

Draft to be Approved

COUNTY OF KAUAI
Minutes of Meeting
OPEN SESSION

Board/Commission:	LIQUOR CONTROL COMMISSION	Meeting Date	January 21, 2021
Location	Tele Conference via Microsoft Teams Audio +1 469-848-0234, Conference ID: 511 037 892#	Start of Meeting: 10:02 a.m.	End of Meeting:12:09 p.m.
Tele Present	Chair William Gibson, Vice Chair Dee Crowell Members: Shirley Akita, Leland Kahawai, Gerald Matsunaga, Randall Nishimura, Gary Pacheco Also: Liquor Control Staff: Acting Director Cecilio Baliaris Jr., Liquor Clerical Assistant Malialani TM Kelekoma; Ellen Ching Administrator Boards & Commission, Deputy County Attorney Charles Foster		
Excused			
Absent			
SUBJECT	DISCUSSION	ACTION	
Call To Order			
Roll Call	Acting Director Cecil Baliaris called roll, noting 7 members were present constituting a quorum.		
Announcements	Next Scheduled Meeting: Special Meeting Thursday, January 28, 2021 – 10:00 a.m. via Tele-Conference Thursday, February 4, 2021 – 10:00 a.m. via Tele-Conference.		
Approval of Agenda		Mrs. Akita moved to approve the Agenda. Mr. Pacheco seconded the motion. Motion carried 6:1.	
Public Testimony	Charles and Carol Meek - Kilauea Resident - Opposition Letter John and Paula Johnson – Kilauea Resident – Opposition Letter		

SUBJECT	DISCUSSION	ACTION
	<p>Ms. Ching, Administrator for Boards & Commission advised Chair Gibson that the John and Paula Johnson are present via tele-conference and if they would like to give a verbal testimony, you may entertain that as this time.</p> <p>Chair Gibson asked the Johnsons would they like to give testimony, in which they replied, yes.</p> <p>Testimony from Paula Johnson via Telephone: Hi, this is Paula Johnson, I am opposing the action for the License for Kai Bar, because our home is located directly behind the location. Unfortunately, when they did the design for the building was a very poor design. The bathroom is measured, we actually measured it from our bedroom window at 30 feet from the public restroom. That being said as it is already we are being woken up at all hours of the day in the morning at 5 am and it goes on all night long. We are hearing the toilet flush, when we are trying to sleep in the middle of the night and that is without any kind of liquor license. We've had noise of people sitting right outside, I don't understand how there is a home. Our 2nd story is literally directly above Kai Bar. So these people are there from early morning hours, conversating and making loud noises from 6am. I am just really concerned, I got a letter from Sean and understand and he says that, "It's not their vibe", to host a bunch of drunk people and dancing to loud music and I completely respect that. However, what his vibe is may not be what somebody else's vibe is, especially after having a couple of drinks. So with that, I am opposing this, hopefully it doesn't go through. We want peace in our family, peace in our home. So yeah. I guess my husband wanted to speak to.</p> <p>Testimony from John Johnson via Telephone: I am opposing the Liquor License and the dance permit. Due to the fact the other side of the street where the market is located, you have Kilauea Fish Market, when they have loud music you can hear every word, every song so I can only imagine what it's doing when it's less than 50 feet. From my room, where my son plays outside the cussing. Anything that can be happening when liquor is involved it could be there. I just don't want to put myself in a situation where I have to go and secure the noises that is coming across my fence and it's coming into my life. So I have to do something, that's why I oppose it,</p>	<p>Mr. Nishimura moved to enter the Public Testimony for Charles & Carol Meek and John & Paula Johnson regarding Viva Kai LLC, dba Kai Bear Coffee Roasters Opposition letter into the record. Mrs. Akita seconded the motion. Motion carried 7:0</p>

SUBJECT	DISCUSSION	ACTION
	<p>I strongly oppose it, due to the alcohol and loud music. Thank you for hearing my side. Being that we are on the phone you can't see us, you don't know the property, and there really is no emotion involved. You can't feel it but take the time to think what you would do if your house was placed next to a dancing and liquor establishment. Thank you very much, mahalo.</p> <p>Chair Gibson asked are there any more testimonies.</p> <p>Investigator Kenneth Herman advised Chair Gibson that a person showed up for in person meeting at the gate. He may be calling in right now. The letter that went out from the Liquor Department does show an in-house meeting which was a mistake. He gave this individual the conference number and id#. Want to make sure we allow time for this person to phone and call-in. There is one more person that would like to speak.</p> <p>Chair Gibson asked for his name.</p> <p>Mr. Carvalho responded, Kenneth Carvalho.</p> <p>Chair Gibson asked if he was speaking against.</p> <p>Mr. Carvalho responded wanted to listen to what was going to be said, before he make his statement.</p> <p>Chair Gibson replied, okay, shall we go ahead with the Public Hearing.</p> <p>Ms. Ching advised Chair Gibson to do another call for anyone who would like to speak on this Public Hearing regarding Viva Kai LLC dba Kai Bear Coffee Roasters.</p> <p>Chair Gibson stated normally we open the Public Hearing and at one section we ask for Testimony for and against.</p> <p>Ms. Ching replied you can go ahead and do that.</p>	

SUBJECT	DISCUSSION	ACTION
1.	<p><u>PUBLIC HEARING:</u></p> <p><u>VIVA KAI LLC dba KAI BAR COFFEE ROASTERS:</u> Application No. 2021-011 was filed on January 17, 2020 by VIVA KAI LLC dba KAI BAR COFFEE ROASTERS for a New Restaurant General (live entertainment with dancing) license at The Kilauea Lighthouse Village in Kilauea located at 2555 Ala Namahana Parkway #F, Kilauea, Kauai, Hawaii. The Commission accepted Application No 2021-011 for publication and public hearing on November 19, 2020 and ordered to print notices of public hearing in the Garden Island on November 25, December 2 scheduling the public Hearing on January 21, 2021 at 10:00 a.m. or shortly thereafter via Tele-Conference</p> <p>Chair Gibson opened the Public Hearing for Viva Kai LLC dba Kai Bar Coffee Roasters. Chair Gibson asked, is there a Departments Report on this application.</p> <p>Acting Director Cecilio Baliaris Jr. stated all legal requirements for today’s Public Hearing have been met. Via affidavit the applicant has stated that they have sent notices to 54 property owners or Lessees’ on record within 500 feet of the proposed premises. Up until the time of the Public Hearing, the Department has not received any letters in support. The Department has received two letters in opposition to this application</p> <p>Chair Gibson thanked Acting Director Cecilio Baliaris Jr., and asked who is representing the applicant, please state your name and position.</p> <p>Sean Garcia owner Kai Bar Coffee Roasters and is here with Store Manager Monique Tucker. Advised that both will be making statements on behalf of Kai Bear Coffee.</p> <p>Chair Gibson asked if he received a copy of the Investigator’s Report.</p> <p>Mr. Garcia responded, yes.</p>	

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	<p>Chair Gibson asked if he understands the report and may proceed with comments on the report.</p> <p>Mr. Garcia stated that they do not have any comments on the report, they seem to be accurate.</p> <p>Chair Gibson stated that he will first entertain any objection to the application at this time. Are we talking with the Johnsons or the Meeks?</p> <p>Investigator Herman asked just a suggestion as the Attorney may correct me if I am wrong. Being as we opened the Public Hearing and there was testimony before you opened the Public Hearing we may want to repeat, have those people testify again for those that weren't on at the time.</p> <p>Chair Gibson agreed.</p> <p>Vice Chair Crowell stated move the testimony that was received today into the record for this agenda item.</p> <p>Chair Gibson asked for a ruling from County Attorney Charles Foster.</p> <p>Mr. Foster stated instead of just moving the testimony, let me ask the Administrator Ms. Ching. We record these transcripts made subsequent or recordings just available for review later.</p> <p>Ms. Ching stated only the minutes are posted on the website.</p> <p>Mr. Foster stated anyone who has something to add for the purpose of the hearing should be able to be rehear, their testimony wasn't too long.</p> <p>Chair Gibson asked should we entertain their testimony.</p>	

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	<p>Mr. Foster replied, yes. Commissioner Akita asked who was speaking.</p> <p>Chair Gibson replied the County Attorney Charles Foster.</p> <p>Commissioner Akita asked, please state your name before speaking it is so hard, if I don't have your picture on my screen, it's very difficult to note who is speaking.</p> <p>Mr. Foster replied he will do that.</p> <p>Chair Gibson asked John or Paula Johnson would like to repeat their testimony.</p> <p>Testimony from John Johnson stated that he opposes to alcohol and music being played, for the simple reasons behind that fence is a Community. Not all are Homeowners, but we are. There are families with children that are aligning the properties aren't homeowners they might have not been aware of what's going on. So I would just let you guys know that the bathroom that the Kai Bar uses is about 30 feet from where we sleep. We are woken up at all hours of the night. I counted out 63 feet from their door to our Living Room that's where people enter. Their toilet itself is one of those high compression toilets and flushes really loud, it's not a normal toilet it's really loud we are hearing that blow all hours of the night. The fact of people drinking the volume seems to come up, everybody knows you drink, you get happy, you talk a little bit louder. I would like to know if the drinkers will be hanging outside of the building, is the music going to be played outside of the building or is inside of the building all those kind of stuff hasn't even been brought up. It's kind of weird talk on the phone not seeing you guys, but it's really important as a father to three kids raised on Kauai to not have that kind of drinking, you know what comes with drinking. I just want to make that clear, I don't want to be the one having to Police the area. We do have Security Guards in that vicinity ranging from 74 years old to about 50 that can't even catch the young kids on whatever they are doing. With alcohol it's going to set to a next level this is the North Shore of Kauai and it is a community and there is kids all around. I just want to bring up those thoughts up before making a decision. That's what I have, so thank you.</p>	

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	<p>Testimony from Paula Johnson, this is Paula Johnson just restating of what I said earlier, in regards to the bathroom, the location being 30 feet from our bedroom window. We are being woken up from 530 am, and through all hours of the night, because the security guards use that bathroom. I am completely opposed to this, not only of what my husband has already stated as far as the noise and the alcohol. I also want to note that what my husband was saying as far as whether the music will be playing inside or outside just concerning that, I would still be opposed to it regardless if the music is being played inside. Even with the letter that I received they will be open until 9:00 pm, which we all know even if the place closes at 9pm people hang out and decide what they are doing next, 9pm turn to 10 pm. When people are starting to leave which is noise no matter what. Like my husband said the Security, can't even catch the kids that they are trying to chase off around there. I'm really worried it's going to take away the peace that we have within our neighborhood and family. Our house is located so close to the Kai Bar. It's really unfortunate when we bought the house several years ago, if I would have known at that point this is gonna be something I have to deal with, definitely think we would reconsider. So I am just on the line to be in extreme opposition of this application. Thanks for hearing us out today. One more thing we also have pictures and video recordings of the noise. If you guys would like pictures on how close our house is and the recordings of the noise we have already endured we will be happy to send that to somebody.</p> <p>Chair Gibson asked is the noise caused by the music.</p> <p>Mrs. Johnson replied, it is caused by customers of Kai Bar early in the morning. They tend to be in the middle of the two buildings. There's a Candle Shop and Kai Bar, they tend to hang out in the middle. There is table and chairs, the last time I looked, that was sitting out there right in the middle.</p> <p>Chair Gibson asked Mrs. Johnson if they received communication from Kai Bear.</p> <p>Mrs. Johnson replied, yes.</p>	

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	<p>Chair Gibson stated in addition to that letter have you spoken with the proposed Licensee.</p> <p>Mrs. Johnson replied, that would be a question for my husband, John and Sean are friends.</p> <p>Chair Gibson asked Mr. Johnson if he had any communication with Sean.</p> <p>Mr. Johnson replied, yes I have communicated with him, and he went over the fact that they won't be going late. It's more of a house music, low-key acoustic music and that kind of stuff along with mimosa's and wine. But if a Liquor License is gone and you get wells and top shelf stuff, that will change the atmosphere. When the money comes around and Kilauea is lacking that kind of experience for people, you will see the money come through and the wells will be served and the wine, mimosas will be the last thing in their mind. That's kind of my thing. He kind of does say that it will be Mimosas and Wine, and more of a mellow atmosphere. Who's to say what the permit is going to say, what the License is going to say, a mellow atmosphere or just music. We are not protected, if we had some type of protection, it will be one thing, but we don't. That's why I do oppose it, the business seem to be thriving without the music and alcohol. That's all I have thank you and mahalo.</p> <p>Chair Gibson asked Dennis Carvalho if he wanted to add testimony.</p> <p>Mr. Carvalho responded, yes sir, my name is Kenneth, not Dennis. Real property owners just adjacent to this development 4242 Kanikele, and we are opposed to this Liquor Licensing for live entertainment with dancing. With that it was not specified whether it was a cabaret license or not, that they can actually stay open till 2a.m. But the applicant is saying that they are closing at 9pm, I don't see that in writing anywhere. Under the Cabaret License I think you can go till 2am, I'm not sure if that's part of all of this. I have not received any type of written documents or heard during this meeting. That is why I asked I wanted to listen to what was said first before I make my statement. Mostly dealing with the added noise, the added garbage that's created. There is nowhere on that property that they have any type of rubbish cans. On top of that there are two dumpsters for the entire property. At times gets overfilled and rubbish is just left in the area, which also brings in rodents, cats, lots of cats. All I'm going to hear most of the time is, that's not our rubbish. Well that's the rubbish from the complex and they are not doing a good job at maintaining that. The stench comes right through our</p>	

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	<p>house as the Johnson's do.</p> <p>Our bedrooms is almost on the property line. The rubbish dispensers are right next to the property line. So that would be another major concern for us in terms of added garbage and how that's going to be taken cared of and maintained. I don't see that anywhere in writing also that is another major concern, as well as the added vehicle traffic. I'm not sure what part of the parking is going to be used. If the overflow will end up in our sub-division, it is a small sub-division. The Johnson's mentioned the noise, anything happens within that area echoes directly in the sub-division and normally it is a very quiet sub-division. Majority of the people that lived there work, that is the time when they need to relax, calm down. So this added with the Liquor License, I'm just afraid that they will go beyond. I know for a fact that the building is not insulated for that type of music or entertainment. Thank you very much.</p> <p>Investigator Herman stated that he could answer a couple of questions regarding the Liquor License, not the mall as we have no jurisdiction of the mall area. The Liquor License that is being applied for is a Restaurant Class License, there is a lot of misconceptions about Cabarets. There is only one Cabaret License on this island and they are allowed to go to 4am. The restaurant class license is allowed to go to 2am. The questions that the Johnsons have concerning the area of the Liquor License is just for the interior of the Kai Bar. Without that Liquor License they would not be under the jurisdiction of the Liquor Department. This way they are being regulated.</p> <p>Chair Gibson asked are there anyone who would like to speak on behalf of the applicant.</p> <p>Mr. Sean Garcia, Owner of Kai Bear Coffee Roasters stated he wanted to thank everyone who testified. I am friends with John Johnson, some of the complaints I have heard before. I actually called him after when I received the letter of opposition. We had a chance to speak on the phone about it. So just a few things especially for Mr. Carvalho, I know you came in late. I just want to be clear on a couple of things. The first one is the live music and dancing, I sent out a letter stating what are intentions are. With live music and dancing goes it's a little misleading, we have no intentions of entertainment of doing anything different then what we are currently doing. So as of now our building is pretty insulated, the noise level of the music right now that you guys are experiencing, I believe is pretty low. Usually when I go behind the</p>	

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	<p>building I can't hear the music.</p> <p>We plan to keep that level, unfortunately for us to play any kind of live music, a guy with a guitar and a small amp. We have to have the live music and dancing section of the permit. We don't plan to have dancing, we don't plan to have loud club bass type of music. We are a little café, sit down café, what we are doing now, music wise is not going to change. If we ever want to do any kind of special event, we would be more than happy to let the community know. I can't imagine what that would be, if we were to put some kind of concert, I can't imagine doing that. The second thing the music will be indoors only, that is part of the Liquor License, we are allowed to serve alcohol indoors, consume alcohol indoors and have music indoors. We haven't been playing music outside, once we have the Liquor License we won't be able to. We are not going to be doing dancing, it's a sit down restaurant. I know there has been an issue with the restrooms and your right John Johnson they are real loud. I can talk to the landlords maybe swapping them out for something a little quieter.</p> <p>After I received the letter of opposition from the Johnson's, I called Johnny and informed that the bathrooms are being used at night. I let the landlord's know about that a few weeks ago. I actually talked to the landlord yesterday, he promised me the Security Guards are not using the bathrooms in the middle of the night. Some of that noise maybe a cleaning crew in the middle of the night. They are coming at 7 or 8 now. With regards to the bathroom it is locked from 9pm to 5:30 am. Which is the time our crew comes in the morning for breakfast. So they have to be unlocked that early. Dumpsters that's a new one, Mr. Carvalho I have not heard about the overflowing, I can talk to the landlords about that, getting it dumped on a more regular basis.</p> <p>The other thing that I wanted to say with the Liquor Commission comes certain regulations, we are kind of subject to what the Liquor Commission can say what we can do or not do. Without the Liquor License we can have dancing and play music as loud as we want. We can do that indoors and outdoors. If we get the Liquor License it kind of changes things. If there are complaints we would have to act anyways, if we got complaints from neighbors. If it's coming from the Liquor Commission it's a very immediate thing.</p> <p>Final thing, I know the word BAR is in our name, we see ourselves as a Coffee Bar, not like a bar like "Cheers", or a sports bar. The rules of our license dictate that the majority of our sales is goods and non-alcohol items. We do coffee and breakfast, that's the majority of our deal. We are not really looking to change that. We would like to offer a little bit more. I sent out a</p>	

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	<p>letter that we are closed at 7pm and may bump it up to 9pm. Our lease agreement says that we are to stay open till 9pm, because of COVID our landlords have been understanding. The island is kind of sleepy right now. We won't go later than 9pm. If we ever want to do a special event, once a year, I be more than glad to let you guys know. It would never be a weekday. I don't want us to disrupt the community. I want us to fit in with it. The Johnson's are really close to the back of our building, I try to take that into consideration. When I talked to John a few weeks ago, he said that our staff has been pretty quiet. The first week or two that we opened, we were kind of loud. We got the staff trained and everyone knows that people are still sleeping. We try to keep it quiet and will continue to do that. We won't let people linger out back. I also know that there was a question with alcohol comes smokers, we won't let people smoke behind our building, like we wouldn't let them sit behind and chat. That is all I have for now, thanks for letting me go.</p> <p>Chair Gibson thanked Mr. Garcia. Chair Gibson asked would you be open to having your liquor license conditional on 9pm maximum closing hours.</p> <p>Mr. Garcia responded he would be fine with that.</p> <p>Chair Gibson asked if there were any questions.</p> <p>Commissioner Akita wanted to point out to the Johnson's some of their concerns deal with the Landlords of the property and they need to understand the Commission has no jurisdiction as far as the Landlord is concerned. I am surprised that they have not discussed these issues, they are matters of concern. Like the dumpsters, security and so forth that really we have no jurisdiction. I would like to also say, I agree with Mr. Garcia that if in fact we do give them this license, then our people would be responsible, by checking the noise level and the concerns that would be relevant to whatever happens in that establishment that they would create. Right now it sounds like you have somewhat, and Mr. Garcia are already taking the initiative to talk to the landlord regarding some of the concerns you discussed. Thank you to all of you, I appreciate hearing all of that.</p> <p>Chair Gibson asked if there were any questions from the Commission.</p>	

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	<p>Vice Chair Crowell asked if you need to go outside to the bathroom or is there an access through the interior. Mr. Garcia replied you would have to walk out through the dining room, the women's bathroom is on the side of the building. Unfortunately the men's bathroom is behind the building.</p> <p>Vice Chair Crowell, asked Mr. Garcia if his space is air conditioned or is the windows all open and the noise leaks out.</p> <p>Mr. Garcia replied, in the restrooms?</p> <p>Vice Chair Crowell responded, yes.</p> <p>Mr. Garcia replied that he does not recall. Each bathroom has a small window.</p> <p>Mr. Johnson replied, no there is a window. They are open and you can hear every word that the girls are saying when there in there together.</p> <p>Vice Chair Crowell thanked, Mr. Johnson.</p> <p>Vice Chair Crowell asked what kind of music is being played?</p> <p>Mr. Garcia responded, for the most part we play music off of an IPod, we are a coffee shop, it's never very loud. We don't play anything that is heavy guitar, heavy bass or loud Rap. It's a lot of acoustic it's mellow music. There's a few times since we have been open that we had a DJ, come but we do that in the mornings, because we are a coffee shop. We will do it on Saturday or Sunday morning, it's a lighter ambience music, maybe world music, reggae. The live music that we have done so far, the musician that we brought in has always been around brunch time on the weekends. That is why we want the live music and dancing part of the permit to continue that, not for the evenings, but to continue during Sunday Brunch music.</p>	

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	<p>Vice Chair Crowell asked what does your menu consist of, Breakfast, Lunch and Dinner? Mr. Garcia responded breakfast, lunch we don't serve dinner our kitchen closes at 3pm. We have a full bakery in Kapa'a, so we serve desserts in the afternoon till 7pm. We may add some lite pupu's, if we end up getting a liquor license, will see, and were not sure for now it is breakfast, lunch and pastries.</p> <p>Vice Chair Crowell thanked Mr. Garcia. If we were to limit this license to the stipulations or the representation that were made today, is that okay with you?</p> <p>Mr. Garcia replied yes, I would be fine with that especially on the time. I don't want to be limited to the type of food we serve. But for the time that we close, I would be 100% okay with that.</p> <p>Chair Gibson asked are there any questions or comments from the Commissioners.</p> <p>Commissioner Nishimura stated that he had couple questions for Mr. Garcia. Relative to the layout, its unfortunate the bathroom is directly facing the residential area, were the residents aware that this was a commercial property at the time that they bought?</p> <p>Mr. Johnson replied yes, we had no idea that the bathroom was going to be right there until the day that they opened.</p> <p>Commissioner Nishimura stated, I understand that part, it looks like the bathroom takes care of the unit at that end of the property. It's another issue that cannot be addressed. He asked Mr. Garcia, in terms of the operating hours, if you were limited to serving liquor prior to 5pm would that present a problem.</p> <p>Mr. Garcia asked stop serving liquor at 5pm every day?</p>	

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	<p>Commissioner Nishimura replied if were to impose that type of limitation on your application, would you be willing to accept that?</p> <p>Mr. Garcia responded I don't know, I feel that would be a hard limitation. On one inclination I would say that's fine, because of the way things are right now. For me it's hard to predict the future, that boxes us in if we ever wanted to stay open till 9pm. That's a tough one if you were to add those restrictions to those hours I would ask for Thursday, Friday, Saturday serve till 9pm. In case we wanted to do a special event it really locks us in.</p> <p>Commissioner Nishimura asked relatively to your live music up to this point, have you had any complaints.</p> <p>Mr. Garcia responded, no we haven't had any complaints. The building is very well insulated. So when you are behind the building you usually can't hear the music. I have yet to hear the music from behind the building, unless the doors are open and we usually don't have the doors open, that hasn't been an issue.</p> <p>Commissioner Nishimura asked the Johnsons if they concur with that.</p> <p>Mr. and Mrs. Johnson responded, no we haven't heard the music.</p> <p>Commissioner Nishimura thanked the Johnsons.</p> <p>Mrs. Johnson responded, I don't concur because I have heard the music and I do have a couple of things that I would like to touch on, to what Sean was talking about. I have heard several times him mentioning these special events, it is now a further concern of mine. Because Special Events, I get it if it's just once a month or once every six months. What is the</p>	

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	<p>special event thing he has envisioned in his mind as far as locked into the future was brought to my attention as well. I have had many years' experience as a bartender and very close friends own a lot of restaurants that have Liquor Licenses who started out with beer and wine license and ended up going to a full liquor license. Because they saw the amount of profit there was in selling beer and wine. Now my concern is this he is talking about locked into the future absolutely. Now my concerns is locked into the future, if we are not opposing him not getting this license to serve liquor and going off of his word and not their vibe, more of a glass of wine and mimosa with brunch type of café. Once they start seeing the amount of money they could make with selling liquor they could easily start selling more and more hard liquor and next thing you know we have a mess. We are the ones that are locked in because we did not oppose this license going thru, so we are not gonna have any say.</p> <p>Commissioner Akita asked are we still on the agenda.</p> <p>Chair Gibson replied, yes.</p> <p>Commissioner Akita asked are we still accepting public testimony and said this is not a debate.</p> <p>Chair Gibson replied we were getting questions from the Commissioners and Mr. Crowell question to the applicant was responded to and I think perhaps we are a little out of order accepting more testimonies from the complainants.</p> <p>Chair Gibson asked are there any more questions from the Commissioners.</p> <p>Commissioner Matsunaga responded of his concern about the complaints that are lodged are out the control of the proposed licensee. He would like to propose that the licensee together with the Johnsons and Carvalho's try to work out some type of resolution they can live with. Whatever they can stipulate to would be part of the conditions of the license being granted. He asked Mr. Garcia if he would be able to work out some type of resolution with the</p>	

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	<p>Johnson's and Carvalho's. Would it help if you have time?</p> <p>Mr. Garcia responded he would be absolutely fine, he does not mind figuring out some type of resolution.</p> <p>Commissioner Matsunaga stated if you come to a resolution that would be a part of the liquor license that you would live with.</p> <p>Mrs. Johnson responded I am opposing this liquor license all together, I'm sorry I understand, I know you are friends with John. I am opposing this a 100%. I don't want a liquor license near my home.</p> <p>Chair Gibson asked any other questions from the Commissioners. Hearing none, he asked Acting Director Cecilio Baliaris Jr. how many potential votes for or against.</p> <p>Acting Director Cecilio Baliaris Jr. stated Mr. Herman can answer that, it's his application.</p> <p>Investigator Herman stated according to HRS, the opposing side will need 51% on that mailing list to be able to override the license. You are welcome to make decisions on your own.</p> <p>Chair Gibson asked how many people in this pool?</p> <p>Investigator Herman replied there are 57 TMK (Tax Map Keys) within the 500 foot radius, 54 letters went out some of the properties are owned by the same person. We do have affidavits of letters that was sent to all of those residents.</p> <p>Chair Gibson stated to this point we have 3 negatives.</p> <p>Investigator Herman replied, correct. That would not be enough to overturn a license.</p>	

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	<p>Chair Gibson stated, the reason I asked the question Mrs. Johnson, for your information if we go ahead, I think the license will be granted. Therefore it might be to your advantage to take up Commissioner Matsunaga's recommendation to have conversation with the applicant to see if you can reach a compromise. Does that make sense?</p> <p>Mrs. Johnson stated I really don't understand what difference that would make at this point, considering there is 3 opposing. There is nobody as close as we are. So whoever is down the line, the fence they are not directly behind it as we are? I don't know, obviously he is going to get the license granted regardless our oppositions is not. I don't know what that would do at this point.</p> <p>Chair Gibson stated, at least we would be able to put conditions on the license, such as 9pm closing forever.</p> <p>Mrs. Johnson responded that would be something my husband would have to take care of.</p> <p>Mr. Johnson responded, I think we can get together to come up with some kind of terms along with Mr. Carvalho as he is affected by this whole thing.</p> <p>Mrs. Johnson stated to make a quick note, I've heard several of you speak of how this has have anything to do with the property and I get that. I'm in contact with the property developers as well. So let's just completely disregard all of that. Let's talk about what we need to do going forward.</p> <p>Chair Gibson thanked Mrs. Johnson.</p> <p>Ms. Tucker of Kai Bar asked is there any way we can make those arrangements now or come</p>	

SUBJECT	DISCUSSION	ACTION
	<p>to an agreement at this current moment. Given that we are all on the phone together.</p> <p>Mr. Johnson replied, he can meet Mr. Garcia whenever, we can meet at Kai Bar, or my house.</p> <p>Investigator Herman advised the Commission the Public cannot be talking over each other like that. In answer to Ms. Tucker the Commissioners can put stipulations on the license on there, if that's their decision with a motion. The Public needs to stop talking over each other.</p> <p>Commissioner Akita stated we are ready for the question or they are going to meet together, but I don't think we can go through all of this, we have already spent a great deal of time hearing and I can understand the opposition and suggestions take it or not take it. She has already refused it once. Some action needs to be taken by the Commission now.</p> <p>Chair Gibson asked are there any other comments from the Commissioners.</p> <p>Commissioner Nishimura asked are they willing to go offline and negotiate at this time or not. I know one is opposed.</p> <p>Chair Gibson replied we heard both, we should mandate they have discussion and put this item back on the agenda with further information. Does that make sense?</p> <p>Commissioner Akita replied I do not believe we can mandate them to meet informally it's an item on the agenda either they choose to meet or they do not want to meet. Then we need to make a decision.</p> <p>Mr. Johnson responded, I think we should meet, I'm all for meeting with Mr. Garcia. We haven't spent a whole lot of time, real work is real time. So I think we should meet.</p> <p>Commissioner Akita thanked Mr. Johnson.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Chair Gibson closed the Public Hearing for Application 2021-011. Chair Gibson stated the Application 2021-011 will be rescheduled for February 4, 2021.</p> <p>Commissioner Akita stated for the record, they will be meeting.</p> <p>Chair Gibson responded should that come under the jurisdiction of the department for a follow-up.</p> <p>Investigator Herman replied I don't know if we have jurisdiction or mandating that these people meet. We are deferring to give them the opportunity to work it out, it's up to them to work it out. It's just my opinion, Counsel are you able to give advice on this.</p> <p>Mr. Foster responded yes I agree with the Investigator Herman that would probably be the best way to cast it in a motion. In the motion we are continuing this to the February 4th meeting to provide time for the party if they wish or have requested or shown an interest in meeting and conferring to stipulate to some resolutions.</p> <p>Investigator Herman advised Mr. Garcia that he will be calling him after the meeting.</p> <p>Chair Gibson stated that's what I meant I didn't expect that we follow up with the complainant and the applicant. I think that the Department should follow up to provide us the information on February 4th, when we meet. Does this make sense?</p> <p>Investigator Herman replied, he understands. Thank you.</p> <p>Chair Gibson asked Mr. Foster, should we restate the scheduling of the February 4th meeting? To provide time for the opposition and the applicant to have discussion.</p>	<p>Mr. Nishimura moved to defer Application 2021-011 Viva Kai, LLC dba Kai Bar Coffee Roasters to the February 4, 2021 meeting. Mrs. Akita seconded the</p>

SUBJECT	DISCUSSION	ACTION
	<p>Mr. Foster replied that is your discretion, you can continue for any reason. I was addressing that we were ordering them to meet, which we are all in agreement, we can't do.</p>	<p>motion. Motion carried 7:0.</p>
<p>2.</p>	<p><u>VIOLATION HEARING:</u></p> <p><u>ET & WT, LLC dba KENJI BURGER</u>: Violation of Rule 3.1 Posting of License and availability of Rules and Regulations and Liquor Laws of the State of Hawaii.</p> <p><i>"Waiver of Right to Hearing on Alleged Violation" is included in the meeting packet.</i></p> <p>Acting Director Cecilio Baliaris Jr. stated to the Commission that the Licensee has waived it right to a Hearing and has paid the required fee.</p> <p>Chair Gibson replied, the required penalty.</p> <p>Acting Director Cecilio Baliaris Jr. responded, yes.</p> <p>Commissioner Pacheco requested to put on the next agenda the amount that the Licensee is charged in regards to waiving the right to a hearing. He thinks the amount they are assessed in regards to them actually coming in for a Hearing is a great amount of money that we are losing. He requested to put this on the next agenda to change the dollar amount on the waiver of rights hearing on the amount they need to pay.</p> <p>Commissioner Matsunaga replied you will have to amend the rules. The rule provides that you can post \$150.00 for forfeiture. If you want to change that, you will need to change the rules. Is that correct Mr. Herman.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Investigator Herman responded, yes.</p> <p>Mr. Foster replied, it is Rule 3.11 waiving the right to a Violation Hearing. First is a \$150.00 fine, so yes that would be a rule change.</p> <p>Commissioner Akita reminded the Commissioners that we adopted the new rules on June 4, 2020.</p> <p>Investigator Herman stated the amount before was \$50.00 and was raised to \$150.00.</p>	
<p>3.</p>	<p><u>DIRECTOR'S REPORTS:</u></p> <p>a) <u>INVESTIGATORS' REPORTS:</u></p> <p>b) <u>ACTIONS OF THE DIRECTOR:</u></p> <p>c) <u>INFORMATIONAL MATTERS: Hokuala Golf Club Management LLC, dba The Ocean Couse at Hokuala License No. 5G-009. On January 13, 2021 representative for Billy Casper Golf, LLC, parent company of license Hokuala Golf Management that they made a name change. Billy Casper Golf, LLC is now Antares Golf, LLC. There is no change in ownership, corporate officers, or stockholders and no stock has changed hands.</u></p>	<p><u>Motion #1</u> Mrs. Akita moved to accept the Director's Report a through c. Mr. Crowell seconded the motion. Motion carried 7:0.</p> <p><u>Motion# 2</u> Mr. Crowell called for a recess @ 11:15a.m. Mrs. Akita seconded the motion. Motion carried 7:0</p>
	<p><i>Open Session Meeting reconvened @ 11:19 a.m.</i></p>	

SUBJECT	DISCUSSION	ACTION
<p>4.</p>	<p><u>BUDGET PRIORTIES:</u></p> <p><u>MICHAEL A DAHILIG, MANAGING DIRECTOR:</u> Discussion on budget priorities.</p> <p>Mr. Dahilig, Managing Director, thanked the Commission for their service on this important Commission. There is a number of various items that come before you, from adjudication and policy, we certainly appreciate your willingness to serve the County in this highly paid capacity. With that being said, I do recognize what the Pandemic has created a number of challenges for the Liquor Department as well as the Liquor Commission concerning how things going into the FY 22 budget and how they are going to be handled. Rather than try to guess budget priorities of going into our budget setting and how we have leadership from the department and on the line as well. I asked Ms. Ching to see if we could meet for us and the Mayor’s Office, to understand some of the priorities, some of the competing interest that are arising as a result of the Liquor Budget being squeezed, for lack of people drinking as much at bars or restaurants. Due to the restrictions, I probably would say in the past I used to contribute quite a lot to the Liquor Budget, for my patronage in restaurants and bars. I certainly understands there is consequences if a budget is set by the Administration that in fact, it creates a cost in which is not captured by the actual revenue. There is a downstream effect in the amount of either money or fees that have to be assessed to all of the Liquor Permitees. I have that it is a concern of the Liquor Commission about. Especially in times when small businesses are at a Cross Roads to asking them to pay more rather than pay less could put a foul in their pocket and certainly appreciate the Liquor Commission foresight wanting to at least entertain the idea that we need to help our small businesses where we can and not over extend them through with additional cost to do business from a regulatory standpoint. I don’t have a set question to ask or wanting to hear the thoughts of the Commissioners and your staff to get a better</p>	

SUBJECT	DISCUSSION	ACTION
	<p>picture going into the budget season, where we should be trying to keep in mind we set the priorities for the overall FY 22 budget. Or we send the budget over to council on the 15th of March.</p> <p>Chair Gibson asked are there any comments or questions. Chair Gibson advised Mr. Dahilig they are not normally involved in the making of the budget. It is usually the Director that does this. We are really not that familiar with what goes into the budget and what we should be concerned with. Commissioners you have anything to add.</p> <p>Commissioner Akita asked is Acting Director Cecilio Baliaris Jr. still on?</p> <p>Acting Director Cecilio Baliaris Jr. replied, yes.</p> <p>Commissioner Akita stated isn't our understanding that our budget from our Department has already been submitted.</p> <p>Acting Director Cecilio Baliaris Jr. replied, yes it has. We are supposed to be discussing this at the Budget Hearing at end of the month.</p> <p>Commissioner Akita stated we have had our own discussion regarding this. Having it been shared with us.</p> <p>Acting Director Cecilio Baliaris Jr. replied, yes it has.</p> <p>Commissioner Akita asked was the budget before submittals shared with all the Commissioners.</p> <p>Acting Director Cecilio Baliaris Jr. replied, yes it has at an earlier meeting. He did</p>	

SUBJECT	DISCUSSION	ACTION
	<p>proposed some budget sums proposing to re-enter. Since then Mr. Sales and Acting Director Cecilio Baliaris Jr., have done the budget made the necessary arrangements and cuts. As he said earlier it will be discussed at the Budget Hearing Committee at the end of the month.</p> <p>Commissioner Akita stated it was never brought back to us, for a discussion on what finally transpired.</p> <p>Acting Director Cecilio Baliaris Jr. replied, there was no discussion as they just did it.</p> <p>Commissioner Akita replied that is all I need to know and thanked Acting Director Cecilio Baliaris Jr.</p> <p>Mr. Dahilig, clarified the broader picture there is a concern about small businesses that are bars and restaurants needing to pay more or having a larger cut of the revenue to pay for operations on this end. The trickled down effect is that the operations here are maintained at a certain rate or there increase or decrease it has a direct effect on the percentage that we then set by State Law as to how much of the revenue we need to shave to fund the operations. That is more of a high-level question that we understand and clarify or got some confirmation on. Once the budget has with Acting Director Baliaris Jr. and his team has sent over to us it gets integrated into the budget. That is what is used to calculate how much needs to be paid out per Licensee. So we just want to get an understanding where possibly the Commission is wanting to direct some degree of policy that relates to the burden that these establishments have to bare to fund their operations.</p> <p>Commissioner Akita stated she had difficulty, a number of establishments with their fee went up. Although these are pandemic times they were closed and not selling as much alcohol but the percentage fees were the same and had to pay a larger</p>	

SUBJECT	DISCUSSION	ACTION
	<p>amount. So there was a lot of concerns that was brought to our attention. Commissioners do you remember that is when we found out by law it's a set percentage that is charged to every establishment. We had no jurisdiction, because legislatively it has been established.</p> <p>Chair Gibson stated we had no control, the key factor was the surplus from the previous year. That surplus was naturally shrinking, so I don't know if we went any further than that. As far as the fees that we assessed to the Licensees.</p> <p>Commissioner Nishimura stated one of the things that he has been concerned about that Chair Gibson and Commissioner Akita mentioned all of the fees are generated by law rule and we do not have the ability to change that formula. However, part of that formula is how the department uses the funds, what funds are available and surplus and so forth. He would like to know if there is possibility of the General Funds being able to grant or loan the department funds in order to mitigate some of the impact of the Pandemic. Perhaps the department payback to the general funds. Any kind of relief provided at this point. The reason for that, if we continue down the road with the status quo we will have smaller and smaller surplus. As the fees go up we may have fewer and fewer key holders and to that extent the fees will become exorbitant for some of these operators to stay in business. Those are some of the concerns that he has. He would like to hear from Mr. Dahilig if it's conceivable that the Administration could take that under advisement.</p> <p>Investigator Herman suggested as we are getting into some different realms, as far as the day to day operations, suggested to discuss in Executive Session. Counsel could you advise.</p> <p>Mr. Foster stated it is not necessary to go into Executive Session, we are getting off</p>	

SUBJECT	DISCUSSION	ACTION
	<p>the Agenda. Should you want to dig into this, probably make an agenda item for a later date. The agenda item is a report from an Executive.</p> <p>Chair Gibson stated the agenda item is discussion on Budget priority.</p> <p>Mr. Foster apologized, we haven't ventured into Executive Session territory yet.</p> <p>Investigator Herman stated thank you for clarifying, he was bringing up concerns on the day to day operations.</p> <p>Commissioner Akita stated this is really funny, when she saw discussion on budget priority, she guessed everyone had their own interpretation of what you were gonna talk about. She thought you were gonna come up with, "Hey" this is where the administration has set the priorities. It would be an informational thing from you to the Commission. Maybe you can still do that, she doesn't know.</p> <p>Mr. Dahilig replied, I will try to articulate this way, I see what Commissioner Nishimura alluded to the potential of the number of Licensees to decrease. We see that revenues are decreasing and yet our operations either they are going to maintain to be the same or at increased levels. It is important at the Admin Level to understand from the Commission if there is a concern about once the budget is set for operations that it may mean each of the Licensees may have to bare a larger share of the cost. So that I don't think from a dollars and cents standpoint we are asking to the Commission to say here's the number we want. At the same time we are not asking you to confirm a number that we want. We are simply trying to ascertain that potential for an increased share per Licensee is a valid concern that we have, we need to be wary about. As far as the Commission sets and then going into budget deliberations. Commissioner Nishimura pointed out it is something we need to from a small business mind point try to backstop the deficit in revenue</p>	

SUBJECT	DISCUSSION	ACTION
	<p>from one of general funds from the County's General Treasury. As of right now every Licensee runs the operations for Liquor, yes that's the way it works. There may be just not enough money to do so. Keep in mind we have other enterprise funds to do so. For example, the golf fund, golfing is subsidized by the county tax payers by a million dollars a year. So it is not a money making enterprise. The difference with liquor is a correlation between activity and funding in operation and we need to be mindful, if we keep the operations the same it could create a consequence on the licensees who are hurting. That is where we want to understand if the Commission sees that as a concern or it is not a concern, something that needs to be addressed or if there are ideas on how we work the operations budget to effectuate that. I know that the current team that you folks have in there has given the administration proposals on how to handle these items. You are the broader overarching on statues running the program. We want to make sure the backend decisions don't run off where the Commission is thinking right now.</p> <p>Vice Chair Crowell mentioned there was a briefing from the Finance Department, Michelle Lizama for the formula. What happens the Licensees especially the bars and restaurant operations their fees more than doubled, when their revenue went way down. So that was a concern, whereas on the flipside the retail stores are doing good business. We are trying to look at ways to give small business reliefs, maybe there's the COVID relief money be used to supplement or assist the budget shortfall that we may be experiencing or something like that. There is a concern that the bars and restaurants are really eating it. We don't want to see them disappear some have already disappeared.</p> <p>Mr. Dahilig replied to Vice Chair Crowell, here is the low down for everyone's edification on where we are with CARES money. Whatever CARES money that we have left is not to used to backfill lost revenue for normal operations. There is a</p>	

SUBJECT	DISCUSSION	ACTION
	<p>restriction from the Federal Government with respect to the 27.8 million dollars that the County received last summer. However, we are keeping our eye on the moneys that are being talked about from President Biden with respect to 1.9 trillion dollar package that has approximately 350 billion dollars earmarked for State and Local assistance.</p> <p>In the past this has been an item which has been a large debate between the democrats and republicans in the House and Senate. Given the way the political alignment sits with the Congress and the President at this point. There is a likelihood we could see State and Local assistance that is included in that stimulus measure. What we do recognize that this money that it is earmarked by the Biden Administration would allow for the ability to make up for lost revenue. So that's a key thing when you ask that can be used to backstop as the downturn with revenues in the Liquor Fund. So there is a possibility, but until we end up with some type of Legislative authorization from the Congress it is only speculative at this point. So in reality the only measure that we would have, would be to look at some type of general fund subsidy from the County level, should that be kind of the desire to not have these fees spike on bars and restaurants.</p> <p>Vice Chair Crowell stated, it's really sad to see all of these businesses suffer.</p> <p>Chair Gibson thanked Mr. Dahilig and asked are there any other recommendations, hearing none.</p> <p>Mr. Dahilig thanked Chair Gibson and stated that he will be in contact with the Liquor Team as we go through the budget process and we have our hearing next week. We will be able to get into deeper dialogue, just wanted to give the opportunity to speak in front of you folks and get some input and big picture of what we need to look at as we allocate resources for the operations.</p>	

SUBJECT	DISCUSSION	ACTION
	<i>Commissioner Matsunaga left the meeting @ 11:30 a.m.</i>	
5.	<p><u>DISCUSSION AND UPDATE ON THE HIRING OF THE DIRECTOR OR LIQUOR CONTROL</u></p> <p>Ms. Ching Boards and Commission Administrator advised Chair Gibson this is a duplicate item from the Executive Session. The PIG (Permitted Interaction Group) met yesterday and an abundance of concern to whether would be able to produce a report or not as the PIG (Permitted Interaction Group) just met yesterday. You have a very hard working diligent group, they did meet and have a report.</p>	
	Commissioner Nishimura requested to invite Ms. Ching, Boards and Commissions Administrator to the Executive Session.	
6. 7.	<p><u>EXECUTIVE SESSION:</u> Pursuant to Haw. Rev. Stat. ("H.R.S.") §92-4 and §92-5 (a) and (2) and (4), the purpose of this Executive Session is for the Commission to discuss the hiring of a new Director of Liquor Control and other related items, and to consult with its attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities as they may relate to this agenda item.</p> <p><u>PRESENTATION OF THE RECOMMENDATIONS OF THE PERMITTED INTERACTION GROUP (PIG) ON THE REVIEWING AND SCORING OF THE ESSAYS FOR THE DIRECTOR OF LIQUOR CONTROL</u></p> <p><u>DISCUSSION AND UPDATE ON THE HIRING OF THE DIRECTOR OR LIQUOR CONTROL</u></p>	<p>Mrs. Akita moved to enter into Executive Session. Mr. Pacheco seconded. Motion carried 6:0.</p> <p>Meeting resumed in Executive Session at 11:43 a.m.</p>

SUBJECT	DISCUSSION	ACTION
	<p><u>RETURN TO OPEN SESSION</u></p> <p><u>EXECUTIVE SESSION</u>: Pursuant to Haw. Rev. Stat. ("H.R.S.") §92-7(a), the Commission may, when deemed necessary, hold an executive session on any agenda item without written public notice if the executive session was not anticipated in advance. Any such executive session shall be held pursuant to H.R.S. §92-4 and shall be limited to those items described in H.R.S. §92-5(a).</p>	<p>Returned to Open Session @ 12:07 p.m.</p>
	<p><u>RATIFY THE ACTIONS TAKEN IN EXECUTIVE SESSION</u></p>	<p>Mr. Nishimura moved to ratify the actions taken in Executive Session. Mr. Pacheco seconded the motion. Motion carried 6:0</p>
<p>Adjournment</p>	<p>With no further business to conduct, Chair Gibson called for a motion and a second to adjourn the meeting.</p>	<p>Mr. Pacheco moved to adjourn the Meeting. Mrs. Akita seconded the motion. Motion Carried 6:0</p> <p>At 12:09 p.m. the meeting was adjourned.</p>

Submitted by: _____

Reviewed and Approved by: _____

Malialani TM Kelekoma, Liquor Clerical Assistant

William Gibson, Chair

- () Approved as circulated.
- () Approved with amendments. See minutes of _____ meeting.