KAUA'I PLANNING COMMISSION
REGULAR MEETING
July 23, 2019

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair Sean Mahoney at 9:00 a.m., at the Līhu'e Civic Center, Mo'ikeha Building, in meeting room 2A-2B. The following Commissioners were present:

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

The following staff members were present: Planning Department – Director Kaaina Hull, Chance Bukoski, Jody Galinato, Dale Cua, Romio Idica, and Planning Commission Secretary Leslie Takasaki; Office of the County Attorney – Deputy County Attorney Nicholas Courson *(Left at 10:06 am)*, Deputy County Attorney Mahealani Krafft; Office of Boards and Commissions – Administrative Specialist Anela Segreti, Support Clerk Arleen Kuwamura

CALL TO ORDER

Chair Mahoney: Called the meeting to order at 9:00 a.m.

ROLL CALL

Planning Director Mr. Kaaina Hull: Good Morning Chair and members of the Commission. Um, first order of business is roll call. Commissioner Keawe?

Mr. Keawe: Here.

Mr.Hull: Commissioner Streufert.

Ms. Nogami Streufert: Here.

Mr. Hull: Commissioner Ho?

Mr. Ho: Here.

Mr. Hull: Commissioner Apisa.

Ms. Apisa: Here.

Mr. Hull: Chair Mahoney

Chair Mahoney: Here.

Mr. Hull: You have a Quorum, Mr. Chair.

APPROVAL OF AGENDA

Mr. Hull: The next agenda item is agenda Item C, approval of the agenda. The Department would recommended amendments.

Chair Mahoney: Chair will accept the motion to receive and approve the agenda.

Ms. Apisa: Motion to approve the agenda as submitted.

Mr. Ho: Second.

Chair Mahoney: It's been moved and seconded. Any discussion?

Ms. Nogami Streufert: I have one for discussion, there's one.

Chair Mahoney: On the agenda? Hearing none, all in favor, signify by saying, aye. Aye. (Unanimous voice vote). Opposed? (None). Motion carried. 5:0. Thank you.

MINUTES of the meeting(s) of the Planning Commission

Mr. Hull: The next agenda item is uh, agenda Item minutes, meeting minutes of the May 28, 2019.

Ms. Apisa: Motion to approve the minutes as submitted.

Chair Mahoney: It's been moved. Is there a second?

Mr. Keawe: Seconded.

Chair Mahoney: It's been moved and seconded. Any discussion?

Ms. Nogami Streufert: Yes please. I would like to make one correction to the--there is something that is a attributed--here's a paragraph that is attributed to me and as much as I would like to say that it is something that I said, I do not have enough information for me to have said that. I think Kaaina was responding to a question that I had. And so, we can make that one change.

Mr. Hull: What page was that on, Commissioner?

Ms. Nogami Streufert: Sorry, I did not put a page number on it. It's on page 14. And my question was, do you support --does the Department support the 800 square feet? And the whole paragraph after or the whole answer after that I think is Kaaina's. As much as I would like to take credit for it. It is not mine.

Mr. Keawe: Yeah, Yeah.

Chair Mahoney: Ok, can we correct that?

Mr. Hull: Yes. The Department would recommend that the minutes for the May 28th meeting be amended to reflect that the response is from myself and not as opposed to Commissioner Streufert.

Ms. Apisa: I will amend my motion to that correction.

Mr. Keawe: Seconded.

Chair Mahoney: Ok, It's been moved and seconded. Any discussion? Hearing none. All in favor, signify by saying, aye. Aye. (Unanimous voice vote). Opposed? (None). Motion carried. 5:0. Thank you.

RECEIPT OF ITEMS FOR THE RECORD (None)

Mr. Hull: Next E. Receipt Items for the Record. We have no receipt of items for the record.

HEARINGS AND PUBLIC COMMENT

Mr. Hull: Uh, next agenda Item is F, Hearings and Public Comment. If there are any members of the public that would like to testify on any agenda item, this would be the point you want to do it. The Chair does afford the opportunity for you to testify during the actual agenda item itself. So if you would like to testify now because you don't want to wait for the agenda item to come up, you can do that or you could wait for the agenda item to come up. Sorry for the confusion. If you would like to testify now or you would like to wait. Seeing no none for general public comment testimony.

Continued Agency Hearing

Mr. Hull: The next agenda Item is F.1., Continued Agency Hearing. There is no continued agency hearings.

New Agencyc Hearing

Special Management Area use Permit SMA(U)-2019-6 to construct a single-family residence on a parcel situated along the makai side of Kuhio Highway in Hanalei town, immediately adjacent to Post Office facility, further identified as 5-5236 Kuhio Highway, Tax Map Key (4) 5-5-002:031, and containing a total land area of 13,129 sq. ft.= *Tomkri Family Holdings, LLC.*

Mr. Hull: So moving on to F.2., New Agency Hearing. Agency hearing for Special Management Area use Permit SMA(U) 2019-6 to construct a single-family residence on a parcel situated along the makai side of Kuhio Highway in Hanalei town, immediately adjacent to Post Office facility, further identified as 5-5236 Kuhio Highway, Tax Map Key; 5-5-002:031, and containing a total area of 13,129 sq. ft. They applicant is Tomkri Family Holdings, LLC. I don't have anybody signed up for this agenda item. Is there anybody in the agenda, in the audience

that would like to testify on the Tomkri Family Holdings agenda item? Seeing none. The Department would recommend closing the agency hearing.

Mr. Keawe: I move to close the Agency hearing on this item, Tomkri Family Holdings.

Ms. Nogami Streufert: Second.

Chair Mahoney: It's been moved and seconded to close the agency hearing. Any further discussion? All in favor, signify by saying aye. Aye. (Unanimous voice vote) Any opposed? (None) Motion carries 5:0 Agency closed, thank you.

> Class IV Zoning Permit Z-IV-2019-14 and Use Permit U-2019-11 to allow operation of a commercial retail agriculture stand on a parcel situated along the western side of Kawaihau Road in Kapahi, approx. 600ft. west of its intersection with Kaehulua Road, further identified as 5907C Kawaihau Road, Tax Map Key (4) 4-6-011:060, and containing a total land area of 2.006 acres. = *LBD Coffee, LLC.* [Director's Report received by Commission Clerk 7/9/19.]

Mr. Hull: Next we have the New Agency Hearing for Class IV Zoning Permit Z-IV-2019-14 and use permit U-2019-11 to allow operation of a commercial retail agriculture stand on a parcel situated along the western side of Kawaihau Road in Kapahi, approx. 600ft. west of its intersection with Kaehulua Road, containing a total land area of 2.006 acres. The applicant is LBD Coffee. We have one individual signed up to testify. Muriel Sissy Morgan.

Chair Mahoney: Excuse me, could you a state your name for the record and you have three minutes.

Ms. Muriel Sissy Morgan: (Inaudible).

Chair Mahoney: Excuse me could you check your microphone, turn the switch on the top towards you.

Mr. Keawe: There is a button on the top, its higher up. There you go.

Ms. Muriel Sissy Morgan: Hello. My name is Sissy Morgan, Muriel Morgan. I go by Sissy Morgan. I own the four houses across the street from this project, 5906B, 5910, 5898, and 5898A. I have quite a history with Les Drent and his project. I have been opposing the liquor distillery that he is trying to put on this project. I know we are not here to talk about that, but it has caused quite a confusion in our neighborhood. Our neighborhood is on pins and needles with him doing this project. Um, the General Plan does not go as far as this lot when it comes to the neighborhood center and the neighborhood central on the general plan. It goes as far as, I think its Ku—Kuanalani Road to Puuka'a. This project is about a half a mile up from Puuka'a. It's not included in that neighborhood center, it's residential. I have enlarged the map in case you are not familiar with it. Where you can see, where the light area here, next to that green square is residential. It's not included in that neighborhood general or the village that is talked about in the general plan. That is down in the industrial which is where this type of thing should be is down in the industrial. It's not going to do us any good to turn our agriculture lands into fox farm amusement parks. When half of it is going to be concrete, the sale of his products are so expensive the locals are not going to be able to afford them. He said that himself. He has no

respect for the community, for the government, for the cave people that live around him. Within the 500 foot radius there's 23 and a half out of 28 properties that are opposed to the distillery and I bet if I went around with another petition they would be opposed to this too. Because he has verbally assaulted some neighbors and just abused the rest of them on social media and in the Garden Island newspaper. This project does not belong right there in Kapahi. It could be down where the village is, I mean the tension around it right now is he hates all of us for doing the petition for the distillery, you could ask him yourself. He has nothing nice to say about all of us, he calls us freaking idiots. Excuse my language. There is no respect about this whatsoever, there is nothing pono about what Les Drent is doing.

Chair Mahoney: Ok. Let's not go into like character, Keep-

Ms. Morgan: Ok. I am sorry.

Chair Mahoney: Keep it to the point of why you disagree. Let's not—

Ms. Morgan: And in the Director's Report it states that this would be great for the youth? What is the youth going to do with cigars? And coffee? And bourbon? You know, it's not for the youth, the locals can't afford it.

Mr. Hull: Three minutes Mr. Chair.

Chair Mahoney: Your three minutes is up.

Ms. Morgan: Ok. Thank you. I just- I humbly ask you to deny this. Thank you.

Chair Mahoney: Thank you for your testimony.

Mr. Hull: We have no further individuals signed up but if there is anybody in the audience that would like to testify on this application, and this is for the Agriculture stand. There are two applications for this property, one is for the Agriculture stand and one is for the warehouse. This agency hearing is concerning the agriculture stand. Anybody else in the audience would like to testify?

Ms. Morgan: I guess I would like to testify against that one too because it's the testimony.

Chair Mahoney: It's not, it's not up yet because we are taking care of this one first so.

Ms. Morgan: Ok.

Mr. Hull: So seeing further testimony-

Chair Mahoney: Yeah, you will have an opportunity. You will.

Mr. Hull: This is the agency hearing portion which the members of the public are allowed to testify. Seeing none. The Department would recommend closing the agency hearing for agenda Item F. 2b.

Ms. Nogami Streufert: I move that we close the agency hearing for public comment on F.2b

Mr. Ho: Second.

Chair Mahoney: It's been moved and seconded to close the agency hearing for Item F.2b. Any further discussion? All in favor, signify by saying aye. Aye. (Unanimous voice vote) Any opposed? (None) Motion carries 5:0 Agency closed, thank you.

> Class IV Zoning Permit Z-IV-2019-15 and Use Permit U-2019-12 to allow operation of a commercial warehouse facility on a parcel situated along the western side of Kawaihau Road in Kapahi, approx. 600 ft. west of its intersection with Kaehulua Road, further identified as 5907C Kawaihau Road, Tax Map Key: (4) 4-6-011:060, and containing a total land area of 2.006 acres. = *LBD Coffee, LLC.* [Director's Report received by Commission Clerk 7/9/19.]

Mr. Hull: The next New Agency Hearing is Class IV Zoning Permit Z-IV-2019-15 and use permit U-2019-12 to allow operation of a commercial warehouse facility on a parcel situated along the western side of Kawaihau Road in Kapahi, Identified as 5907C, Tax Map Key: (4) 4-6-011:060 approx. 600 ft. west of its intersection with Kaehulua Road, containing a total land area of 2.006 acres. LBD Coffee, LLC, is the applicant. We don't have anybody signed up for this section for the warehouse facility. But is there any members of the audience that would like to testify on this agency hearing?

Chair Mahoney: Ok, could you state your name for the record please? And you have three minutes to testify.

Mr. Tai Erum: Thank you. Tai Erum. I work for LBD Coffee and am the Operations Manager for the company. I just really wanted to talk about what Sissy had said. She as you pointed out she was kind of attacking Les on his character more. I just wanted to point out that during, since she had brought it up, we've been going to liquor commission hearing for the past couple of years now. And when she goes around and gets these petitions—

Chair Mahoney: Ok, you know let's not get started in both—

Mr. Erum: Well I just wanted to point out that she—

Chair Mahoney: You know what, you got to testify. I don't want to hear about he said/she said—

(Inaudible talking from audience)

Chair Mahoney: Why don't you be quiet? You are out of order. Alright.

Mr. Erum: One thing, I'll just point out that what she has been saying is lies. And that's all. Like I wasn't going to testify at all but I just wanted to publicly point that out.

Chair Mahoney: Well, okay. Well you know, you have an opportunity to say something beneficial about the project—

Mr. Erum: Respectfully Chair, I appreciate what you are saying because honestly, in some of the other commission hearings, they allow this to go on for extended amount of time beyond the 3 minutes and more. So actually, this is surprising and I appreciate what you're saying.

Chair Mahoney: Okay, well.

Mr. Erum: Thank you. That's all.

Chair Mahoney: Ok, well thank you for your testimony.

Mr. Hull: Any other additional members of the public?

Chair Mahoney: Ok, and could you state your name for the record please and you have three minutes to testify.

Mr. Trevyn Pless: Uh yeah. My name is Trevyn Pless. I work for LBD Coffee as well. Yeah, I just wanted to say a few positive things about the projects. It is on agricultural land, it is something that should be allowed for the type of land that it is, and it is something that will bring more people to the community. Ah, it will bring more jobs, will bring just more activity to the area and I think it is something that we should be in support of. You've heard you know, some of the negative but really, no body involved in this is looking to cause animosity. We are just trying to build a pretty small business with a small group of people. We have no interest in causing any rift with the community. This has all been a surprise to us, we have never entered in with a negative intentions. And I guess that is all I have to say.

Chair Mahoney: Thank you for your testimony.

Mr. Hull: Any further testimony from the members of the public or audience that would like to testify on this agenda item?

Ms. Morgan: What I would just like to say about—

Chair Mahoney: Could you state your name for the record.

Ms. Morgan: I'm sorry. My name is Sissy, Muriel Morgan. I go by Sissy Morgan. Um, one of the main reasons why I am Opposed to this also, is I don't think we want to start bring tourist up to Kapahi, there is really not a lot for tourist up there. And for him to have a retail shop or is it um, or is it going to be a Kauai products store? Or is he able to sell all agriculturally made items made in Hawaii? Is it going to be Menehune market? There is one ½ a mile down the street. The only other thing that will bring tourist up there is Ho'opi'i falls, which is very dangerous for the tourist. That's the only thing that brings them up there right now. And something like retail sales which sells Hawaii products, is going to bring the tourist right up there and they are going to go to Ho'opi'i falls. And there is going to be more rescues and more recoveries at Ho'opi'i falls because it's going to encourage them to come up there. I don't know what else I can say about it really. Um, I'm just opposed to it.

Chair Mahoney: Ok, well thank you for your testimony.

Ms. Morgan: Thank you.

Mr. Hull: Any other testimony from members of the audience that would like to testify on this agenda item? Seeing none the Department would recommend closing the agency hearing.

Chair Mahoney: Chair will entertain a motion.

Ms. Apisa: I move we close the public testimony portion.

Ms. Nogami Streufert: Seconded.

Chair Mahoney: It's been moved and seconded to close the agency hearing. Any discussion? Hearing none. All in favor, signify by saying, aye. Aye. (Unanimous voice vote). Opposed? (None). Motion carried. 5:0.

Continued Public Hearing

Mr. Hull: Next we have no Continued Public Hearings.

New Public Hearing

Zoning Amendment ZA-2019-7: A bill (2741) for an ordinance amending Chapter 11A, Kauai County Code 1987, as amended, relating to Environmental Impact Assessment on Land Development. The proposal amends Section 11A-2.1 of the Kauai County Code relating to EIA exemptions = *Kauai County Council*

Mr. Hull: So Moving on to New Public Hearings. Zoning Amendment ZA-2019-7: a bill (2741) for an ordinance amending Chapter 11A, Kauai County Code 1987, as amended, relating to Environmental Impact Assessment on Land Development. The proposal amends Section 11A-2.1 of the Kauai County Code relating to EIA exemptions. The applicant is the Kauai County Council and we have a Director's report pertaining to this matter.

Jody Galinato will be providing the report on behalf of the Department.

Staff Planner Jody Galinato: Good morning Chair and members of the Commission.

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

Ms. Galinato: I will hold off for the Conclusion.

Chair Mahoney: Thank you. Any questions for the Planner by any of the Commissioners?

Ms. Nogami Streufert: If I could ask one question. This is just for waiving the fee, not necessarily the EIA?

Ms. Galinato: This is just waiving the Environmental Impact Assessment fee.

Mr. Hull: Yes, so Commissioners. So sometimes not to confuse the situations. Some Projects will require Environmental Impact Assessment or Environmental Impact Statement or Environmental Assessment be done under HRS Chapter 343. The fee that this proposal is looking at removing, does not have any connection to the 343 document. It is just a fee that the County assess and essentially is utilizes within the General Fund for impact mitigation measures arguably for any project that has to pay an EIA fee. They are not quite connected often, they are thought to be connected but this impact assessment fee has no connection to the 343 document.

Chair Mahoney: Any other questions for the Planner? Is that their presentation there?

Mr. Hull: No. there's nobody from Council to present on this side. At this time you might want to ask if there is somebody from the public who might want to testify.

Chair Mahoney: Is there anybody from the public who would like to testify on this agenda item? Seeing none. Could we have the recommendation from the Planner?

Ms. Galinato: Based on the foregoing evaluation and conclusion it is hereby recommended that Zoning Amendment A-2019-7 be approved with the amendments as shown in exhibit A, attached.

Ms. Nogami Streufert: I move that we approve the Zoning Amendment ZA-2019-7 as shown in exhibit A.

Mr. Keawe: Second.

Chair Mahoney: It's been moved and seconded to Approve zoning amendment ZA-2019-7. Any discussion? Hearing none. All in favor—

Mr. Hull: Just say one quick thing. Sorry Chair. This is part of a rather large, a series of 6 or 7 proposals that Council Evslin has concerning the facilitation and incentivization of additional rental units. Given just our staffing and resources we can only do two at a time. So we have about two more coming at the next agenda item and there are also two or three non-zoning ordinance related proposals that Council Evslin has. Now granted it does not require your review but Council members and my talking with him felt that it would be prudent to get your input, if you had any objections to those additional Ordinance Proposals. But they are not zoning related so they are not related to Chapter 10, Chapter 8, or Chapter 9, there is not officially a zoning amendment. But what I am getting at is, we've got 4 or 5 proposals coming before you folks. We have no problems with you folks if it looks like you are leaning towards approving and just moving it out of here. But I just want to put that on the record in case you folks wanted to hold this one and the later one until all of them come to you folks and one time and review them? On the bus style. The Department has no preference but I just wanted to lay that out for your own edification, if you will.

Ms. Nogami Streufert: You're saying that there are about 6 others in addition to this one and they are all somehow related because they are part of the same bill? Is that correct?

Mr. Hull: They are not a part of the same bill. They are separate bills—

Ms. Nogami Streufert: (Inaudible) there all amendments to the same, same regulation?

Mr. Hull: There um. It's not the same regulations. There are 7 different bills or 6 different bills, sorry. 7 different bills, 4 of them relate specifically to tweaking Zoning, the Zoning Ordinances regulation to facilitate ARU's. 2 or 3 of them are not specific to the zoning ordinance, but have to do with like sewer hookup fees or affordable housing and they were sent to you folks for your review as well. There all up at the August 13th Commission meeting. And all I wanted to do is state that you know, if you folks wanted to hold this to review them all together? The Department doesn't have a problem with that. If you folks want to take action today and move it

out of this Commission? The Department has no problem with that either. But I just wanted for your own edification to be aware that a few more are coming your way.

Ms. Apisa: Knowing that more are coming, it makes sense to kind of review um all together.

Mr. Ho: You said that there will be 4 related to the ARU?

Mr. Hull: Sorry. 4 total related to the Zoning Ordinances. And then another 2 or 3 that are related to ARU's but will not be affecting the Zoning Ordinances.

Chair Mahoney: Director. These are all separate bills right?

Mr. Hull: Correct.

Chair Mahoney: I mean we are going to evaluate them?

Mr. Keawe: One at a time?

Chair Mahoney: Yeah, one at a time might be easier then looking at 7. Because there all going to be separate bills, just food for thought.

Ms. Nogami Streufert: Unless some how they are related to each other or have an impact upon each other.

Chair Mahoney: Well there—

Ms. Nogami Streufert: That would be the only, if there is any interaction between these amendments.

Chair Mahoney: Well than they would, I don't know—

Ms. Nogami Streufert: In other words, once you approve one you are kind of down the road and a, you maybe be contradicting yourself.

Chair Mahoney: Well I would guess—

Ms. Nogami Streufert: When do you anticipate –?

Chair Mahoney: I guess "guess" isn't a good word but the information we need to build is going to be, you know, to be bruised and looked at. And if you put 7 in front of us, you know, I was thinking it would be more, but I would go with what the Commissions consensus here.

Mr. Keawe: If we take these two separately and go ahead and offer our comments and approval or denial. Um, the can be again put on the agenda for the next August meeting, basically, this is what you have already done and look at that subsequent to the other 4 or 5 that are coming in, is that right?

Mr. Hull: Arguably, yes we could attach, like if you took action today. Say the Commission approves it, arguably we could still attach it to these other bills—

Mr. Keawe: Right. Attach it to the (inaudible) you've already done this at the last meeting so it relates to what's coming up.

Chair Mahoney: (Inaudible) if you guys want to look at it now it's fine to—

Ms. Nogami Streufert: When do you anticipate that the others will be coming to us?

Mr. Hull: The very next meeting.

Mr. Keawe: The very next meeting? Ok. Don't we have a motion on the floor?

Ms. Nogami Streufert: I will resend my motion.

Ms. Apisa: We can just vote it down.

Ms. Nogami Streufert: We can do that too.

Chair Mahoney: Okay. So a—

Ms. Apisa: Call for the question I guess?

Mr. Keawe: Okay, What are we voting on at this point?

Chair Mahoney: It was moved to approve the Zoning. It was moved and seconded. To approve Zoning Amendment ZA-2019-7 and though the discussion. We should have a role call then.

Deputy County Attorney Nicholas Courson: I would just withdraw.

Ms. Apisa: Oh, Okay.

Ms. Nogami Streufert: I withdraw my motion.

Chair Mahoney: Okay. The motion has been withdrawn. Do we need any—?

Mr. Courson: As long as it is clear the Commission as a whole is fine with it. No objections.

Chair Mahoney: Okay. Alright motion has been withdrawn. So now would we need another motion to continue this at our next meeting?

Mr. Hull: Yes, I think that if there is a desire to hold them all together, a motion to defer to the next commission meeting would be appropriate.

Ms. Nogami Streufert: I move to defer action on this amendment until we have the complete set of the amendments.

Ms. Apisa: Second.

Chair Mahoney: Okay. It's been moved and seconded to defer action until next meeting when we have the full other amendments. Any further discussions? Hearing none. All in favor, signify by saying, aye. Aye. (Unanimous voice vote). Opposed? (None). Motion carried. 5:0.

Zoning Amendment ZA-2019-8: A bill (2745) for an ordinance amending Chapter 10, Kauai County Code 1987, as amended, relating to the Lihue Town Core Urban Design District. The proposal amends Section 10-5A.7(a) of the Kauai County Code relating to generally permitted uses and structures within the Special Planning Area "D"(SPA-D), Rice Street Neighborhood Design District = *Kauai County Council*

Mr. Hull: The next Agenda item is also a New Public Hearings. Zoning Amendment ZA-2019-8: a bill (2745) for an ordinance amending Chapter 10, Kauai County Code 1987, as amended, relating to the Lihue town Core Urban Design District. The proposal amends Section 10-5A.7(a) of the Kauai County Code relating to generally permitted uses and structures within the Special Planning Area "D" (SPA-D), Rice Street Neighborhood Design District. Again the applicant is the Kauai County Council and Jody is the Planner on this agenda.

Jody Galinato will be providing the report on behalf of the Department.

Staff Planner Jody Galinato: Okay. I will be really brief because this ties in to the same kind of thing. Basically in the Rice Street Neighborhood Design District there was an amendment to allow multi-family dwellings not to exceed our 40 Density. But it prohibited ARU's and this Zoning Amendment would allow ARU's in that District.

Mr. Hull: Yes. Real briefly I will just state for the record and getting the last vote one the last agency item, I would anticipate you folks would be deferring this as well. But just for the record. The Department, as Jody has mentioned and in her report we are supportive of this proposal. However, the Department also recognizes that within the past year the County Council did discuss, well essentially provided the opportunity for our 40 Density within the Rice Street District. And at the same time explicitly prohibited ARU's in this district because they did not want it to have a psuedo R-80 Density. The Department is supportive of infill development and increasing densification as in so far as the former character still meet the town area. So that's why we are supportive but we are cognizant of the fact that the policy making body did make an explicit action to prohibit them. So we are cognizant of that and respectful of that however, from a planning perspective we are supportive of this and so we just want to establish that for the record.

Ms. Nogami Streufert: Is there any other R-40 within Lihue Town?

Mr. Hull: There is no R-40's on the entire island with the exception of the Rice District. Technically with the ARU ability, R-20 now functions as R-40 though. And so I think that that was some of the framers of this proposal's view point is that with the ARU ability in fact, all of the R- 20 sections on the island functions as R-40. If we truly intend to further intensify the density even more so in the Rice Street area in the Lihue Town Court area that it would be appropriate to move it from R-40, not to move R-40 but to allow for ARU's in the R-40 District as well. So like I said, the Department is in agreement with that but we recognize some of the concerns that the policy making body had within this past year.

Chair Mahoney: Okay, so Commissioners, Chair will entertain a motion.

Ms. Nogami Streufert: I move to defer consideration of bill No. 2745, the amendment to the bill 2745 until we have the complete set of all amendments.

Mr. Keawe: Second.

Chair Mahoney: It's been moved and seconded. Any discussion? Hearing none. All in favor, signify by saying, aye. Aye. (Unanimous voice vote). Opposed? (None). Motion carried. 5:0

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

CONSENT CALENDAR

Status Reports

Director's Report(s) for Project(s) Scheduled for Agency Hearing on Tuesday August 13, 2019.

Class IV Zoning Permit Z-IV-2020-1 and Use Permit U-2020-1 to construct a new branch office building and associate site improvements on property located within Kilauea town, situated immediately across the Kilauea Post Office facility and immediately adjacent to the Kilauea Lighthouse Shopping Center, along the northern side of the Kilauea Lighthouse Road/Keneke Road intersection, further identified as Tax Map Key: 5-2-005:023, and affecting a portion of a larger parcel containing approx. 179.439 acres =*Gather Federal Credit Union.*

Mr. Hull: So moving on we have the Consent Calendar. There is just one agenda Item on the Consent Calendar. Class IV Zoning Permit Z-IV-2020-1.

Mr. Keawe: That's basically to receive the Director's Report?

Mr. Hull: Just to receive the Director's Report, yes. Correct.

Chair Mahoney: Could I have a motion? Mr. Keawe: I move to receive the Director's Report for a Zoning Class IV Zoning Permit Z-IV-2020-1 and Use Permit U-2020-1 for Gather Federal Credit Union.

Chair Mahoney: Is there a second?

Mr. Ho: Seconded.

Chair Mahoney: It's been moved and seconded. Any discussion? Hearing none. All in favor, signify by saying, aye. Aye. (Unanimous voice vote). Opposed? (None). Motion carried. 5:0

Chair Mahoney: We are going to take a 10 minute caption break.

The Commission recessed this portion of the meeting at 9:37 a.m.
The Commission reconvened this portion of the meeting at 9:44 a.m.

Chair Mahoney: I call the meeting back to order.

New Agency Hearing

Special Management Area use Permit SMA(U)-2019-6 to construct a single-family residence on a parcel situated along the makai side of Kuhio Highway in Hanalei town, immediately adjacent to Post Office facility, further identified as 5-5236 Kuhio Highway, Tax Map Key: (4) 5-5-002:031, and containing a total land area of 13,129 sq. ft.= *Tomkri Family Holdings, LLC.*

Mr. Hull: (Inaudible).

Chair Mahoney: Mike.

Mr. Hull: My apologies. Special Management Area use Permit SMA (U)-2019-6 to construct a single-family residence on a parcel situated along the makai side of Kuhio Highway in Hanalei town, further identified as Tax Map Key: 5-5-002:031, the applicant is Tomkri Family Holdings, LLC and Romio is the Staff Planner on this.

Romio Idica will be providing the report on behalf of the Department.

Staff Planner Romio Idica: Aloha Chair and Commissioners. My name is Romio I am from the County of Kauai Planning Department. Before I go into the Director's Report. I just wanted to point out that there was an Ordinance that was adopted in July 3rd 2019, Ordinance No. 1051 regarding to develop new standards within the residential district. On page 2 of the Director's Report, It should read Map max lot coverage sixty percent rear setback five feet or half the plate height, whichever is greater. And also there is only a ten feet minimum between structures. With that said. I am going into my report.

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

Mr. Idica: Any questions before I read the conclusions or recommendations?

Chair Mahoney: Is there any questions for the Planner? Does anybody want him to repeat the report? Okay.

Ms. Nogami Streufert: I do have a quick question. There on your recommendation No. 5, it's to encourage them to work with their neighbors to pave the road. Is there any way to make that stronger since it is for emergency vehicles and not just for looks or anything else but it is for safety?

Mr. Hull: Yes. At this point there is nothing we can to require them to work with the neighbors and ultimately it is a cost and this action the Commission cannot impose an additional cost on the neighboring property that isn't part of the application. Um, ultimately any further developments in the area could potentially require an actual pave road to be put in before the further

development plate is approved. But as far as requiring other neighbors to share the cost, sharing program if you will, there is no ability to go that far on this petition.

Chair Mahoney: Is there someone from, an applicant to represent the applicant here? Could you come and state your name for the record. And then—

Mr. Matt Hunter: My name is Matt Hunter. I'm the agent for the—

Mr. Keawe: Could you pull the mike up closer to you please.

Mr. Hunter: Yes. My name is Matt Hunter. And I represent Tom and Christy Taylor the owners of the property. And um, in regards to the driveway, it's really a well maintained gravel road. The owners really have taken good care of it, and I have seen there is a note over on Akua there's another small privately owned parcel that's used by 4 or 5 different homes. And it's got pot holes in it and I know some of the people that is living on it. In fact, these folks that are doing this project did own a house on that property, that's their second home. And a there's problems with the pavement because it does get pot holes, it's not cheap, it's expensive to repair it versusgravel including Kobayashi who lives right down the street, quick grade and fresh gravel and it stayed pretty nice over the years no pot holes.

Ms. Nogami Streufert: I guess my concern is that it could be a safety issue not just for the residents but for any emergency vehicles that would come through. But if it is well maintained then whether its gravel or paved is not as important as it is maintained and kept up in a good shape where everyone can use it safely.

Mr. Hunter: I agree.

Chair Mahoney: Commissioner Keawe.

Mr. Keawe: Mr. Hunter was there any in the last year's April flood?

Mr. Hunter: There was on this property on the site, there is an existing home in the front of the home, it's on the highway and then the location of the requested ADU's about a 140 feet behind the high, off from the highway behind his house. And where the existing home is there was, there's a slab that goes into a laundry room that is probably 3 inches off the ground. Water did not enter that portion because there was a tenant in it at the time and they had told us. So the water level might have been 2 inches on the front part of the property and the lot is pretty much level. It's right at 11.8 feet the above sea level. The a—

Mr. Keawe: So there was no intrusions in any of the living areas?

Mr. Hunter: Correct. Zero intrusion. It was pretty much high and dry. The post office next door was a different story, it got a little inundation in there. But it's built, it's on a lower piece of property and this one like I said, is pretty much table top level.

Mr. Keawe: Okay.

Chair Mahoney: Any other questions for the applicant? Seeing none. We have the Planner's final recommendation please.

Mr. Idica: Based on the fore going evaluation and conclusion it is recommended that Special Management Area SMA (U)-2019-6 be approved. Approval of the permit is subject to the following thirteen Conditions and is noted on the record.

Mr. Keawe: (Inaudible) about Deed restriction?

Chair Mahoney: Could the applicant please come back. Once again state your name for the record.

Mr. Hunter: My name is Matt Hunter.

Chair Mahoney: Okay Matt. Do you understand the Conditions and the applicant understands all the Conditions and is agreeable to such?

Mr. Hunter: I do. And I have talked to the owners about these Conditions and they are acceptable.

Chair Mahoney: Okay, thank you. Could you continue please, Planner?

Mr. Idica: Well that concludes the Director's Report.

Chair Mahoney: Okay, Alright. Thank you for presentation. Now the Chair will entertain, entertain a motion.

Ms. Apisa: I move that we approve Special Use Permit (U)-2019-6 to construct a single-family residence.

Ms. Nogami Streufert: Second.

Chair Mahoney: It's been moved and seconded. Any discussion? Hearing none. All in favor, signify by saying, aye. Aye. (Unanimous voice vote). Opposed? (None). Motion carried. 5:0. Thank you for your fine job.

> Class IV Zoning Permit Z-IV-2019-14 and Use Permit U-2019-11 to allow operation of a commercial retail agriculture stand on a parcel situated along the western side of Kawaihau Road in Kapahi, approx. 600ft. west of its intersection with Kaehulua Road, further identified as 5907C Kawaihau Road, Tax Map Key (4) 4-6-011:060, and containing a total land area of 2.006 acres. = *LBD Coffee, LLC.* [Director's Report received by Commission Clerk 7/9/19.]

Mr. Hull: Next Agenda Item is F.2b., Class IV Zoning Permit Z-IV-2019-14 and Use Permit U-2019-11 to allow operation of a commercial retail agriculture stand on a parcel situated along the

western side of Kawaihau Road in Kapahi, further identified as 5907C Kawaihau Road, Tax Map Key: (4) 4-6-011:060, The applicant is LBD Coffee. And Dale is our Planner.

Dale Cua will be providing the report on behalf of the Department.

Staff Planner Dale Cua: Good Morning Chair, members of the Commission. At this time with your permission, if you don't mind I'll highlight points of the Director's Report?

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

Chair Mahoney: Yes. Thank you.

Mr. Cua: It is noted that Kawaihau Road is an improved County Roadway with twenty feet wide asphalt pavement and is wide enough to accommodate two-way vehicular traffic. The Excess easement leading up to the project site is unimproved. Agency comments are attached as Exhibit A. At this time that would conclude the Director's findings for the project.

Chair Mahoney: Is there any questions for the Planner by any members of the Commission? Seeing none. Is there representative for the applicant? Could you come and state your name for the record please?

Mr. Les Drent: My name is Les Drent. I'm a farmer. Been in business in Hawaii for about thirty years, three decades. My wife is a tenured professor at KCC teaches Math, Science and runs the Agricultural Department there, also helps out with early college program. I have two children. Jessica who is a freshmen this year, both of my kids, I have got a son whose going into sixth grade, alright, Kunuikapono Charter School in Anahola. I've been fortunate to have lived on this island. Everything I have to say here in my statement is in direct response to the County of Kauai Planning Department and the nearly sixteen years of harassment that my farms and my family has endured. Hawaii Revised Statutes Section 205-2 (inaudible) expressly states that Hawaii grown and Hawaii value added retail use of Agricultural Zone land shall be permitted. But that use maybe further defined by the Counties through Ordinance. County of Kauai has hampered my ability to do business on this island. You couple that with neighbors who have spent years complaining about our farm activity. We have three certified organic farms on Kawaihau, we have farms on other parts of the island. We are supportive of all farming on this land, this island. All people. GMO Companies, the dairy, and every type of farming that is legal we have supported. What is it that the County of Kauai does not understand about that State Law? Our Mayor in 2012, voted in this Agriculture Department over the legislature to support that. Derek knows me very well. We've got Federal and State Laws that protect the rights of farmers in this State and in this Country. No Court Official, Public Servant, or Public Employee shall declare any farming operation a nuisance for any reason if the farming operation has been conducted in a manner consistent with generally accepted Agriculture and Management Practices. What do we not understand about this folks? Agriculture is suffering on this island. I don't spend time in places like this, I have suffered for two years over at that Liquor Commission. Gerald Rapozo's gotten to know me, Yeah I'm pretty ornery at this point, pretty worked up. So are a lot of farmers, I spent the day out at Beck's yesterday. We just finished a

brutal move this summer, out of the Agricultural area up there. It wasn't an Agriculture, we were in an industrial area and we were in the Smiths Light Industrial area for the last eight years processing our agricultural crops paying high rent. We slaved out there and I am telling you it was blood, sweat, and nearly tears out there this summer. Moving, moving, behind a gate two miles away from the community.

Chair Mahoney: Well, excuse me could I interrupt you for just a second?

Mr. Drent: Sure.

Chair Mahoney: You know I appreciate your, you know, your passion about farming etc. And it's an admirable to be in that but could you kind of explain what you would like to do with—

Mr. Drent: What I would like to explain to you is why, I'd like to ask you why am I here if the State Law expressly permits it, Why? Why am I here? Maui County, Oahu, Big Island, you go in and you sign a one page form, you sign it, and there County Zoning Ordinances are updated. Oahu, no problem go in and sign the page, Maui has further defined it, "can exceed a thousand square feet." Why haven't we defined? (Inaudible) why are we dragging farmers in to these venues? Why do I have pay? I'm impressed your stalks are bigger than mine. You know, twelve hundred dollars for this, twelve hundred dollars for this, plus my attorney fees? For the right for my daughter who raises bees with me to sell a jar of honey? So yeah, I am asking you, why am I here? Why I am here and why am I having to endure? You get one neighbor who is opposed to this and has ability to go around and poison everyone. So why am I here? Can any body tell me that, why am I here?

Mr. Hull: The Commission would add for the Department. I think what Mr. Drent's getting at is the question whether or not a Use Permit is required? And ultimately it's been the Departments position not just my position, but the Department for the past several decades has required any commercial sales on Agriculture lands to receive, to get a Use Permit from this body before operating. The question that he is posing to you folks, is essentially for you folk to rule in on that, you do have the authority to issue a declaratory ruling. And if that is the case the Department at this time would recommend deferral on this agenda item and the declaratory ruling request can be submitted to you folks prior to you taking action on this, that's your prerogative.

Mr. Keawe: Kaaina you want to explain the declaratory.

Mr. Hull: So essentially, the commission can take action to issue a declaratory ruling as far as the matter in which the Zoning Order should be interpreted. The Departments position that under the Use Table, right, you have a Use Table out right Permissible Uses in the very Zoning Districts from the Residential Zoning District, the Industrial Zoning District, Commercial Zoning District, as well as the Agriculture Zoning District. And it has listed out right permitted uses and in no shape has it been the Departments interpretation and several Directors before my time as well has interpreted that because there is no Commercial Sales listed on that, that you then have to look at the Use Permit Section if there is anything similar in nature. And the Director's given the authority to say if it is similar in nature there is something in the Use Permit Table that we

can forward to you folks. But there is no authority given to a Director in the Outright Permissible Table to say similar in nature it has to be Explicitly Listed and if it's not Explicitly Listed it jumps down to that Use Permit aspect. I can say definitely Mr. Drent has a serious objection to the way the Department is operating. And quite honestly I agree with what he is saying that Commercial Operations for some Ag. should be permissible, outright permissible. Which is why we are working right now to amend the Ordinance to provide for permissible commercial sales to happen on Ag. Land when the Agricultural product is grown on that site. But we are still working through the process of getting that bill to Council and until that authority is granted, still the position of the Department that they have to go through the Use Permit process.

Ms. Nogami Streufert: And as I recall we have had a couple of cases that we have had where we have reviewed these kinds of cases before. Recently in the last couple of years as I recall.

Mr. Hull: Correct.

Ms. Nogami Streufert: So as not as though this is different from any other ones that we have done.

Mr. Hull: No.

Mr. Drent: I told my lawyer to stay home today. You know he's got to be in court today too with judges. You know I told him a month ago to just forget it, you know, this is ridiculous you spent so much time and energy and money. This case is in the Fifth Circuit right now, we filed a Declaratory Judgement two years ago. Judge Watanabe still has not brought it up. It's news to me that you are now considering updating your Zoning Ordinances to comply with the law that was past. Amazing how you folks work, I tell you. You know we are not here to be soccer field friends its business okay? I have nothing against everybody here personally I just want to state that okay? I mean really.

Chair Mahoney: Well you know it's a commission—

Mr. Drent: I'm just, I'm just in complete disagreement with all of this.

Chair Mahoney: Well there is a process we are all obligated to follow.

Mr. Drent: Well I don't agree with the process, the process should have been updated State Law was passed—

Chair Mahoney: Well the process is what it is right now and that is what we have to deal with and –

Mr. Drent: Read the Committee Reports from the State Legislature and why that law was created, it was to avoid this.

Chair Mahoney: Okay, well, right now this is what we are dealing with we are not trying to put up obstacles—

Mr. Drent: Okay, well you can deal with it. Honestly, you know who has the final say in this my wife. You know honestly if I had, eh, when I first came to Hawaii, Hawaiians come to (inaudible) and she doesn't want it right now, we are scared of this property. We are scared farmers on Kawaihau. So she has got the final say not you. The State Law has already ruled on this and if the Hawaiians come out and say no, hey, I'm done. Sell the land, you know I respect the Hawaiian culture so much here. I don't respect the bureaucracy that exist in the Planning Department, I'm sorry, I don't!

Chair Mahoney: Okay well, you know your political views have been expressed but you know, it might be to your advantage to take this time to explain what you are planning to do. You know—

Mr. Drent: Sell my value added Agricultural Products from within an enclosed structure on my farm. Now so that, Felicia Cowden's already gone, "well you know the folks aren't spiritually aligned with your products" ah, I apologize. I have been in the cigar industry, I've hosted cigar events for Maize Hirono in Washington. I, I mean I spent my time lobbying. I've been around, I've been around, you know. I mean, okay I'm going to make bourbon now, I'm growing corn. I don't know, I am sorry you have a drinking problem or you know. But some of us are responsible enough to enjoy a cigar and a glass of bourbon and a I'm sorry if you're not spiritually aligned with my products Felicia.

Chair Mahoney: Okay well—

Mr. Drent: Okay so, I'm going to do value added products there, yeah, it's all in the report.

Chair Mahoney: Okay well good, that's what we want to hear about is the report.

Mr. Drent: Not, shhh, that's not what it is about.

Chair Mahoney: Well this leads to a path to continue our process.

Mr. Drent: I, I not going down that path (inaudible) permit, permit.

Chair Mahoney: (inaudible) fine but—

Mr. Drent: Your argument started years ago.

Chair Mahoney: Right now we have got an Agenda Item before us, we are trying to do our duty and we are listening to Reports from our Planner, we have a process to follow, we invited you up to speak and to describe some of the things which you are going to do which you did in our own manner. And is there any questions from any of the Commissioners for the applicant?

Mr. Keawe: Mr. Drent. Can you tell me, I don't know much about farming, can you tell me a little bit about the products, I read something about the type of products? How do you sell them and where do you sell your products currently?

Mr. Drent: We grow coffee. We started our own coffee, roast coffee, mill, you know roasted packages.

Mr. Keawe: Right.

Mr. Drent: We mostly mail order.

Mr. Keawe: Mail order?

Mr. Drent: Mail order yeah, there are various states, and you know we sell a lot of Kona Coffee. I, we started with a coffee industry in Kona back in 1991. I came over here in 1998, started growing chocolate we don't commercially sell the chocolate, it's something that the kids play with and we don't sell the honey either, a, my daughter used it for a fundraisers. We started growing tobacco in 2004, boy I lose my dates, already it's a sign of old age right? A stressed out farmer. Started growing tobacco in 2004, um, and ah, made some horrible cigars and ah, finally figured it out and ah, making good cigars and ah, those cigars are sold over three hundred stores in Hawaii ABC to Safeway we do a robust mail order business with that. We stared growing 2014, we started growing cover crop trudi kale on our tobacco. And I said Hey, byproduct of trudi kale ah, you can make whiskey, I saw trudi kale whiskey somewhere. And ah, but the only problem with that is that the Feds was up on the farm and everything else, the birds that ate the trudi kale so we said, "well you know I still like bourbon I think that there is a potential in bourbon you know we got something different and the governments com'in down on us hard on us the cigars." So I don't know the future of what that is. So we started growing ah, corn, I said, hey, corn grows everywhere, you know" ah—

Mr. Keawe: Are those, is it grown here locally on Kauai?

Mr. Drent: Absolutely. Yeah, it's all hundred percent grown. So we grow, we'll be shipping containers out next week our seasons coming to an end this week. Ah, and ah, so we are using that corn to make American Bourbon. And we had proposed doing a distillery up on that land, when I got that land, I don't know, five six years ago? We sent for the plan, you know, we consolidated all of our agriculture processing. We get out of the industrial area, which you know, we really did not have the room to coffee farm and we have been existing in an industrial area for eight years paying high rent you know, next to the gym and the traffic you know, shouldn't have been there but I was there because I was forced to be there. So we moved out of there this summer because and we canceled a bunch of Building Permits as you guys know, because the neighbors put up such a front ah, to what we are doing. We've moved all the kilns and the, you know, everything up to, away from the public basically. And now the only things that are on that land is the main warehouse which would house the distillery, the chocolate processing, the coffee roasting, and then this small visitor center—

Mr. Keawe: And so the visitor center, would you be selling those value added products? Any fresh products or produce in that?

Mr. Drent: I have a local kid up there Razhon who started working with us um, pretty inspirational kid, he is young, he has got a couple of kids, local boy from the neighborhood, not that I'm not local after thirty years, you know. And he's making a go of it with tomatoes, and fresh greens. And look hey, come on folks, you know, at two, three hundred thousand dollars an acre for Ag land these days and the industries just having been raped and pillaged by the realtors and everybody else exploiting the loop holes and land. We are giving Razhon an opportunity he is a smart kid. He went to the mainland got educated, came back, he's got couple young kids, he's working with us, and you know we are allowing him to get acess to equipment and ah, try to help him out you know. I am assuming he is going to see the light at the end that that is not possible in today's world. But my God, we are going to stand behind him because you know, he is a farmer and that's what farmers do. Just like I was out at Beck's yesterday I mean, it's just you know, farmers on this island are pretty tight.

Mr. Keawe: So are they fields that are close to this particular operation?

Mr. Drent: It's right, we are giving Razhon the opportunity to grow right on the two acre because you know, people put up a front to the bees, they don't want the bee's there. Like the tobacco there, they don't want the coffee there cause of the smell and odors. We put in an after burner at the coffee farm ten years ago, which we did not have to do, but we just did it because we had complaints of people and they still complained, you know. You know, that's what people do, they complain about our mulch piles, we get the police there when we run the chippers, you know, the police come up because of the noise you know. We start mowing too early in the morning we have another neighbor complains about that. You know, it just goes on and on, on this island. With ah, you either want Ag. or you don't? And I don't know is two acres the same value of Ag. Land that a two hundred acres is? I mean I guess that's why the Land Use Commission's going through the whole IAL I watched that. I spend the winter back East now it's just too much for me, I take my kid back and homeschool him and play hockey for a few months in the winter to get away, and nothing grows in the winter in New Hampshire. So You know, I just, I. So back to your question, fresh produce, yes we love to be doing that but nobodies making money on bananas, pineapple, and papaya any more, you know I'm sorry. It's just you can't do it! Man I run a legitimate business, I mean, I run a legitimate payroll, we don't start anybody on our farms for under fifteen dollars and hour, I mean it's a joke. You can't make a living on this island for twenty-five dollars an hour, thirty, and forty. I mean, ask my two guys the Operations farmer, Manager and farm manger back there. I mean, you know, the only way that I tell people, the only way that I'm going to sell food fresh produce and that kind of stuff is if it's subsidized by the booze and tobacco. That's where we are at. Why don't you grow taro? Well, you know if I can subsidize that I will do that, you know. So yeah, it's kind of a bad answer, but to answer your question that's where it's at—

Mr. Keawe: Thank you, at least you gave me an idea of what you do.

Mr. Drent: Yeah.

Chair Mahoney: Alright. Any further questions for the applicant?

Ms. Nogami Streufert: I do have one. There was a, I think you got this, there is a letter from the Department of Water that says that there is no, that you need water on that the Ag. Stand and that nothing has been done to date on this?

Mr. Drent: Ah, is that to the building? Some of the stuff I just received today.

Ms. Nogami Streufert: A June 13th 2019.

Mr. Drent: Is that to the, to the farm stand? Or is it to the property?

Ms. Nogami Streufert: It's the operation of a commercial retail agriculture stand.

Mr. Drent: Ah, it's probably for the stand because all that was, we have no, and the warehouse has been fully permitted. We have water to the property, we have, but the stand was something that we put together separately and that's why there's two applications. The original plan was the warehouse which is fully permitted by every Department Waste Water, we have a waste water plant that was designed there. But the stand was something that we put, it was more like a hypothetical because it's a fallback position because on August 1st the Liquor Commission kind of ruled on our two year struggle with getting a permit to distill our corn into, onto bourbon there. So if that's killed than there goes the warehouse but than what do we do? How do we sell our products? So we sort of introduced, so no, that building is not permitted so there is no permits for that building.

Ms. Nogami Streufert: That's what we are dealing with right now. That is what—

Mr. Drent: So there is no permits for that building it's complete, my architect just drew it up and so there is no, known permits for anything on that.

Mr. Hull: So Commissioners the, yes. So what's pretty standard for any type of use that requires Planning Commissioner review i.e. a Use Permit? Is that the applicant or Landowner will present the idea in its more, yes, not the full blown Building Permits get applied first because at the end of the day the first Agency, the Building Department is going to route it to is the Planning Department. And the Planning Department does not have the authority to sign off on i.e. the Use Permit and they are not going to have the plans drawn up. So what the applicant is just looking at your folks today insight into is, is, can he have the ability to have that commercial retail stand there? And if he can have that commercial retail stand sited there, he has that entitlement from you folks. Than he goes to the Building Department with a set of plans and one of the Agencies it gets routed to is the Water Department. So he will have to resolve the water issues with the Water Department before the Water Department signs off on that Building Permit.

Ms. Nogami Streufert: Okay, so this is just the preliminary report?

Mr. Hull: Correct. I think historically and the Water Departments comments still reflect that for decades you know, much before your times on the Commission. The Planning Commission before were used as a clearing house, if you will. That first, they would meet all the conditions of the agencies here at the Planning Commission. But since the Building Permit processes were put in place where all the agencies have their respective lines to sign-off on now. No longer does the Planning Commission function in that manner really.

Ms. Nogami Streufert: So that would be a Condition if it were approved, if the Use was approved, then this would be a Condition that would have to be fulfilled before it can actually go into operation?

Mr. Hull: That or whatever water concerns are essentially, they have to resolve that with the Water Department.

Mr. Drent: A the reason we do anything with getting permits for that is we have learned our lesson hard, very hard. And it's cost me a ton of money to get permitted with everything else, to have what went on over at Liquor. I've spent so much time and money getting permitted on that and even got Planning's Approval on that, to get crushed over there.

Chair Mahoney: So is there any further questions for the applicant? Hearing none. How about a recommendation from the Planner.

Mr. Cua: Ok a moving on to the recommendation based on the foregoing evaluation and conclusion it is here by recommended that the subject request, before we move on to the recommendation are you going to take public testimony before I read the recommendations?

Chair Mahoney: Is there any members of public that would like to testify on this Agenda Item? You already testified twice.

Ms. Apisa: Is there anything new?

Chair Mahoney: Is there anything new you wanted to add? You have something additional you want to add, you are welcome to it, if it's re-hash of the same stuff?

Ms. Muriel Sissy Morgan: That's ok, that's ok, and I've said it.

Chair Mahoney: Okay. Okay thank you.

Mr. Hull: I'll say the Department stands by the evaluation and recommendation given, given the public testimony and much that was received in the transmitted to you folks in the supplemental and the Director's Report. You know, much of it was I will say Chair it got into character assessments which for this body for the Departments Review is kind of neither here nor there quite honestly looking at the actual proposal. One issue that was a concern when we looked at it and that was a concern that was brought up by both a testifier as well as in the comments is the insurant that it is in fact servicing the farm operation as it occurs on the site or connected with other farms. And the Department is definitely supportive of as you can see in our report of farm

operations and farm sales that are in conjunction with actual agriculture activity occurring on the property. And so the Department has one additional Condition that would be recommending to put on it. I can put it for circulation and it's similar to the other farm operations that have come to this body before to have agriculture sales and we will be recommending Condition 11 also being included which states, "sale of items shall be restricted to agriculture products grown and or produced on the subject property. Additional food stuff from offsite preferable from Kauai or the State of Hawaii maybe utilized in the products. Additional promotional products such as hats and t-shirts with the subject properties farm related logos and other tropical products may be sold at the site." And it's similar to other Conditions we've put or this body has put on farm sale operations. I will give it for circulation.

Chair Mahoney: Give a copy to the applicant.

Mr. Hull: Yes.

Mr. Ho: Kaaina. This, what you just passed out is another Condition added.

Mr. Hull: It would be an additional Condition the Department will be recommending.

Ms. Apisa: Could I ask a question about this supplemental?

Mr. Hull: Okay. You have a question Commissioner?

Ms. Apisa: In the supplemental that you just handed out it said, "Additional food stuff from offsite preferable from Kauai or Hawaii may be utilized in the products but not outside products themselves." Is that correct?

Mr. Hull: Correct. So the intent was, is that you know, the primary you know, product is gonna be grown on the land owner's farm. But it's recognizing that you know there is some ingredients that may be involved with the value added goods may not be grown on the farm or even available in the State so he can still utilize other food stuffs from other areas. But the primary intent is for the product he is selling to be primarily from the land that he is farming.

Ms. Apisa: Okay so, the conclusion it says, "Farm related logos and other tropical products may be sold." So they can do other products?

Mr. Hull: No. As far as the merchandise that you should, we found in farms stands or in farm operations that they may be able to sell their actual product i.e. in this case it would be the cigars or what have you. But in other proposals that we've had before you folks, they've asked to be able sell, and the one that comes to mind is "Common Ground." Common Ground was using or utilizing there farm to sell farm related products not just the food stuff that they were selling there, but they also asked to sell like Common Ground related t-shirts and logos and what have you. As long as it is associated with the farm, we are saying yes, that's promotional for the farm and if it helps the farm further farm the property then indeed. The Department was supportive and this body was supportive of that Condition for other farm operations.

Ms. Apisa: So expanding on that just to be clear. So if it's a local product but not if it's just Kauai t-shirt or something.

Mr. Hull: Yeah, exactly.

Ms. Apisa: Thank you for clarifying that.

Mr. Keawe: So that would be specific to his branding?

Mr. Hull: Correct.

Mr. Keawe: I got it.

Chair Mahoney: To the applicant do you understand the—

Mr. Drent: No I don't understand. I just want to really make sure because we hashed this out I don't know, five or six years ago with the letter from long board Mikey. Mike Laureta still at the Planning Department? You are familiar with that e-mail right? Where he said that a, "we operate a bunch of farms," Right, this two acre farm is one of three small farms on Kawaihau, you know, we freely move our agricultural crops from farm to farm for production. I mean I can't be expected to have if we grow chocolate at two farms to have two different processing facilities for the chocolate right? On each one of those farms and then am I just allowed to sell that chocolate from the one farm that it's growing on? I got to keep the chocolate from that farm selling on that farm? That not what this is saying, I just want to make sure that you know—

Mr. Hull: I think the Department would have any objections to what Mr. Drent was saying and to that affect we would amend Condition No. 11 to state, "sale of items the site shall be restricted to agriculture products grown and produced on the subject property (inaudible) associated farms."

Mr. Drent: Okay, and what is exactly "associated" let's make sure we get everything out in the open here so we know exactly what Mr. Drent is doing on his farms. You know, we moved this summer it was brutal, I told you about that. We had three farms that grew our corn last year for the bourbon, one was our farm, the main one. We also worked with Adam Kileman in Koloa land that he leases down there we had him grow some corn. Because were interested in the different lands (inaudible) had to do with the bourbon taste, and then also picked up some corn from Beck's and created a great relationship with them. So I had three different farms you know, and then I am also dealing with North American Grains along with the bourbon by legal definition it's got to contain fifty one percent or more corn. So there is potentially as high as forty-nine percent grains in that bourbon that are grown in Canada, you know. I know also have been in the coffee industry since 1993. I started on the Big Island, I was a big supporter of Kona Coffee and still am, truth and labeling. Tommy Greenwell, is I would call an associate of mine, I've been friends with the guy Jesus, nearly three decades. Ah, so I do get hundred percent Kona Coffee and I have been fueling my Kona Coffee mail order with hundred percent Kona you know, grown coffee. So is that all associated? Where are we, you know? I just want to make sure we're you know? This is the opportunity, we've had these discussions you know, you

know, they've gone haywire you know, and I've contributed to that but I want to make sure that we are all on the same understanding of what associated is you know. I am not going to be bringing in, look, I am not a t-shirt trinket guy, I am not a made in China trinket guy. We make our cigar cutters in China, my glass balls right now for the bourbon are being made in China right now. I am watching them come off of these, we rely, my Cigar Factory is in Nicaragua, you know. I use Halapa Valley, I use Ecuadorian Tobacco in my cigars along with the Kauai grown. A different and varied blend I mean that gives the uniqueness of the cigar. You know, so I just want to make sure that we are not going be, you know, I don't have people coming back on me and saying, "why does he have bails of Halapa Valley ah, cigar tobacco alongside the stuff that we grow?" Ah, is that, did I asking the right question here?

Mr. Hull: Yeah.

Chair Mahoney: Yeah. I think we've got the, the question now, maybe the Director could help us with the answer.

Mr. Hull: Yeah. It's um—

Ms. Apisa: Additional food stuffs.

Mr. Hull: Yeah. That's what I'm saying, "additional food stuffs" I think what Mr. Drent is getting at is can there be a clear threshold? Because should the Department come back with an enforcement action and there was a disagreement on what "associated farm and food stuffs" encompasses is kind of up for the discussion. You know, then we had this discussion with this body, some of you folks weren't there. But several years ago when Common Ground was here essentially it was decided that we were not gonna, the Commission decided at the time it's not going to go through the exercise of listing every single food product and the ratio that it needs to be had at. That was, I am not saying that you folks can't, it could potentially be an exercise of fertility. But—

Mr. Keawe: It was something we considered before.

Mr. Hull: It was something you considered before and essentially, leaving it somewhat open-ended for the Department to monitor and regulate and should we feel fit to bring it back to you folks. That's where it's been kind of left at, um, and that's the kind of what I would say where this would be, I don't know if Mr. Drent is okay with that? I have no problem quite honestly deferring this agenda item so that he is afforded more time to go over this language and perhaps in agreement can be worked out between the Department and the applicant? But I am not sure (inaudible) to the exact language. But I got no problems deferring this until he and possibly if he wants his attorney to look at it as well. I got no problem with that.

Mr. Drent: I think that you know, I think its important hash this out and get it right. That's what I think and I have always talked about that you know, you need to have stuff in the Ordinances, it needs to be defined. I have no idea why it is not, better to find out. Big supporter of Hawaii grown products, I'm a farmer here, I'm really proud of that—but I'm risking, what you are asking me to do is to take a chance that further enforcement action. Believe me there has been

further enforcement action for fifteen, sixteen years from your Planning Department. But I don't want to be investing in this with my daughter going to college in three years, right? (Inaudible).

Chair Mahoney: No I understand.

Mr. Drent: Yeah. Is it worth the investment? That's where we are at now.

Chair Mahoney: Well how about if right here you would like more time to discuss this with your Lawyer and the Department—

Mr. Drent: And the Department? I think everybody needs to figure this out. So it is clear—

Chair Mahoney: Okay. If that's agreeable with a—

Mr. Keawe: No Again, your concern is the same as ours, we want to be absolutely clear that you understand what "Associated farms or partners" is what "Products are associated" and that we all agree. There's no, should be no concern on your part because it's already been defined. So if you have no problems with the deferral I think—

Mr. Drent: I have no problems with the deferral I want to get things right and then set a precedence for future farmers. That make sense? So with having to do all this and that includes having to go through this whole permitting process which I think you really need to get figured out as well. So—

Chair Mahoney: So I think we are doing pretty good and I think you are doing a lot better since when you first came in to so we are understanding each other, we will both work on it. So—

Mr. Keawe: Okay. How do we do this?

Ms. Nogami Streufert: I move that we defer consideration of the Class IV Zoning Permit and Use Permit for the operation of a parcel retail agricultural stand to a future date to be determined by the Planning Department.

Mr. Keawe: Second.

Chair Mahoney: It's been moved and seconded. Any discussion? Hearing none. All in favor, signify by saying, aye. Aye. (Unanimous voice vote). Opposed? (None). Motion carried. 5:0.

The Commission recessed this portion of the meeting at 10:47 a.m.
The Commission reconvened this portion of the meeting at 10:53 a.m.

Chair Mahoney: I call the meeting back to order.

New Agency Hearing

Class IV Zoning Permit Z-IV-2019-15 and Use Permit U-2019-12 to allow operation of a commercial warehouse facility on a parcel situated along the western side of Kawaihau

Road in Kapahi, approx. 600 ft. west of its intersection with Kaehulua Road, further identified as 5907C Kawaihau Road, Tax Map Key (4) 4-6-011:060, and containing a total land area of 2.006 acres. = *LBD Coffee, LLC.* [Director's Report received by Commission Clerk 7/9/19.]

Mr. Hull: The next Agenda Item is Agenda Item F.2c., Class IV Zoning Permit Z-IV-2019-15 and Use Permit U-2019-12 to allow operation of a commercial warehouse facility on a parcel situated along the western side of Kawaihau Road in Kapahi, further identified as 5907C, Kawaihau Road, Tax Map Key: (4) 4-6-011:060. And containing a total area of 2.006 acres. The applicant is LBD Coffee, LLC. Again. Dale is the Planner on this, the reports stands as is and is very similar in nature to the report he just gave on the Ag. Stand facility. So just saying the, keeping with time interest, the Department stands by the report and has a similar recommendation that the Department also be looking at recommending adding the Condition 11, to ensure of the sale of the Ag. Products are in keeping with the products that are grown with the farm primarily. But knowing that we will have to work that out with the applicant. The Department is open and available for any a questions and I'm not sure if you want to bring the applicant up? But ultimately, the Department is open for a deferral so among other things work out, but in particular work out Condition No. 11 Potentially.

Chair Mahoney: Could the applicant please come back and state you your name for the record please.

Mr. Les Drent: Les Drent. Applicant, farmer.

Chair Mahoney: So you have heard the Director and well going for a deferral on this agenda item?

Mr. Les Drent: Yes, and a deferral is for the reason not to work this out with the applicant. I think you are still missing the point. You need to work this out within your agency and the Planning Commission and the people that make the laws.

Mr. Hull: No, No I am going to object right now. The request for deferral is not address the process as the Department has stated earlier, the Department is looking at the process –

Mr. Les Drent: I disagree and I object the process.

Mr. Hull: Than the Department won't say then don't defer it. If your saying that, that is not the propose of it. Because quite honestly, I am not going to attempt to work with the applicant to iron the condition if he is stating —

Mr. Les Drent: Well there we are at that juncture again.

Chair Mahoney: Well why don't we just take moment there and hold the ego's for a second and you know, we just defer the other agenda item. It's about the same the Department is not asking for the deferral to correct the Department. It's an opportunity for you to understand the Condition more readily with your attorney, and that is what is offered to you.

Mr. Les Drent: I am not going to take the offer and I will rescind the other offer. I object. I think that the law needs to be defined, the law needs to be further defined and the County Zoning Ordinance. And that needs to occur first—

Chair Mahoney: Well that's not going to happen here now.

Mr. Les Drent: Well unfortunately, then I object and I rescind the other—No, I don't accept any of this then. Sorry, I don't know what else to say. You know I've moved on, where distilling the bourbon in Washington anyway so, you know we can just wait it out with the Fifth Circuit. You know, we can head down that road if you want.

Chair Mahoney: Well you can make your choice. But you are putting your own obstacles up here.

Mr. Les Drent: Well there's no obstacles. You know, I'm a solution guy, I hate to tell you. I've been finding solutions in Hawaii with agriculture for, you know, for a long time. I'm pretty clever.

Chair Mahoney: Well alright, we will end it there if you do not accept.

Mr. Les Drent: I don't accept. I think you need to get the law fixed and (inaudible).

Chair Mahoney: So we will have to do whatever process we have to do here. Now so—

Mr. Les Drent: Okay, have at it. Don't ask why the dog barks.

Mr. Hull: Ok so with that, then I guess the other agenda item will have to do with later because it was deferred. So than the Department would stand by the recommendation that Condition 11 be imposed on this Zoning Permit and Condition 11, and state, "sale of items shall of this site shall be restricted to agriculture products grown and produced on the subject property or its associated farms. Additional food stuff from offsite preferably from Kauai or the State Hawaii maybe utilized in the products. Additional products such as hats and t-shirts with the subject farm related logos and other tropical products may be sold at the site."

Ms. Nogami Streufert: Could I ask a couple of questions? If we are going back on this whole thing. Alright. One of the issues, not issues, one of the concerns I have on this is that, you said the traffic. Oh Sorry, the applicants not here. I am looking at your application right now and just have a couple questions. You said the traffic would be no more than 2 to 20 patrons per day. How did you determine that?

Mr. Les Drent: I can't manage the traffic. Is that what the lawyer put in the application, 2-3 patrons a day?

Ms. Nogami Streufert: No. 2 to 20.

Mr. Les Drent: 2 to 20 patrons a day? You know I have no idea. I mean it's, I think we put a lot of hypotheticals in there. I mean I think we put 6 parking stalls, I believe just because we were required too. We had to fill in, we had to find cultural practitioners. You know the Hawaiian friends that I have said there is absolutely nothing culturally significant about that land. But we are still made to go through these exercises. You read through that General Plan there is a lot of things that are in there. So I really don't know, I really don't have the answers.

Chair Mahoney: Well okay, let's move on to the next question then.

Ms. Nogami Streufert: Than again I will come back to the water issue. Do you have a plan on how you would address that, not just for water for processing but also for safety?

Mr. Les Drent: Water for processing? I mean we've already got all the permits and approvals for that warehouse to do all the processing. We've down the water calculations for waste, I mean everything has been permitted so I'm not sure. Are we back to the farm stand? Or are we at the warehouse portion of the commercial?

Ms. Nogami Streufert: Both of them are, that was a concern on both of them.

Mr. Les Drent: The concern on both of them? So we're talking about both?

Chair Mahoney: We are not talking about the Farm Stand.

Mr. Les Drent: You're talking about the warehouse? Yeah, well it's all been fully permitted.

Ms. Nogami Streufert: I'm sorry. When you say fully permitted, what do you mean by fully permitted?

Mr. Les Drent: The County of Kauai has fully permitted the use of that building for distilling alcohol out of our corn, processing our tobacco for cigars, our coffee, our chocolate, our honey. Everything is waste water, fire, we have the permits in hand the only thing we did not have in hand, was the liquor distillery permit. Which over the last two years we have been hung up on. And we've also been hung up on this issue of the retail. And once again, I think you need to define your zoning ordinances before we can have an honest discussion. Because you are asking me to accept ambiguity. How can you do that? How can you expect me to go there? And I am a small farmer, I mean, you want go there and invest $1.2 million in building this thing? And I don't know, am I limited on the number of people I have there? I am not a Roberts Hawaii Tour bus guy either. I mean you know look, honestly Kaaina, you want to come up and break my butt on my property? Guys call they are on their way to Princeville to play golf, they want a box of cigars. Hey, you want a full box, come on up. They come on up. Yeah, I break the law buddy. I am telling right here I break the law. But then how often to do they come up? I don't know geez, they are hardly ever there really, but you know.

Chair Mahoney: (Inaudible cross talk)…We don't want to hear how you break the law or anything—

Mr. Les Drent: Well I do.

Chair Mahoney: Alright. Well—

Mr. Les Drent: That's the problem.

Chair Mahoney: Well that's not what we do.

Mr. Les Drent: Well then you need to fix the law.

Ms. Nogami Streufert: Okay. Could I ask, what is the question that we have on the table?

Chair Mahoney: Yes.

Mr. Keawe: What are we trying to do right now? I am getting confused.

Chair Mahoney: Okay.

Ms. Nogami Streufert: I am lost.

Mr. Les Drent: What are you trying to do here because I think you need to get the law fixed before you can have me come in here and I shouldn't be here asking for a permit? Why am I here asking for this permit? If the State law says it shall be permitted. Why am I here?

Chair Mahoney: Okay.

Mr. Les Drent: It's not required in Maui, it's not required on the Big Island, it's not required on Oahu—

Chair Mahoney: We are not on Maui, we are not on the big Island this is the procedure that's happening here now. So right now we are square this up, what agenda item we're on Class IV Zoning Permit Z-IV-2019-15. What's our options Mr. Director that we can do on this?

Mr. Hull: The options are one, you can accept the Department Report as recommended and adopt that approval recommendation with the conditions of approval, you can amend the conditions and still approve it, or you could defer the item, or you could deny the request.

Mr. Les Drent: Do I have the option to withdraw the applications, both of them right now until you get the law figured out?

Mr. Hull: Absolutely. You absolutely have the right to withdraw the application.

Mr. Les Drent: I withdraw than and that end it. You guys get your law fixed and I withdraw, both applications. Does that make things simpler for you?

Chair Mahoney: Fine.

Mr. Les Drent: Okay. That's sounds good. I am off to see the family by the way, I missed the other side of my family in California for this.

Mr. Hull: (Inaudible). Moving on there are no further Agenda Items. The topics for next future meetings I know that we had some discussions concerning Coco Palms coming before you folks today. There was some scheduling issues so they will be on the August 13th agenda item, Coco Palms will be on the August 13th agenda. And they did meet their requirement to submit by June 30th 2019. So they did submit the update as far as the permit stands but the actual discussion will happen on the August 13th meeting.

Ms. Morgan: I just wanted to tell you all thank you.

Chair Mahoney: Nope. You're alright. There is no more public testimonies. Thank you that is noted on the record.

Mr. Hull: Now that we have no further agenda items. The following Planning Commission Meeting will be held at 9 a.m., or shortly thereafter at the Lihue Civic Center, Moikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Lihue, Hawaii 96766 on Tuesday August 13, 2019. That's a wrap.

Chair Mahoney: Okay. Can we get a motion to adjourn?

Ms. Nogami Streufert: I move to adjourn.

Mr. Ho: Seconded.

Chair Mahoney: It's been moved and seconded. . All in favor, signify by saying, aye. Aye. (Unanimous voice vote). Meeting adjourned. Motion carried. 5:0

Chair Mahoney adjourned the meeting 11:03 a.m.

Respectfully submitted by:

Arleen Kuwamura,
Commission Support Clerk

(X) Approved as circulated on September 10, 2019.

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