

KAUA‘I PLANNING COMMISSION
REGULAR MEETING
September 11, 2018

The regular meeting of the Planning Commission of the County of Kaua‘i was called to order by Chair Apisa at 9:03 a.m., at the Lihu‘e Civic Center, Mo‘ikeha Building, in meeting room 2A-2B. The following Commissioners were present:

Chair Donna Apisa
Vice Chair Glenda Nogami Streufert
Mr. Roy Ho
Mr. Kimo Keawe
Mr. Sean Mahoney

Absent and Excused:
Ms. Kanoë Ahuna

The following staff members were present: Planning Department – Director Michael Dahilig, 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 11:04 a.m.*), Commission Support Clerk Darcie Agaran

CALL TO ORDER

Chair Apisa called the meeting to order at 9:03 a.m.

ROLL CALL

Planning Director Michael Dahilig: Commissioner Keawe.

Mr. Keawe: Here.

Mr. Dahilig: Commissioner Ahuna. Commissioner Ho.

Mr. Ho: Here.

Mr. Dahilig: Vice Chair Streufert.

Ms. Nogami Streufert: Here.

Mr. Dahilig: Commissioner Mahoney.

Mr. Mahoney: Here.

Mr. Dahilig: Chair Apisa.

Chair Apisa: Here.

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

APPROVAL OF AGENDA

Mr. Dahilig: We move on to Item C, which is the Approval of the Agenda. The Department would recommend – before Item H – moving Item K and Item I.1. before going into Executive Session, and moving Item I.10., relating to status on Coco Palms, to the end of the agenda this morning; that would be our recommendation.

Chair Apisa: Do we have a motion to modify the agenda?

Mr. Mahoney: Chair, move to approve modified agenda.

Mr. Keawe: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 5:0.

Mr. Dahilig: Thank you, Madame Chair.

MINUTES of the meeting(s) of the Planning Commission

Meeting of July 24, 2018

Mr. Dahilig: We are on Item D.1. These are the meeting minutes of July 24, 2018, for your approval.

Chair Apisa: Motion to approve?

Mr. Mahoney: Chair, move to approve the minutes of July 24, 2018.

Ms. Nogami Streufert: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 5:0.

Mr. Dahilig: Thank you, Madame Chair.

RECEIPT OF ITEMS FOR THE RECORD

Mr. Dahilig: We are on Item E. This is Receipt of Items for the Record. We have none for this morning for transmittal.

HEARINGS AND PUBLIC COMMENT

Continued Agency Hearing

Mr. Dahilig: This is Item F.1., Continued Agency Hearing. We have none this morning.

New Agency Hearing

Special Permit SP-2019-1 to deviate from the minimum lot size requirement, as prescribed by Hawai'i Revised Statutes (HRS) Section 205-2(4)(c), involving a 2-lot subdivision within the Residential (R-2) zoning district on a parcel situated on the makai side of Kamalu Road in Wailua Homesteads, approx. 200 ft. south of the Crossley Road/Lokelani Road intersection and further identified as 1270 Crossley Road, Tax Map Key: (4) 4-4-005:036, and containing a total area of 40,000 sq. ft. = John K. Morioka Trust.

Mr. Dahilig: Item F.2., relating to new agency hearings – this is a Special Permit SP-2019-1 to deviate from the minimum lot size requirement as prescribed by Hawai'i Revised Statutes Sections 205-2(4)(c), involving a 2-lot subdivision within the Residential zoning district on a parcel situated along the makai side of Kamalu Road in Wailua Homesteads, approximately 200 feet south of the Crossley Road/Lokelani Road intersection and further identified as 1270 Crossley Road, Tax Map Key: (4) 4-4-005 Parcel 036, and containing a total area of 40,000 square feet. The applicant is John K. Morioka Trust.

Madame Chair, the Department would recommend opening the agency hearing at this time.

Chair Apisa: We will open the agency hearing.

Mr. Dahilig: Madame Chair, the Department does not have anybody signed up to testify at 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 – is there anyone here who would like to testify on this Special Permit SP-2019-1? Not hearing any.

Mr. Dahilig: Thank you, Madame Chair. The Department would recommend closing the agency hearing.

Chair Apisa: Close the agency hearing.

Mr. Mahoney: Chair, move to close the agency hearing.

Mr. Keawe: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 5:0.

Mr. Dahilig: Thank you, Madame Chair.

Continued Public Hearing

Mr. Dahilig: We are on Item F.3. This is the Continued Public Hearing. We have none posted for this morning.

New Public Hearing

Mr. Dahilig: Item F.4. – this is New Public Hearings. We have none posted for this morning.

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

Mr. Dahilig: And Item F.5. – this is all remaining testimony pursuant to Hawai‘i Revised Statutes Chapter 92, the Sunshine Law. The Department does not have anybody signed up to testify on any other agenda item this morning, and the Department would recommend making a final call for any testifiers pursuant to the State law.

Chair Apisa: Any testifiers here would like to speak? Not hearing any.

Mr. Dahilig: Thank you, Madame Chair.

CONSENT CALENDAR

Status Reports

Transmittal (7/24/18) from Kanani Fu, Director, Kaua‘i County Housing Agency, transmitting the 2018 Annual Report for the State Land Use Commission Docket No. A17-802/County of Kaua‘i Housing Agency Lima Ola 201H.

Annual Status Report 2018 for Special Management Area Use Permit SMA(U)-2005-08, Project Development Use P.D. U-2005-26, Use Permit U-2005-25, and Class IV Zoning Permit Z-IV-2005-30, Tax Map Key: (4) 3-5-001:027 (Por.), 168, 169, 171 (Por.), 172 (Por.), 175, and 176 = *Kaua‘i Lagoons LLC & MORI Golf (Kaua‘i) LLC.*

Director’s Report(s) for Project(s) Scheduled for Agency Hearing on 9/25/18.

Special Management Area Use Permit SMA(U)-2019-1 and Class IV Zoning Permit Z-IV-2019-1 for the construction of twenty-two (22) mounded LPG storage tanks and associated improvements (underground transmission pipelines) on parcels located in the Nāwiliwili Harbor area in the vicinity of Pier 2, further identified as Tax Map Keys: (4)

3-2-004:016 (Por.), 021-023, 053; 3-2-003:001-004, 007, and affecting a total area of approx. 2 acres = *The Gas Company, LLC.*

Class IV Zoning Permit Z-IV-2019-2, Use Permit U-2019-1, and Special Permit SP-2019-2 to demolish and replace the existing water tank with a new 1.0 MG tank on a parcel situated on the mauka side of Kūhiō Highway in Waiakalua, approx. 500 ft. southeast of the terminus of Wailapa Road, further identified as Tax Map Key: (4) 5-1-005:131, and containing a total area of 22,868 sq. ft. = *County of Kauaʻi, Department of Water.*

Class IV Zoning Permit Z-IV-2019-3 and Variance Permit V-2019-1 to deviate from the lot length requirements within the Residential (R-2) zoning district, pursuant to Sections 8-4.4(a)(3)(A) & 8-4.4(a)(3)(B) of the Kauaʻi County Code (1987), as amended, involving an 8-lot subdivision of a parcel situated on the eastern side of Kamalu Road in Wailua Homesteads, approx. 350 ft. south of the Kamalu Road/Opaekaa Road intersection, further identified as 370 A Kamalu Road, Tax Map Key: (4) 4-2-003:023, and containing a total area of 4.068 acres = *Alexander and Vivian Youn Family Trust.*

Mr. Dahilig: We are now on Item G. This is the Consent Calendar. We do have two Status Reports this morning, as well as three Director's Reports setting for agency hearing on September 25, 2018.

Madame Chair, if there is no commissioner that wishes to dive into any of these items further, the Department would recommend moving on to the next agenda item.

Chair Apisa: Any...no questions, comments? Okay.

Mr. Keawe: Do we need to accept the report at this point?

Mr. Dahilig: As a formality, you can.

Ms. Nogami Streufert: Before we do that, could I ask a question?

Mr. Dahilig: Sure.

Ms. Nogami Streufert: On the Kauaʻi Lagoons.

Mr. Dahilig: Okay.

Ms. Nogami Streufert: One of the conditions was to have an emergency shelter or an evacuation shelter and it said that they were going to comply with it, but it did not specify a date or time or where it was going to be. As we keep getting more and more storms, it becomes even more important, especially where it is located and the proximity to surges, as well as to wind and rain.

Mr. Dahilig: Okay. Madame Chair, if I could, maybe, just suggest, since the status report is what it is, what we could probably do is provide Vice Chair Streufert a follow-up directly to the applicant to determine whether–

Ms. Nogami Streufert: That would be great.

Mr. Dahilig: –we can provide more detail as to that condition.

Chair Apisa: Sounds good. Okay, I guess, then, no further comment, we will move on.

Mr. Dahilig: We are now on Item...this is Item K.

Chair Apisa: G.2.?

Mr. Dahilig: Sorry, G...G.1. and 2. is...

Chair Apisa: Oh, okay. I'm sorry.

COMMITTEE REPORTS

Subdivision

Mr. Dahilig: No problem. Item G.1. and 2. have...we have been moving on to Item K. This is the Subdivision Committee Report.

Mr. Keawe: You have all received copies of the Subdivision Report. I move to approve the Subdivision Report.

Ms. Nogami Streufert: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 5:0.

Mr. Dahilig: Thank you, Madame Chair.

GENERAL BUSINESS MATTERS

Request (7/2/18) to amend Condition No. 21 of Project Development Use Permit PDU-2008-11, Class IV Zoning Permit Z-IV-2008-12 and Use Permit U-2008-10, Tax Map Key (4) 2-8-008:001, to allow additional time complete construction of the project in Kōloa Town, Kōloa, Kaua'i = Kōloa Village, LLC (formerly Kōloa Town, LLC.)

Mr. Dahilig: We are now on Item I.1. This is a request dated July 2, 2018, to amend Condition No. 21 of Project Development Use Permit PDU-2008-11, Class IV Zoning Permit Z-IV-2008-12, and Use Permit U-2008-10, Tax Map Key: (4) 2-8-008 Parcel 001, to allow additional time

to complete the construction of the project in Kōloa Town located in Kōloa, Kauaʻi. The Kōloa Village, LLC – formerly Kōloa Town, LLC – is the applicant. Dale will be providing the report on behalf of the Director.

Chair Apisa: Thank you.

Staff Planner Dale Cua: Good morning, Madame Chair and members of the Commission. Before I move on to the Director’s Report, just wanted to inform you that I did pass out to you a supplement sheet and this is to accompany the information you received regarding the Kōloa Village project that you have before you.

Mr. Cua read the Summary, Project Description and Use, and Applicant’s Reasons/Justification sections of the Director’s Report for the record (on file with the Planning Department).

Mr. Cua: That concludes the background and findings of the report.

Chair Apisa: Thank you. (Is) the applicant present?

Ms. Lorna Nishimitsu: Good morning, Commissioners. Lorna Nishimitsu for Kōloa Village, LLC. I know it sounds bad that this project was initially permitted in 2008, but I would like to reiterate that my client is the third owner. The first owner who got the permits went into foreclosure. The property was purchased by the lender, which got the first extension. The property was then sold to my client in 2014 and from that point on, they have been jumping through a number of hoops to try and get the 27 conditions, that were imposed to allow the development, satisfied. My client’s representatives have been meeting with its local consultants and contractors and the governmental agencies to try and get the numerous pieces of this puzzle to meld.

The summary of the conditions – I tried to put out in a spreadsheet for you to show you what steps have been taken. The physical part – the construction phase – has already commenced and is expected to be finalized in about August 2019 for the commercial portion and February 2020 for the residential part. At this point, the applicant has already bonded more than \$1.4 million for the public improvements, which are, like, the roadways, the County roadways, sidewalks, etc. that follow this project, and has put in more than \$2 million towards the site work.

There has been continued progress by this applicant; perhaps, from this commission’s perspective, not as quickly as everybody would like to see, but a project of this size does take more time than expected. And I always like to bring out, as an example, the Kumamoto Earthquake in 2016 that created this sinkhole at a four-way intersection of six lanes, which, in Japan, was reestablished within a week, amazingly. Things in Hawaiʻi – because of the regulations, etc. – they seem to just take much longer. There has been no abandonment of the forward progress. There have been hitches, but there has been continued progress. A total of \$7 million in site development and construction is going to have to be expended to get most of the construction completed, but the lion’s share of the...well, a large part of the money has already

been sunk into the project. In about two months, the building pads are supposed to be completed.

Based on all of this, we are asking that this commission find it within itself to allow them to continue forward with bringing this project to fruition.

Chair Apisa: Thank you. Any questions from the Commissioners?

Mr. Mahoney: Chair, okay, so the August 2019 date and the residential completion by February 2020 – do you think that can be accomplished?

Ms. Nishimitsu: Well, based on the discussions with the contractors, barring any downtime that's out of their control, that's what they're targeting for completion. Nothing would please them more than to have the grand opening of both segments.

Mr. Mahoney: Sure it would please them, but if...they are making progress, fulfilling their obligations and there is forward progress, and not real iffy stuff; there's a more concrete plan of getting it accomplished. I know it's been different owners and so forth, but a plan to...you know, that's history now. The new owners – they have a job to do in asking for the extension and putting their full effort into getting it completed.

Ms. Nishimitsu: Since the acquisition and the finalization of the construction drawings, once it is submitted, it is still back and forth between the agencies and the developer's consultants, and that's what creates the fits and starts of any project, especially of this size.

Mr. Mahoney: I understand.

Ms. Nishimitsu: For example, there was a lot of back and forth about the County wanting more planting to be put in in addition to the preservation of the two crepe myrtle trees, which are not protected trees by the way; they are just old trees. So that went back and forth for quite a while. Like I said, the little fits and starts are what create problems for the developer because the representative flies back and forth trying to have face-to-face meetings with the agencies to get them resolved.

Mr. Mahoney: Well, that's part of the process to get it resolved; it takes commitment. I understand fits and starts, but just try to get a plan to meet the obligations; that's all. Okay, thank you.

Chair Apisa: Go ahead.

Ms. Nogami Streufert: I guess if I am to paraphrase, is two years realistic?

Ms. Nishimitsu: I believe we had asked for more, but the Planning Department – and rightfully so – wants to keep that fire lit so that there is always the threat that this is the absolute deadline. Although I think, for reasonable cause, the Commission is probably going to have more flexibility, but the Department – being the vanguard for the Commission – wants to do its role in

protecting the Commission from having to be the ones to crack the whip; the Department will be the whip cracker in this situation.

Ms. Nogami Streufert: So you really don't realistically think this is going to be done in 2020.

Ms. Nishimitsu: Well, my client is hopeful that there won't be any more glitches.

Ms. Nogami Streufert: Okay.

Mr. Ho: Madame Chair?

Chair Apisa: Yes.

Mr. Ho: I know this might be breaking procedure, so I will have to ask Mr. Dahilig. There is a letter here that conflicts with her request for extension and it is from the State of Hawai'i, Safe Drinking Water (Branch).

Mr. Dahilig: Yes.

Mr. Ho: Could I show it to Lorna for her comment?

Mr. Dahilig: This is regarding the injection wells?

Mr. Ho: Yes.

Mr. Dahilig: These are...I guess—

Chair Apisa: What is the date in there?

Ms. Nogami Streufert: 2019.

Mr. Dahilig: 2019. The injection wells are the infrastructure that's going to go in first before the vertical construction, so I'm sure the applicant can answer whatever questions you have concerning, I guess— I know that they tend to, in their own permitting scheme, give a deadline when those wells need to be constructed, but that typically doesn't necessarily bear on some of the other vertical items that we are looking at from a construction standpoint. So the grading, infrastructure laying, and those types of things – they have their own extra agency deadlines beyond what happens here at our department, so they may not necessarily jive. But I am sure she can reconcile some of the dates with...

Ms. Nishimitsu: Well, thank you, but that's the first I've seen of that letter because I don't get pulled in to deal with every communication that gets funneled to the developer. But I would agree with the Director that the groundwork items have to be taken care of before you can start building the commercial spaces, the residential spaces because it just makes sense to get the earth movement equipment out of there before the other contractors come in for the building part. And although they are not really running on parallel tracks, I think the developer and his

contractors have to try and keep moving things along in somewhat parallel tracks to get the timing quite right. If an extension becomes necessary from the Safe Water Drinking Branch, then that is going to have to be dealt with while this Planning Department permitting, Planning Commission permitting still is in place, which is why I kind of referenced, like, there are so many moving parts to a project of this size. And I know there are projects that are a heck of a lot bigger, but it's...I could never be a project manager I guess is what I am saying.

Chair Apisa: Okay. Any other questions?

Mr. Keawe: I just had...so Lorna, if I understand correctly, your client purchased the property in 2014.

Ms. Nishimitsu: Yes.

Mr. Keawe: Yes, so with this two-year extension, you are looking at six years, and possibly longer, to complete it.

Ms. Nishimitsu: Yes.

Mr. Keawe: Is that what...?

Ms. Nishimitsu: Yes.

Mr. Keawe: Okay. My concern, and same with Commissioner Streufert, is...you know, we all know how construction projects go, and that would be a concern, you know, coming back again for another extension. Usually, from what we've seen in the past, it is usually best intentions, we are going to do this, and all that kind of stuff, but you know...I mean, the percentages are greater for people to come back. And then I understand the Director's concern; obviously he wants to make sure that the client is complying with all the conditions and moving the schedule along per what the extension is. So I think it's just an overall concern.

Ms. Nishimitsu: Although, realistically, I don't think my client would turn down a longer extension if the Commission saw fit to give it to them to be more realistic. But like I said, we do understand the Department's concern of always wanting to keep the fires lit under developers.

Chair Apisa: Any other questions?

Ms. Nogami Streufert: I move to amend Condition No. 21 of the Project Development Use Permit PDU-2008-11, Class IV Zoning Permit Z-IV-2008-12, and Use Permit U-2008-10, Tax Map Key: (4) 2-8-008:001 to allow additional time – to June 10, 2020 – to complete construction of the project in Kōloa Town, Kōloa, and...no, I'll stop at that.

Chair Apisa: Do we have a second?

Mr. Ho: Second.

Chair Apisa: Ready for the vote? All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 5:0.

Ms. Nishimitsu: Thank you very much.

Mr. Dahilig: Thank you, Madame Chair.

EXECUTIVE SESSION

Pursuant to Hawai'i Revised Statutes 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-2017-6 = Anininina LLC., CC-2017-10 = Boomerang, Ltd., CC-2018-1 = Elizabeth Kendrick and Joe Chaulklin, CC-2017-5 = PMD Hanalei, LLC., CC-2017-7 = Kauains LLC nka JJGrat LLC., CC-2017-8 = Kauains LLC (Hanalei Nalu), CC-2017-9 = Kauains LLC (Paniolo Cottage), CC-2016-12 = Carole Theiss.

Mr. Dahilig: We are now on Item H, relating to Executive Session. I will turn this over to the Deputy County Attorney for (inaudible).

Deputy County Attorney Jodi Higuchi Sayegusa: Okay. Chair, we are on H.1. Pursuant to Hawai'i Revised Statutes 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-2017-6 = Anininina, LLC; CC-2017-10 = Boomerang, Ltd.; CC-2018-1 = Elizabeth Kendrick and Joe Chaulkin; CC-2017-5 = PMD Hanalei, LLC; CC-2017-7 = Kauains, LLC nka JJGrat, LLC; CC-2017-8 = Kauains, LLC (Hanalei Nalu); CC-2017-9 = Kauains, LLC (Paniolo Cottage), and CC-2016-12 = Carole Theiss.

Chair, I believe we need to have a motion (and) second to enter, and then we will do a roll call (vote).

Mr. Keawe: I move to go into Executive Session.

Mr. Mahoney: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 5:0. We will go into Executive Session.

The Commission recessed this portion of the meeting at 9:28 a.m.

The Commission reconvened this portion of the meeting at 10:18 a.m.

Chair Apisa: Reconvene the Planning Commission meeting.

GENERAL BUSINESS MATTERS (Continued)

In the Matter of Petition to Appeal Decision of Planning Director Relating to the Forfeiture of TVNCU #1202 (Hiolani at Hā'ena, now known as "Hiolani" TVR) for Failure to Timely Renew for Property Situated in Hā'ena, Kaua'i, Hawai'i, identified by TMK No. (4) 5-5-008:040, and containing 25,500 square feet = Anininina LLC (CC-2017-6).

In the Matter of Petition to Appeal Decision of Planning Director Relating to the Forfeiture of TVNCU #5035 (Mango Cottage) for Failure to Timely Renew for Property Situated in Kōloa, Kaua'i, Hawai'i, identified by Kaua'i TMK No. (4) 2-6-007:034, and containing 7,993 square feet = Boomerang, Ltd. (CC-2017-10).

In the Matter of Petition to Appeal Decision of Planning Director Relating to the Forfeiture of Non-Conforming Use Certificate TVNCU #4308 (Ginger Beach House) for Failure to Timely Renew and Denial of 2017 Transient Vacation Rental Renewal Application Form at 4176 Anahola Road (aka 4176 Pilikai Road) for Property Situated in Anahola, Kaua'i, Hawai'i, identified by Kaua'i TMK No. (4) 4-8-007:0002, and containing 10,590 square feet = Elizabeth Kendrick and Joe Chaulklin (CC-2018-1).

In the Matter of Petition to Appeal Decision of Planning Director Relating to the Forfeiture of TVNCU #1166 (Weke Road Estate, now known as Hanalei House) for Failure to Timely Renew for Property Situated in Hanalei, Kaua'i, Hawai'i, identified by Kaua'i TMK No. (4) 5-5-002:012, and containing 2.0087 acres = PMD Hanalei, LLC (CC-2017-5).

In the Matter of Petition to Appeal Decision of Planning Director Relating to the Forfeiture of TVNCU #5089 (Hanalei Ilikea, now known as Kahakai Beach Cottage) for Failure to Timely Renew for Property Situated in Hanalei, Kaua'i, Hawai'i, identified by Kaua'i TMK No. (4) 5-5-001:022, and containing 24,195 square feet = Kauains LLC nka JJGrat LLC (CC-2017-7).

In the Matter of Petition to Appeal Decision of Planning Director Relating to the Forfeiture of TVNCU #5090 (Hanalei Nalu, now known as "Nalu Cottage" TVR) for Failure to Timely Renew for Property Situated in Hanalei, Kaua'i, Hawai'i, identified by Kaua'i TMK No. (4) 5-5-001:023, and containing 25,005 square feet = Kauains LLC (Hanalei Nalu) (CC-2017-8).

In the Matter of Petition to Appeal Decision of Planning Director Relating to the Forfeiture of TVNCU #5091 (Hanalei Bay Hale, now known as "Paniolo Cottage" TVR) for Failure to Timely Renew for Property Situated in Hanalei, Kaua'i, Hawai'i, identified by Kaua'i TMK No. (4) 5-5-001:024, and containing 25,816 square feet = Kauains LLC (Paniolo Cottage) (CC-2017-9).

Chair Apisa: So at this time I would like to take up the following Contested Case matters: Items I.2., CC-2017-6, Anininina LLC; I.3., CC-2017-10, Boomerang, Ltd.; I.4., CC-2018-1, Elizabeth

Kendrick and Joe Chaulklin; I.5., CC-2017-5, PMD Hanalei, LLC; I.6., CC-2017-7, Kauains LLC nka JJGrat LLC; I.7., CC-2017-8, Kauains LLC, Hanalei Nalu; and I.8., CC-2017-9, Kauains LLC, Paniolo Cottage.

For each of these Contested Cases, the Planning Commission received the following: the Hearing Officer's report and recommendation, the Petitioner's exceptions to the Hearing Officer's report and recommendation, the Petitioner's written request for oral arguments, and the Planning Department's support of the Hearing Officer's report and recommendation.

Ms. Higuchi Sayegusa: Perhaps, Chair, would you like the parties to come up?

Chair Apisa: Yes, that would be good. Thank you. If you would each introduce yourself for the record, please.

Mr. Gregory Kugle: Sure. Good morning, Chair and Commission members. Greg Kugle, and I represent each of the petitioners in the Contested Cases which were just read by the Chair.

Deputy County Attorney Mark Bradbury: Deputy County Attorney Mark Bradbury on behalf of the Planning Department.

Chair Apisa: Thank you. In its exceptions, the Petitioner raised due process issues due to additional reasoning articulated in the Hearing Officer's report and recommendations, and the Petitioner was unable to respond through briefs. These additional reasons partly based the Hearing Officer's recommendation to affirm the denial of the renewal application.

To allow the Petitioner and Department to have an additional opportunity to put forward arguments they find dispositive and address issues raised by the Hearing Officer, I would like each of the parties to submit its proposed Findings of Fact, Conclusions of Law, Decision and Order for the Planning Commission's consideration. To allow sufficient time for the Commission to review these documents and for the documents to be available along with the Commission's agenda and packet, the proposed Findings of Fact, Conclusions of Law, Decision and Order must be submitted 14 days prior to the commission meeting. Therefore, please file these documents by October 29th for the November 13, 2018, commission meeting; these are suggested dates. Is this sufficient time for the Petitioner? That would be filing by October 29th for a November 13th meeting.

Mr. Kugle: Chair, (I'm) just looking at my calendar very quickly.

Chair Apisa: Yes, please.

Mr. Kugle: Yes, that would be sufficient time for Petitioners.

Chair Apisa: Is it sufficient time for the Planning Department?

Mr. Bradbury: Yes, it is, ma'am.

Chair Apisa: All right, thank you. In addition, pursuant to Section 1-6-19(d) of the Planning Commission's Rules of Practice and Procedure, the Petitioner has lodged a written request for oral argument. The Commission must decide whether to grant or deny this request. Commission, may I have a motion either to grant or deny the Petitioner's request for oral argument?

Mr. Mahoney: Chair, move to grant.

Chair Apisa: Do we have a second?

Mr. Keawe: Second.

Chair Apisa: It has been moved and seconded to grant or deny the Petitioner's request for oral arguments. All in favor?

Ms. Higuchi Sayegusa: I'm sorry. Just to clarify, the motion was to approve.

Chair Apisa: To approve. I'm sorry.

Ms. Higuchi Sayegusa: To approve and grant the oral argument.

Chair Apisa: Yes, I'm sorry.

Ms. Nogami Streufert: Do we need a date on that?

Mr. Ho: Do we need a date for those oral arguments, Madame Chair?

Ms. Higuchi Sayegusa: Perhaps let's decide whether...let's go through with the vote on whether to approve it and then we can move forward with the logistics.

Chair Apisa: So we have a motion on the floor to grant the Petitioner's request for oral argument; we have a motion and a second. Is there any discussion? All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 5:0.

The request for oral argument was approved. Since the Commission will also consider each parties' proposed Findings of Fact, Conclusions of Law, and Decision and Order at its November 13th meeting, oral argument will also occur at the November 13, 2018, meeting. Each party will have a maximum of 10 minutes per case. Is that sufficient?

Mr. Kugle: Chair, I think it is. Probably what I would intend to do is – the issues are virtually identical in the 7 cases that I have, so I think...I wouldn't want to repeat myself 7 times and perhaps with leave of the Chair, maybe to be addressed at that meeting, I might request a little additional time to cover all 7 cases, but it wouldn't take me 70 minutes.

Chair Apisa: Okay, thank you; that makes sense. So it has been approved, so we will be expecting the documents by October 29th and on the November 13th agenda.

Unidentified Speaker: Thank you.

Chair Apisa: Thank you.

Mr. Kugle: Thank you, Commissioners.

Notice of Appeal and Demand for Contested Case Hearing from Denial of Nonconforming Use Certificate Renewal Applications, by Gregory W. Kugle and Joanna C. Zeigler, Attorneys for Kauaians LLC at:

- 5032 Weke Road, Hanalei HI 96714 (TVNC #5090) = Kauains LLC (Hanalei Nalu) (CC-2017-8)
- 5042 Weke Road, Hanalei, HI 96714 (TVNC #5091) = Kauains LLC (Paniolo Cottage) (CC-2017-9)
- 5020 Weke Road, Hanalei, HI 96714 (TVNC# 5089) = Kauains LLC nka JJGrat LLC (CC-2017-7)

Ms. Higuchi Sayegusa: Chair, since you folks are there, we can continue on with Item I.9., Notice of Appeal and Demand for Contested Case Hearing from Denial of Nonconforming Use Certificate Renewal Applications by Gregory Kugle and Joanna Zeigler, Attorneys for Kauains LLC. These are for properties: 5032 Weke Road, Hanalei, HI 96714, TVNC #5090 – Kauains LLC, Hanalei Nalu, CC-2017-8; 5042 Weke Road, Hanalei, HI 96714, TVNC #5091 – Kauains LLC, Paniolo Cottage, CC-2017-9; 5020 Weke Road, Hanalei, HI 96714, TVNC# 5089 – Kauains LLC nka JJGrat LLC, CC-2017-7. The Commission is also in receipt of the Clerk of the Commission's recommendation to refer, dated August 9, 2018, the appeals of the Planning Department's decision related to the denial of the 2018 Non-Conforming Use Certificate renewal packets for the below referenced TVNCUs, who received an amended Cease & Desist and Forfeiture dated August 16, 2017, for the addresses and TVNCs I just read; so referral to the County of Kaua'i, Boards and Commissions Office to conduct the required analysis and Contested Case hearings related to the above referenced appeals.

The Commission has, before you folks, the Clerk's recommendation to refer the appeals to a Hearing Officer, and so it is really up to you folks whether you want to make a motion to refer this matter to the Hearing Officer or not, or to set it before you folks for a Contested Case hearing.

Ms. Nogami Streufert: Just a question, is this contingent upon the oral arguments that are going to be presented on the 13th of November?

Ms. Higuchi Sayegusa: These are related in the sense that they are the same—

Ms. Nogami Streufert: The same case and—

Ms. Higuchi Sayegusa: Same address, same TVNC at issue, but these are the issues related to the Cease & Desist dated August 16, 2017. So it is an additional...they have additional reasons for an appeal, and the appeal has been lodged with you folks, so it has to be decided upon. So

the question really is whether...if you folks want to conduct the hearing or if you want to refer the matter to a Hearing Officer.

Mr. Kugle: If I could explain...just perhaps, maybe, answer Commissioner Streufert's question. I think that these appeals are new appeals for the 2018 renewal packets that came due while the Contested Case arising from the 2017 renewal packet denials was going through the Hearing Officer process. So in other words, these property owners, even though they were in a Contested Case proceeding concerning the forfeiture or not of their Non-Conforming Use Certificates, the annual renewal period came around again and they did not want to be deemed to have waived the argument or subsequently abandon their TVR rights. And so they submitted a renewal again in 2018 on the anniversary date just as one would normally do, and then those were uniformly denied, so those appeals were noticed...so it is very related, but it is the following year from the cases that you just voted to conduct an oral argument on and to receive proposed Findings of Fact.

Ms. Higuchi Sayegusa: Okay.

Mr. Kugle: If that is clear as mud.

Chair Apisa: I guess at this point I will just make a comment that I am not related with any of these cases, but I am in the business. I have a real estate office and we do vacation rentals and TVR and all that, so just to make a public disclosure on that. So I do understand what you are saying. Does the Commission have any other questions? About what was said?

Mr. Mahoney: No. But we have to make a decision.

Ms. Higuchi Sayegusa: Right. So, again, the choices before you are whether to...for you folks to conduct the Contested Case for this new set of arguments, or if you want to have a Hearing Officer do that for you folks and issue a recommendation.

Mr. Keawe: Let me understand if I got this right. So according to Mr. Kugle, what we had just discussed and agreed to, as far as oral arguments are concerned, were prior to...this was for the 2017 renewal. So what he is talking about is the 2018 renewals.

Ms. Higuchi Sayegusa: Yes.

Mr. Keawe: We need to go through this similar process and appoint a Hearings Officer for those renewals. Is that what we are talking about?

Ms. Higuchi Sayegusa: Yes.

Mr. Keawe: Okay.

Ms. Nogami Streufert: If – I'm just going hypothetically – if one were to affirm the right of the TVRs to continue from the 2017–

Ms. Higuchi Sayegusa: I think if we are getting into the substantive matters, that is where the recommendation is for that...if you folks want to conduct the hearing, then we can set it for a...we can do a scheduling order or, you know, we can set it out to discuss the substantive issues related to these new set of appealed issues. But right now we are discussing more so the process; do you guys want to do it yourselves or you want to send it to the Hearing Officer?

Mr. Keawe: My opinion is I don't think we are capable or...I mean, to give it the validity that it needs, it needs to be part of the legal process, so my opinion is it should go to a Hearing Officer.

Chair Apisa: And that is the normal process, I believe.

Mr. Mahoney: I concur with Commissioner Keawe.

Chair Apisa: Right.

Ms. Higuchi Sayegusa: Okay.

Chair Apisa: I do, too. So do we have a motion?

Mr. Mahoney: Chair, I move to turn the matter over to the Hearing Officer, if that will suffice.

Mr. Keawe: Second.

Chair Apisa: Okay, we have a motion on the floor to turn these three cases – TVNCs #5089, #5090, and #5091 – to a Hearing Officer. All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 5:0.

Notice of Appeal and Demand for Contested Case Hearing from: (1) Cease and Desist & Forfeiture of Non-Conforming Use Certificate TVNCU #1032; and (2) Denial of Renewal Application by Gregory W. Kugle and Joanna C. Zeigler, Attorneys for Christopher James at Tax Map Key 5-5-001-014, 4922 Weke Road, Hanalei, Kaua'i, Hawai'i 96714

Ms. Higuchi Sayegusa: Chair, we are on Item...let's see now...with your permission, if I could skip to Item I.11. So this is Notice of Appeal and Demand for Contested Case hearing from: (1) Cease and Desist & Forfeiture of Non-Conforming Use Certificate TVNCU #1032; and (2) denial of renewal application by Gregory Kugle and Joanna Zeigler, Attorneys for Christopher James at Tax Map Key 5-5-001-014, 4922 Weke Road, Hanalei, Kaua'i, Hawai'i 96714. You folks are also in receipt of the Clerk of the Commission's recommendation to refer, dated August 27, 2018, the appeal of the Planning Director's decision related to the Cease and Desist & forfeiture of the Non-Conforming Use Certificate #1032 for failure to timely renew, and the Department's August 14, 2018, denial of untimely Non-Conforming Use Certificate packet as required by the Kaua'i County Code, Section 8-17.10(h)(1) for TVNC #1032, Christopher James, TMK 55001014 (Contested Case No. CC-2018-9) to the County of Kaua'i, Boards and Commissions Office to conduct the required analysis and Contested Case hearing related to the above referenced appeal.

Similar to the matter we've just dealt with, the issue here is procedurally how you folks want to handle this Notice of Appeal and Demand for Contested Case; whether you folks want to do it yourselves or refer it to a Hearing Officer.

Mr. Ho: This one will go to the Kaua'i Boards and Commissions?

Ms. Higuchi Sayegusa: Yes. Going forward, the Boards and Commissions Office will be handling the procurement and contracting with the Hearing Officers.

Mr. Ho: Motion to remand to Kaua'i Boards and Commissions – Contested Case, Christopher James, Tax Map Key 5-5-001-014, 4922 Weke Road.

Chair Apisa: Do we have a second?

Mr. Keawe: Second.

Chair Apisa: All in favor? (Unanimous voice vote) A motion has been made and approved to refer this case for Christopher James to the Hearing Officer.

Notice of Appeal and Demand for Contested Case Hearing from Denial of Nonconforming Use Certificate Renewal Application at 2659 Puuholo Road, Kōloa, Hawai'i 96756, TVNC No. 5035, by Gregory W. Kugle and Joanna C. Zeigler, Attorneys for Boomerang, Ltd. at Tax Map Key 2-6-007-034

Ms. Higuchi Sayegusa: Madame Chair, we are on Item I.12., Notice of Appeal and Demand for Contested Case Hearing from Denial of Nonconforming Use Certificate Renewal Application at 2659 Puuholo Road, Kōloa, Hawai'i 96756, TVNC No. 5035, by Gregory Kugle and Joanna Zeigler, Attorneys for Boomerang, Ltd. at Tax Map Key 2-6-007-034. You folks are also in receipt of the Clerk of the Commission's recommendation to refer, dated August 28, 2018, appeal of the Planning Department's denial of the 2018 Non-Conforming Use Certificate packet for TVNCU #5035, who received an amended Cease & Desist, and forfeiture of TVRNCU Letter dated August 16, 2017, Boomerang, Ltd., TMK 26007034, Contested Case No. CC-2018-10, to the County of Kaua'i, Boards and Commissions Office to conduct the required analysis and Contested Case hearings related to the above referenced appeal.

Chair Apisa: Any discussion? Do we want to refer this?

Ms. Nogami Streufert: Are 12, 13, and 14 the same?

Ms. Higuchi Sayegusa: They are different cases.

Mr. Keawe: I guess the question is, do we need to do the same thing for each one?

Ms. Higuchi Sayegusa: I think, procedurally, it might be best to do so.

Ms. Nogami Streufert: Okay.

Ms. Higuchi Sayegusa: Separately. Cleanest.

Chair Apisa: Do we have a motion? Are we ready to make a motion?

Ms. Nogami Streufert: I move to refer the appeal of the Planning Department's denial of 2018 Non-Conforming Use Certificate packet for TVNCU #5035 to the County of Kaua'i, Boards and Commissions Office to conduct the required analysis and Contested Case hearings.

Mr. Mahoney: Second.

Chair Apisa: We have a motion on the floor. All in favor? (Unanimous voice vote) Any opposed? (None) Motion has been carried 5:0 to refer TVNC #5035 to a Hearing Officer.

Notice of Appeal and Demand for Contested Case Hearing from Denial of Nonconforming Use Certificate Renewal Applications at 7214 Alamo Road, Hā'ena, HI 96714, TVNC No. 1202, by Gregory W. Kugle and Joanna C. Zeigler, Attorneys for Anininina, LLC at Tax Map Key 5-8-008-040

Ms. Higuchi Sayegusa: Madame Chair, we are on Item I.13., Notice of Appeal and Demand for Contested Case Hearing from Denial of Nonconforming Use Certificate Renewal Applications at 7214 Alamo Road, Hā'ena, HI 96714, TVNC No. 1202, by Gregory Kugle and Joanna Zeigler, Attorneys for Anininina, LLC at Tax Map Key 5-8-008-040. You folks are in receipt of the Clerk of the Commission's recommendation to refer, dated July 31, 2018, the appeal of the Planning Department's denial of the 2018 Non-Conforming Use Certificate packet for TVNCU #1202, who received an amended Cease & Desist, and Forfeiture of TVNCU letter dated August 15, 2017, Anininina, LLC, TMK 58008040, CC-2018-11, to the County of Kaua'i, Boards and Commissions Office to conduct the required analysis and Contested Case hearings related to the above referenced appeal.

Mr. Keawe: I move to move to the County of Kaua'i, Boards and Commissions to conduct the required analysis and Contested Case hearings related to Gregory W. Kugle and Joanna C. Zeigler, Anininina, LLC at Tax Map Key 5-8-008-040.

Mr. Mahoney: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 5:0. TVNC #1202 is referred to a Hearings Officer.

Notice of Appeal and Demand for Contested Case Hearing from Denial of Nonconforming Use Certificate Renewal Applications at 5204 Weke Road, Hanalei, HI 96714, TVNC No. 1166, by Gregory W. Kugle and Joanna C. Zeigler, Attorneys for PMD Hanalei, LLC at Tax Map Key 5-5-002-012

Ms. Higuchi Sayegusa: Item I.14. – Notice of Appeal and Demand for Contested Case Hearing from Denial of Nonconforming Use Certificate Renewal Applications – 5204 Weke Road, Hanalei, HI 96714, TVNC No. 1166, by Gregory Kugle and Joanna Zeigler, Attorneys for PMD

Hanalei, LLC at Tax Map Key 5-5-002-012. You folks are in receipt of the Clerk of the Commission's recommendation to refer, dated July 31, 2018, the appeal of the Planning Department's denial of 2018 Non-Conforming Use Certificate packet for TVNCU #1166, who received an amended Cease & Desist and Forfeiture of TVNCU letter dated August 16, 2017, PMD Hanalei, LLC, TMK 55002012, CC-2018-12, to the County of Kaua'i, Boards and Commissions Office to conduct the required analysis and Contested Case hearings related to the above referenced appeal.

Chair Apisa: Do I have a motion?

Mr. Keawe: I move that TVNC No. 1166 Gregory...Joanna Zeigler, Attorneys for PMD Hanalei, LLC at Tax Map Key 5-5-002-012 be moved to the County of Kaua'i, Boards and Commissions Office to conduct the required analysis and Contested Case hearings related to the above subject referenced appeal.

Mr. Mahoney: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 5:0. TVNC No. 1166 is referred to a Hearing Officer.

Petition to Appeal Decision of Planning Director Related to the Forfeiture of TVNCU #1368 (Coco Cabana) for Failure to Timely Renew for Property Situated in Hanalei, Kaua'i, Hawai'i, identified by Kaua'i TMK No. (4) 5-8---5:002 containing 1.92 acres = Carole Theiss (CC-2016-12)

Ms. Higuchi Sayegusa: We are on Item I.15., Petition to Appeal Decision of Planning Director Related to the Forfeiture of TVNCU #1368, Coco Cabana, for Failure to Timely Renew for Property Situated in Hanalei, Kaua'i, Hawai'i, identified by Kaua'i TMK No. (4) 5-8-005:002 containing 1.92 acres, Carole Theiss, CC-2016-12. You folks are in receipt of the Hearing Officer's report and recommendation of Contested Case; Certificate of Service dated August 20, 2018.

Chair Apisa: Any discussion or a motion? This one – we have a Hearing Officer's report and recommendation.

Mr. Ho: This will be to receive the Hearing Officer's report?

Ms. Higuchi Sayegusa: Before you folks you have the option of approving or denying the...

Mr. Mahoney: The report?

Ms. Higuchi Sayegusa: The report, right. So you folks have the report with his recommendations. You can also render a different decision based on the record. This matter seems to be pretty straightforward. There was a request, at least orally, by the Petitioner at some point to withdraw her appeal. There hasn't been a signed stipulation to that effect. Meanwhile,

she sold her property. No response has been proffered by the new owner for an amount of time, so based on that, the Hearing Officer has recommended...well...

Ms. Nogami Streufert: Dismiss it with prejudice.

Ms. Higuchi Sayegusa: Dismiss it with prejudice. Affirming the denial of the Director. So you folks have the option to approve that-

Ms. Nogami Streufert: I move to accept the Hearing Officer's report and recommendation to accept the Planning Department Director's order.

Mr. Ho: Second.

Chair Apisa: We have a motion on the floor. All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 5:0.

Petition to Appeal a Decision by Karin Watson (8/27/18) related to Certificate TVNCU #1060 (Fortune Cottage), 4075 'Anini Road, TMK 53006007, 'Anini, Kaua'i = Fortune Family Trust (CC-2018-13)

Ms. Higuchi Sayegusa: Chair, I think we can circle back to Item I.10, the status on Class IV Zoning Permit Z-IV-2015-8, Project Development Use Permit PD...I'm sorry. Oh, I'm sorry. I apologize. My mistake. We are on Item I.16, Petition to Appeal a Decision by Karin Watson, dated August 27, 2018, related to Certificate TVNCU #1060, Fortune Cottage, at 4075 'Anini Road, TMK 53006007, 'Anini, Kaua'i, Fortune Family Trust, CC-2018-13. You folks are in receipt of the Clerk of the Commission's recommendation to refer, dated August 27, 2018, appeal of the Planning Department's decision related to the denial of the Non-Conforming Use Certificate packet submitted on August 13, 2018, as required by the Kaua'i County Code, Section 8-17.10(h)(1) for TVNCU #1060, Fortune Family Trust, 'Anini, Kaua'i, TMK 53006007, CC-2018-13, to the County of Kaua'i, Boards and Commissions Office to conduct the required analysis and Contested Case hearing related to the above referenced appeal.

Mr. Keawe: I move that TVNCU #1060, Fortune Cottage, 4075 'Anini Road, TMK 53006007, 'Anini, Kaua'i, Fortune Family Trust be moved to the County of Kaua'i, Boards and Commissions Office to conduct the required analysis and Contested Case hearings related to the above referenced appeal.

Mr. Mahoney: Second.

Chair Apisa: We have a motion on the floor. All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 5:0; TVNCU #1060 is referred to the Hearing Officer.

Mr. Dahilig: Thank you, Madame Chair.

Per the amended agenda, let's move to Item M. This is New Business for Action.

Ms. Nogami Streufert: Excuse me. Before we continue on, could we have a five-minute break?

Chair Apisa: Sure. We will have a five-minute break.

The Commission recessed this portion of the meeting at 10:45 a.m.

The Commission reconvened this portion of the meeting at 10:52 a.m.

Chair Apisa: Reconvene the meeting.

COMMUNICATION (For Action)

UNFINISHED BUSINESS (For Action)

Mr. Dahilig: Thank you, Madame Chair. Just for the record, there are no items under Items J or L for action today.

NEW BUISNESS

Special Permit SP-2019-1 to deviate from the minimum lot size requirement, as prescribed by Hawai'i Revised Statutes (HRS) Section 205-2(4)(c), involving a 2-lot subdivision within the Residential (R-2) zoning district on a parcel situated on the makai side of Kamalu Road in Wailua Homesteads, approx. 200 ft. south of the Crossley Road/Lokelani Road intersection and further identified as 1270 Crossley Road, Tax Map Key: (4) 4-4-005:036, and containing a total area of 40,000 sq. ft. = John K. Morioka Trust

Mr. Dahilig: We move to Item M, which is New Business for Action. Item F.2.a. – this is Special Permit SP-2019-1 at 1270 Crossley Road, Tax Map Key: (4) 4-4-005 Parcel 036, a total area of 40,000 square feet. John K. Morioka Trust is the applicant and Dale will be presenting the report on behalf of the Department.

Mr. Cua: Good morning, Madame Chair and members of the Commission, again.

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

Mr. Cua: At this time, this concludes the Director's Report. I will hold off on the Conclusion and Recommendation.

Chair Apisa: Thank you, Dale. Questions from the Commission? I guess I have a question. Just, again, what is the size of the lot that they are proposing?

Mr. Cua: Sure. If you...let me see.

Chair Apisa: It is less than half an acre.

Mr. Cua: Right. So if you go back to page 3 of the report, Lot 48A is being proposed at 18,219 square feet. The minimum lot size in the State Land Use Rural District allows for a lot that is 18,500 square feet, so it is deficient by 200+ square feet.

Mr. Ho: I have a question for Dale. Dale, right now the property carries an R-2 designation. When you subdivide it – two lots – they both will carry an R-2?

Mr. Cua: Yes.

Mr. Ho: Both will?

Mr. Cua: The zoning remains.

Chair Apisa: They really can't come up with another 300 square feet?

Mr. Cua: No, they...yes.

Chair Apisa: Can't create any land.

Mr. Keawe: Two hundred and eight-one square feet.

Chair Apisa: Two hundred and eight-one, specifically.

Mr. Cua: Right, correct.

Chair Apisa: Question?

Mr. Mahoney: Petitioner.

Chair Apisa: The Petitioner – I'm sorry. Is the Petitioner here? I'm sorry.

Mr. Keawe: Mr. Kodani.

Ms. Nogami Streufert: Dale, does this mean that if both of these lots are now going to be R-2 that, essentially, we've changed that to an R-4?

Mr. Cua: No, the zoning remains. It is just that the lot, currently as it stands today, is 40,000 square feet.

Ms. Nogami Streufert: But for the whole thing it is an R-2?

Mr. Cua: Right, yes.

Ms. Nogami Streufert: So if you subdivide it, you've now got two lots, and you are saying each one of them is R-2.

Mr. Cua: R-2.

Ms. Nogami Streufert: Then that technically means that if that were together, it would have been an R-4.

Chair Apisa: No.

Mr. Cua: No, I mean, if they qualify for an additional dwelling unit, so essentially, the parcel – this particular parcel – can be developed to R-4, you know? You can have, potentially, two homes on each resulted lot.

Mr. Ho: Dale, could you run that past us again?

Mr. Cua: Okay, sure. So I think just purely by density, after the parcel is subdivided, each lot will just qualify for one home. Because they only qualify for one home, they could apply for an additional dwelling unit, which is only applicable to those lots that qualify for only one home; whether it is R-2, R-4, R-6, you know? So that is why in this instance, if these lots qualify for an additional dwelling unit, then you could potentially have two homes on the each lot.

Chair Apisa: I think I'd–

Mr. Ho: I think we understood that. How did you allude to R-4?

Chair Apisa: I think I would like to hear from the Petitioner and then we could, maybe, ask them the questions.

Mr. Clyde Kodani: Thank you. For the record, my name is Clyde Kodani. I am the authorized agent for the applicants. To my left is Andy Miles. He is a senior engineer at Kodani Associates and he will answer whatever questions you have.

Mr. Andy Miles: All right. This is my first time here, so you all try to be nice to me. All right. What questions do you have and I will try to...

Chair Apisa: Is the intent to put four houses on the...what is the intent of doing the subdivision?

Mr. Miles: The intent right now is...is that he wants to be able to...he may sell the other lot, but there is the one house that is on there now. The septic system that is being drawn up and being put in could accommodate...the fact that we are eliminating the cesspool, we could actually accommodate up to four homes if that is what they decide to do.

Mr. Keawe: Chair?

Chair Apisa: Yes, please.

Mr. Keawe: I have a question. On your Appendix D, Preliminary Subdivision Map, that you have included in your application, can you explain (it) to me? I can see the one house that's there, and then you've got three other squares, so that looks like three additional dwellings.

Mr. Miles: Yes, that is actually showing what you could ultimately put on there.

Chair Apisa: Potential.

Mr. Miles: Potential, yes. And the reason being is, is for the septic. I mean, so you could see...we had to verify that we had enough space to put in a septic that could accommodate the maximum area.

Chair Apisa: Has that septic already been installed?

Mr. Miles: It is in the process of being installed. Primarily, it is being installed right now because of eliminating the cesspool behind the existing house.

Mr. Keawe: Go ahead.

Mr. Ho: Isn't there a caveat on that? Isn't there...you can build two houses but no more than five bedrooms, or something like that?

Chair Apisa: That is per septic.

Mr. Kodani: Yes. Per septic system, you need 10,000 square feet, up to a maximum of 5 bedrooms. So our understanding is that the client, should he build, will be building three bedrooms and two bedrooms, so no more than five bedrooms per septic system.

Chair Apisa: What is the neighborhood? Because, I mean, I think I can see it very quickly going to four houses on this lot, total. I mean...and the neighborhood is, like, a half-acre, so what...

Mr. Miles: In the process of putting this application together, we actually heard back from the...I think we had, like, 40-some notifications (that) went out and roughly a little over half actually responded, which was kind of surprising; I am not used to that kind of response. But anyway, their biggest question was well, is it going to be like the homes right down the road? Because, apparently, there are other properties in the area that have additional dwellings on the same small stamp size lots. So that is what we were explaining to the people that called in, is that it is whatever the regulations allow, which, in this case, is you could potentially have up to two homes on each lot. But he has no plans right now to actually build all these, but this exhibit that we included, we prepared for the sake of the septic to make sure that we actually could accommodate everything because you have to have a certain amount of square footage to be able to put the field lines in and such.

Mr. Keawe: My question is what is the intent right now? As far as how many...how many dwellings are you going to end up...if we approve this, how many houses are going to be on that lot total right now?

Mr. Kodani: I would say probably four; no more than, probably, two two-bedrooms and two three-bedrooms.

Mr. Keawe: Okay. So it's four homes, right?

Mr. Kodani: Yes.

Mr. Keawe: Four individual homes.

Mr. Kodani: Yes. And if I understand, I think the four dwelling units still complies with the density requirements, so we are not...I think Planning Staff can kind of (inaudible).

Mr. Keawe: Yes. I think it was more about intensifying the use that's not zoned for it, so that's (inaudible).

Mr. Kodani: We are not increasing what is really allowable there.

Ms. Nogami Streufert: In the 50 percent response rate that you got, were there any concerns about the density or parking or anything like that?

Mr. Miles: No. I don't know if you all got a copy of the...there was a spreadsheet that we included in the public notification; it had a lot of colors on it. Basically, it is a two-page handout – kind of looks like that – and there was really only one that – and it wasn't really negative – he was just kind of non-committal; he's like oh, so there might be four more, you know, total homes. But everybody else pretty much...the common thread was so it is no different than some of the other parcels that are in the area, or well, it is not affecting me, I don't live next to him, so that was the general thrust of what the comments were that were–

Chair Apisa: Did the immediate neighbors respond?

Mr. Miles: Yes.

Chair Apisa: And what was their response?

Mr. Miles: The only question was about...was regarding the drainage, and we explained to him that...well, whenever...it still has to go through a subdivision approval, so once that goes through, you have to go through Public Works to make sure all the drainage is addressed and all that. So we explained to him this was the first step, is to actually...to be able to do the subdivision, and then if that is approved, then we actually have to draw up a subdivision to show all the setbacks, the drainage, septic system, and all that.

Chair Apisa: Any further questions from the Commission or from the Planning Department, from Dale? We ready to come to a conclusion?

Mr. Keawe: I just had one more–

Mr. Mahoney: His recommendation.

Mr. Keawe: Oh, sorry. One more question. So if we go ahead and allow this and it doesn't make the...at what point do we say well, we did this one and it was 18,219 square feet; somebody else comes in and might be just 18,000 square feet and it might be 500 square feet less. So I guess a concern is at what point of leeway are Special Permits going to be given to...you know what I am getting at, right? I mean, as far as—

Chair Apisa: Setting a precedent.

Mr. Keawe: Setting a precedent. And they say well, this guy got 18,219 (square feet) and mine is only couple hundred feet less. Anyway, it is just a question. I think from a personal standpoint, if he is going to build three more houses and all of them go into long-term rentals, I think that might be a good thing.

Chair Apisa: Well, it is not in a TVR district, so it's (inaudible).

Mr. Keawe: Yes, so he can't do vacation rentals, but still...I mean, you got three long-term rentals and, you know, we've got that big shortage, Mike.

Mr. Dahilig: I will put it this way – and I don't want to get too technical with the proceeding at this point – but the Special Permit in reality is the equivalent of a Variance Permit at the State level. It becomes more, at this point, with some standards and the equity question; I mean, it really is an equity question. Some of these things are bright lines and in some circumstances you could say 200 feet less or 100 feet less; in this case, it is 300 square feet less. So the Commission has the ability to exercise, I guess, equitable judgement in this case; where is the fairness in it. So I think our feeling in that is that this is...it is almost there and, you know, okay, it is a de minimis roundup in terms of the way we are characterizing it, but it really is within the province of the Commission. And the State law authorizes this type of permit proceeding to exercise some degree of equitable judgement, so if you feel that this is something that is a little outside the bounds of deviating from the Code from a fairness standpoint, then that's cool. If it's within that, then that's cool, too. I mean, I think that's why we have this type of proceeding to say, like, you know...I don't think there is really any rubric for this kind of thing necessarily, but it is really a judgement call at this point. That is the only advice I could probably give beyond what our recommendation is in this scenario.

Chair Apisa: Are we ready to hear the Conclusion?

Ms. Nogami Streufert: Can I ask one (inaudible)? In that neighborhood, are the lots and the density approximately the same as this would be?

Mr. Miles: Yes. That was actually the point I was going to ask if I could make is actually in the State Code, it does say...it gives you an actual quantitative figure – the 18,500 – for the minimum, but then it gives you a qualitative or – it says “or the equivalent residential density” – and in this area, there are other parcels that are comparable. I mean, they may not be exactly 40,000; there might be one that is 40,900 square feet, so they are all comparable, kind of

anecdotally the same. And that was some of the responses we had on...where we sent out the notices is, some of the response was, like, oh, it is going to be like this one up here or that one over there. So it is kind of comparable, so I guess in addition to being just 1.5 percent off the minimum, was we were kind of hoping that it is...it's not dissimilar to the area, so that's the, kind of, standpoint we were taking. Thank you.

Mr. Keawe: I guess from my standpoint, it is more about the housing issue, and if you got three more houses that are going to go to local families on a long-term rental, then I think that's a good thing. And I know – I live up there – so there is one lot right at the end there – the intersection – that's got four houses on it already, and they are in the process of building them. They have been in that process for probably almost a year now, and that is right in that same subdivision.

Chair Apisa: Anything else before we hear from Dale and his conclusion? Okay.

Mr. Cua read the Preliminary Conclusion and Preliminary Recommendation sections of the Director's Report for the record (on file with the Planning Department).

Mr. Cua: And that concludes the Department's recommendation.

Chair Apisa: Thank you. So, now, anything further? Are you okay with the Commission's recommendation?

Mr. Kodani: We have no objections to the recommended–

Chair Apisa: The conditions?

Mr. Kodani: Yes.

Chair Apisa: Anything else?

Ms. Nogami Streufert: I move that we approve Special Permit SP-2019-1 with the conditions as stated in the report from the Planning Department.

Mr. Mahoney: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 5:0. Congratulations.

Mr. Kodani: Thank you.

Mr. Miles: Thank you. It is my first time here and as you can tell, I am from Tennessee, so (inaudible).

Chair Apisa: Good job.

Ms. Nogami Streufert: Welcome to Kaua'i.

GENERAL BUSINESS MATTERS

Status on Class IV Zoning Permit Z-IV-2015-8, Project Development Use Permit P.D. U-2015-7, Variance Permit V-2015-1 and Special Management Area Use Permit SMA(U)-2015-6 = *Coco Palms Hui, LLC*

Mr. Dahilig: Madame Chair, let's pop back to Item I.10. This is a status on Class IV Zoning Permit Z-IV-2015-8, Project Development Use Permit PDU-2015-7, Variance Permit V-2015-1, and Special Management Area Use Permit SMA(U)-2015-6 for Coco Palms Hui, LLC.

Before we go into this, Madame Chair, I do want to mention to everybody that we just got word that Tropical Storm Olivia has sped up and we have been moved into a Tropical Storm Warning.

Chair Apisa: Oh no.

Mr. Dahilig: So, you know, I don't think we are in any...in case your phones are going off or whatever not, I wouldn't, as we go into this discussion, be too concerned at this point that some time discussing this is going to belabor any issues, but just in case you do start getting texts on your phone, don't be surprised by that information.

What I'd like to do, because I know that there has been a little bit of a media kind of blip on Sunday concerning this matter, concerning the Mayor's position on this, as well as I know both Commissioner Ho and Commissioner Keawe have been wanting to have this item up on the agenda for a few months now, I do want to state that we do have...and we have circulated the required status reports that are required by Condition No. 29 to the Commissioners for your review, and that's around. So that's from Mr. Greene and it is attached to the back of the...what I've circulated, but I think, you know, the question is, at least for the Department, what is going on there?

I think a lot of what we've done in terms of enforcing this particular permit has been to...as you've heard from the previous discussion relating to Kōloa Village, that we need to continue to keep a fire moving on this. One of the items that has become of a particular concern to the Department, as it relates to the progression of this, has been the progress of the actual building permits. So what I've done is I've asked my staff to pull, through our computer tracking system, all the permits related to Condition No. 15 of the amended permit relating to building. There has been a lot of suggestion that permits are moving forward and things have been submitted; however, as of yesterday when we've pulled the permit status for the Building 8, which is the lagoon; Building 12, which is the Queen's Hall; Building 11, which is the retail building; Building 9, which is the spa building; Building 20, which is the comfort station; Building 14, which is the Lanai Bar; Building 13, which is the house and the palms building; the warehouse, Building 10; Building 4, which is the lagoon building; the Ali'i Kai Building, which is Building 3 and Building 2; the Shell Building, Building 1; Buildings 5E, 7B, 7A, 6D, 6B, 6A, 5D, 5C, 5B, 5A, and a few electrical permits that have been pulled – I must explain that through our tracking system, what typically happens is you submit for a building permit and you open up a file. Through that file process, you upload plans into our ePlan permitting system. And through whatever reason, in terms of what has been exchanged with various agencies back and forth,

there is, at this point, no activity with these individual files for quite some time. No activity in the sense that the requisite plans – usually they are big bundles like this – the digital files are not being uploaded in a timely manner to each one of these permit applications, and there are over...there are almost 30 of these applications that are, right now, open.

So where we are running into some internal deliberations is on how to look at Condition No. 15 relating to submitting for the building permits by August 31, 2017, which is what's happened. These are open; they are open permits. But essentially, they are like a cookie jar with no cookies in it, essentially. I will say that, from a departmental standpoint, we haven't reconciled any course of action because we would have to look at it as an enforcement measure, and from a deliberation standpoint, we probably would not want to raise some of those items from a strategic standpoint before the Commission this morning. But at the same time, I do...and I want to say from a public record standpoint that is where we are at right now; is that we have open permits with no plans. It raises the conundrum here where...you know, what do you do in these circumstances? So we haven't really engaged with our...and it is typical for some time to go on between opening a permit file and have the plans eventually uploaded, but it has been a year. So we have some concern about the reasonability of completing these open permit files with our AS400 and ePlan system, so I want to point that out.

The rest of the items that are on the...at least as it relates to these conditions, are not necessarily timing items. So Condition No. 15 is really the timing item that if we are concerned about what progress is being made on the site, that really is the thing to look at.

Now, there are other complaints that have been progressing concerning whether or not the site is being taken care of; are things overgrown, you know, those types of things. We don't necessarily look at those items in that degree of detail, but we do understand that it is an eyesore, and I would concur with the Mayor's comments to the media that our department is concerned about the unkemptness of that site and how the (inaudible) is progressing. We have been pleased with the progress on demolition leading up to the submittal of these building documents, but up until this point, we still have not seen any progress on being able to obtain the widening easement for Haleilio; that is still outstanding. So these are kind of clean up items that I don't think, right now, are necessarily bearing on, again, the timing issue.

I am open to any questions, and I think, out of fairness, Mr. Greene is in the audience, so maybe give him a chance to respond to some of the questions or maybe giving him the opportunity to answer any questions you may have directly. But I think for our department, that's kind of where we are at at this point from an enforcement analysis. So I am available for any questions, Madame Chair.

Chair Apisa: Mr. Greene, would—

Ms. Nogami Streufert: Before you do that, can I ask a question? For all of these open files, is there any of them that has any documents in there?

Mr. Dahilig: Well, they have documents, and I can get into a little more detail with each agency, and I can circulate what these are. For example, when we do our routing, you will see the permit

number and you will see that there's no action, right? So anytime that there is a blank area, there is no action; no action, right? But in other circumstances, like say for example, there are a couple plans that have been uploaded where it has been denied on the first cycle and then there has been no revisions that have been uploaded, so—

Ms. Nogami Streufert: When was that submitted?

Mr. Dahilig: The latest action was in 2016.

Ms. Nogami Streufert: 2016?

Mr. Dahilig: 2016, right. So I can circulate these for the Commissioners' review but essentially we are dealing with 2 scenarios where either it's totally blank, so there has been no 360 action because there are no plans in the actual file, or we've hit a dead end with the file – comments have gone out, we need to upload another set of plans, and there has been no uploading since then.

Ms. Nogami Streufert: So it has been two years.

Mr. Dahilig: Yes. So those are the two types of scenarios that we are, I guess, kind of looking at as a...in any case, Madame Chair, that's...

Chair Apisa: Where it's at.

Mr. Dahilig: Where it's at.

Chair Apisa: All right, thank you. Tyler Greene, please, and state your name for the record.

Mr. Tyler Greene: Aloha, Planning Commission. Tyler Greene on behalf of Coco Palms Hui, the developer of Coco Palms. I appreciate the opportunity to be here today. I am definitely surprised by the Planning Director's comments in regards to the permits. This is the first time that we are hearing about this. I would like to explore what, in fact, possibly happened, and was it before...I know the County made a transition from online submittals to manual submittals. Was there an error in that transition? Were they uploaded electronically?

It was our understanding that everything had been submitted. It was a, what we call, permit set of drawings that was submitted back in August 31st of 2017, and if they were not submitted correctly, I am surprised that it has been over a year since we weren't notified that that wasn't submitted correctly. So we want to do our very best to, obviously, follow every condition that's been given in front of us, and so, definitely, if I can get a copy of what the Planning Director put together in terms of the permits, then we can circle up with our architect and see what happened there, and report back to you on that.

Mr. Dahilig: Mr. Greene, your architect has full and open access to the status of these files at any given time. So rather than us having to provide that information for you, if these permits have been open and nothing has been acted upon, it certainly should be your architect's

responsibility to be keeping tabs on what's going on. So this is real time information; this is not something that we mine periodically. This is something that if your architect wants to go and take a look at how they uploaded these plans or whatever not, they can get you the status right away.

So if the Commission would like me to provide it, I can, but, Commissioners, they have free and full access to the status of these permits at any given time, so I won't oblige unless I'm directed to at this point.

Mr. Mahoney: With all the controversy and all the planning and start/stops that have been going on and the waits for everything and all the publicity that's been around, you guys should be way...all over every detail. I mean, people bent over backward from the Council, the Commission. And the last time I remember when you were in here, I said this is almost like your last hoorah, and it would be up to you guys to be on top of this, and it doesn't seem like you are; now it's somebody else's fault that you don't know what's going on or answering these things. I mean, people talk about Coco Palms daily; it is the topic of conversation daily on this island. And you guys as developers have come in with all kinds of different scenarios about why this and so forth is happening. But when you come in here and now it's like you don't know – you got to know. This is like your whole life; it should be either you want this project to happen – the odds were against it. It was chugging along, making some progress; the demolition went well. But now it's like nobody knows what's going on now. I expect way more out of you guys when you come into this commission. You should know every detail and you should be in communication with the Commission; as the Director said, daily, weekly, whatever it takes for this project to happen. Somebody has got to be all over it. I've never seen any kind of project – I've been involved in construction for about 30+ years – that has taken on a life like this one has. And all the breaks that you guys have got, you got to really step it up, really. I mean, this “I don't know” stuff just doesn't cut it anymore. And I'm not trying to scold you. It's like...nobody wants to see a project fail, but information is out there; it's available. If there's a problem, get in and solve it. But there has got to be a consistent, constant effort – constant effort – for this. Okay, thank you.

Chair Apisa: Feel better?

Mr. Mahoney: Yes, I do. I'm not trying to take a personal scold at you, but this is...you are one of the people that are in charge of this project and you got to show your leadership skills; what's going on. There are a million rumors out there, but what is the story? What's keeping it up? You got money, the financing...what's going on? Can this project meet its deadlines? Or is it going to continue to go on? I'll stop there. And these are just some suggestions that...if you come into a meeting for a project that has been going on this long, you better know every single facet about it right off the bat; instead of asking what the Department is doing. It's up to you guys to be doing; you guys check with the Department. I don't think a delay of this magnitude...okay, I'm going to end it there, but that's just some of the concerns that I had.

Chair Apisa: And I think it's shared by many. Go ahead, Glenda.

Ms. Nogami Streufert: Could you tell us what the status is then?

Mr. Greene: Yes, I actually would like to because of the article and I think everybody kind of gravitates towards that.

Mr. Dahilig: This was put on before that article came out.

Mr. Greene: Understand, understand.

Mr. Dahilig: So I don't want to give the impression that the—

Mr. Greene: I understand.

Mr. Dahilig: This has been, again, as I stated previously, we've had commissioners asking about status for this for months, so this is not something that has just come out of the blue.

Mr. Greene: Understand. But what had happened is I had sent an update to the reporter, which clarified a lot of things and a lot of the same questions that you folks have, and so if I could, I would like to read the email of what was sent in to the reporter that also addresses your question about the update.

Allan, as I did not hear what the Mayor said to you in the context of the conversation you had with him, I'm not able to comment on what you claim that he said. He has been a strong supporter of the project from the very beginning and is well aware that we currently have a very robust cultural center planned for the property. As you will attest, because you were the reporter that covered the matter, the last 17 months plus were spent dealing with the trespassing issues. You are very well aware that those proceedings recently finished although there is still an appeal in the District Court matter. That being said, we have made exceptional progress and advanced the project as best as anyone possibly could do given the fact that there was a title dispute on the property over the last year and a half. Below are updates and benchmarks you need to be aware of. We cut the grass down in July; in fact, I think you wrote an article about it. The buffalo grass grows extremely quick as you know. We like to cut it every couple of months. We are securing the appropriate machines to give it another full cut on the entire grounds. We currently have a full-time security maintenance person on property continuing to clean the internal sections of the property, like the lagoon and parts of the grove that you do not see from the road. We are about to start the preconstruction phase of the project. The preconstruction phase means we are in conversations now with construction companies to work through the remaining planning, preparation, and organization prior to the renovation rebuild; included in this is completing a full set of construction drawings. Because of the scope of the project, this is a very large set of documents that requires a vast amount of coordinating with architects, engineers, subcontractors, and other participants in this project. To this end, this work is mostly done in space offsite in a more conducive office work environment. Therefore, we do not need the use of the trailer right now. It was helpful for Ron Agor, the lead architect, to use this trailer early on when he and his guys were measuring all of the buildings, but he no longer needs it there. Once we are through the preconstruction phase and start the rebuild, then we will bring back a construction trailer. We take the conditions of approval very seriously – and what I wrote was, we have met and will continue to meet all aspects of the conditions of approval. All of the buildings have been submitted for permits and are currently in the planning review process – as

far as I understand. We are currently working with the title company to provide insurance policy on our senior construction loan when we start the rebuild. We have tours happening on the property on a regular basis from Bob Jasper and Robert's Tours. This could also be the reason you saw the gate open. We have a food truck there to service these tours – Paco's Tacos – you should go try them. After getting through the trespassing court proceedings, we are more confident than ever in our ability to deliver Coco Palms back to the island of Kaua'i. Coco Palms will be reborn.

Ms. Nogami Streufert: So these planning documents for the preconstruction part of it – from your perspective, they have already been submitted?

Mr. Greene: From my perspective, we submitted a scaled-down set of drawings called the permit set of drawings, and that we were in the plan review process with those drawings and that there had been comments that had come back on some of those drawings.

Ms. Nogami Streufert: But that was in 2016, is that correct?

Mr. Greene: Well, I need to see and that's what I said; that this was the first time I heard that none of our...that all of our permit set of drawings were not submitted. We thought we were in line with Section [sic] 15 and everything was submitted prior to August 31st, 2017. And in my recollection, I know that – I don't know if it was 2016 or 2017 – when the submittal process changed from a hand-delivery process of physical maps to an online submittal, and so I just need to see what transpired there and what happened there.

Mr. Ho: Madame Chair. Will you comment on the...two things I have to question you about – one is the right turn lane on Haleilio (Road), and the other one I would like to know about is the workforce housing and where you stand on that. The reason I ask these things is these are part of your conditions and the conditions, I believe, you accepted them because...and then we granted you the permits. So the permit and the conditions go hand in hand. You should be not only working with your building permits, but these conditions, I believe, should be either actively worked on or maybe some of them can be completed. So with that, those two items, can you comment where you are on that?

Mr. Greene: We did pay an in lieu fee for Haleilio Road. We have been in conversations over the last year or so with the Department of Transportation. There does need to be some additional conversations with them in regards to the road widening there and how that impacts Haleilio (Road). For a moment there we thought we might have to move the retail building in the front there and rework the power lines, which all of that would tie into the right-turn lane on Haleilio (Road). But we did pay a \$93,000 in lieu fee to the County as one of the conditions.

As for the workforce housing, we do own a property across the street in a separate LLC. We have recorded a housing agreement with the County on that particular property. We are looking...and we were, again, trying to work through the trespassing issues and waiting for the right time to fold that property into the Coco Palms Hui, LLC so that it is under the same umbrella, and as I said, these trespassing issues...literally, there were two sides going – a District Court side and a Circuit Court side. There is an appeal still out on the District Court side, and

the Circuit Court side – they filed an appeal that finally just got tossed out the 22nd of August. So now that that is done – that was three weeks ago – and the dust has settled for that, now we can continue those conversations with the title company to make sure we can insure the entire project and that includes the workforce housing.

Mr. Ho: The workforce housing project – are there plans for that submitted somewhere?

Mr. Greene: Those plans haven't been submitted or drawn yet. Unfortunately, we have been forced to press the pause button over the last 18 months because of the trespassing issues.

Mr. Ho: Thank you.

Mr. Keawe: Tyler, in your original presentation a couple years ago when you came before us, you talked about various sources of funding to try to get the project off the ground, and then I remember one of the main things was you needed to get an industrial investor or someone that had – institutional investor, I'm sorry – to be able to get this project to the \$130, or whatever, million it was at that time. My question is...the industry is doing great. I mean, it is going gangbusters; all the islands are full. You've got companies buying properties all the time; institutional investors buying properties because the industry is so great. What's the hold up on that area? Or is there one?

Mr. Greene: There are different phases to that, but as we were completing the demolition prior to the trespassing issues, we had great activity and great response from a lot of those institutional investors. And then when they saw the issues we had to work through, because we were encouraged to go...we started out with the County, actually, on these issues on the criminal side, and then from the County, we spent a few months with them trying to work through the issues there on site. We, then, were encouraged to go to the civil side, so we, then, had to open up a new court case on these trials. So that is the District Court side and the Circuit Court side, so that, then, drew out that long, arduous process.

Once they had filed the claim for title, basically we were not able to get a new title insurance policy and so it is much like trying to buy a car without getting a bill of sale. So basically, those investors said call us when you work through this.

Now in the short three weeks, we actually have had a lot of significant conversations with institutional providers on both the debt and equity side. I can say that we do have all of the capital needed to get through our preconstruction phase. What our preconstruction phase is, is getting a full set of construction drawings. Once we have a full set of construction drawings, we can get a solid contract with a vetted-out construction number with a capable general contractor, and at that point, that is when the institutional debt providers will come in to a project like this.

So you are absolutely right; the market is great. The interest for Coco Palms is absolutely outstanding and amazing. It is just that everybody that we were talking to a year and a half ago just said hey, call us when you get through this.

Chair Apisa: Glenda.

Ms. Nogami Streufert: At this point, regardless of what happened in the past, we are here today and we have to go forward. On the basis of that, what does your timeline look like from now until the completion of this project? What are you anticipating being completed by “x” date? Do you have a timeline like that?

Mr. Greene: We have a target, and I do believe wholeheartedly in keeping a fire lit under everybody. I had a meeting yesterday and told somebody I am all in on this project. I’ve got personal capital and I’ve got loan commitments and personal guarantees that I put up that would impact my family dramatically if this project didn’t happen. And I do wake up every morning thinking of Coco Palms. I do go to sleep every night thinking of Coco Palms and how we are going to get this across the finish line. But in terms of a timeline and target, it is essential to have that. I am reluctant to say in this setting because I don’t want it to get taken out of context, but I will do so because I know that is important, but our target and our hope is to be open mid-year 2020 or end of the year 2020.

Ms. Nogami Streufert: But from now until then, generally there are intermittent...or short-term, mid-term, long-term kinds of goals.

Mr. Greene: Yes, so we are rounding the corner to start our preconstruction phase. We had to restructure our partnership with our partners and new capital coming in, and we are working through that now, so that means that we have to revise our internal documents and our governing documents. Once that happens, then the preconstruction phase – we think we can get through between 6 to 12 months; 6 on a good side, 12 on the long side. What that entails is drafting up those full set of construction documents. Now, that is going to be contingent upon communication with different engineers, different subs and vendors, and so on and so forth. So we can push as hard as we can, but we can’t control everything.

Once we get through the preconstruction phase – and let’s say that is 6 to 12 months – the construction schedule for the project was always 18 months. If we compress that, we think we could get there in 14 to 15 (months), but it could be longer. Again, we do our best to try and have targets and run for those as fast as we can, but there are just certain things we can’t control.

Mr. Keawe: I have a question. So Tyler, you said you submitted something on August 31, 2017, they were drawings, so what is the difference between what you submitted and that you said hey, I submitted it to you guys, and what you are talking about as far as preconstruction working drawings?

Mr. Greene: In the industry, there is a term called permit set of drawings, which is a scaled-down set of drawings, and then there is a full set–

Mr. Keawe: So by scaled-down set, what does that mean?

Mr. Greene: That could be floor plans, foundations, elevations, so on and so forth.

Mr. Keawe: Okay.

Mr. Greene: A full set of construction drawings is going to have every single detail of the actual construction process; down to what kind of screws and nails they are using, so on and so forth.

Mr. Keawe: All right. So you said you submitted the scaled-down on August 31, 2017.

Mr. Greene: The permit set of drawings.

Mr. Keawe: But according to the County, they don't have it. So that's their problem, right?

Mr. Greene: No, it's our problem. So that's why I said this is the first time that I found out about it today – that we weren't in compliance – and so the first thing I am going to do is dive into that and figure out what happened.

Mr. Keawe: Okay.

Chair Apisa: Anyone else have any questions, comments?

Ms. Nogami Streufert: In the next 3 months – I know that the preconstruction phase, you said, is 6 to 12 months – but in the next 3 months, what do you anticipate having completed?

Mr. Greene: We will have the preconstruction phase started. We will have the property totally cleaned up. We will have ramped up our tours again. We had some issues with trespassers when we were doing tours of guys jumping out of the bushes and scaring people on the tours and theft and vandalism, and so on and so forth, so all that now is a thing of the past. So we will have our tours cranking. We have a few events that we would like to try and plan; whether it be talk story with Uncle Larry or whatever it may be, we want to start to get some activities going there.

Ms. Nogami Streufert: Do these tours and programs detract from your ability to complete your construction?

Mr. Greene: Well, we are not...because we haven't started the construction yet, they don't take away from anything.

Ms. Nogami Streufert: But now that you are going to go into the preconstruction phase.

Mr. Greene: Yes, the preconstruction – there won't be any building until we get to that full set of construction documents.

Ms. Nogami Streufert: And that, you think, is going to be between 6 to 12 months?

Mr. Greene: We are anticipating 6 to 12 months.

Mr. Keawe: If I can– So you've got enough...you basically said you had to reorganize the partnership and everything else, so you've got enough capital to get you through the preconstruction phase. Is that correct?

Mr. Greene: Correct.

Mr. Keawe: And the preconstruction phase's main item from that effort is going to be the full set of working drawings?

Mr. Greene: Correct, correct.

Mr. Keawe: So I get back to the original question – institutional investor.

Mr. Greene: Yes, there's an institutional guy...I was on the phone last week with an institutional investor that wants to come in and provide the senior construction debt, and he said well, we will come in once you have a locked down contract with your contractor. And in order to do that – with a vetted-out number – in order to do that, you have to get your construction documents done.

Mr. Keawe: Okay, so–

Mr. Greene: So they're there and they are very excited about Coco Palms, but they are not going to come in until we have a contract with a GC.

Mr. Keawe: Go ahead, Roy.

Mr. Ho: My question would be for our planning director. Do these – the permits that he has presently right now – do they carry an open-ended thing? Or can we terminate them? Or does it expire?

Mr. Dahilig: These permits are revocable, and there are actions that we can take to have benchmarks that are prescribed by time be enforced. So there is not a termination date with respect to the overall set of conditions. Some cases we do prescribe...let's say like a two-year window or a five-year window, or like in Kōloa Village, you saw it was a one plus five scenario. In this circumstance, we actually didn't put a date deliberately because we wanted benchmarks to be treated just the same throughout the course of the permit implementation.

In law school, they teach you a Latin phrase that is the equivalent of the thing speaks for itself, and this speaks for itself in terms of the compliance element that we are supposed to be looking at. So I would say that when you look at what happens here, we've already once taken action to come to the Commission to revoke these permits, so that option is not off the table; to revisit that type of proceeding before the Commission again. At this point, we are, from a departmental standpoint, weighing all our options; looking at what we have as tools to hold the permit holder accountable.

As Commissioner Mahoney mentioned, what's not lost is the fact that these are permits that are based off of an Iniki Ordinance waiver that has been dragging on since 1992 and was left open by the Council for a window specifically so that...at the plea of the Coco Palms developers to come in and submit essentially what are now non-conforming buildings for reconstruction.

That's the effect of these permits; is that they are holding onto non-conforming entitlements that were allowed prior to December 11, 1992, which today was 26 years ago – to the day.

So at this point, rather than speculate on what course of action, Chair, we would want to take and recommend to the Planning Commission, I think right now we are just looking at all our options, but to us, the record speaks for itself.

I've never heard in the industry that we have a varied degree of detail when it comes to submitting construction plans to our Building Division. I would love to hear something to the effect of I'm mistaken in that, but after being the Director of this department for eight years, I know what kind of intake that they get over there at the Building Division, and I would suggest that when you submit plans, you submit everything. These are not shop drawings. Shop drawings are after you get the Building Permits approved. So this is everything. Everything's got to come in a bundle and that's why we went through an ePlan permit process because these things are this thick. So everything should be in there. There is no intermediary building permitting type of permit set that gets transmitted for each one of these items. So if there is a confusion here, I would love to hear the confusion, but I think we are pretty clear on what is happening here after we've looked at the AS400 system. And again, this is information that is in real time, accessible to any architect that decides to open up a permit – they can check on the status and many of these permits, again, have been open for about two years now, a little over two years, and half of them don't have any documents in them.

So I think, again, the thing speaks for itself, and we will be consulting with our counsel to look – not necessarily Jodi – but our counsel to look at options that we may want to recommend to the Commission about this.

Ms. Nogami Streufert: May I ask a question of the...

Chair Apisa: Please.

Ms. Nogami Streufert: You've heard of all the concerns that are on here and also in the community, I'm sure. How would you mitigate it? How would you mitigate some of these concerns in the immediate future?

Mr. Greene: We are more encouraged than ever, despite what you are hearing today, and you would be surprised at the underlying support of the community. We had some bad press come out that didn't articulate our side and our position, but again, after 18 months of having to press the pause button, it has been 3 weeks and we are excited.

Ms. Nogami Streufert: Okay, well–

Mr. Greene: We are going to continue.

Ms. Nogami Streufert: What specific actions will you be doing immediately?

Mr. Greene: Well, I think the one at the top of the list is sitting and figuring out what has been submitted and understanding who it was assigned to in the plan checker and vetting out what we've been told today, and continuing on. And locking down our deal with a general contractor and staying the course and getting it done.

Ms. Nogami Streufert: Who has oversight of the entire project?

Mr. Greene: That would be me.

Ms. Nogami Streufert: And how has this escaped...these are not small issues and there are 30+ different permits that are out there. How was that overlooked?

Mr. Greene: It was our understanding that they were submitted, and I guess where we dropped the ball was just not to verify and check that. We need to be responsible and accountable for that, and we will do everything we can to make it right.

I would like to put on the record that in the midst of the delays and not being able to do anything for the last 18 months, including property taxes and other fees and things we've paid to the County, there has been just shy of about a million dollar contribution to the County on behalf of a project that pressed the pause button. So despite all of those issues, we stayed the course, we didn't give up. We worked through it as calmly and as collectively as we could and we tried to show care and aloha to those folks, and I believe that we did, and we are still here. We are not giving up.

Ms. Nogami Streufert: Okay.

Chair Apisa: I think the purpose here today is to get a status update, not to take any action on it. But any other questions that we would like to get as a status update?

Ms. Nogami Streufert: I guess what might make us a little bit more comfortable is knowing what actions are going to be taken by when. I understand planning is different from execution, but having a timeline that says these are the kinds of things that you can expect by "x" date and knowing that sometimes it can be exceeded or you can meet the deadlines beforehand, but right now, if our only deadline is going to be 2020, that's a little too far to wait for some updates.

Mr. Greene: I understand completely, and we want to do our very best to update you in any format that you want, and that's something I can easily put together. So what I would like to offer to do is just to put something to send over to all of you in terms of a written outline of what you can see in the next 3, 6, 12 months, so on and so forth.

Mr. Ho: We are speaking about something physical? Your outline will describe something physical happening to the property?

Mr. Greene: Correct, correct.

Ms. Nogami Streufert: Is that something that the Planning Department would...

Mr. Dahilig: Again, Commissioners, I think we are charged with, also, the enforcement of this permit, so whether options to either...I will just say this, that even if a timeline was to be proposed, it would require an amendment to this permit, which would put the Commission in a juncture...again, as the Chair reminded everybody, this is a status report, so this is not a decision scenario. But if what is being proffered is something that revises commitments and timelines, these – just like a contract – would have to be amended because these are conditions of approval, and ultimately from a level of comfort, it is the Commission’s ultimate authority to, I guess, accept and be comfortable with those terms or that timeline if that was being proffered. I know...as your director, I would obviously have an opinion about that. But at this juncture, I think any information that Mr. Greene or his architects want to provide the Commission, we will pass along.

And as I mentioned also that we would be looking at our options for recommending to the Commission how we should proceed knowing what we know at this juncture. I think, like I mentioned previously, we have a bunch of public information that is out there concerning this that we can easily draw conclusions for recommendation upon before this commission...to bring before this commission, so I don’t know what else you could add necessarily to, I guess, mute what is already out there in real time. We know what the status of the project is, we know where they are in terms of meeting their obligations, we know what has not been met, and we know, physically, what that thing looks like. And I want to reassure the Commission that, at least within whatever authority we have, we will be very expedient at this point to respond to your concerns, as well as respond to the public at large in terms of their concerns.

Ms. Nogami Streufert: Okay.

Mr. Keawe: Okay.

Chair Apisa: Sean, anything further to add?

Mr. Mahoney: No, I think we’ve all had our go at it. Understand that the conditions are...like the Director said, the conditions are already in place, and both parties know what’s got to be done in what timelines, and I think this clarified it. This was a status report and we learned what the status surrounding this is. So I think we should accept that and that would be the end of it.

Chair Apisa: Roy, anything? We’re good? Okay.

Mr. Ho: I’m good.

Chair Apisa: Thank you very much, Tyler, Mr. Greene.

Mr. Greene: Thank you.

Mr. Dahilig: Madame Chair, that is all that we have today for action.

ANNOUNCEMENTS

Topics for Future Meetings

The following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter at the Līhu‘e Civic Center, Moikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Līhu‘e, Kaua‘i, Hawai‘i 96766 on Tuesday, September 25, 2018.

Mr. Dahilig: We are on Item N. These are announcements – topics for future meetings. The next regularly scheduled Planning Commission meeting will be on September 25, 2018, in this room at 9:00 a.m.

Mr. Keawe: I had a question. The schedule...the 25th meeting...since we went through a whole bunch of the legal stuff, what’s left still outstanding as far as permit requests and just the workflow from your office?

Mr. Dahilig: We do have those three permit items that were set by the Commission for permitting hearings on the 25th. We still have kind of the 800-pound gorilla is the return on Kaua‘i Springs. Other than that, there is nothing really that we’ve gotten from an intake standpoint that we can foresee out. We usually have the on deck sheets; we can go ahead and circulate on deck sheets by email. We can have Les do that.

Mr. Keawe: Yes, just send it by email. Because the on deck (sheets) give us a better idea on the meetings and schedule.

Mr. Dahilig: Other than that, it would be the three permits that you see on page two of the agenda this morning.

Mr. Keawe: Yes, because those are for hearing set on the 25th; Gas Company...

ADJOURNMENT

Chair Apisa: Okay, so no further business. Motion to adjourn?

Mr. Mahoney: Move to adjourn, Chair.

Mr. Keawe: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 5:0. Meeting is adjourned.

Chair Apisa adjourned the meeting at 12:04 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.