Yes, it is because of drainage issues and things like that. I was just curious if you were involved in that.

Mr. Mishima: Well, they did mention that the location that (inaudible), which is the back side of the school, that they had problems. You know, we live in that neighborhood and there are issues, such as clay in the neighborhood, and at times – there are a lot of homes who are exposed to that clay area – it shifts. I don't know about the drainage problem; it was mentioned, but...

Chair Apisa: Any questions? Thank you for coming forward and testifying.

Mr. Mishima: Thank you.

Mr. Dahilig: Trisha Denny, followed by Esther Estes.

Ms. Trisha Denny: Trisha Denny. I am one of the residents as well. I understand the need for the covered play court, and we are in agreement that we want it; we just don't want it in our backyards. I am not a lawyer, I am not versed in these things, but from what I have read, the Use Permit standards state that a Use Permit may be granted only if the Planning Commission finds that the establishment, etc., etc., or use of its compatible use and not (be) detrimental (to) health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of the proposed use. C'mon, 40 feet from our backyards; that is detrimental to our comfort and our peace. I mean, I know it was used before, as they said, for kids playing, but that was 15 minutes recess, 30 minutes lunch, a little bit before and after school, but not 10 hours a day, 7 days a week; that is a very big difference.

Also, from what I read on the Use Permits, I could not find anything that said anything about lapsing funds, public or private, as a reason to grant the permit. I mean, a lot of discussion at the March 27th meeting, from what I watched online, was regarding the funding. I know a million dollars was thrown out; however, at the March 29th meeting, when we asked the cost difference between the current site and the middle of the area, Justin from the consultant said it was \$250,000. He also stated that one of the additional options in putting it in the current place was the stage, which costs a couple hundred thousand dollars. So I think things are getting a little skewed here, and some scare tactics are being imposed to kind of say hey, we can't do it, so you guys...you are a rock in a hard place; they put us in a rock in a hard place, you all are in a rock in a hard place. They are trying to show that hey, we can't put it, but it seems pretty viable from what they told us at that meeting.

I know they mentioned some safety issues. I think there is, maybe, but there are some line of sight issues already; they can't see that lower campus from Admin. I think it is the library or the cafeteria – I'm not sure of the buildings – in the way, and if that is, we could do security cameras, fence-in the gate from the park; I know that may be part of the issue. So, I mean, that stuff is fairly cheap in consideration of the rest of this project.

Another thing – it went from school use only to now 7 days a week, 8:00 (a.m.) to 6:00 (p.m.); that is 10 hours a day versus school hours. They also mentioned community use and rec leagues. I mean, it seems like it is changing – the use of this facility. We would rather be everybody, but not in our backyard all the time; that's not what we want.

And they did not notify us, and I think that is the most disturbing thing. I am a parent of two very young children, and they will one day attend Waimea Canyon Middle School. They will benefit from this.

Mr. Dahilig: Three minutes, Madame Chair.

Ms. Denny: Okay, real quick.

Chair Apisa: Are you going to sum it up?

Ms. Denny: Yes. I feel their actions are unacceptable. These are the people in charge of shaping, molding, and teaching our youth, not just academically, but as people. They purposely excluded us until the end where, now, we really have no choice. We look like the bad guys saying we don't want this play court; we want it, we just don't want it in our backyards. I would rather my children grow up with morals and values, then to have the academic and athletic success this play court could bring. Sorry. While it would be a great academic and athletic asset to the school, by approving the DOE to build a play court in the current northeast corner of the school, it sends a message to our students and children that bullying and (inaudible) your neighbors to get what you want is perfectly okay and actually gets rewarded. Thank you. That's pretty much it.

Ms. Ahuna: I have a question.

Ms. Denny: Yes?

Ms. Ahuna: Did you share your thoughts with Senator Kouchi or Representative Morikawa? Or have you guys gotten to communicate with them?

Ms. Denny: I know some of my neighbors have; I haven't. I work during the day. I've had to take off to come here, as I did last week. I got one of their numbers, but from what my neighbors were telling me what they were told, I kind of felt very discouraged about it. So, I mean, I spent most of my free time watching the video and trying to see what was going on. I don't understand this process—

Ms. Ahuna: I only ask that because the funding came from State appropriations or State Legislature that they worked hard for to get to the school. So I just was wanting to know if that was communicated to them by the community at all.

Ms. Denny: I believe so. I know a couple of my neighbors have said they've called multiple representatives, but a lot of...or politicians – I don't know everyone's titles – but that a lot of them are staying out of it. I know this is a very hot topic. It is an election year; people aren't going to stick their necks out for something that could potentially be skewed wrong – hey, that is the guy that made it so they couldn't build a play court – even though they are looking out for us. I understand; I am not going to hold it against them, but I understand that.

Chair Apisa: Any other questions? Thank you for coming forward and testifying.

Ms. Denny: Thank you for your time.

Mr. Dahilig: Esther Estes.

Ms. Esther Estes: Good morning. My name is Esther Estes, a resident of this Waimea subdivision that we are talking about. I live two streets down from Waimea Canyon Middle School. I am here today because I am concerned about the play court destined for the school. I have to admit my name was on the petition that my neighbor Barry Hashimoto brought to my house to sign. He was very angry about the issue and was trying to gather as many signatures as possible. So as a friend and neighbor, I signed the petition more as a favor.

I was told that the primary concern was the noise that the play court would generate as it would be built very close to the fence line. The petition was then delivered to the Commission at the March 27th meeting. From that meeting, another meeting was scheduled for community input on Thursday, March 29th at Waimea Canyon Middle School. At that meeting, there was Justin Matsukawa from the design firm; Mike Dahilig, Planning Director; Bill Arakaki from DOE; and other reps from the County and State. What I saw at this meeting was a bunch of angry neighbors who opposed the building of the play court in the chosen location. Primary concern was the noise generation, secondary was safety, parking in the neighborhood during sanctioned events, and the blocking of trade winds. Unfortunately, it was an oversight and not intentional that the community was not allowed to provide input into the site selection. However, I feel that no matter where the play court is located, there will be a noise factor. Noise is noise, and there will always be school noise if you live next to the school. But if you think about it, there is noise early in the morning when the State lawn-mowing tractor mows the entire campus at 5:30 in the morning. There is also noise at any time of day when neighbors mow their own lawns. The hospital generator hums 24 hours a day. Emergency vehicles – police cars, fire trucks – sound off at all hours of the day. We also can't forget the neighborhood dogs who howl excessively at all hours of day and night. Along with noise, there are neighbors who illegally burn trash, dogs who are unleashed, loud neighbors; it is being a part of this neighborhood. But noise is awesome, especially at school. Noise means that our children are attending school, learning, socializing, being educated to become prospective teachers, doctors, engineers, so that someday they will become pillars in our community. For what is the alternative? Truancy, homelessness, drugs?

The bottom line is, if this play court is not approved, Waimea Canyon Middle School will never get a play court. Years from now, this play court issue will come up again and the Westside will wonder why the west side schools are always behind—

Mr. Dahilig: Three minutes, Madame Chair.

Ms. Estes: –in getting upgraded, and the answer will be that the community neighborhood stopped it because of the site location due to noise.

Chair Apisa: It's (been) three minutes. Can you wrap it up?

Ms. Estes: Having said that, I am in favor of moving the play court forward. Thank you.

Chair Apisa: Thank you. Any questions?

Ms. Estes: Thank you.

Chair Apisa: Thank you.

Mr. Dahilig: Sharlene Morimoto.

Ms. Sharlene Morimoto: Good morning. I wasn't intending on testifying, but after hearing all of the...I decided to come up and say my peace. I am Sharlene Morimoto. I am a parent who had two children attend Waimea Canyon Middle School. I am also a landowner in that subdivision. I chose my property, not by the school, but on the outskirts by the road, okay? I was also a school secretary at Waimea Canyon Middle School for...I want to say...30 something years, so I have seen it. I am in favor of the covered play courts. I have seen kids go into the cafeteria to do badminton or whatever when it rains. I have seen them play outside in the playground...I mean, where they normally do P.E. in the very, very hot sun. I have seen my registrar go out and supervise the kids in the basketball court, which is neighboring the school, and watch them during lunch recess, and she has to put a hat on. It is very, very hot out on the Westside. So I just want to let you know that I am in favor of the covered play court for future generations.

Chair Apisa: Thank you.

Ms. Morimoto: Are there any questions?

Chair Apisa: Questions? Thank you.

Mr. Dahilig: Madame Chair, that's all I have signed up to testify under the Sunshine Law. I would suggest making a final call for any other testimony on any other agenda item before moving on.

Chair Apisa: All right, thank you. Is there anyone else wishing to testify? Hearing none, we close this portion.

Mr. Dahilig: Thank you, Madame Chair.

CONSENT CALENDAR

Status Reports

Director's Report(s) for Project(s) Scheduled for Agency Hearing on 4/24/18.

Mr. Dahilig: We are now on Item H. This is the Consent Calendar. We do not have any Status Reports or any Director's Reports scheduled for agency hearing at the next Commission meeting.

COMMITTEE REPORTS

Subdivision

Mr. Dahilig: We are now on Item L. This is the Subdivision Committee Reports.

Chair Apisa: Do we have a Subdivision Committee Report?

Mr. Ho: This morning we heard from Judy Wakumoto. She asked for tentative subdivision approval; it was granted. Final subdivision map approval was granted to Marty Hoffman Revocable Trust and Kukui'ula Development Company for final map approval. That was our meeting this morning.

Ms. Nogami Streufer: I move to accept the Subdivision Committee Report.

Ms. Ahuna: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Motion approved 4:0.

EXECUTIVE SESSION

Pursuant to Hawai'i Revised Statutes Sections 92-4 and 92-5(a)(4), the purpose of this executive session is to consult with the County's legal counsel on questions, issues, status and procedural matters. This consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Commission and the County as they relate to CC-2015-20, Class IV Zoning Permit Z-IV-2007-1, Use Permit U-2007-1, Special Permit SP-2007-01, Tax Map Key: (4) 2-8-002: por. 005 = *Kaua'i Springs, Inc.*

Pursuant to Hawai'i Revised Statutes Sections 92-4 and 92-5(a)(4), the purpose of this executive session is to consult with County's legal counsel on questions, issues, status and procedural matters. This consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Commission and the County as they relate to Class IV Zoning Permit Z-IV-2018-5 and Use Permit U-2018-4 to construct a new covered play court on the Waimea Canyon Middle School campus in Waimea Town, situated approx. 1,200 ft. north of the Kaumuali'i Highway/Huakai Road intersection, further identified as Tax Map Key: 1-2-006:033 (portion), and containing a total area of 15.5 acres = *State of Hawai'i, Department of Education.*

Mr. Dahilig: Madame Chair, I will turn this over to the Deputy County Attorney for Items I.1. and I.2.

Ms. Higuchi Sayegusa: Madame Chair, we are on Item I., Executive Session, 1 and 2. I will read both matters. Pursuant to Hawai'i Revised Statutes Sections 92-4 and 92-5(a)(4), the purpose of this Executive Session is to consult with County's legal counsel on questions, issues, status, and procedural matters. This consultation involves consideration of the powers, duties,

privileges, immunities, and/or liabilities of the Commission and the County as they relate to CC-2015-20, Class IV Zoning Permit Z-IV-2007-1, Use Permit U-2007-1, Special Permit SP-2007-01, Tax Map Key: (4) 2-8-002 a portion of Parcel 005 – Kaua‘i Springs. Also, I.2. – pursuant to Hawai‘i Revised Statutes Sections 92-4 and 92-5(a)(4), the purpose of this Executive Session is to consult with the County’s legal counsel on questions, issues, status, and procedural matters. This consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Commission and the County as they relate to Class IV Zoning Permit Z-IV-2018-5 and Use Permit U-2018-4 to construct a new covered play court on the Waimea Canyon Middle School campus in Waimea Town, situated approximately 1,200 feet north of the Kaumuali‘i Highway/Huakai Road intersection, further identified as Tax Map Key: 1-2-006 Parcel 033, a portion of it, and containing a total area of 15.5 acres – State of Hawai‘i, Department of Education.

Madame Chair, I recommend that a roll call vote is taken whether or not to...oh, I’m sorry. We still need a motion and a second on whether or not to move into Executive Session, and the vote, I would recommend, be a roll call.

Ms. Nogami Streufert: I move that we move into Executive Session.

Mr. Ho: Second.

Chair Apisa: All in favor? (Unanimous voice vote)

Mr. Dahilig: Oh, Madame Chair, I guess per the Attorney’s discussion, I will make a roll call vote.

Chair Apisa: Oh, that’s right, we will do a roll call.

Mr. Dahilig: Madame Chair, the motion on the floor is to go into Executive Session pursuant to the items posted under Items I.1. and I.2. of this morning’s agenda. Commissioner Streufert.

Ms. Nogami Streufert: Aye.

Mr. Dahilig: Commissioner Ahuna.

Ms. Ahuna: Aye.

Mr. Dahilig: Commissioner Ho.

Mr. Ho: Aye.

Mr. Dahilig: Chair Apisa.

Chair Apisa: Aye.

Mr. Dahilig: Madame Chair, you have four ayes.

Chair Apisa: We will move into Executive Session.

The Commission moved into Executive Session at 9:46 a.m.

The Commission returned to Open Session at 10:58 a.m.

Chair Apisa: Call the meeting back to order.

GENERAL BUSINESS MATTERS

In the matter of Remand from the Hawai'i Supreme Court for Amended Decision and Order based upon Additional Evidence for CC-2015-20, Class IV Zoning Permit Z-IV-2007-1, Use Permit U-2007-1, Special Permit SP-2007-01, Tax Map Key: (4) 2-8-002: por. 005 = *Kaua'i Springs, Inc.* [Hearing Officer's Report and Recommendation of Contested Case Hearing; Certificate of Service (10/20/17) deferred 11/14/17, deferred 1/23/18, deferred 3/27/18.]

Mr. Dahilig: Madame Chair, we are now on Item J.1., in the matter of remand from the Hawai'i Supreme Court for Amended Decision and Order based on additional evidence for Contested Case No. 2015-20, Class IV Zoning Permit Z-IV-2007-1, Use Permit U-2007-1, and Special Permit SP-2007-1 at Tax Map Key: (4) 2-8-002 portion (of) 005 – Kaua'i Springs.

Madame Chair, I will turn this over to the Deputy County Attorney for this matter.

Ms. Higuchi Sayegusa: So at this point, before the Commission is the Hearing Officer's report and recommendation. Again, you folks have the option at this point to reverse, modify, or adopt the recommendation.

Chair Apisa: I will look to the Commissioners for...

Ms. Nogami Streufert: I would like to ask Mr. Roversi a question.

Deputy County Attorney Adam Roversi: Aloha, Madame Chair and Commissioners. Deputy County Attorney Adam Roversi, representing the Planning Department in this matter.

Ms. Nogami Streufert: Thank you for being here. At the last meeting, you had stated that there is a difference between rental versus purchase, and the Department's perspective was it is a rental?

Mr. Roversi: The opposite. The Finding of Fact...I believe we are referring to Finding of Fact No. 18 in the Hearing Officer's report, which characterizes Kaua'i Springs...I will just read Finding of Fact No. 18. It says, "Petitioner's rental of the Kōloa Water System is based upon the amount of gallons of water diverted to the Property for the Bottling Operation... Petitioner does not purchase the water from Knudsen Trust or Grove Farm." The Department objected to that Finding of Fact and proposed, alternatively, that Finding of Fact No. 18 read, "Petitioner's purchase of water from the Kōloa Water System is based upon the amount of gallons of water

delivered to the Property for the Bottling Operation.” And then to strike the last sentence that says Petitioner does not purchase the water from Grove Farm. So it was the Department’s position that that Finding of Fact was not supported by the record. The testimony that was received during the Contested Case Hearing from Grove Farm’s own expert stated that Kaua‘i Springs purchases the water from...sorry, not Grove Farm’s expert, Kaua‘i Springs’ expert stated on the record that the water was purchased from, then, Grove Farm, which was the managing company; as I understand it, Grove Farm is no longer involved, so effectively it is purchased now from Knudsen. We also discussed the fact that the monthly payment from Kaua‘i Springs to Grove Farm [sic] is based on the volume of water that is utilized, and, just as a factual matter, if Kaua‘i Springs’ payments were for the rental of a pipe system, then, perceivably, that rental should be the exact same every single month because their use is not impacting the required maintenance on the pipe system as the flow of water is...effectively, the flow of water is the same through that pipe regardless of what Kaua‘i Springs does or doesn’t do, so it seemed...

Ms. Nogami Streufert: Based upon that interpretation of purchase versus rental, does that have an impact upon Public Trust issues?

Mr. Roversi: Well, it affirms that we have a private commercial...I don’t think it has a large effect on the analysis. Either way, the record is clear that Kaua‘i Springs is a private commercial enterprise utilizing Public Trust resources, and under the Supreme Court’s analytical framework set out that they are, therefore, subject to the highest level of scrutiny under that analytical framework that it should be applied to a water user. I think that our proposed amendment to that Finding of Fact – that they are purchasing water as opposed to just renting pipes – affirms that commercial aspect and the heightened level of scrutiny that is required. It also seemed an important precedential statement for this water system moving forward.

Ms. Nogami Streufert: Thank you.

Ms. Ahuna: Chair, in that regard, the true intent of the Public Trust Doctrine is like we, as the Commissioners, are taking interpretations that have high levels of scrutiny. I think we need to really look at, from my standpoint...Director, have we ever, as a Commission or the Department, had to approve a permit that had specific water selling, you know? Like we have never created a process, really, correct? In regards to these appropriate guidelines that are related to water in regards to...

Mr. Dahilig: The difficulty with Water Law in general is that most of it is enumerated through layered levels of Supreme Court Case Law based on constitutional interpretations and State law interpretations, so it is very case law heavy. Trying to implement some of these principles, like the Public Trust Doctrine, are not very easily folded into normal practice or some type of procedure, so a lot of times it ends up being in a form that is more quasi-judicial in nature because we are dealing with everybody that has rights across a spectrum. What we do from an application standpoint because of the Supreme Court’s ruling in Kaua‘i Springs is that we ask for the type of water use whenever somebody proposes an action before us. If they are drawing based off of an agricultural operation or domestic usage operation or for cultural usages or for Hawaiian Homelands, those usages already pass muster because they are included in the Public Trust realm. This particular item – the court has already told in its ruling that it does not fall

within the Public Trust definition and, therefore, we have to apply a higher level of evidentiary and evaluative scrutiny to be able to decide whether or not the land use approval warrants that approval from this body. So that is the point of discussion that is before everybody here; that we don't necessarily have a rubric, it is a judgement. And whether or not the judgement of the Body, as a body of commissioners, feels that it is still allowable to provide that land use approval. There is that requirement by the Supreme Court to essentially say okay, if you know it is outside of the Public Trust uses, you better explain why. I think that, ultimately, is the tension that's here; does the evidentiary record support you, as a body, being able to make that judgement call? So I don't think we...I obviously have Adam who is representing the Department's interest in this and our position on it, but ultimately, we all understand that that's the standard that the Commissioners are under; is to get to a level of comfort and judgement to be able to say that this land use approval, knowing that it is outside of the bounds of the Public Trust, is supported in a manner that will not negatively impact the Public Trust. That's it.

Ms. Ahuna: So we are being asked to ensure safeguards that ensure proper usage in application in this decision-making and weighing that out?

Mr. Dahilig: Right, because—

Ms. Ahuna: So can, like...

Mr. Dahilig: It's pretty heavy; I understand.

Ms. Ahuna: Are we able to, Jodi, look at the different permits that are...or can you share what the different permits are on the table right now in reference to this application? Identify those.

Ms. Higuchi Sayegusa: The initial application is for the Class IV (Zoning Permit), Use Permit, and Special Permit. But, again, as we have discussed, as it went through the court system in various degrees of appellate review, there was a clarification that in addition to that, we are considering an analysis of effects to the Public Trust. So it is a separate regime that needs to be analyzed and incorporated in any Findings of Fact or Conclusions of Law in your decision.

Ms. Nogami Streufert: Because we are a commission of seven people and you need four to either approve or disapprove something, and that would take a unanimous decision, the question is whether we would like to have...and it may be precedent setting...whether we might want to wait until we have a larger number of commissioners here for deliberation. I am not sure that it would make a difference in terms of what we are thinking right now, but it may make a difference in terms of the way a decision might come down.

Chair Apisa: I would agree with that. I think it would be prudent to have more than just four of the Commissioners present today to make this very big decision.

Ms. Ahuna: I would feel more comfortable if we had a direct response from the PUC or CWRM. Is that possible? Instead of being interpreted by the Hearing Officer. Is it possible to get a direct response from them? Or to at least request that?

Ms. Higuchi Sayegusa: Chair, if you would agree, perhaps it might be best if the applicant is invited and be able to respond to those type of questions.

Mr. Robert Thomas: Thank you for that. Robert Thomas on behalf of Kaua'i Springs. There is not an extra seat, so I asked Jim Satterfield to stay back for this one. To answer your question, we have been, twice now, to both agencies; both the first time around on this where we went informally both to the State Commission on Water Resources Management and to the Public Utilities Commission. We did so informally in 2007 and because this is not a water management area, the State Commission on Water Resources Management said no jurisdiction, it is out of our kuleana. PUC gave a conditional declination saying well, this isn't a public utility unless certain conditions are met. We went up to the Supreme Court and the Supreme Court said go formalize those if you can. So we came back and in the course of the Contested Case after the hearing under the Hearing Officer's direction, Kaua'i Springs made formal applications for declaratory rulings to both agencies that are in the record. And as I recall, the PUC ultimately declined to issue a ruling, or what's in there is in the record, and the CWRM did essentially issue a formal declaratory ruling saying this is outside of the island of Kaua'i. The County of Kaua'i is not a water management area; therefore, we don't set interim instream flow standards or otherwise. So we think we have as concrete an answer from both of those agencies as we are going to get, and that (if) we (were) to go back a third time, they would likely give us the very same answers over again because, literally, nothing has changed since we went back to both of them, if not within the last year, within the last 15 months or so during the course of the Contested Case.

Does that clarify the question?

Ms. Ahuna: Can that be privy – those direct responses from those agencies – to the Commission?

Mr. Thomas: I'm sorry, can that be...?

Ms. Ahuna: Can your direct responses from those agencies be privy to the Commissioners?

Mr. Thomas: I think they are actually in the record that was deuced by Hearing Officer Kimura.

Ms. Ahuna: Well, we have his, but we don't have their direct–

Chair Apisa: I think what she is looking for is...the Hearing Officer gave a report, but she wants to hear something straight from the PUC, I believe, rather than through a third party.

Mr. Thomas: Well, we do have the transmittals, the actual documentation from both of those agencies, and the record in both those agencies, which was made a part of the Contested Case record. Forgive me, I didn't know that the Contested Case record wasn't somehow before you all, but no, that's...I mean, we do have the documentation; we have it already.

Ms. Ahuna: We have the Hearing–

Mr. Dahilig: It's very volumetric.

Mr. Thomas: Yes, that is one thing we are not short of in this case is a lot of paper.

Ms. Higuchi Sayegusa: Right.

Mr. Dahilig: So it has been circulated, it's just—

Mr. Thomas: Oh, okay. So is there something more than those transmittals that you would be looking for?

Ms. Ahuna: I thought it was just something direct from you as the applicant.

Mr. Thomas: In both of those cases, since we were the applicant and we were the one that had the burden of proof under the Public Trust to show the validity of the 645 gallons a day that were requested, we were the ones bearing the burden of going to those agencies, and so they responded to us and then we, of course, provided them to the Planning Department and to your Hearing Officer.

Chair Apisa: Okay, thank you. Any other questions of the applicant? Do we want to make a motion to defer until we have a full commission? Or what are the wishes?

Mr. Ho: Madame Chair, move that we defer until we have as much of a full commission as possible.

Chair Apisa: At least more than a majority.

Mr. Ho: Yes.

Chair Apisa: Do we have a second?

Ms. Nogami Streufert: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 4:0.

Mr. Thomas: All right, thank you. The only thing I might ask is, because...actually, I am bearing the cost of coming here. Is there a way to find out ahead of time if there will be a certain number of commissioners who, I don't know, plan on being at a particular meeting? So that we can kind of—

Chair Apisa: Get some action.

Mr. Thomas: Or keep our resources...we don't have a whole lot, let me put it that way. We have been kind of operating on a bare tank in terms of that.

Mr. Dahilig: I guess the difficulty is one commissioner just resigned in the past week and we have two that are handling personal medical issues that they need to deal with, so it would be difficult for us to put medicine on a clock, I guess.

Mr. Thomas: Sure. No, I understand that.

Mr. Dahilig: I understand where you are coming from.

Mr. Thomas: The only thing that we would ask from the applicant's standpoint is that when it is rescheduled, if it could be re-calendared at a time where it is likely, in your estimated judgement, that you will have the number of commissioners that you would like present; of course you can't obviously guarantee that people will show up at a particular time.

Ms. Nogami Streufert: How much time...notice do you need to have?

Mr. Thomas: I would appreciate...I know this is hard. I would appreciate 30 days. I think that is enough to plan reasonably, and if it doesn't turn out that you can get the needed people, that's understandable, but I think that would greatly ease the burden, financially, and otherwise on planning it out for us; yes, very much. Again, it is simply a request and we would ask that you keep that as part of your planning considerations when you re-calendar this.

Chair Apisa: Where would that take us to?

Mr. Dahilig: I guess, Madame Chair, right now our calendar for April 24th is open, but given the movement of items today, you could have permit actions that get rolled over to the 24th meeting. We were going to leave it at kind of a game-time call to see where the Commission is at with the calendar today to see if the 24th would be needed as a meeting. Looking forward to that, in terms of the on deck sheet that we have circulated to everybody, the next agency hearings that we have are not until May 22nd. So if it is a matter of predictability, we could calendar these items for the 22nd; however, I am not sure, from a quorum-check standpoint, whether...we could find out from the 4 of you today, but in terms of whether Commissioner Keawe and Commissioner Mahoney are available those days, we will still have to verify that. So we could soft-set it for the 22nd and then work from there.

Chair Apisa: That would be May?

Mr. Dahilig: Yes, May 22nd. We are also in the process of trying to get a replacement commissioner already confirmed for Commissioner Lord, so theoretically, we could get somebody seated before the 22nd, also. So that may be an option if the Council wants to take up the appointment earlier than later.

Chair Apisa: Although I'm sure a new commissioner...I'm not sure they want to get thrown into this.

Mr. Dahilig: If it is the person that I'm hearing, in terms of the name, that person will just have to deal with it.

Chair Apisa: Okay.

Ms. Nogami Streufert: I know we have already made a motion to defer, but here is a question. This is actually a...can we just discuss it as a Commission...with commission members? Or is that out of the procedure at this point?

Ms. Higuchi Sayegusa: I'm sorry, and this is related to the Kaua'i Springs matter? Like a procedural instead of a deferral type of...? We already voted and--

Ms. Nogami Streufert: I understand.

Ms. Higuchi Sayegusa: --technically deferred it, but...

Chair Apisa: What is your question?

Ms. Nogami Streufert: I guess the question is, if we put a time limitation on this, say a year, and see what happens, would that be something that would be acceptable and that we can vote on today?

Chair Apisa: So it's deferred for a year?

Ms. Higuchi Sayegusa: No, no.

Ms. Nogami Streufert: No, no, the approval of the permits.

Chair Apisa: Oh, I see what you are saying; conditional or come back--

Ms. Nogami Streufert: One of the conditions that this...and then we see what happens within a year. Does that...and I understand it is out of procedure right now, so this is just a discussion.

Ms. Higuchi Sayegusa: Even for us to have...I mean, technically, we have already deferred the matter. If you folks wanted to retract or reconsider that motion, then I think we could have another motion and a second for a reconsideration of that deferral.

Ms. Ahuna: So you are asking to do what?

Ms. Nogami Streufert: Another condition. I would rescind my vote on the deferral and ask...because I did vote in the affirmative, and then ask that we put another condition in this so that we can vote today and get it off the docket, and that condition would be that the permit would only be good for one year or two years. Because right now, it is an open-ended...

Ms. Higuchi Sayegusa: I'm sorry, in order to discuss the permit itself, we would need a motion and a second to reconsider the deferral.

Ms. Nogami Streufert: I move to reconsider the deferral.

Chair Apisa: Do we have a second? No second.

Ms. Higuchi Sayegusa: The motion fails.

Chair Apisa: Motion failed.

Mr. Thomas: Thank you, Commissioner, for that. I mean, just from the applicant's standpoint, we are willing to do what the Commission believes is necessary to show that this does not...we think that the record already shows that it doesn't...you know, 645 gallons a day out of how much water there is on this island is pretty minimal.

Ms. Higuchi Sayegusa: Sorry. Being that we already deferred the matter, we will just take up the discussion at the next hearing. Thank you.

Mr. Thomas: All right. Thank you very much. So do I have that right? Have we deferred it to May 22nd? Is that correct?

Ms. Higuchi Sayegusa: We have deferred it to the future--

Mr. Thomas: Got it.

Ms. Higuchi Sayegusa: --but we will be sure to try to coordinate with you folks.

Mr. Thomas: Oh, thank you. So I will put that with a...penciled in for the 22nd--

Ms. Higuchi Sayegusa: Thank you.

Mr. Thomas: --and we will wait for further word from you.

Ms. Higuchi Sayegusa: Yes.

Mr. Thomas: All right. Thank you very much, Commissioners and Planning Director. Thank you very much.

Chair Apisa: Thank you for your time and coming back.

Mr. Thomas: I will see you again shortly.

COMMUNICATION (For Action)

Mr. Dahilig: Madame Chair, we are on Item K. This is Communications for Action. We have no communications for action this morning.

UNFINISHED BUSINESS (For Action)

Class IV Zoning Permit Z-IV-2018-5 and Use Permit U-2018-4 to construct a new covered play court on the Waimea Canyon Middle School campus in Waimea Town, situated approx. 1,200 ft. north of the Kaumuali'i Highway/Huakai Road intersection, further identified as Tax Map Key: 1-2-006:033 (portion), and containing a total area of 15.5 acres = State of Hawai'i, Department of Education. [Director's Report received by Commission Clerk 3/13/18, Sup 1 to DR received 3/27/18, Agency Hearing closed 3/27/18.]

Mr. Dahilig: Item M – this is Unfinished Business, Class IV Zoning Permit Z-IV-2018-5 and Use Permit U-2018-4. This is the Waimea Canyon Middle School play courts.

Madame Chair, we have circulated to the Commissioners a Supplemental No. 2 request. I know that you have been briefed on some of the procedural matters leading to the item being listed under Unfinished Business this morning rather than standing on the previous action by the Planning Commission at the March 27th meeting where there was a vote taken on the permit. However, given a review of the record, it is with the guidance of the attorney that we put the item under Unfinished Business for Action given that there was a closure of the agency hearing at that meeting, just to be clear.

Given the actual Commission's discussion, our department took a look back at the record and tried to provide more review and information concerning what, I guess, the community's concerns were regarding this, so we attended...two days after the Commission's action on the 27th closing the agency hearing, we participated in a public meeting with the Department of Education, as well as DAGS officials and people that came in from the community. I will tell you that as part of that discussion, it was very apparent to me, as well as Mr. Bukoski who was there at the meeting, that the discussion...there was a lot of, I guess, concerns related to what exactly the impacts of this project were going to lead to. It is very difficult to be able to get your arms around every single item, but the best we could gather, it fell into a set of buckets related to the location of the project, the noise, airflow, safety, and sightlines of the building. So listening to all sides – what the Principal had concerns about – and I want to be clear that our department did not want to provide judgement as to what the Principal's perspectives are on what is safe and what is not safe. Ultimately, she is the chief executive of that office and needs to guarantee that everybody is safe there. So her concerns related to a placement of the structure in the center of campus gave rise to her issue with sightlines. It is something that, I think for our department, we had to take into account as to what the educational officer is making that judgement on as such. On the flipside, what we were very keenly aware of was that the building was going to be sited very close to the adjacent property line where there are a number of residential structures, so those issues concerning safety – again, sightlines in that respect, can people hide behind the structure, people coming in through these easements that are through the subdivision at unwanted hours – airflow, and then general noise.

So we tried to look at comparable situations around the island where we could get a gauge as to how much noise is really generated by kids that are playing with basketballs or playing chase master or playing – my favorite – sham battle. We sent a team out to the Kapa'a Elementary School play court – which is right in a residential area, there are homes immediately adjacent to the road – right across the street from residential homes. That structure, as built, is actually an

open-air structure. The one proposed for this particular project has partial enclosures on a couple sides of the building to try to mitigate noise. This one at Kapa‘a Elementary School is just four posts and a big roof. Chance and Pat Henriques, who is one of our inspectors, went door-to-door to those neighbors and asked them, “What do you perceive as the impacts with this?” Or, “Do you have any complaints about it?” For the most part, what we gathered is – and Chance can correct me – but the loudest time of day is when they use the area for Zumba. I don’t know if they are teaching middle school kids Zumba, but what was clear is that with the amplified noise from Latin...or Brazilian music, right, Jodi? Brazilian music.

Ms. Higuchi Sayegusa: Or Pop music these days.

Mr. Dahilig: It leads us to distill whether or not there is an effect, and what we are hearing people in a similar situation talk about with amplified noise.

We had a number of conditions that were proposed to the Commission at the last meeting which, based off of the procedure, we have pulled back from. So we have taken a look at our previous analysis and supplemented it in a Supplemental No. 2, which I am sure all of you (inaudible), and really tried to focus on noise, safety, and airflow as the items to try to meet the Use Permit test standard. We see merit when it comes to issues relating to noise and safety as required elements of conditions that need to be mitigated as part of the permit approval process. We also do see a number of supporting elements when you look at the General Plan compatibility reviews that was just passed by the Council regarding health, sustainability, nurturing our keiki, looking at community design to support healthy and active lifestyles, and also that we need to note that Waimea is a social equity identified community that does need to be looked at when it comes to government resources that are directed toward it. So we took all those factors in mind and tried to do some further consultation with some of the community members, and came up with an additional list of seven additional conditions that we believe would help mitigate some of the issues that are being raised. I will go over them in a second, but we, again – I just want to emphasize – are focusing on leaving...in a scenario where the location of the building remains the same, regardless of financial challenges or regardless of what’s going on, if it were to remain the same, what conditions of usage would allow it to not be in a detrimental situation to the immediate neighbors? So what we have proposed is that the building have limited hours during the school day. When you are talking about amplified noise equipment, we don’t want amplification nor do we recommend that an electronic scoreboard be used. That the school functions be the identified usage for the building. I did include a condition related to screening. When I am talking about screening, I am looking at things that are along the lines of more vegetation, not necessarily structures, but things that can help to be a bit of a noise barrier there, and that the community should be working with the middle school to identify placement of these things to try to absorb the noise versus having it just travel directly out. I do find merit that the line of sight from the playground area and then the adjacent parking lot would provide the potential for a narrow strip of space that is not visible from normal traffic; that’s what a lot of the community members have raised as a concern because people can, then, be vagrants or it could promote vagrancy if it is a dark area, and that is a legitimate concern. I do believe that that is something that needs to be mitigated away, so I have asked that a condition be included to provide for motion-detector lighting so that on one hand we are not exacerbating a situation by creating more spotlights and then they shine into people’s homes, rather by having lighting

underneath the eaves that can be triggered so that the building lights up, but not necessarily creates dark lighting; that's a way to discourage people from hanging out or loitering on the school grounds. That is where the second condition comes in related to a fencing element; wanting to fence out that whole corner of the property with an eight-foot fence so that vagrancy or that loitering would not occur in off-campus hours. Finally, that easement issue is something that we wanted to take a look at. So what we want to make sure is that the public has a way to work with us and try to look at limiting those items during off hours. Anyway, Madame Chair, those are our recommendations at this time.

And I want to invite the applicant to come forward and talk about some of the site selection protocols that they used because I think it is helpful for the public to understand what went on.

Chair Apisa: I would agree. Would the applicant come forward to talk about site choices?

Ms. Aolani Yamasato: Hello, Madame Chair and Director. My name is Aolani Yamasato. I am the consultant for the project. We just really want to, first of all, thank the Planning Department for all their work and also, thank the neighbors for all that...I know it is really emotional for them and thank you for the whole process that we're going through, and just really want to emphasize about how the key to school success is about building community and, you know, we really want to have a good relationship with the community, and what that involves is working with the parents and the surrounding community. So, I guess, Principal Speetjens, she already stated how she...you know, she wants to be a good neighbor and she wants to work with the community.

So we did look at other locations, but, physically, they are just unable to meet the criteria for the best location. One of that is no demolition of existing structures, which includes parking lots and buildings. I know one of the areas they were looking at really...they wanted to just demo the parking, but then that just creates a whole different project because that's a demolition project. Also, we looked at open space areas, so two of the locations for this are storm water drainage areas, and developing those areas would be irresponsible as it would cause future maintenance issues which would arise due to storm water issues and also, we need to consider the taxpayers' dollars. I mean, that is all our money, so we can't just locate it in a costly area just because. Visual safety, as stated, was a primary concern; sightlines within and to the school is very important. The other thing was accessibility for the students, as well as emergency vehicles. That is why that site was a good site.

I was going to go into the whole justification for the approval of the Use Permit, but it seems like...yes, the Director's Report – it already stated all of that and it just shows how it is consistent with the General Plan and how...even in the old General Plan, it talked about how...you know, a school is an important community function and it said that – this is the old General Plan though – but about how the DOE should design facilities to facilitate community use during non-school and weekends. I mean, we are not doing that in this project, but it is just something that, you know, you really want to build that community and you really want to have that involvement, not limit it and just restrict that site to just a few hours. Just because that location of the play court, you know, it is really not a hazardous thing where it really harms people; there are no fumes, there are no toxicity, there are no fire hazards, so it is not really that

kind of threat. It is just a potential nuisance where the neighbors are kind of fueled by fear of a potential problem. There is not enough substantial evidence to make additional conditions, and the conditions should have reasonable terms. So to address the concerns, you know, after the construction or, you know, we are just willing to work with the community. But I guess the DOE should actually address the conditions and, I guess, issues that they have with it.

Ms. Gaylyn Nakatsuka: Thank you. My name is Gaylyn Nakatsuka. I am with the Department of Education, Facilities Development Branch, and I am in the Planning Section. I am the one that put together the initial allotment of the funds and helped with the cost estimate. Most of our covered play courts statewide are truly covered court areas. In this case, though, when we went to the school and had our scope meeting, the school was looking at a deficiency compared to other middle schools on the island which all had permanent stage facilities or permanent presentation areas where the students could come up and do presentations. So part of the scope on this project was expanded to do that, and we are actually funding some DOE funds to support that. One of the concerns of this project was that it was already, based on the new scope, underfunded, but we are trying to provide the funding to be able to support that, which is why, when we were looking at some of the conditions, there might be some issues with being able to fund the conditions at the time of constructing this project.

I wanted to speak to some of the items in the...the new six items in the conditions. One of the items was restrict to weekday use from 9:00 a.m. to 3:00 p.m. I think prior to this there was a restriction from 8:00 a.m. to 6:00 p.m. When we look at our schools, we typically look at their operation with regards to the noise ordinance, which is typically from 7:00 a.m. to 10:00 p.m., and that is typically for construction or loud generating noises. In this case, we feel that, for the most part, the schools use the facility during their school hours, which is probably an hour before school and an hour after school, so having a restriction from 9:00 a.m. to 3:00 p.m. is a little tight for what the school would be using it for. I think, also, when we use the covered play court, for the most part it is for play, so it would be similar to what they were doing outdoors but with a covered protection on it. There would be times where they might have presentations, but those, again, (as) stated by the Principal, would be identified and it wouldn't be something that was being done every single day of the year. Also, in this case, it is designed based on Occupancy E, which is Educational. For those kind of components, there is a restriction on use by everyone else, so it is going to be a facility that is used for the school or for school purposes. It might not preclude having someone come in to do a presentation, but it would be with the students and not a community event. So in that case, we are saying it won't be a Zumba class by outside facilities or church events coming in to use the facility, but it might be a Zumba class for students. I have seen it at other schools, so some schools do that kind of thing. Also, the no amplified sound to be used in the structure anytime – I am thinking that this might be a little restrictive. I mean, you have amplified sound in this room so you can hear people. It is going to be really restrictive to be able to have a stage, but not be able to convey your presentation to others, so we are saying that...understanding that there might be presentations that are loud, you have bands and things, but for some things, you just want to be able to hear your speaker. We are looking at ways of seeing if we can at least come to some discussion. We have been presented this and I think we wanted to be able to work with people and not just be given this as an item of...we have to take it or leave it. I also don't want to be able to agree to something if our intent is not to be able to comply with it. I think we are hoping that we can work and come to some agreement with the

use of the function. Yes, there will be no other performing arts in the structure other than for school functions. I also wanted to speak to the screening. There is a solid wall on the back side to the residents, which is the back of the stage area, so the stage is going to project towards the parking lot of the site. We are looking at that as one of the main ways of attenuating noise towards the residential area. We can also work to look at ways of keeping sound within the facility, and that is something that we may need to get together and look at, but it could be something that can be worked out with the school. The motion detector – that would be something that we might typically put into our schools for accent lighting, especially during the evening, and pointing the fixtures' lenses downward. The eight-foot fence – the facility is already secured by a fence on the rest of the walls and is gated. For the Occupancy E use, it is locked in the open position while it is in use; otherwise the school can secure the facility closed. As far as the fence going around the community, I guess that is something that's...I think the school was concerned that people already have access to the facilities; this is just putting a structure there. I think the concern might be access outside and how to get to the school, which is not necessarily just the use of the covered play court, but for the rest of the campus. So again, that is something that might need further discussion. I think there was mention of the easements, which is County property, so, again, that might be something out of the school's hands on how to address that.

Other than that, I think, based on the Director's Report, for the Facilities Development Branch, that we would have to at least take that and have our administrators and our AG take a look at the document as well, and for that, we would like to get some time in order to respond to that.

Chair Apisa: Thank you.

Mr. Dahilig: I guess, Madame Chair, I am still unclear as to what the specific objections are on these items. I think the timing issue is an issue that was actually raised by DOE and DAGS initially, and so now we are being told to hurry up, now wait. I think the concern with trying to find and wedge a number of conditions that could have been developed through a proper community process if the Department of Education had actually gone out and told these neighbors what was going on in the first place, we wouldn't be in a hurry up and wait type of situation here. So I find it inconsistent that if we are now being told we need time to do this, but yet, at the last meeting, we were being asked to rush, you know, what is the deal here? I think that's where...when we have these conditions, it is within the province of the County to make recommendations as to what falls within our jurisdiction and what aligns with it or not, and if there has not been a review by the attorney general over the past five or six days when these conditions have gone out, I really question the seriousness of the urgency that is being presented to us with respect to having this permit approved at this time.

So if a deferral is what the Department of Education is really asking for, it is with the understanding that this permit may not be approved by this Commission for another month or so, upon which time we would likely interpret that as the Department of Education's perspective that the building and the timing is not necessary, and if there is any type of representative lapse, that they are responsible for that.

Ms. Nakatsuka: I understand your point and I just wanted to clarify. We have a concern about our budget and the funds that are going to lapse, but we have a way of...we can still go to bid with the project, we just have to make sure that we put in certain requirements of understanding that construction might occur later because we still have to get the permits completed, so that would have been the point anyway.

Mr. Dahilig: Well, I guess that has been our concern because, you know, our department...and I will tell you. I have actually lost sleep over this.

Ms. Nakatsuka: Yes.

Mr. Dahilig: And our department has been grinding away at this for the past two weeks. So if that sense of urgency is not being reciprocated by the Department of Education and suspect to reviewing these items and being prepared at a meeting like this to be able to provide evaluative input on conditions like this, I find that quite troubling, Commissioners, because we have been put in a position where the community has been wanting this to be resolved. Me, Mr. Bukoski, and Mr. Henriques have literally been on this every day, and I find it quite concerning that we can't get a specific answer as to what is objectionable with these conditions. I would say that, Madame Chair, given that, our recommendation is still to stick with these conditions.

Ms. Nakatsuka: Okay. I am not sure how to respond to that, except that I know that our group who has been working on this project from the get-go has been responding to the information that we've gotten at the time that we've gotten it. We have been talking to our administrators, but for our process, I am thinking that the official document, which I saw dated today, is the one that needs to go to our administrators. We have been talking about these items and I think we have been mentioning it that some of the conditions were unusually restrictive for schools, and I would say that this would be the only school that would have such restrictions on their facilities. So in that sense, there is some concern by our administrators, so I just want to make sure that we pass it by so that we do get the full response from our DOE Administration and not just one branch or one office.

Chair Apisa: Commissioners?

Ms. Ahuna: What would you be asking for in regards to a timeline? Because this is really emotional for all of us. As Director Dahilig stated, it has kind of broken (the) community a little bit and put neighbors to have to make decisions against each other, and they all have an interest...everybody, I think, 110 percent of us, all have an interest in the betterment of the students and our youth. So what are you asking for in reference to that? Like, for the next meeting, or...?

Ms. Nakatsuka: Maybe the next meeting. Coming from our standpoint where we really try to work with the schools to get the facilities that they are requesting in their particular communities, it might be that everything has been rushed a little too quickly, whereas I feel that it is hard if the residents feel like their only way of being able to be heard is to hire a lawyer and to come up with restrictions that have to be met within a Planning Commission type of meeting. And maybe there might be some dialog readily available that, you know, may have times but it might be

greater, but there might be other restrictions on the type of activities going on. So maybe kids can play in the facility when they get to school because they don't get to school at 9 o'clock, but they won't have a band playing there at 7:00 in the morning. It is those kinds of things that I think, you know, we can put things on the table that will be more well-defined.

Ms. Ahuna: We just (inaudible).

Mr. Dahilig: Do you want me to respond to that?

Ms. Ahuna: Yes.

Mr. Dahilig: Respectfully, Commissioner, I am hearing what the DOE is saying. A lot of this could have been handled if there was a proper planning process ahead of this permit. So all these discussions that are being put on the table that the DOE representative is talking about could have been resolved without our department trying to have to gerrymander conditions as an eleventh hour mitigation situation. I mean, these neighbors aren't identifiable. I mean, they have been there the whole time, but somebody didn't go talk to them. So now, because our department has taken these conditions and made them a recommendation, and the rubber is hitting the road, then all of a sudden now we want to talk. I think that is a very – and I will use the word – disingenuous way of trying to create community support for a project that is here at the eleventh hour. But if that is what they want, you know, that is their right to do so, but this community support discussion should have been going on when this thing was being appropriated three/four years ago.

So I can honestly say, where we have been trying to find a middle ground on this, understanding that zoning is within our jurisdiction at the County, that we see an impact, and I want to validate that; that we see a noise and we see a safety impact. And whether the Department of Education agrees or disagrees with our assessment, it is what it is. I find no reason, from our department, to not recommend to this body that there will not be an impact in those two areas.

It is up to the Commissioners as a body as how to act on this, but, again, I find it quite troubling that now that there are conditions here to try to find harmony and balance with the community, the agency that should have been resolving these conditions from the very get-go now wants to take the responsibility back. We ended up with this in our lap because of the lack of that work happening. Sorry to be a little short about this, but that is the way I look at it here.

Ms. Nogami Streufert: If I could, could we ask the principal to also participate in this discussion?

Chair Apisa: Thank you.

Ms. Speetjens: Are there questions?

Ms. Nogami Streufert: Yes, I have a couple. Apparently, there was some community outreach that you had mentioned prior to this, but that went through the students at the school rather than to the community. Is that correct?

Ms. Speetjens: Partially yes and no. We have something called the School Community Council that every public school in the State of Hawai‘i has. We meet monthly and that is representation from parents and community. The site location – it has been in process for five years when our students started writing the letters, right? But the site location was approved by the School Community Council, which represents the schools’ parents and community, as well as the faculty, (in) October ’17; so that is a six-month period.

Ms. Nogami Streufert: So you are saying that the community was informed at least six months...

Ms. Speetjens: Via this committee.

Ms. Nogami Streufert: Via this committee.

Ms. Speetjens: And our website and parent bulletins.

Ms. Nogami Streufert: Right, but that is just, again, through the students and the parents for the most part, and your community council.

Ms. Speetjens: Right, and who sits on the School Community (Council); correct.

Once again, I want to voice that at no time were our adjoining houses to the school...there was not a phone call to the school, there was not a phone call to a teacher who transmitted it to me, there was not a phone call to a parent who then transmitted it to me so we could address this much earlier.

Ms. Nogami Streufert: I guess I understand Mr. Dahilig’s frustration with this and with the community’s frustration, but we are here now–

Ms. Speetjens: Right.

Ms. Nogami Streufert: –and we can’t change what has gone on in the past, we can only go forward.

Ms. Speetjens: I agree.

Ms. Nogami Streufert: But in the future, there should be more community consultation.

Ms. Speetjens: And they would be willing to provide me with addresses or phone numbers or something so I can reach out, correct?

Ms. Nogami Streufert: But I am looking at the recommendations and I think from the Department of Education, you said that these additional seven recommendations were a little onerous to you?

Ms. Speetjens: I think, mainly, we are looking at hours of operation, which are not restrictions on other public school covered play courts in the State of Hawai'i. Our school officially opens at 7:00 (a.m.). I have students coming as early as 6:15 (a.m.) because parents need to go to work, right? We would ask for consideration of a reasonable time when school opens at 7:00 a.m. to take care of our students properly and safely, and then at least until a reasonable time so that we can also make sure the students go home safely.

One of the community concerns about our school, which we are resolving this coming school year, is that there are no after-school activities for our students, and that is the majority of our community saying there needs to be more outreach for our middle school students.

Ms. Nogami Streufert: So for Recommendation No. 8, or Condition No. 8, which currently says 9:00 (a.m.) to 3:00 (p.m.), what are you looking at?

Ms. Speetjens: I would propose what the other middle schools have, which is 7:00 (a.m.) to...what is it?

Ms. Nakatsuka: I think it is the school hours.

Ms. Speetjens: The school hours? Which would be 7:00 (a.m.) to 4:30 (p.m.).

We have buses arriving from (the) community at 7:00 a.m.; that is when, officially, our office opens as well, so we have parents who need to make payments, students. Our first class actually starts at 7:45 each morning.

Ms. Nogami Streufert: But from seven o'clock on, you have faculty already there on location?

Ms. Speetjens: Correct. The HSTA contract there restricts faculty from monitoring students until their start time of 7:45 (a.m.) and they are in classes; that is contractual with HSTA. So I cannot say that my teachers can monitor students before 7:45 (a.m.), and, already, they are in a class.

I have one security guard because I am a small school and, financially, that is what we can afford. I have one vice principal as well because we are a very small middle school.

Mr. Ho: Madame Chair? Would these conditions here preclude us from doing our business of moving on with the permit? Can you live with the conditions put out there? Can you live with it (and) abide by it? Or do you want something...do you want us to defer the permit requirement?

Ms. Speetjens: Condition Nos. 8 through 11 that are new, correct? That's what we are talking about?

Mr. Ho: All the conditions.

Mr. Dahilig: (Inaudible) through 14.

Ms. Nogami Streufert: Eight through fourteen.

Ms. Speetjens: Eight through fourteen?

Mr. Ho: Eight through fourteen, yes.

Ms. Speetjens: I think, maybe, the conditions, once again, that are the most outstanding are No. 8 where it says 9:00 a.m., and my school opens well before 9:00 a.m. We have no intention of ever putting an electronic scoreboard up for No. 9. The amplified sound would be equitable to every other play court as well; used very little, only for like an assembly-type situation and open house.

Chair Apisa: So that would not be with music; it is just for voices and having a meeting?

Ms. Speetjens: Exactly. A P.E. teacher would never use a microphone to direct a class, right? Or a team sports person would not either. They don't have microphones when they are conducting their classes; none of my teachers do.

Chair Apisa: Well, I think more of an amplification is music and being very loud.

Ms. Speetjens: Right. My P.E. classes – I do not have a Zumba in P.E. We have traditional P.E. and we have team sports. Typically, there is no music for team sports and there is (none) for P.E. either. I have a separate band building towards the back of the campus, and that is where music typically is.

So the exception would be – we are asking the community – for our concerts. Our ukulele, band, and hula concerts that happen twice a year; (inaudible) concert. We could give plenty of notice of those – they are well out there months in advance – and those would end typically at 8:15 at night. They start, usually, at 6:00 (p.m.).

Chair Apisa: So basically, you are saying 7:00 (a.m.) until 4:30 (p.m.) on a regular basis, and maybe twice a year exception that would go until 8:30 p.m.?

Ms. Speetjens: With notification to the community that we are having the concerts, which we always do.

Mr. Ho: Without getting into the mechanics of it, again, do you wish us to move on with a permit approval or disapproval? Or do you want us to defer it?

Ms. Speetjens: Can I talk to DOE first?

Mr. Ho: Sure.

Ms. Speetjens: I always have to refer to my DOE representation, right?

Mr. Dahilig: Madame Chair – while they are discussing this – it appears to me that this exercise of wordsmithing that should have gone on before today’s meeting is going to go on right now, and understanding that there is a docket issue with respect to two other applications that need to move forward, could I suggest maybe deferring...asking this item to be deferred to the end of the agenda so they can work this item out and then try to move to the other two agency hearings that are going on right now?

Chair Apisa: So we would defer this to the end of our meeting. We have two other items to go over right now and then we will bring this back at the end of our meeting.

Mr. Dahilig: And what I would suggest is if you are going to be wordsmithing, the community is here; they are sitting right there. I would take the next 30/40 minutes to try to work out something in language that everybody can live with because everybody is talking to us and you guys are talking to each other. Talk to each other, please, so that we can get some kind of condition here that meets what everybody can live with. Because I think if we try to do this now in a formal setting like this, it is going to be a waste of everybody’s time, and I know that we are going to have an issue with maintaining quorum at one o’clock, Madame Chair.

Chair Apisa: Yes, we are going to lose our quorum at one o’clock, so we need to keep our agenda moving along.

Ms. Speetjens: Okay.

Chair Apisa: So are the community members open to speaking with DOE privately outside? All right.

Ms. Higuchi Sayegusa: You would still need a motion and a second to defer it to the end of the agenda.

Chair Apisa: Yes.

Ms. Nogami Streufert: I move to defer the Waimea Canyon School issue until the end of the agenda.

Mr. Ho: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 4:0. Okay, it is deferred to the end of our meeting.

Ms. Speetjens: Thank you.

Chair Apisa: About 30 minutes or so.

NEW BUSINESS

Class IV Zoning Permit Z-IV-2018-6, Use Permit U-2018-5 and Special Permit SP-2018-3 to allow improvements to the Kīlauea Wells No. 1 and 2 facility that includes construction of a new generator shelter, and replacement of an existing pump and motor control center, on a parcel situated on the mauka side of Kūhiō Highway in Kīlauea, approx. 3,500 ft. southwest of the terminus of Kuawa Road, further identified as Tax Map Key: (4) 5-2-002:013, and containing a total area of 2.737 acres = County of Kauaʻi, Department of Water. [Director’s Report received 3/27/18.]

Mr. Dahilig: Madame Chair, let’s move to Item G.2.a. This is Class IV Zoning Permit Z-IV-2018-6, Use Permit U-2018-5, and Special Permit SP-2018-3. This is in the County of Kauaʻi, Department of Water well replacement and generator replacement facility. I believe Dale is the planner on this matter and can provide the report on behalf of the Department.

Staff Planner Dale Cua: Good morning, Madame Chair and members of the Commission. Before I get started, the applicant would like to make a statement before we get started.

Mr. Galen Nakamura: I apologize. I want to be able to move this meeting along though. I just learned that there may be an issue by my appearing before the Commission given my status as a member – I have been reminded – of the Charter Review Commission. I am a member of the Charter Review Commission. So out of an abundance of caution, I would ask that this matter be deferred to the next Planning Commission meeting, which I understand is May 22nd, and at that time, my partner, Laurel Loo, will be present in my place. Sorry.

Ms. Nogami Streufert: I move that we defer the Department of Water issue until May 22nd, the next meeting.

Mr. Nakamura: Thank you very much.

Chair Apisa: Second?

Mr. Ho: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 4:0.

Mr. Nakamura: Thank you.

Chair Apisa: It will be deferred to May 22nd.

Class IV Zoning Permit Z-IV-2018-7 and Use Permit U-2018-6 to allow construction of a new electrical substation on a parcel situated on the makai side of Kōloa Road in Lāwaʻi, approx. 3,300 ft. southeast of the terminus of Aka Road, further identified as Tax Map Key: (4) 2-6-003:001, and affecting an area approx. 2.5 acres in size of a larger parcel = Kauaʻi Island Utility Cooperative (KIUC).

Mr. Dahilig: Madame Chair, we are now on Item G.2.b. This is Class IV Zoning Permit Z-IV-2018-7 and Use Permit U-2018-6. This is an electrical substation at TMK 2-6-003 Parcel 001.

KIUC is the applicant and Mr. Bukoski is coming right back in to present the report on behalf of the Department.

Staff Planner Chance Bukoski: Good afternoon, Chair and Commissioners. I am going to make this very brief. I know you guys are short on time.

Mr. Bukoski read the Summary, Project Data, Project Description and Use, Additional Findings sections of the Director's Report for the record (on file with the Planning Department).

Mr. Bukoski: You have my report in front of you, and that concludes my staff report.

Chair Apisa: Thank you. Is the applicant here?

Mr. Michael Belles: For the record, Madame Chair and members of the Commission, my name is Michael Belles, representing the applicant, KIUC. With me today is Brad Rockwell. He is the power supply manager for KIUC. If I might impose on the Commission, could we take a one or two-minute break? We would like to put up a few exhibits that we would like to speak to during the course of our presentation, and we will do our level best to expedite this and make our presentation as brief as possible.

Chair Apisa: Sounds reasonable. Thank you.

Mr. Belles: Thank you.

Ms. Ahuna left the meeting at 12:12 p.m.

Chair Apisa: We lost our quorum.

Mr. Belles: I understand. We will wait.

Chair Apisa: Thank you.

Ms. Ahuna returned to the meeting at 12:13 p.m.

Chair Apisa: Okay, thank you. We have our quorum.

Mr. Belles: Again, good afternoon, Madame Chair and members of the Commission. For the record, Mike Belles, and with me, Brad Rockwell on behalf of the applicant, KIUC. I would like to thank the Planning Department staff member, Mr. Bukoski, for the report, both the Director's Report as well as the Supplement Report which was made available and circulated today. We have no revisions or changes or comments on either the Director's Report or on the Supplement that was circulated today.

Again, in the interest of time, I had originally intended to go over a brief history of what had preceded this in terms of the approval of the AES Solar project that abuts this and surrounds us –

it is approximately 200 acres – because only two of the four commissioners present today were available and acted upon that back in September of last year. But, again, I believe it was adequately covered in the Director’s Report and the Supplement, and we can make ourselves available to respond to any questions you may have. What I will do, rather than just repeat what Mr. Bukoski has already said, is simply turn this over to Mr. Rockwell and let him give an overview of what the substation represents, located on 2.5 acres – approximately 250 by 350 feet – and give you an example of what was recently built; give you a good chance to have a comparison of what it would really look like in real time and real life based on recent experiences. So I will turn this over to Mr. Rockwell right now.

Chair Apisa: Thank you.

Mr. Brad Rockwell: Thank you. I am just going to spend a couple minutes to explain the pictures that we put up and a couple of points and take any questions you might have. I will just refer to the exhibits as one through five, going left to right.

On the first exhibit, I show two red [sic] circles. It is the general area being shown there and I apologize for the size of it; it is Lāwa‘i. It is basically from Kalāheo in the upper left corner down to Kōloa in the lower right. The red circle indicates the existing location of Lāwa‘i Substation which currently serves that area. The yellow circle is where the proposed facility, the Aepo Substation, will be located.

The second exhibit from the left is a picture of Lāwa‘i Substation as it sits today on Piko Road in Lāwa‘i. Right behind that is a home; essentially, the home is a flag lot kind of tucked around that substation.

The third exhibit from the left is just an aerial view of that Lāwa‘i Substation area.

The fourth exhibit from the left is just an engineering layout of the proposed Aepo Substation; what it will look like with the towers and the control...and basically everything that is described in the application.

And then the fifth exhibit from the left is...instead of bringing a rendering of what the Aepo Substation will look like, the design is essentially based on the design of the Anahola Substation, so this is an aerial photograph of the Anahola Substation as built. The only difference will be that our Aepo Substation will not have the containers here on this left side, so it is just this portion that is, essentially, what will be built there. Another key difference between Anahola is that there is no road fronting this Aepo Substation. It is tucked well-inside of that 1,000-acre parcel; quite far from Kōloa Road or any residential areas, any view plains.

Chair Apisa: Question – if that is the Anahola (Substation), that is not right on Kūhiō Highway, is it?

Mr. Rockwell: It is.

Chair Apisa: Is that the solar farm?

Mr. Rockwell: Yes.

Chair Apisa: Oh, okay.

Mr. Rockwell: Originally, when Anahola was built, there were some concerns with the community that we addressed by installing some landscaping, some native plants along the roadside there. Since those have been more established, we have not received any complaints from then. And like I said, the difference with Aepo Substation is that it is not visible from any of the roads or residences in that area.

I think that is all I have and (I am) open for any questions.

Chair Apisa: Questions?

Ms. Ahuna: What happens to the old substation? Do you guys still use that?

Mr. Rockwell: The Lāwa‘i Substation will eventually be decommissioned. So in order for that to occur, we have to get Aepo Substation built. We are going to build a couple of feeders that come out of that, and then we are going to install a new transformer at the Green Energy Biomass Plant Substation, which currently exists near the Knudsen Gap area, and we will build some circuits out of there. Once we have those two things in place, then we will be able to decommission the Lāwa‘i Substation.

Ms. Ahuna: But it is in the plan to decommission that?

Mr. Rockwell: Correct.

Chair Apisa: But the structure itself would remain? I mean, it is decommissioned, meaning–

Mr. Rockwell: No, the equipment would be removed.

Chair Apisa: Okay.

Ms. Ahuna: What happens to all those solar panels in 35 years? Are those decommissioned as well?

Mr. Rockwell: Well, that decommissioning of all that is planned in these projects, so there is money set aside to remove it and return the ground–

Ms. Ahuna: Just when they get old, you know?

Mr. Dahilig: It was required as part of a Land Use Commission approval.

Chair Apisa: Go ahead.

Mr. Ho: Is the Anahola Substation about the same size as the one you propose to build?

Mr. Rockwell: The AES facility is going to comprise about 200 acres. The picture you see there – the solar panels comprise about 50 acres, so the size of space will be 4 times as far as acreage; however, the solar panels will be spaced out much more because they are using the single axis tracking instead of the fixed tilt, so you will see a lot more green in between all the panels in the AES.

Mr. Ho: And the transfer station itself – is that about the approximate size of it?

Mr. Rockwell: Right, except for the left half where you see those white containers. But yes, roughly about the same two-acre... I think we said up to two and a half, I think, in the application.

Ms. Nogami Streufer: It is two acres.

Mr. Rockwell: Yes.

Chair Apisa: Commissioner Streufert.

Ms. Nogami Streufert: Is this a required construction for the solar farm?

Mr. Rockwell: The primary purpose of the Aepo Substation has been to meet the growing loads in the Po'ipū area; Kōloa and Po'ipū. It will also allow the interconnection of the solar farm.

Ms. Nogami Streufert: But is that required for the solar farm to actually–?

Mr. Rockwell: Correct. In order for the solar farm to connect to the grid, it needs to connect into a substation.

Ms. Nogami Streufert: So if that is the case, why was this not brought up at the same time that the...on September – not sure of the date – 29?

Mr. Belles: One of the options considered very early on in the planning process two years ago was whether or not we file an application jointly or separately with AES Solar and KIUC. The decision was made that for a lot of business interest, it would be best to separate the two because it would be presumptuous on our part to go in with a KIUC facility without knowing whether or not the AES Solar facility would be approved, both by the Planning Commission, because we needed two permits from the County of Kaua'i, which were the Use Permit and Class IV Zoning Permit, as well as the Special Permit from the State Land Use Commission.

Ms. Nogami Streufert: But we are now being told that you require this in order to have the solar farm.

Mr. Belles: Yes, it is required for the function of the AES Solar farm, yes.

Ms. Nogami Streufert: It is a requirement of the solar farm, so should that not have been put together?

Mr. Belles: It was referenced. It was discussed in terms of the original application that there would be a substation servicing this particular facility.

Mr. Dahilig: As Mr. Belles is describing, Commissioner, the applications we received were from a private entity, which was AES Solar. So they went through the Land Use Commission approvals and they went through this process that led to that granting. But those facilities are not owned by KIUC, right, so that power is going to come from that private power plant and KIUC has to receive it somehow. So the substation is owned by KIUC and that is where they are going to have AES come in and plug into that, so, for whatever reason, it's two different applications because of the way that the purchase power agreement was structured and the way that the delivery was, essentially, structured between the two entities. If you look at it from a context, yes, these two cannot operate without each other. But how they came forward from an approval standpoint was largely a function of what business agreements were put together between the two entities because it is a purchase power situation versus a generation situation that KIUC is (inaudible).

Ms. Nogami Streufert: Then I have another question. Are there any other facilities or buildings or any other construction that is going to be required for this?

Mr. Rockwell: No, there is just the previously approved application and this one.

Ms. Nogami Streufert: And this substation will look like the one that is at Anahola. Is that correct?

Mr. Rockwell: Correct, except for those white containers.

Ms. Nogami Streufert: Those will not be there?

Mr. Rockwell: Will not be part of this.

Ms. Nogami Streufert: There is another statement in here that Breaker 2211 to Kōloa will be under-built, Breaker 2212 to Port Allen will be under-built, as well as 2214 to Kōloa, but the one to Lāwa'i is going to be above ground.

Mr. Rockwell: Let me just clarify. "Under-build", I believe, is the term used. It does not mean underground. That is a term we use where we say that distribution circuit, which is a lower voltage, will be under-built below the transmission line. So it is still overhead, it is just on the same poles that the existing transmission line are, so it is just at a lower level.

Ms. Nogami Streufert: But you are going to be doing an underground distribution to Port Allen.

Mr. Rockwell: I don't believe so. I don't believe there is any underground distribution mentioned (in) it. I think it is just an "under-build" – is the term they use.

Ms. Nogami Streufert: It says under-build and distribution underground. They put that word specifically in there.

Mr. Rockwell: I'm sorry, where are you looking in that?

Ms. Nogami Streufert: I think it is page 11.

Mr. Rockwell: Page 11, you said?

Ms. Nogami Streufert: I believe...that's my notes; that I've got page 11.

Mr. Rockwell: And which circuit?

Ms. Nogami Streufert: (Breaker) 2212.

Mr. Rockwell: Okay, "[f]rom Aepo Substation, approximately 0.9 miles of 3-phase distribution underground..." – is that where you are reading?

Ms. Nogami Streufert: Yes.

Mr. Rockwell: Okay, then that is underground; I apologize. So that portion will be underground.

Ms. Nogami Streufert: Why is that underground and the other one's not?

Mr. Rockwell: Well, I can tell you that, in general, we try to do overhead because of the cost difference; underground is significantly more expensive. So in this case, I would have to go back and look to see with our engineers why certain specific areas were proposed to be underground versus others overhead.

Ms. Nogami Streufert: And if they could all be underground, would that not be a better...I understand that there is more cost involved, but in terms of hurricanes, wind storms, would that not be more cost-effective in the long run to have them all underground, as well as more attractive? Scenic beauty.

Mr. Rockwell: It is not more cost-effective. Obviously not having to look at something versus looking at it could be arguably more attractive from a visual aspect. It doesn't necessarily translate into improved reliability. We do have a number of faults that occur on our underground circuits. They can be inundated by heavy rains and things like that, and they do take longer to troubleshoot and fix.

Ms. Nogami Streufert: But based upon the heritage resources, "Open Space, Parks, Agriculture, Conservation" Heritage Resources Designation, its scenic value has importance; that whole area has a heritage value in terms of being scenic. It is an area that...and that is part of your report; that the value of this area is because of a scenic view.

Mr. Rockwell: Yes.

Ms. Nogami Streufert: So if there is any way of putting most of these underground–

Mr. Rockwell: Right.

Ms. Nogami Streufert: –it would be more–

Mr. Rockwell: Just to be clear, there is an existing aboveground transmission line that runs through the parcel, so we are going to be attaching to those for some of this distribution level. I guess what I am trying to say is there is existing overhead lines already that we are not proposing to put underground. Are you–?

Ms. Nogami Streufert: Are you proposing, then, that there will not be any other poles that will be put up there?

Mr. Rockwell: There will be some poles for some of these distribution circuits that will be erected.

Ms. Nogami Streufert: But to connect to Lāwa‘i or to connect to anywhere else?

Mr. Rockwell: Correct, to serve that general area. I mean, there is a fair amount of existing overhead poles already in that general area, and so I don’t want to get too far afield to make sure I am answering your questions or your concerns.

Ms. Nogami Streufert: I would like to make sure that we are not changing the scenic value of it any more than we have to. If there are existing poles that you are going to be using and no other poles will be added, then that is one thing. But if there are more poles that are going to be added and more overhead wires, then that has an impact upon the heritage resources that we have there.

Mr. Rockwell: And I will just say, in general, I think we are adding overhead poles throughout the island from time to time when customers require service, so I can’t say that all future–

Ms. Nogami Streufert: This is only about connections to the Lāwa‘i Substation and to the Kōloa Substation; that is what I am looking at right now.

Mr. Rockwell: Right, so I stand by what is in the application. The portions that are going to be underground are listed in here, and the portions that will be overhead, or when you use the term “under-build” that means it is overhead; that is what our proposal is based on our engineering plans and our cost assessments and our reliance on the studies that were done.

Chair Apisa: Okay. Further questions?

Mr. Dahilig: I believe Chance has our recommendation on behalf of the Department.

Mr. Bukoski: Preliminary recommendation – based on the foregoing evaluation and conclusion, it is hereby recommended that Class IV Zoning Permit Z-IV-2018-7 and Use Permit U-2018-6 be approved.

Madame Chair, would you like me to go through the conditions?

Chair Apisa: Sure, if they are not too...

Mr. Bukoski: I have six conditions.

Chair Apisa: Yes, please.

Mr. Bukoski read the six conditions of the Director's Report for the record (on file with the Planning Department).

Chair Apisa: Thank you.

Ms. Nogami Streufert: May I add two conditions to that? Or suggest two conditions for that? No. 1 – that, to the extent possible, connections should be underground or mitigated to limit visibility or to decrease the value of the scenic value of the property; the heritage value. The second one – that there be public outreach, to include the general public, to let them know that this is happening, and to have a photo of the Anahola Substation so they know what is going to be put there; that they have, not just a graphic which is very difficult to...at least from a layperson's perspective, it is difficult to see what it is really going to look like, but a visual of what the substation will look like because it is very different when you see the height of these towers as opposed to looking at a schematic. So I would suggest that those two conditions be added.

Mr. Dahilig: Just to recount, you wanted "[t]o the extent possible, connections should be underground to limit impacts to the surrounding environment."

Ms. Nogami Streufert: Underground or to mitigate any visual impact upon the heritage resources, which is the scenic value of that area.

Mr. Dahilig: All right. And the second one is hold a public meeting with a photo...I didn't catch that last one.

Ms. Nogami Streufert: A public outreach or public meeting to include, not just the Kōloa Neighborhood Association, but the surrounding area – Kalāheo, Lāwa'i, Ōma'o – and the general public for that matter.

Mr. Dahilig: Okay.

Ms. Nogami Streufert: Because there are advantages to having this; there are definite advantages. There are also some...people have to live next to it – just like in Waimea – so let's be cognizant of that. And to include a photo – like you've got there – of what the substation will look like.

Chair Apisa: The actual one of Anahola.

Ms. Nogami Streufert: Right. If it is going to be like the one in Anahola, then that should be something that they should be able to see and to appreciate what it is going to look like. A

schematic is great for seeing how they all connect, but when it comes down to it, laypeople like myself are going to have a very difficult time trying to visualize it, and when it goes up and they didn't think it was going to look like that, that is going to be a problem. So I just want them to know ahead of time what is being planned so that they are prepared for it. Because if the solar farm cannot exist without the substation and we have already approved the solar farm, then we are kind of stuck with having a substation, so they need to at least know what is happening to them. I don't want the same kind of situation we are having in other places on this island.

Chair Apisa: Did I hear you correctly say that it would not really be visible from a road?

Mr. Rockwell: Correct. We don't believe the substation will be visible from the road and any residence, except...I think there was just the one that we mentioned when we were talking about the solar farm application, which is the Tulone Residence.

Mr. Dahilig: Madame Chair, given the proposed conditions, the Department wouldn't have any objections to folding that into our Director's Report as Condition No. 7 and Condition No. 8.

Chair Apisa: Okay. Any further discussion from the Commissioners?

Mr. Dahilig: It would probably be prudent to get on record whether the applicant objects to the conditions as stated.

Chair Apisa: Does the applicant object to any of these conditions?

Mr. Belles: We don't object to the conditions. I just don't want to be accused of being disingenuous at some subsequent date and I just want to have a clear understanding as to the second one, which involves the public outreach and the community meeting which we did do on behalf of our other client, AES, and it was a very good meeting on January 25th. I just wanted to make sure that it is understood that this will be a condition of approval, but it is not going to preclude us from proceeding with the construction and development of this; that we will do it in a timely basis at some time in the future.

Ms. Nogami Streufert: As long as there is enough time prior to the construction that you can get constructive input from the community should that come about.

Mr. Rockwell: And I do want to just add that at that community meeting we conducted previously when AES was in the lead, I actually spoke at that as a representative from KIUC and discussed the project in whole, so we did discuss this with the community at that time as well.

Ms. Nogami Streufert: For the record, I did see the minutes of it, as well as the comments, and that you have responded. I appreciate the fact that you have done an outreach, but the outreach was...for many people in other areas besides Kōloa, it was a little difficult to find, so they were not aware of it. However, you did your due diligence and you did do that and it was attended by some people in the community, but I would like to make sure that this one gets a little bit more attention so other people will see it, will know about it. I am not sure how that can be done; maybe two public announcements. You know what, that is not part of our purview, it is just to

make sure that we can get as much public input before you get started. I think we have seen today that insufficient input from the public just creates more of a tension and I would like to avoid that because that is not necessary and I don't want to tear communities apart. This whole purpose is to make communities come together. It is a good project because it will provide electricity, but there are issues that can come up and I would like to make sure that they are voiced and they are responded to before you start construction.

Mr. Dahilig: Just in writing, we are interpreting this as...and this would be the language of Condition No. 8, “[a]pplicant shall hold a public meeting a reasonable time before commencing construction to present the proposed substation, including clear photos of what it would look like. The meeting shall be publicized to not just the Kōloa community, but also Kalāheo, Ōma‘o, Lāwa‘i, and across the island.”

Ms. Nogami Streufert: And it was in The Garden Island.

Mr. Dahilig: Yes.

Ms. Nogami Streufert: I'm sure that it was there, but it was on the back page. It was a public announcement or public meeting, and they will be aware that it is there now.

Mr. Belles: We have no objections to doing exactly what we did with AES Solar, which was have two public advertisements in The Garden Island newspaper and not just marginal hidden away in the Obituaries, but a good size, efficient size, for people to be aware of it. So we will replicate that same process. Since you wanted to reach a broader audience, that will obviously be available to any subscriber or purchaser of The Garden Island newspaper. The only thing I wanted to clarify – did you, also, want us to send out notices to everybody living within 300 feet of the 1,000-acre parcel?

Ms. Nogami Streufert: Absolutely, and how far you go past that, that's your prerogative.

Mr. Belles: Okay, so again, we will replicate what we did for the January 25th meeting conducted by AES in terms of outreach to the community, advertising in The Garden Island newspaper, and personal service on individuals living within 300 feet of the 1,062-acre parcel.

Ms. Nogami Streufert: Thank you. Appreciate that.

Mr. Dahilig: So we will incorporate that language, also.

Ms. Nogami Streufert: Okay.

Mr. Dahilig: Madame Chair, we stand on our orally-recommended eight conditions.

Chair Apisa: Okay.

Mr. Belles: We have no objections and thank you very much.

Chair Apisa: Any further discussion? Or is someone ready to make a motion?

Mr. Ho: I move to accept the Planning Department's recommendations with the two amendments from Ms. Streufert.

Ms. Higuchi Sayegusa: Is that an "accept and approve"?

Mr. Ho: Yes.

Ms. Higuchi Sayegusa: Okay.

Chair Apisa: Do we have a—

Ms. Ahuna: Second.

Chair Apisa: Okay. All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 4:0.

Mr. Belles: Thank you, again, very much.

Chair Apisa: Congratulations.

Mr. Dahilig: Thank you, Madame Chair.

Zoning Amendment ZA-2018-6: A bill (No. 2693) for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to the Comprehensive Zoning Ordinance. The proposal amends Section 8-15.1(d) of the CZO relating to Additional Dwelling Units = *Kaua'i County Council.*

Mr. Dahilig: We are now on Item G.4. This is the one for new public hearing. This is ZA-2018-6. This is Bill No. 2693 as proposed by Council Chair Mel Rapozo. I have transmitted my Director's Report to the Commissioners for its review and essentially what it is, is a date change, extending the deadline once again for those that want to come in and recertify their Additional Dwelling Units. It does not reopen a new regime where those that have not met certain grandfathering dates can now come in and get a new ADU. I will note that the Additional Rental Unit Law did get signed into ordinance about three weeks ago, so that came through this commission about a month and a half ago, so that did get approved. We don't see this as, necessarily, a Pandora's Box that is being opened up. This is probably the third time already that we have done this procedure, so from an operational standpoint, we won't have to remake processes for this. I will note that the second time we opened this up for an extension we only added an additional 16 re-certifications, so this time around it will probably be even less than that. So at this point, we don't have any objections to the draft language as presented by Council Chair Rapozo and would recommend approval.

Ms. Nogami Streufert: Can I ask one question on this one?

Mr. Dahilig: Sure.

Ms. Nogami Streufert: Cesspools – do we still allow cesspools?

Mr. Dahilig: No.

Ms. Nogami Streufert: Because that is still in there; in the language.

Mr. Dahilig: Actually, that's where...this got circulated. We literally got this yesterday; that DOH recommends that Section 1(5)(A), page 2, that the word "cesspool" should be removed from the language. We would concur and incorporate that in our recommendation.

Ms. Nogami Streufert: Yes, that is what I have here, too.

Ms. Ahuna: So that has already been an amendment?

Mr. Dahilig: That is a proposed amendment that we just got yesterday; literally yesterday.

Ms. Ahuna: How does it get...?

Chair Apisa: (Inaudible) proposed to?

Mr. Dahilig: So what we will do is, in the bill, we will just strike that word out and put brackets around the word "cesspool".

Mr. Ho: Can we just talk here about this ADU? This ADU – do you have an idea of how many are out there right now? There is maybe less than 150, right?

Mr. Dahilig: We have–

Ms. Nogami Streufert: Two hundred and thirteen were approved.

Mr. Ho: Two fifty?

Ms. Nogami Streufert: Two hundred and thirteen were approved.

Mr. Dahilig: Yes, 230 [sic] something that have come in with that–

Mr. Ho: Certification.

Mr. Dahilig: That certification.

Mr. Ho: But do you require them to come in yearly and pay a fee for this?

Mr. Dahilig: No.

Mr. Ho: It's one time?

Mr. Dahilig: One time.

Mr. Ho: One time. Could this be a part of their deed? I mean, their entitlement? If they have it, then, you know, it's theirs. If they pass the land to their children, it still remains with them. If they sell their property, then it ends.

Can't do it, Jodi?

Mr. Dahilig: I see the--

Ms. Higuchi Sayegusa: Yes, I--

Chair Apisa: I see where you get into whether children and hanai children and stepchildren and...

Ms. Ahuna: That would be fine, but it's just the--

Mr. Ho: Yes, if hanai children.

Ms. Ahuna: That actually would be fine, but it just would be a new owner in general is what you are talking about, right?

Mr. Ho: If it stays in the family, just let it pass on.

Ms. Higuchi Sayegusa: I have previously looked into restrictions on entitlements based on blood or family lineage, and that might present some constitutional issues, so I wouldn't recommend that be included. I think what we are talking about is that sunset date to go and act upon the entitlement to build, and I think, previously, Council did put in a date whereby people would have to act upon and build, right? And that is sort of the policy call which...I mean, I think it's just the time restriction. It was a means to control and deal with this issue of limiting it, but I would caution against heritage or blood...like lineage type of restrictions.

Mr. Ho: On the back side of that, it is kind of...like if it expires, it goes away, and then the family loses it. There are many families that just don't take advantage of that.

Ms. Higuchi Sayegusa: Right, and I think that is essentially what we are discussing here, right? Do you guys still see value in that deadline or that time limitation?

Ms. Nogami Streufert: That can always be something (inaudible).

Mr. Ho: Yes, that is for another time/discussion. I am through.

Ms. Ahuna: Are we deferring this?

Mr. Dahilig: I guess the manner of the language that has come down is really just to reopen the process as we understand it. Whether or not these items are or are not transferable, I think, as Jodi articulated, that really wasn't part of our analysis here. We can definitely put together another bill if that is something that the Commission wants to take a look at as it relates to these items, but it is really...it is a fixed set of houses that are there. We are not dealing with something that is an unknown universe from a scale standpoint. So if it is something that we are looking at to adjust the program, I think we are going to have to do a little bit more of a wordsmith within the actual bill that, I think, really kind of goes outside the purview of what I think Council Chair Rapozo was trying to do; was just reopen the certification process here.

Mr. Ho: I'm good.

Chair Apisa: Okay, so action?

Ms. Nogami Streufert: I move to approve this Zoning Amendment ZA-2014-9 [sic] with the amendment that—

Chair Apisa: Dash nine or dash six?

Mr. Dahilig: Six.

Ms. Nogami Streufert: Dash six; I'm sorry. With incorporating the Department of Health's recommendation that "cesspool" be struck.

Mr. Ho: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 4:0.

UNFINISHED BUSINESS (For Action) (Continued)

Class IV Zoning Permit Z-IV-2018-5 and Use Permit U-2018-4 to construct a new covered play court on the Waimea Canyon Middle School campus in Waimea Town, situated approx. 1,200 ft. north of the Kaumuali'i Highway/Huakai Road intersection, further identified as Tax Map Key: 1-2-006:033 (portion), and containing a total area of 15.5 acres = State of Hawai'i, Department of Education. [Director's Report received by Commission Clerk 3/13/18, Sup 1 to DR received 3/27/18, Agency Hearing closed 3/27/18.]

Mr. Dahilig: Madame Chair, I would suggest returning back to Item M.1., which is the Unfinished Business relating to the Waimea (Canyon) Middle School play courts.

Chair Apisa: Moving back to M.1., the Waimea (Canyon Middle) School play court.

Ms. Nakatsuka: Thank you for your patience, Planning Director and Commissioners. In speaking with the residents adjacent to the school, we have looked at Item No. 8 and the

restricted hours, and have come to an agreement of hours of 7:00 a.m. to 3:30 p.m. on school days for use of the facility, understanding that it won't be used on the weekends or holidays.

Chair Apisa: And then any exception for that twice a year?

Ms. Nakatsuka: With the exception for that and the no amplified sound, only six times a year that there may be performances and that will be preceded by at least one month of notification.

Ms. Nogami Streufert: For each one?

Ms. Nakatsuka: For, yes, each performance.

Ms. Nogami Streufert: Okay.

Mr. Dahilig: Is that suggested language for Condition No. 9 or Condition No. 10?

Ms. Nakatsuka: For both. So normal use would be 7:00 (a.m.) to 3:30 (p.m.).

Chair Apisa: School days.

Ms. Nakatsuka: On school days; with the exception of up to six performances a year. And then for the no amplification, there will be no amplification for daily usage, except for the performances six times a year that they will have some amplification for voice and possibly some of the instruments.

Chair Apisa: And you don't need it for voice during a normal school day?

Ms. Nakatsuka: No.

Ms. Speetjens: No. P.E. classes do not use (inaudible).

Chair Apisa: Okay. Thank you, both sides, for getting together and talking.

Ms. Nakatsuka: I think, also, we wanted to mention that No. 10, because of that "[o]ther than school functions, (there shall be) no performing arts (events) in the structure", so based on our permit and the Occupancy E, it is specifically for educational purposes, so no organized community sports will be housed in the facility; it is going to be only school activities.

Chair Apisa: School functions only?

Ms. Nakatsuka: Yes. And I think for the other items, the screening – it kind of ties in with the eight-foot fence that Justin will speak to.

Mr. Justin Matsukawa: Good morning, Commission. In regards to–

Chair Apisa: Would you state your name, please, for the record?

Mr. Matsukawa: Oh, I'm sorry. Justin Matsukawa for the record. Item No. 11, regarding the implementation of the screening buffer between the court and the neighbors – we accept the condition and we will definitely coordinate and meet with the appropriate neighbors as required by this to come up with an appropriate solution to appease both parties. We don't have any objection to that.

Item No. 12, regarding the motion detectors – I think that is something that can be reasonably addressed. Per our proposed design, we already actually have implemented some level of exterior lighting, so if it is a matter of changing controls and switching...I believe that that is something that we could resolve and that would be acceptable.

Item No. 13, regarding the eight-foot fence – so we have discussed this item in regards to particularly...we understand the security concerns that these neighbors have and we do want to try to address them as best as we possibly can. In conversation, we have asked to remove that eight-foot height requirement and to allow us to work out a design similar to Condition No. 11, where we would work with the community and develop a design that would address all of their security concerns. We were throwing around some proposed ideas outside and I think that we could reasonably come up with a solution. We would gladly meet with the community to go over and discuss this even further. The concern – I will explain a little bit – is the rear of this structure, so it is the area in between the solid wall and the back property line and these neighbors. So what we would try to implement is a security measure that would protect that back sanctuary area or secluded area as the neighbors are concerned about loitering and other things. We would still provide an enclosure, but what we propose is not around the entire structure; it is around that immediate area of concern that these neighbors have.

Chair Apisa: Does that...?

Mr. Hashimoto: Well, I hope we work it out.

Mr. Matsukawa: As I stated as part of the condition, we would be willing to work this out with the neighbors so that we could develop an appropriate design.

Chair Apisa: Thank you. Questions?

Mr. Dahilig: Madame Chair, let me just recount what I have heard that would remove any objections from the Department of Education as to the conditions. Condition No. 8 would read from 7:00 a.m. to 3:30 p.m. on school days, and that would be excluding Saturdays, Sundays, and holidays, and then the second sentence would be stricken. Condition No. 9 would relate to, again, confirming no amplified sound equipment used in the structure at any time. There shall be no electronic scoreboard. However, there are six times a year when there will be performances, and there will be a one-month notification to the public concerning those performances six times a year.

Ms. Nakatsuka: And those performances...let me just check back. They will not go past...is it 8:30 (p.m.)? 8:15 (p.m.)?

Ms. Speetjens: I would say typically 8:15 (p.m.) now. I would say 8:30 (p.m.) just to be safe.

Chair Apisa: 8:30 (p.m.).

Ms. Nakatsuka: It would go no later than 8:30 (p.m.).

Mr. Dahilig: No later than 8:30 (p.m.), okay. So I have that as folded into Condition No. 10. Condition No. 11 would stand as is. Condition No. 12 would stand as is. Condition No. 13 would be, “[t]he Applicant shall work with the community to install a fence to secure the area behind the structure.” And then strike the next sentence – where it shall run from. So we will just say “behind the structure”, and then signs shall be posted no loitering, etc. You are okay with leaving that in?

Mr. Matsukawa: Yes.

Ms. Nakatsuka: Yes.

Mr. Dahilig: And then...that’s it. So that is what we are hearing as the–

Ms. Nogami Streufert: Can I ask one question on that? For these six performances – the hula, the ukulele, and the band – will you be using amplified equipment?

Ms. Speetjens: Yes.

Ms. Nakatsuka: Yes, that’s part of the–

Ms. Nogami Streufert: Okay, so the amplification is only to be used for those. Right now we have it no amplified sound equipment, but you are going to change that?

Mr. Dahilig: Yes, with the exception of–

Chair Apisa: The six performances.

Mr. Dahilig: –of the sanctioned six performances. Okay, we would fold those in if that leads to no objection from the DOE.

Ms. Nogami Streufert: I move that we approve the Class IV Zoning Permit Z-IV-2018-5 and Use Permit U-2018-4 to construct a new covered play court on the Waimea Canyon Middle School campus in Waimea Town as discussed here with the conditions.

Mr. Ho: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) The motion carried unanimously, 4:0. Thank you and congratulations. Again, thank you, both sides, for being here to work it out.

Mr. Matsukawa: Thank you, Planning Commission and Director.

Ms. Nakatsuka: Thank you so much.

Mr. Dahilig: Thank you.

Ms. Nakatsuka: Thank you for your patience.

ANNOUNCEMENTS

Topics for Future Meetings

Mr. Dahilig: Madame Chair, that's all the business that we have for action before the Commission this afternoon. There are topics for future meetings that have been circulated as part of the on deck sheets.

The following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter at the Līhu'e Civic Center, Mo'ikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Līhu'e, Kaua'i, Hawai'i 96766 on Tuesday, April 24, 2018.

Mr. Dahilig: Again, we do not have anything lined up for commission action on the 24th of this month. Given that this calendar has been either cleared out or moved out, items have been moved out to May 22nd. It is very likely that May 8th, as well as the next meeting, we will not have any business before the Commission.

Mr. Ho: Our next meeting is May 22nd?

Mr. Dahilig: May 22nd at this point.

Ms. Higuchi Sayegusa: We still have that subdivision issue.

Mr. Dahilig: Yes. We may call everybody in on the 24th for a very short matter that will start off with the Subdivision Committee meeting, but we won't know until we...I talked to Matt Takata on the plane yesterday and it is relating to something that has created a title cloud for a very large community in Kapa'a, so we may need commission authority to be able to clear that title cloud.

Ms. Ahuna: Is that on the 24th?

Mr. Dahilig: Yes, so we may call the Commissioners in for a very short meeting on the 24th, but other than that, there are no permits or other actions that are coming forth at this point.

With that, Madame Chair, that's all we have. So the next regularly scheduled meeting could be on April 24, 2018, at 9:00 a.m.

Chair Apisa: So May 24th possibly—

Mr. Dahilig: No, April 24th.

Chair Apisa: I'm sorry, yes, April 24th – possibly a Planning Commission short meeting.

Mr. Dahilig: Short meeting.

Chair Apisa: On April 24th.

Mr. Dahilig: Yes.

Chair Apisa: And then nothing on May 8th, and the next meeting would be May 22nd.

Mr. Dahilig: Yes, at this point.

ADJOURNMENT

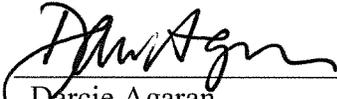
Ms. Nogami Streufer: I move to adjourn.

Mr. Ho: Second.

Chair Apisa: All right. We have a motion to adjourn with two minutes to spare. All in favor?
(Unanimous voice vote) Motion carried 4:0. Meeting is adjourned. Thank you.

Chair Apisa adjourned the meeting at 12:58 p.m.

Respectfully submitted by:



Darcie Agaran,
Commission Support Clerk

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

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