

KAUA'I PLANNING COMMISSION  
REGULAR MEETING  
May 28, 2019

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair Nogami Streufert at 9:27 a.m., at the Lihu'e Civic Center, Mo'ikeha Building, in meeting room 2A-2B. The following Commissioners were present:

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

Absent and Excused:  
Mr. Sean Mahoney

The following staff members were present: Planning Department – Director Kaaina Hull, Deputy Director Jodi Higuchi Sayegusa, Chance Bukoski, Jody Galinato, and Planning Commission Secretary Leslie Takasaki; Office of the County Attorney – Deputy County Attorney Nicholas Courson; Office of Boards and Commissions – Administrative Specialist Anela Segreti, Support Clerk Arleen Kuwamura

**CALL TO ORDER**

Chair Nogami Streufert: Called the meeting to order at 9:27 a.m.

**ROLL CALL**

Planning Director Kaaina Hull: Good morning, Madame Chair. Commission. First order of business for Planning Commission May 28<sup>th</sup> 2019 is roll call. Commissioner Ho.

Mr. Ho: Here.

Mr. Hull: Commissioner Apisa.

Ms. Apisa: Here.

Mr.Hull: Commissioner Keawe.

Mr. Keawe: Here.

Mr. Hull: Chair Mahoney is excused. Vice Chair Streufert.

Chair Nogami Streufert: Here.

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

## **APPROVAL OF AGENDA**

Mr. Hull: Next is Agenda Item is, Approval of the Agenda.

Chair Nogami Streufert: May I have a motion to approve the Agenda. Is the agenda as is or are there any amendments?

Mr. Hull: The Department doesn't have any recommended amendments.

Ms. Apisa: I move that we approve the Agenda as presented.

Mr. Keawe: Seconded.

Chair Nogami Streufert: All in favor signify by saying aye? (Unanimous voice vote) Any opposed? (None) Motion carries 4:0.

## **MINUTES of the meeting(s) of the Planning Commission**

Mr. Hull: Next Agenda Item is Agenda Item D. Minutes of the Meeting of the Planning Commission of April 9<sup>th</sup> 2019.

Mr. Keawe: I move to approve the Minutes of April 9<sup>th</sup> 2019.

Ms. Apisa: Second.

Chair Nogami Streufert: Any further discussions? Seeing no discussion. All in favor signify by saying aye? (Unanimous voice vote) Any opposed? (None) Motion carries 4:0.

## **RECEIPT OF ITEMS FOR THE RECORD (None)**

Mr. Hull: Next Agenda Item is, there are no Receipts of Items for the Record.

## **HEARINGS AND PUBLIC COMMENT**

Mr. Hull: So moving on to F. Hearing of Public Comment. Individuals may orally testify on Items on this Agenda during Public Comment period. So is there anyone in the public that may want to testify on any agenda item, you are afforded the opportunity now as well generally at the discretion of the Chair during the agenda item that opportunity also afforded. Would anyone like to testify on any agenda items at this moment? Seeing none.

Continued Agency Hearing

New Agency Hearing

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

Zoning Amendment ZA-2019-6: A bill for an ordinance amending Chapter 8, Kauai County Code 1987, as amended, relating to Comprehensive Zoning Ordinance (CZO). The proposed amends Section 8-1.5 of the CZO relating to Guest House Definition= Kauai County Council. [Director's Report received and hearing deferred 4/23/19.]

Mr. Hull: We move on to... there is no Continued Agency hearing, there is no New Agency Hearing. Moving on to Item F. 3. Continued Public Hearing. Zoning amendment ZA-2019-6: a bill for an ordinance amending Chapter 8, Kauai County Code 1987, as amended, relating to Comprehensive Zoning Ordinance (CZO). The proposed amends Section 8-1.5 of the CZO relating to Guest House Definition, the applicant or at least the original proposer is the Kauai County Council. You folks have a supplemental No. 1 to the Directors Report. We have two (2) individuals signed up to testify. Before I get into the testimonies, we also have a letter of support that came in this morning from the Kauai Board of Realtors in support of the proposal with additional testimony. Concerning this Zoning Amendment, the Department- at the last Planning Commission recommended approval of it. Also, there was somewhat at the last minute public testimony submitted regarding two (2) particular issues of the zoning amendment. One was to request to remove the size of the lot to allow a guest house. And the second one was to clarify if owners can also reside in the guest house not just tenants or guests. The Department was amenable and in agreement with those proposals so we have drafted a staff report which essentially goes into...I won't read the report verbatim that Mr. Bukoski wrote, but essentially going at the heart of what the guest house proposal and why it was done. It was essentially to further allow flexibility to address the housing needs on Kauai. As you are all well aware, the State and Kauai as well is in a housing crisis. There is a significant deficient of inventory currently on Kauai. Zoning is not and end all be all, but it is the first aspect of where property owners can look at potential strategies and opportunities to provide for housing needs. This body as well as ultimately the County Council recently reviewed and adopted the additional rental unit bill to allow for more rental units to be provided for in the residential district. Council Member Brun, who introduced the guest house proposal before you folks. He isn't the Housing Committee Chair anymore but I believe this was spun out of his time serving as the Committee Chair. And the fact that there are two (2) issues going on with guest homes, and for the record, a guest home is a 500 sq. ft. unit that can be used for lodging guests, tenants, and in our interpretation owners on a lot of record. Historically, and through the definition that is currently in place, a guest house functions, for all intentional purposes as an exterior bedroom if you will in which people can reside in there. But no kitchen is essentially allowed in there for habitation to occur separate and apart from the primary unit. And so I think- I believe one Council Member Brun introduced his intent was to provide for additional flexibility for housing opportunity by allowing for a kitchen in the guest house. And Secondly, I believe his intent was also to address the fact that illegal conversions have been occurring for years now. It is something that the Department when we have a complaint actually goes out and does inspection. As I've said a number of times at the County Council as well as before this body. If there is a zoning violation, we do go out on the complaints but given the housing crisis it's not the intent of the Department to actively go out there and shut down illegal dwelling units essentially. The Department recognizes that these illegal dwelling units have spun up impart because we are in a crisis. I mean for all intensive purposes, these units are black market units. But black markets generally arise when government regulations prevent the necessary supply getting to the consumer. And in

this case the consumer being the need for housing inventory, the home owners or home renters. And so it's not the intent for the Department to go out and proactively shut down these units that are illegally converted, because again, they are addressing a much needed demand that is not being met currently. But if we are given a complaint, we do have to inspect it and if we do find these units illegally converted, we are essentially required to bring them into conformance. So anyways, it looks like the intent of the bill was one, to address the housing crisis and to also recognize that these conversions are acquiring and to allow them to convert from a zoning perspective. Should the bill ultimately be adopted, it doesn't automatically equate that these units are completely and totally legal. They still have to go through the necessary agency review to ensure that the infrastructure and the safety and health and welfare of the people occupying these units is not threatened. So they still have to get the building permits, they still have to ensure there's adequate water capacity, ensure that there is adequate access, and what have you. But this is essentially the first step in attempting to address that so zoning is the first barrier if you will, to converting these units. So the Department is recommending approval, we did get the testimony at the last meeting that we are in agreement with and we've submitted the amendments to you folks removing the lot size as well as clarifying the owners can reside in these units as well. So we are here for questions?

Chair Nogami Streufert: Are there any questions? Do you have one?

Ms. Apisa: No. Does anybody out there-

Chair Nogami Streufert: Before I go there I would like the Commission first. At this point is there anything in this regulation that would prevent...are they wanting the units to be used as a homestay?

Mr. Hull: As a homestay or vacation-

Chair Nogami Streufert: I know the intent is good, the intent is to decrease the problem with not having enough inventory for rentals or for residents here. But is there anything that would prevent it from being used as an illegal TVR or a homestay so that it is used for the purpose that it is intended?

Mr. Hull: Vacation rentals and homestays are prohibited outside the visitor destination area. So in no way, shape, or form could they legally operate a home stay or vacation rental in guest houses outside of the VDA. Should they do that they would essentially fall within our enforcement parameters and previews of us catching them essentially and then shutting them down.

Chair Nogami Streufert: But within the VDA could these be used as homestays?

Mr. Hull: Technically yes. It could be used for either or homestay or a TVR within the VDA.

Chair Nogami Streufert: Which would not be the intent of what this regulation is for?

Mr. Hull: Yes. If it's talking about specifically housing inventory issues, no.

Ms. Apisa: How many VDA's, I mean I'm just more familiar with the North shore, I know Princeville specifically prohibits a second house. So I know that VDA is ruled out. Are there any other VDA's that could potentially apply to?

Mr. Hull: In Kapaa there is a visitor destination area as well as in Poipu and a small portion of Waimea.

Chair Nogami Streufert: Kekaha?

Mr. Hull: Kekaha does not have VDA. You have a series of vacation rentals along the Kekaha coastline but those were all permitted through a non-conforming use certificate evaluation. But no more could be permitted in that area.

Mr. Keawe: So I have a question.

Chair Nogami Streufert: Yes.

Mr. Keawe: So, Kaaina you mentioned that limiting the lot size, is that right? Because I'm still reading it-it says, "at least 9000 sq. ft. from the bill." So?

Mr. Hull: So the proposal-

Mr. Keawe: So what about this?

Mr. Hull: Yes. Essentially the 9000 sq. ft. is just saying that any lot of record than can apply for a guest house and have a respective kitchen in their guest house.

Mr. Keawe: So It needs to have at least 9000 sq. ft.?

Mr. Hull: No. Previously the guest house was limited to 9000 sq. ft. What we are saying is to remove that 9000 sq. ft. window.

Mr. Keawe: Now is that –Do we have that in writing somewhere?

Mr. Hull: Yes. So if you look at the bill section 1. It has a definition of guest house. The definition currently reads, "Means of building"-

Mr. Keawe: So the bracket means they are taking it out?

Mr. Hull: Yes.

Mr. Keawe: Thank you.

Chair Nogami Streufert: Are there any comments? Or anyone want say anything about this from the audience?

Mr. Hull: Oh, let me call the...if there is no further discussion at the Commission level or questions for the Department? I can call up the signed up registers. The first we have signed up is Dennis Esaki?

Mr. Dennis Esaki: Good morning. Regarding kitchen in guest houses. I am in favor of allowing kitchen in guest houses even on Ag. Land for the following reasons; it makes sense, you get a permit to build it, you can eat in it, you can sleep in it, you can use the bathroom in it, but you can't put a kitchen in it? Not being able to cook in it, means you have to go outside perhaps drive to town to get some prepared food to bring it home to eat. It's crazy. That counter argument that it may be used for illegal purposes can be used to deny any permit, it could possibly be used for other purposes. They use like all other farm dwellings, (inaudible) guest houses on Ag. Land. Should abide by the farm dwelling agreement. Everyone is talking about housing and how we can get tax credit etc., for low income affordable housing. This would add hundreds of homes to the market and the County would not have to spend a cent. Some say that it is not good policy, but you should allow it anyway since they are doing it. That is not the reason for allowing it, you should recommend approval to the Council because it makes sense. Also, the size should...the allowable size for guest house should be increased from the present 500 sq. ft. on A. Land to allow for the kitchen. 500 sq. ft. house is one percent of a one acre lot, perhaps if you get a 2 acre lot some (inaudible) can increase it to 1000 sq. ft. or at least 300 sq. ft. to accommodate the kitchen. If not, you would just have a smaller usable space. Most of the Ag. Lots are not on the County sewer system so they would have to put in a septic system that can accommodate only five bedrooms anyway. And some of the houses they got some big houses so the guest houses would not impact that you know if they stick within parameters. I urge you to recommend approval. In the past for limited time period, they allowed this guest houses to be converted to be ADU's which got rid of all the other requirements and so this is kind of going in that direction, and I repeat, it makes sense for you to recommend to the Council to approve. Thank you. Questions?

Chair Nogami Streufert: Is there any way that something can be put in this resolution that would ensure that it is used for the purposes that you clearly state, that there are residents who need housing (inaudible) or people who need housing on a long term bases. That this does not become another transient vacation rental. Because the problem with it is that, that does not help the situation of affordable housing on Kauai if it's not used for the people who need it for that reason.

Mr. Esaki: Yes. I think for ones on Ag. Land which there are hundreds of already. If you are allowing the kitchen they are bound by the farm dwelling agreement, which all houses on the Ag. Property, they gotta do Ag. The other parcels as Mr. Hull mentioned, they got to abide by their respective zoning rules.

Mr. Hull: Yes. I think to Chair Streufert, that as soon as public testimonies are done, the Department definitely hears your concern and we have a draft oral amendment that we can make to that affect to restrict TVR's to see what the Commissions temperature is on that essentially.

Chair Nogami Streufert: Any other? Anyone else-

Mr. Hull: Sorry. Next person is-

Chair Nogami Streufert: I'm sorry. I did not mean to cut you off.

Mr. Hull: Next person signed up is Keahi Kuaiwa.

Mr. Keahi Kuaiwa: Good morning. Commissioners, Director Hull. My name is Keahi Kuaiwa, I'm a native Hawaiian and I am an advocate for the people of Kauai and that includes the kama'aina as well as the malihini. First of all, I just want to express my support for the amendment in the way it's currently, in its current state. I do have some concerns that I wanted to address, particularly with what was brought up today. As far the increase in potential TVR's in the visitor's destination area, which is pretty much the increase that we are looking at. You could look at it two ways. You could say yes, there is more TVR's now, so that's not the intent but if you think about it in a different way. By increasing TVR's in a visitor destination area you're basically supplying that demand, which is also a demand. People want to stay at TVR's which will actually reduce potential the TVR's that are happening illegally right now. Especially on Ag. Land where it really doesn't belong and in some residential communities where we are getting a lot of complaints. So I think we should really consider...and the way it written, is the way it was written and that was what was generally proposed by the Council members without any sort of weird enforcement rules that basically puts a burden on the Planning Department trying to enforce. And I realize that we are trying to be progressive right now using drones and that sort of things but that comes with its own problems. So just want to be careful with kind of oppression with trying to enforce things that may not be enforceable. So, I think the increase in TVR's in the visitor destination area sort of a minor issue. As far as reducing the square footage below 9000 sq. ft. I support it either way, but, it will increase amount of guest houses overall. That includes lots that are smaller than 9000 sq. ft. Not only in the entirety of Kaua'i but includes the visitor destination areas. So you're are talking about adding a guest house on lots that are less than 9000 sq. ft. that's in a visitor destination area which that might not have been something that was even considered. So it will increase the overall supply not only the rental but as well as in the TVR areas. So that is just something to consider; as I said, I support it either way. As for as the 500 ft. requirement, I think that, that's sort of a minor issue. Again I support it either way, if you want to increase that I don't think it's that big of a deal. I like it also with the maximum of 500 sq. ft. Because that's what people want right now. There's...There is a tiny home movement, people are sort of moving towards that. I apologize for going long and I realize that we only had two people. If you could let me finish I would really appreciate that but I can be done if you would like?

Mr. Hull: Three minutes Madame Chair.

Chair Nogami Streufert: If you could close...wrap up.

Mr. Keahi Kuaiwa: Okay. So maybe in the future we can create a credit system so you could maybe trade out a higher square footage property for a smaller square footage property and that might balance things out. I don't think we are that progressive yet, but I will talk to our Council members about that. The other thing is to allow tenants guess and owners? I don't understand

what that is? So who is not allowed, you know? I think it's better to strike that whole thing, why try to put things in? Your Council members are going to say, what's the definition of a guest, you know? What's an owner? Does that mean five (5) percent ownership? Or What if I own seventy-four (74) percent, you know? So if you want to put that in, I support it. If you take it out I think it's a better chance of approval with the Council members after watching video of last meeting. So that's all I have to say. Like I said, I support it either way. If you add something else we'll probably have another public hearing, but I will be there too. Thank you.

Chair Nogami Streufert: Thank you. Any other one else?

Mr. Hull: A there is no one that is signed up. Is there anybody else in the public that want to testify? You're free to go than.

Ms. Lee Mori: Aloha and thank you.

Chair Nogami Streufert: Would you please identify yourselves?

Ms. Lee Mori: My name is Lee Mori. I'm here voluntarily representing the Kauai Board of Realtors. I am the Chairman of the Government Affairs Committee. I know you've received our letter this morning. I would like to go over it a little bit with you and let you know that we are in support of having the guest cottage privileges on Ag. Land. Because, I was listening to the previous gentlemen's discussion and I think that as badly we need housing and as badly as we need rentals. Just quickly, today I experienced an employer who is desperately looking for someone to work in their restaurant and they couldn't hire anyone and they refused to hire anyone unless they had a home first, because they have had such a bad experience with hiring people who go, oh, I'm going to move into a place soon and then they can't find anything. So it's affecting our business right now so we desperately do need these housing available. And we support having the Agricultural guest homes available to for rental because I can't clearly see a difference in an agriculture guest home and residential guest home. You are not changing the dynamics, of what's happening on the agriculture land. What you are doing is providing another unit for rental purposes. So we support the use of guest homes strictly for long term rentals though, strictly for long term rentals. And we also would encourage you to add the definition of what a differentiation between a guest and a tenant. A guest would be a non-paying person that may possible stay there for a short period of time. Because there is no reference to that in the CZO, so if you could clarify that would make a difference and the industry has started using the terminology of guest to mean a paying tenant which was not the intention. So that's something I think that needs to be clarified in here. And we support the consideration of changing the square footage or allowing up to 800 sq. ft. Simply because a long term rental would accommodate a family easier, you know, 500 sq. ft. would be tough to get a kid in there but 800 sq. ft. you definitely could do that. And so we're in support of that, Okay. Any questions?

Mr. Hull: Three minutes, Madame Chair.

Chair Nogami Streufert: I do have a question if I may.

Ms. Mori: Okay.

Chair Nogami Streufert: Your second one, we support the use of guest homes strictly for long term rentals unless the property is in the VDA. Did you have any specific language for that?

Ms. Mori: No. But if you would like for us to create something we would. We'd be happy to help. No. we don't. No.

Chair Nogami Streufert: I'm just asking. Any other questions? Okay. Thank you.

Ms. Mori: Thank you so much. Thank you for your consideration.

Mr. Hull: Other members of the public that would like to testify?

Chair Nogami Streufert: In that case, do we have a motion to close (inaudible)?

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

Mr. Keawe: Second.

Chair Nogami Streufert: All in favor signify by saying aye? (Unanimous voice vote) Any opposed? (None) Motion carries 4:0.

Mr. Hull: The public hearing is closed. The Department is still recommending approval and holds to that, given the discussion on the floor today concerning objections I think the Department would side with that interpretation Chair concerning really narrowing the focus of guest houses to be used for habitation or dwelling purposes and not for short term rental purposes. So the Department would recommend a small... would take a...would purpose an additional amendment to the definition of guest house. Where the sentence ends to include the new language, "a guest house shall not be used for a transient vacation rental or homestay operation within or outside of the visitor destination area."

Ms. Apisa: So it is strictly long term rental no matter where it is?

Mr. Hull: Yes.

Ms. Apisa: I would support that.

Mr. Keawe: One real quick one. You know on the square footage, what if you stack two 500?

Mr. Hull: Yes. Concerning guest house 500 sq. ft. 500 sq. ft. is for one or two stories. So if you had a 500 sq. ft. guest house, you could not put a two story on it, because it is limited to 500 sq. ft. You could have a two story guest house that had the foot print of 250 sq. ft. if you will. So you have 250 sq. ft. on the bottom floor and 250 sq. ft. on the second floor which equals 500 sq. ft. But the overall square footage of the guest house regardless of the amount of stories it has, has to be 500 sq. ft.

Mr. Ho: So Kaaina. It has to be 500 sq. ft. contained?

Mr. Hull: Correct.

Ms. Apisa: It's a maximum of 500 sq. ft.?

Chair Nogami Streufert: Does that include a garage?

Mr. Hull: It includes the garage if the garage is not walled off. It does not include the garage...there are some scenario's where a guest house been permitted on the second story, no not on the second story, i'll say on the elevated structure. That in some places like Hanalei that have flood standards and guest houses would be elevated say 10 or 12 ft. high and a car port is put beneath the guest house with no walls. Because there is no walled space or there is no wall space if you will, that bottom story of 500 ft. doesn't count.

Chair Nogami Streufert: Do you support...does the Department support the 800 sq. ft.?

Mr. Hull: The Department and quite honestly, it has come up, the Department would remain neutral I mean we don't have a position on that, we are going to hold to the 500 sq. ft. And the reason being is that in our research with the additional rental unit bill, it came up time and time again that one of the largest areas where inventory was lacking, was in the studio apartment demand in that you had single individuals or couples, or whether they be on the younger side or those aging in place in that there was no... the demand for access to housing was adsorbent given the virtually null supply of studio apartments on Kaua'i. So that is one aspect why we are generally in support of the 500sq. ft. And also, it was the... I mean the proposal from Council is in looking at putting kitchens in these things. When you looking at opening it up to further square footage, I'm not sure if that was the original intent of that. That was the essential tackled through the additional rental unit bill. But as far as increasing the square footage, I don't believe that was the original intent of what the proposal was trying to do. Since it seems that he and the Council was trying to allow for kitchens occur in these units. Now if it's the desire for the policy makers here on this table to increase the 500 sq. ft., I can say the Department will not object to that. But like I said I don't think it was the original intent of the proposal.

Mr. Keawe: So the intent was pretty specific on the demographics you're after which is what you already said; single person or couple?

Mr. Hull: Correct. Yes. And...and I will go a little bit further. The ARU bill that was past recently that you folks reviewed. Indeed is looked at as freeing up a lot of standards to allow residential development within the residential district to allow for the 800 sq. ft. additional rental units to be put on the lot of record sometime several of them. And the Department, like I said, we are supporting the bill. And this bill applies to the residential district as well as the agriculture district. Having said that, the Department has been before you folks with the general plan update and a lot of our long range policies in which we are not supportive of sending more development into the agriculture district. Not only does that type of suburban sprawl type of development have impacts on the rural character of our outer lying areas of Kauai. But more importantly, it's wreaking havoc on the demands or financial cost of our financial structure. The

more we sprawl outward the cost are exponential as far as what it's having on our infrastructure. And when you know, our road stock here on Kauai is to up keep it and those that we have proposed. I think I brought it up before you folks before, in the next 20 years, the Federal Transportation Agency has slated Kauai to need 3.2 billion dollars and we are going to get 600 million over those twenty (20) years from Federal, State, and County resources. That's a 2.2 billion dollar deficit, that's not inefficiencies on the in guys on the side of the road or getting cost that is an inefficiency in the way we have developed our towns for the past thirty (30) to forty (40) years. And it's the cost of suburban sprawl, when we outward sprawl that much more. It's far more costly among other things infrastructure. Which is why, sorry I'm going on the long road, it's why we are generally against it. The reason and why we would be generally against expanding the foot print in guest houses, is because it does make it much easier to outward sprawl and develop. So then, why is the Department supporting the 500 sq. ft. with a kitchen on Ag. Lands? And that has to come down to the fact that the Department is of mind set that concerning Ag. Lands and kitchen, though we don't generally support the notion. As far as bringing them into compliance that ship has sailed. Now if you walk into virtually every single guest house on agriculture lands they have kitchens in them. And currently they are illegal, if it's the prerogative of the policy makers you folks know to be the County Council to go in and shut those operations down. The Department can, we would need considerable more resources for us to do it, but it's not our intent to do it either. So sorry about the long, protracted, discussion but that's just the sentiment of the Department. While we don't generally support suburban and outward sprawl into Ag. lands, the reason we are agreeable and amenable to this proposal as it applies to both residential districts as well as agriculture districts, is that it's happening on a massive scale already and it's time to kind of write that off.

Chair Nogami Streufert: Yes, Mr. Ho.

Mr. Ho: If you are living in a scenario where you're Ag. Property already has been subdivided you can't do it anymore. You've got an ADU in place, you can't have another ADU. But, someone, a child's coming home, you're turning your home over to your child, if you want a smaller unit for the last surviving person, I guess our scenario would be best in that situation. I would give consideration to something like that. I guess in an Ag. Area.

Chair Nogami Streufert: For long-term rentals use?

Mr. Ho: Long-term use, yes.

Ms. Apisa: It's hard to differentiate what the purpose is going to be when the house is there, the house is there.

Mr. Ho: Size wise, a person, elder person maintaining a larger home or 500 sq. ft. one.

Ms. Apisa: You're talking size?

Mr. Ho: Yes. Size. Of if he/she has a, what do you call that? A wheel chair or an assistance problem, you could build a smaller unit to fit that person. So it's just a thought.

Chair Nogami Streufert: Any other discussions? Are we looking for a motion? Or are we-

Mr. Hull: We'd be looking for a motion if the Commission is ready to act today.

Chair Nogami Streufert: Is there any way to add something about long-term rentals?

Mr. Hull: What would be the intent?

Chair Nogami Streufert: To ensure that it is not used for transient vacation rentals.

Mr. Hull: Oh yes. So the proposal that the Department put on the floor was that additional language and we would consider it a revised amendment orally to our report and recommendation. That the definition of the guest house stay as you folks have and also include the following sentence at the end, "the guest house shall not be used for a transient vacation rental or homestay operation within or outside of the visitor destination area." So if the Commission wanted to adopt that proposal the motion will essentially be the motion to adopt as amended by the Department.

Chair Nogami Streufert: Is there any motion? Any discussion or any-

Ms. Apisa: To make a motion I think I need a little help in getting it started here Ka'aina. So it's basically to approve the guest house as existing but also allowing up to 800 sq. ft.? Correct, were you doing that?

Mr. Hull: Oh the Department is not recommending the 800 sq. ft. It's just a desire for you folks to do that, the Department does not have any objections but the Department will not be proposing it.

Ms. Apisa: Oh, You're not recommending? Oh, Okay. So we will just go with what you are recommending. The guest house as currently up to 500 sq. ft.

Chair Nogami Streufert: Do we have to do the amendment separate from the entire motion?

Mr. Hull: I'll actually turn to our-

County Attorney Mr. Nicolas Courson: I think maybe if you are looking to support what the Department has suggested you could move to approve exhibit A as amend by the Department. I think it would be a very clean and concise motion. So rather than trying to reiterate what the definition is, it's in the packet.

Mr. Keawe: And at some point exhibit A is going to be available too, I mean hand written and -

Mr. Hull: So sorry, the exhibit A is the proposal as (inaudible) and so I made an oral amendment but if the Department, sorry, if the Commission would like us to draft it so that we can print it in print for you folks, the Department could recommend that either a five (5) minute recess or if you want to table this to the end of the agenda.

Chair Nogami Streufert: How about we do a five or ten (10) minute recess?

Ms. Apisa: Yes. I would like to get it straight.

Mr. Keawe: Yes, that would be good.

Chair Nogami Streufert: There will be a ten (10) minute recess.

The Commission recessed this portion of the meeting at 10:06 a.m.

The Commission reconvened this portion of the meeting at 10:16 a.m.

Mr. Hull: Good Morning Madame Chair, returning back to the guest house definition. The Department has submitted the draft proposal with the updated recommendation from the Department. There are copies at the front if the members of the public would like to review it. So just for clarification anything that is bracketed is under (inaudible) to be removed and anything underlined is proposed new language. So the proposed guest house definition that we have in our supplemental Directors Report stays the same. But the added prohibition on guest houses being used as transient vacation rentals/homestay operations in or outside the VDA is highlighted in yellow Proposal. So the Department stands by this updated recommended zoning amendment.

Ms. Apisa: I am ready to make the motion.

Chair Nogami Streufert: I think Commissioner Ho has something to say.

Mr. Ho: I would like to add, as a resolution also, to be included that guest houses would be allowed in Ag. Area. Ag. Lots.

Mr. Hull: It already is as a function of it being a function of the primary dwelling unit, it already is permissible in the agriculture district.

Ms. Apisa: It's residential and Ag.

Mr. Hull: So there was some...and it did come from some discussion from members of the public as far as why is the residential section being proposed here? And that's just because under the table of uses, we have to when we are recommending removing the 9000 sq. ft. that section needed to be included in the draft, because we are recommending from the table of uses removed specifically from the residential section. But guest houses are permitted as an accessory use within the agriculture district.

Mr. Ho: So you are going to change the table?

Mr. Hull: The proposal for here is to change the table to remove the 9000 sq. ft. but there is no need to change the table to allow guest houses in the Ag. District.

Mr. Courson: To really clarify to that in the table as you see this, there's a bracket language on a parcel (inaudible) or larger. The Department is saying they had to add the table because they were removing something from it. So because the only way to remove something is to put it in brackets like that, so that's why they are showing you the table. They are saying that there is no need to make that other change you're not going to see the bill because otherwise you just see the entire ordinance reiterated.

Mr. Ho: Oh.

Chair Nogami Streufert: I think Mr. Ho maybe referring to the fact that there is a column for Ag.

Mr. Ho: Yes.

Mr. Courson: Right. But the change though is here.

Mr. Hull: It's just for the residential. So yes. The way that tables structured to...as it goes permitted uses, use permits on residential. Then it goes permitted uses, use permits, and resort, then permitted uses, use permits, and commercial...so on and so forth. So at the very end of the table then we get into the Ag. and open section in which the accessory units are already permissible.

Mr. Ho: So it means that if the block is empty like that it's permitted?

Mr. Hull: So in the Ag. Section of the table (inaudible) use table you either have a (P) or a (U) and if you find a (P) or (U) than it's not permissible. But if you see all the way at the bottom of the agriculture section, there is (P) for accessory uses which the guest house is considered and so that (P) for permitted use is there.

Mr. Keawe: But it's just not showing here.

Mr. Hull: It's just not showing here because we didn't need to change it. Yes.

Mr. Ho: Ok.

Mr. Courson: Its way down.

Mr. Ho: Oh.

Mr. Courson: This table is huge, well their only showing you the portion (audible) portion the deleted is what is causing you the confusion cause it showing the top but when you get way down here that's when you start seeing-

Mr. Keawe: Oh. So way down here Nick, basically?

Mr. Courson: But because they are not changing that.

Mr. Keawe: Ok. I got it. I got it.

Ms. Apisa: Ready for the motion?

Chair Nogami Streufert: Ready for the motion?

Ms. Apisa: Alright. I think I have this clear. Just to help alleviate our housing crisis on the island. I make a motion that we follow the Planning Departments recommendation to amend section 1. Section 8-1.5 Kauai County Council Code 1987, as amended, by amending the definition of guest house as follows; guest house means a building with a floor area of no more than 500 sq. ft. may contain a kitchen, is used for dwelling purposes by guest, tenants, and owners. A guest house shall not be used for transient vacation rentals, TVR, or homestay operation within or outside of visitor destination area VDA.

Mr. Courson: So the issue with the way the motions worded is you captured a portion of what the Department is trying to do. I think just to approve the bill as amended would be better because otherwise, it's ambiguous whether you're also supporting their deletion from the table and their addition of a definition (audible).

Ms. Apisa: Okay. So it would be better to simply-

Mr. Courson: If the Commission as a whole supports this just to say, "We move to approve the amended bill for ordinance."

Ms. Apisa: Just too sure we get it clear, that's the intent, yes. I move that we amend the bill for ordinance.

Mr. Courson: Yes. We approve the amended bill.

Ms. Apisa: Right. I move that we approve the amended bill for ordinance.

Chair Nogami Streufert: Second?

Mr. Keawe: Second.

Chair Nogami Streufert: It's been moved and seconded. Is there any discussion? Seeing no discussion. All in favor signify by saying aye? (Unanimous voice vote) Any opposed? (None) Motion carries 4:0.

New Public Hearing

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

## **CONSENT CALENDAR (None)**

### **Status Reports**

**Director's Report(s) for Project(s) Scheduled for Agency Hearing on Tuesday, June 12, 2019. (None)**

**Mr. Hull:** Next Agenda Item Madame Chair, is there are no New Public Hearings. There is nothing on the Consent Calendar.

## **GENERAL BUSINESS MATTERS**

**In the Matter of Petition to Appeal Decision of Planning Director Relating to the Notice of Violation and Order to Pay Fines Related to Use Permit U-2015-20, Special Permit SP-2015-5 and Class IV Zoning Permit Z-IV-2015-21, for Property Situated at Lawai, Kauai, Hawaii, identified by Tax Map Key (4) 2-6-001:091, CPR Unit 2, containing a total area of 1.2 acres, Michael Levy and Alexis Boilini, Trustees of the Levy-Boilini Living Trust.**

**Memorandum (5/7/19) from Kaaina S. Hull, Director of Planning, to Planning Commission re Stipulation as to Findings of Fact, Conclusions of Law and Recommendation for Issuance of Permits with Stipulated Conditions, CC-2016-1, Class IV Zoning Permit Z-IV-2015-21, Use Permit U-2015-20, and Special Permit SP-2015-5, Tax Map Key (4) 2-6-001:091, CPR Unit 2, Michael Levy and Alexis Boilini, Trustees of the Levy-Boilini Living Trust, recommending Planning Commission adopt the Stipulation as provided for by Nadine Y. Ando, Hearing Officer.**

**Mr. Hull:** We move on to Agenda Item I- General Business Matters. And I will turn this portion of the Commission over to the County Attorney.

**County Attorney Mr. Nicolas Courson:** General Business Matters, I. 1. In the matter of Petition to Appeal Decision of Planning Director Relating to the Notice of Violation and Order to pay Fines Related to Use Permit U-2015-20, Special Permit SP-2015-5, and Class IV Zoning Permit Z-IV-2015-21 for Property Situated at Lawai, Kauai, Hawaii, identified by Tax Map Key (4) 2-6-001:091, CPR Unit 2, containing a total area of 1.2 acres, Michael Levy and Alexis Boilini, Trustees of the Levy-Boilini, Living Trust. And a Memorandum dated 5/7/19 from Kaaina S. Hull, Director of Planning, to Planning Commission re Stipulated as to Findings of Fact, Conclusions of Law and Recommendation for Issuance of Permits with Stipulated Conditions, CC-2016-1, Class IV Zoning Permit Z-IV-2015-21, Use Permit U-2015-20, and Special Permit SP-2015-5, Tax Map Key (4) 2-6-001:091, CPR Unit 2, Micheal Levy and Alexis Boilini, Trustees of the Levy-Boilini Living Trust, recommending Planning Commission adopt the Stipulation as provided for by Nadine Y. Ando Hearing Officer.

**Chair Nogami Streufert:** Anyone here about this case?

Mr. Barry Edwards: Barry Edwards, on behalf of the petitioners who are also present, Ms. Streufert.

County Attorney Ms. Maryann Sasaki: Maryann Sasaki, on behalf of the County.

Chair Nogami Streufert: Kaaina?

Mr. Hull: Kaaina Hull on behalf of the Planning Department.

Chair Nogami Streufert: Mr. Edwards would you like to state anything about this?

Mr. Edwards: I have nothing to add about this stipulation. Ms. Streufert, I'm happy to answer questions if you have them.

Chair Nogami Streufert: Is there any questions? I have a question than, I did not see a Finding of Fact for this (inaudible). There is a stipulation but not a Finding of Facts. Ms. Sasaki.

Ms. Sasaki: Well, this is a result of a lengthy process, lengthy discussion with respect to this homestay. But I think typically, your findings of fact conclusions of law are not with stipulated settlements but with more frequently with orders. So we could absolutely draft a finding of facts for you if you want that. But typically if the parties agree, it's in the nature of a contract prior agreement and they've determined that what's been remediated needs to be remediated and if any fine, as in this case, that such fines would be paid.

Chair Nogami Streufert: Is there any questions? I would like to request an Executive Session with our Attorney to discuss some of the issues.

Mr. Courson: So we can do that, we can do an unanticipated Executive Session if that's what the Commission wants?

Mr. Ho: Which Attorneys are you asking for?

Chair Nogami Streufert: Our Attorney.

### **EXECUTIVE SESSION**

Chair Nogami Streufert: All those in favor?

Mr. Keawe: So we need a motion, right?

Mr. Courson: Yes. If you could get a motion and I will read the language and then we'll take the vote.

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

Ms. Apisa: I'll second.

Chair Nogami Streufert: All those in favor-

Mr. Courson: Before we vote actually we need to read the language. So, the Commission may go on to an executive session on an agenda item for one of the permitted purposes listed in section 92-5(a) Hawaii Revised Statutes, without noticing the executive session on the agenda where the executive session was not anticipated in advance, HRS Section 92-7(a). The executive session may only be held, however, upon an affirmative vote of two-thirds of the members present which must also be the majority of the membership to which the board is entitled. HRS Section 92-4. The reason for holding the executive session shall be publicly announced. Which would be to consult with the Commissions legal counsel regarding liabilities, rights, privileges etc. So now we are ready for a vote.

Chair Nogami Streufert: All those in favor signify by saying aye? (Unanimous voice vote) Any opposed? (None) Motion carries 4:0. We will go into executive session.

The Commission recessed this portion of the meeting at 10:28 a.m.

### **GENERAL BUSINESS MATTERS (Cont)**

Chair Nogami Streufert: Reconvene the meeting at 10:44 a.m.

Chair Nogami Streufert: Comments. During our Executive session we discussed with our Attorney some of the questions that we had in terms of how this decision was brought. Because it does in here specify that it was; Stipulation as to Findings of Facts, Conclusions of Law and recommendation, but we did not see any Findings of Facts. So the question that we have before you is, could you tell us how you came to that Stipulation? How each party came to that Stipulation?

Mr. Edwards: Through preparation of drafts, exchange of drafts, and negotiation. But our intention was that this be the Finding of Fact which were adopted. First, by the Hearings Officer and then by this body if you chose to adopt it.

Chair Nogami Streufert: I think we were looking for the rational if possible of how one came to that Stipulation or on what basis?

Mr. Edwards: I am not sure I understand what you mean by rational? We wanted to make sure that the facts supported the issuance of the permits according to the law. And that...and that there was evidence to support the conclusions that were made and the agreed Conditions to the permit. Which were again negotiated with the Planning Department and approved by Mr. Hull. So that's the process and that was the rational, we wanted to make sure that you had something which was well based in the evidence, compliant with law, and approved by the Planning Department.

Ms. Sasaki: What I would also note that you could address the Cowen ... We modeled this upon the Cowen agreement and we thought that would be an appropriate...that was an appropriate

model for this situation. And if you look at the Prefectural materials of the Stipulation, there is in fact an illusion to the Finding of Fact and Conclusions of Law in the Cowen agreement.

Mr. Hull: To add to that, Chair. For the original report the Department did find the Proposal potentially in keeping with compatibilitive area and potentially in keeping with the parameters of the Use Permit. The Primary issue that the Department denial was revolving around was this notion of HRS 205 and how much agriculture that the applicant was presenting their doing in conjunction with the homestay operation. And does the primary issue revolve around virtually all the homestay operations that we recommended (inaudible). In looking at what essentially came out from the (inaudible) case. I have to be honest is indeed that the Hearings Officer did not find our reasoning logical and appropriate. And essentially the Hearings Officer 50% threshold that we have been holding to as far as demonstrating that there is an agriculture component to the operation that is generating revenue, that exceeds 50% of the overall revenue generated from the property. Well we felt it was an appropriate argument, The Hearing Officer did not in the (inaudible) case. And that's what we are also holding to here. So once that had been established that it was not appropriate in the Hearings Officers view, that, that 50% threshold be maintained. The Department began to look at other cases that we had maintained that, and removing that analysis do find that the Proposal can mean keeping with HRS 205. Having said that, the Department hears your concerns Chair Streufert, because at the end of the day, right like, stipulated agreements in contested cases that revolve around fines. There are two parties really, it's the Planning Department and the potential violator. And the violator appealing a notice of violation, if you will. If those become stipulated agreements and the parties kind of can walk away because we are the two parties in conflict, if you will. Concerning this particular proposal Commissioners. I can see your concern in that this isn't just a notice of violation, this is actually a proposed entitlement that you folks are reviewing granting to this party and if the Commission's desire is to have it clearly established on the record, as far as what you folks would be officially adopting should you side with the Department in this Proposal. To have a very specific Finding of Facts Conclusion of Law laid out for you folks to discuss the merits of each one of those findings. And adding or ultimately deny those findings and find that your own. The Department see's that concern and is available to work with the party hopefully, to an amenable agreement as far as agreed upon Findings of Facts and Conclusion of Law that we can submit to your folks.

Ms. Sasaki: We can certainly Stipulate to the Facts, that's not a problem.

Chair Nogami Streufert: I think a-

Mr. Courson: One more Executive session. I might be able to clear this up.

Chair Nogami Streufert: Alright.

Mr. Edwards: I Could I make one point?

ViChair Nogami Streufert: Yes please.

Mr. Edwards: The Findings of Fact which were prepared when Ms. Sayegusa was sitting in Mr. Courson's chair. Basically, took the Stipulation that was reached in the Cowen matter and cut and pasted it into another format which was called Findings and Fact and Conclusions of Law. What we've done here is collapse the two (2) and I understand you have a procedural question but I believe the question has been answered and this is really more addressed to Mr. Courson.

Chair Nogami Streufert: I think from my perspective, I'm not as concerned about the procedure and how you did that, I'm concerned more with why? How you reached that? You're telling me about process and how you got there and I understand, that and I don't have a problem with necessarily anything else on this. I am just looking for a little bit more information.

Ms. Sasaki: Well you know, it's in the nature of negotiated agreements for both sides to not get exactly what they want and I think that after the Cowen situation, and I think Ka'aina made it clear. A general reassessment of this situation was in order and both sides and looked at the value of continuing forward to litigate and continuing to expand the money, time, and effort and thought they could come to a kind of happy medium. I think that, that is the nature of negotiated settlement.

Chair Nogami Streufert: I think you had suggested that we go into Executive session, was that correct?

Mr. Courson: Yes. I think I can clear this up. So it would require another vote.

Ms. Apisa: I move to go into Executive Session and hopefully-

Chair Nogami Streufert: For ten (10) minutes.

Ms. Apisa: For ten (10) minutes and hopefully we could come to a conclusion and clear it up.

Mr. Ho: Seconded.

Chair Nogami Streufert: All those in favor? Aye. (Unanimous voice vote) Any opposed? (None) Motion carries 4:0.

Chair Nogami Streufert: We will be in Executive session until 5 after 11 a.m.

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

The Commission reconvened this portion of the meeting at 11:08 a.m.

Chair Nogami Streufert: We are back in session. Are there any further discussions or question or comments? If not, are we ready to entertain...Chair is ready to entertain a motion.

Mr. Keawe: Okay, I move to accept the Stipulation Agreement between the parties for this particular case, Michael Levy and Alexis Boilini, Levy-Boilini Living Trust.

Chair Nogami Streufert: Is there any second?

Ms. Apisa: Second.

Chair Nogami Streufert: It's been moved and seconded. Is there any discussion? All those in favor? Aye. (Unanimous voice vote) Any opposed? (None) Motion carries 4:0.

Notice of Appeal and Demand for Contested Case Hearing from Notice of Violation & Order to pay Fines for 7930 Ulili Road, Kekaha, Hawaii, Tax Map Key (4) 1-3-001:022 for Cheree Rapozo, from Gregory Kugle, Esq., and Joanna C. Zeigler, Esq., to clerk of the Planning Commission and Kaaina S. Hull, Director of Planning and Jodi A. Higuchi, Deputy Director of Planning (5/7/19).

Clerk of the Commission's Recommendation to Refer an Appeal of the Planning Director's Decision Related to the Planning Director's Notice of Violation & Order to Pay Fines for the continued operation of an unpermitted transient vacation rental, Cheree Rapozo, Tax Map Key (4) 13001022, Kekaha, Kauai, received on May 9, 2019 via email, for referral to Boards and Commissions as Contested Case Hearing No. CC-2019-1.

Mr. Courson: The next Agenda Item, is I.2. Notice of Appeal and Demand for Contested Case Hearing for Notice of Violation & order to pay fines for 7930 Ulili Road, Kekaha, Hawaii, Tax Map Key (4) 1-3-001:022 for Cheree Rapozo, from Gregory Kugle, ESQ., and Joanna C. Zeigler, ESQ., to clerk of the Planning Commission and Kaaina S. Hull, Director of Planning and Jodi A. Higuchi, Deputy Director of Planning. A Clerk of the Commission's recommendation to refer an appeal of the Planning Director's decision related to the Planning Director's notice of violation in order to pay fines for the continued operation for an unpermitted transient vacation rental, Cheree Rapozo, Tax Map Key (4) 13001022, Kekaha, Kauai, received on May 9, 2019 via email. For referral to Board and Commissions as Contested Case Hearing No. CC-2019-1.

Chair Nogami Streufert: Any discussion? Anyone want to present anything.

Mr. Keawe: Ka'aina can you give us a little bit of background on this. You had mentioned previously that there were concerns in the Kekaha area having illegal TVR's on the coast and that type of thing.

Mr. Hull: Yes, so the original...this is a-

Chair Nogami Streufert: Could you identify yourself before.

Mr. Hull: My apologies. I am fresh in this seat. Ka'aina Hull, on behalf of the Planning Department. The petition you have before you is an operation that the Department has found to be...or should I say a property that the Department has found to be operating an Illegal Transient Vacation Rental. This is in Kekaha, now as mentioned in the previous discussion about visitor destination areas and Kekaha's a vacation (inaudible). There are several legally operating vacation rentals in Kekaha and there is no visitor destination areas that are functioning to that...there are several that apply for and receive the Non-conforming Use Certificate back in

2005, when the window was open to apply for those. No new operations, vacation rental operations can occur in Kekaha and this is one that was operating absent a Non-conforming Use Certificate and so a Zoning Compliance was issued and they were put on notice and ultimately a notice sent. We had to re-look at the property and after the Zoning Compliance was issued, they continued to operate the TVR and so we issued a Notice of Violation and an order to pay fines and essentially that's what they are appealing today.

Ms. Apisa: Question. Are they still operating today or have they ceased?

Mr. Hull: They have not ceased.

Chair Nogami Streufert: Are they required too?

Mr. Hull: Under our interpretation, yes. But just as they...the operation not to cease operation after we issued the first Non-compliance Notice they still have not ceased after we initiated the notice of violation.

Ms. Apisa: So they are asking to have them waived...the fine waived but yet they continue to operate?

Mr. Hull: Correct. At least it is the Departments position in the event the investigating the site that they are still in operation. They have chosen or opted not to appear for you folks today but I also defer to the fact they will have their arguments in position as to whether or not they are operating or whether they are doing so legally. But it is the Departments position that they were operating illegally and indeed they continue to operate illegally today.

Chair Nogami Streufert: Are they a daily fine in addition to that fine?

Mr. Hull: Right now we are issuing a \$10,000.00 fine. As far as issuing more fines? The Department is entertaining that. I know that it's also been discussed during Hearings with the Hearing's Officer, where the Department was able to demonstrate that they were still continuing to operate and the Hearing's Officer has up'd those fines through the Hearings process to capture the fact that they continue to operate so.

Chair Nogami Streufert: Any other discussions?

Mr. Keawe: Oh, sorry.

Chair Nogami Streufert: No, Please.

Mr. Keawe: So the recommendation is to refer it to the Hearing's Officer?

Mr. Hull: Correct.

Chair Nogami Streufert: Are we ready for a motion?

Mr. Ho: Move to refer the case of Cheree Rapozo to a Hearing's Officer.

Chair Nogami Streufert: Is there any second?

Mr. Keawe: Second.

Chair Nogami Streufert: Is there any discussion? All those in favor? Aye. (Unanimous voice vote) Any opposed? (None) Motion carries 4:0. It will be referred to the Hearings Officer.

Petition to Appeal Action of the Planning Director in the matter of the Application of Kauai Springs, Inc., for Class IV Zoning Permit Z-IV-2007-1, Use Permit U-2007-1, Special Permit SP-2007-1 for property located at Tax Map Key (4) 2-8-002; por. 005 by Gregory H. Meyers, Attorney for Appellant-Applicant (5/2/19).

Clerk of the Commission's Recommendation to Refer an Appeal of the Planning Director's Decision Related to the Planning Director's Notice of Violation & Order to Pay Fines for the continued operation of an unpermitted Water bottling Operation, Kauai Springs, Inc., Tax Map Key (4) 2-8-002; por. 005 Koloa, Kauai, Received on May 2, 2019 via email, for referral to Boards and Commissions as Contested Case Hearing No. CC-2019-2.

Mr. Courson: The next Agenda Item, is Petition to Appeal Action of the Planning Director in the matter of the Application of Kauai Springs, Inc., for Class IV Zoning Permit Z-IV-2007-1, Use Permit U-2007-1, Special Permit SP-2007-1 for property located at Tax Map Key (4) 2-8-002; por. 005 by Gregory H. Meyers, Attorney for Appellant-Applicant May 2, 19 and the clerks of the Commission's recommendation to refer the Appeal of the Planning Director's decision related to the Planning Director's notice of violation and order to pay fines for the continued operation of an unpermitted Water bottling Operation Kauai Springs, Inc., Tax Map Key (4) 2-8-002: por. 5, Koloa, Kauai, received May, 2 2019 via email, for referral to Board and Commissions as Contested Case Hearing No. CC-2019-2.

Chair Nogami Streufert: Just for clarification, is this about the entire permitting process or is this only about the fines and the cease and desist?

Mr. Hull: Thank you Chair. Again, Ka'aina Hull on behalf of the Planning Department. The Appeal that you have before you today is just on the fines. So previously you folks went through a fairly long Contested Case process as far as whether or not the property could get the Entitlement via the Use Permit and Special Permit to operate a bottling facility at this site. At the end of the day, the Planning denied that petition and they would not be allowed to operate. The Department found that they were operating after the denial happened and essentially issued the cease and desist notice. Because they did not have those permits necessary to operate upon the facility at the site and a fine was issued. So the petition you have before you is focused solely on the Appeal to the cease and desist and fine the Department issued previously.

Ms. Apisa: The amount of the fine is?

Mr. Hull: \$10,000.00

Chair Nogami Streufert: And during this time that the Appeal process is going through are they allowed to continue the operations?

Mr. Hull: Technically, no. The Department continues to monitor and quite honestly at this point we are unsure to say whether or not they are continuing to operate. It appears that they may not be operating but we have not finalized that investigation. But as far as when this fine was issued, they were in operation.

Mr. Keawe: Okay. So subsequent to that, you still don't know positively. But indications are that they're not?

Mr. Hull: They're not supposed to be...and there are indications that they may not be operating okay but we have not come to a conclusive determination as far as that is concerned.

Chair Nogami Streufert: So to clarify, this is only about an appeal to appeal a fine which is before the Commission to either refer or to hear the case itself. Are there any other questions or discussion? Are we ready for the motion?

Ms. Apisa: So the option is to refer?

Chair Nogami Streufert: The option is either refer it or to not refer it but to hear the case ourselves.

Ms. Apisa: So to hear the case-

Mr. Keawe: One of the options is we can hear the case and the other option is to refer.

Chair Nogami Streufert: Right. That's correct.

Ms. Apisa: So there is no...that's the only decision today.

Chair Nogami Streufert: What we want to do with this case.

Ms. Apisa: So Okay that makes it a little simpler.

Mr. Keawe: Any recommendation Ka'aina?

Mr. Hull: The Departments recommendation is to defer to the Hearings Officer. Just the overall logistics of these type of Hearings. I mean if you folks want to subject yourselves to that process then the Department is not going to stand in the way of that but the Department is recommending this to be referred to the Hearing's Officer.

Ms. Apisa: I'm ready to make a motion.

Mr. Keawe: Go ahead.

Ms. Apisa: I move that we refer this to a Hearing's Officer.

Mr. Keawe: Second.

Chair Nogami Streufert: Is there any discussion? Hearing none. All those in favor? Aye. (Unanimous voice vote) Any opposed? (None) Motion carries 4:0. It will be referred to the Hearings Officer.

In the Matter of Petition to Appeal Planning Director's Decision Related to the Denial of 2018 Non-Conforming Use Certificate Renewal Packet for TVRNCU #1060 (Fortune Cottage), Untimely Submitted on 8/13/18, as Required by Kauai County Code, Section 8-17.10(h)(1) And Cease and Desist and Forfeiture of TVRNCU Letter dated 8/7/18 related to Property Situated in Anini, Kauai, Hawaii, identified by Kauai Tax Map Key (4) 5-3-006:007 containing 11,250 square feet, Fortune Family Trust. (5/2/19).

Hearing Officer's Report and Recommendation of Contested Case re CC-2018-13, TVRNCU #1060, Tax Map Key (4) 5-3-006:007, (4/15/19), Fortune Family Trust.

Mr. Courson: The last Item on General Business Matters, hold on I'm sorry the second to the last item. In the matter of Petition to Appeal Planning Director's Decision related to the denial of 2018 Non-Conforming Use Certificate Renewal Packet for TVRNCU # 1060 (Fortune Cottage), Untimely Submitted on 8/13/18, as required by Kauai County Code, Section 8-17010(h)(1) And cease and desist and Forfeiture of TVRNCU letter dated 8/7/18 related to Property situated in Anini, Kauai Tax Map Key (4) 5-3-006:007 containing 11,250 square feet, Fortune Family Trust. Up for decision is the Hearing Officer's report and recommendation of Contested Case re CC-2018-13, TVRNCU #1060, Tax Map Key (4) 5-3-006:007, (4/15/19), Fortune Family Trust.

Chair Nogami Streufert: Is there any one here from the Fortune Family Trust?

County Attorney Ms. Maryann Sasaki: No. Maryann Sasaki for the County.

Mr. Courson: So the Hearing Officer returned their recommendation and so the decision really is whether to adopt the recommendation or not. Does the Department have any comments on the-

Ms. Sasaki: It was a clear cut case, they had not renewed their Non-Conforming Use TVR Renewal on time and the Hearing's Officer found that they forfeited it because of that behavior.

Ms. Apisa: Not that it matters but I'm just curious. How delayed was it? Days or Months?

Ms. Sasaki: If my memory serves, two weeks.

Ms. Apisa: Not that it matters.

Chair Nogami Streufert: I think there was two. One in 2016 and then the second one was in 2018, check was dated June 26<sup>th</sup> but post marked on August 1<sup>st</sup>.

Mr. Keawe: I think this is the one they had numerous opportunities over the years. It has expired once, and they agreed to go ahead and renew it. They renewed it and then the next year they didn't bring it in on time so I'm ready.

Chair Nogami Streufert: Do we have a motion?

Mr. Keawe: I move to affirm the decision of the Planning Director's issuing of notice for forfeiture dated August 7, 2018 and dismiss the Petitioners appeal because it has not met the burden of proof (inaudible) evidence for the Fortune Family Trust.

Mr. Hull: Seconded.

Chair Nogami Streufert: Is there any discussion? Hearing none. All those in favor? Aye. (Unanimous voice vote) Any opposed? (None) Motion carries 4:0.

Resolution to Honor and Recognize Joan Ho'olai Ludington, the Planning Department Employee of the Year.

Mr. Hull: Committee and Chair. Moving on to the final Item on the Agenda General Business I.5, Resolution to honor Joan Ho'olai Ludington of the Planning Department Employee of the Year. So I've been in discussions with Chair Mahoney about the desire of the Commission to look at honoring the Departments Employee of the Year. So we drafted a proposed Resolution for you folks to review, I'll read it on to the record. So the Resolution reads; County of Kauai, Planning Commission, Joan Ho'olai Ludington, May 2019, whereas the County of Kauai has prioritized regulation of Transient Vacation Rentals and currently bans transient accommodations outside of the established visitor destination areas and whereas regulations prohibiting transient accommodations that are located outside of the County's visitor destination areas are twofold. One, to address the proliferation of negatively impactful resort uses within our residential neighborhoods. And two, to address Kauai's housing inventory crisis. And whereas recognition and honor is in order for Joan Ho'olai Ludington, who has demonstrated an unyielding commitment and dedication to enforcing against illegal transient vacation rentals. And whereas Ms. Ludington's duties have her investigating the worldwide web, conducting digital sting operations, developing evidential records, issuing notices of violations, and meeting with the contentious violators. And whereas, Ms. Ludington's continuous innovation of enforcement techniques in order to keep pace with the ever changing vacation rental industry practices has resulted in the closure of hundreds of illegal vacation rental. And whereas Ms. Ludington has begun participating in outreach with policy makers including but not limited to State Legislatures at the State Capital to educate and lobby for additional resources and legislative tools that her division and other enforcement divisions around the State can use to further combat the illegal vacation rental industry. And whereas for the year 2019, Ms. Ludington has been selected as the County of Kauai, Planning Department, and Employee of the Year. Be it resolved that the Planning Commission and County of Kauai, State of Hawaii, hereby honors and recognizes the outstanding services and commitment of Joan Ho'olai

Ludington to our Garden Island community. Be it resolved that a copy of this Resolution be forwarded to the Office of the Mayor and we do certify that the foregoing is dually adopted by the County of Kauai Planning Commission during this meeting on May 28, 2019. So this is the resolution that we had drafted for the Commission to consider in honoring Ho'olai. In a nutshell obviously you guys are well aware of the fact that the enforcement of the vacation rentals is a priority to the County, particularly the Planning Department. There are vacation rentals, thousands of them quite honestly, here on Kauai that are legal, and are operating in the confines of Law. The Department and the Administration have no problems with those. They are located in the visitor destination area, they are operating where they are meant to operate. However, given the ease which third party host platforms like Airbnb and VRBO allow for anybody to really post up there house or unit to be rented for vacation rental purposes has really attracted a lot of illegal activity that one, can be extremely impactful on our residential neighborhoods. The amount of resort type uses occurring in residential neighborhoods, from excessive traffic and loud noises to the parties that occur, to sometimes, housing, you know sometimes we have come across 20-30 people being housed in a two bedroom home, in a residential neighborhood. And all things that come with that to the fact indeed, this industry, this illegal operation of some of these units is significantly impacting our housing inventory. I have seen numerous articles as of recent saying, no, it does not impact the housing inventory. These are all high-end homes on the beach that would never be available to local families. If you got to spend the day with Ho'olai and her other enforcement team to see how many of these operations are really in and are not on the beach and are not high-end and are literally within neighborhoods like Omao or parts of Lihue or parts of Koloa town, Waimea that have taken the residential units, residential stock you'd be flabbergasted there are. And so Ho'olai really is the spear tip, the brunt, boots on the ground, helping shutting down these operations. The number she post up are absolutely unreal. And the hours that she works yes, it's the 7:45am – 4:30pm but sometimes it's 2 am on a Sunday morning and it's just because that's what enforcement of this type of issue takes and as of recent, that was of great pride, quite honestly to be over at the State Legislature working with our Legislators, our Senators, and our Representatives to try and get more enforcement tools and I had no problem having Ho'olai up at there with me to basically explain to them, and walk those halls with me and to explain to Legislators what it takes and what the reality of enforcing against these operation is like. So at the end of the day, it was with great pride and pleasure that we are able to name her as our Employee of the year. And in discussions with Chair Mahoney, I would like to thank you guys for considering adopting an official resolution to honor services and work as well.

Chair Nogami Streufert: Do we have a motion to adopt this Resolution?

Mr. Keawe: I move to adopt this Resolution recognizing Joan Ho'olai Ludington as the Planning Department Employee of the year.

Mr. Ho: Seconded.

Chair Nogami Streufert: Is there any discussion? Hearing none. All those in favor? Aye. (Unanimous voice vote) Any opposed? (None) Motion carries 4:0.

Chair Nogami Streufert: Would you like to say something? Would you like to come up and say something?

Ms. Joan Ho'olai Ludington: Good morning. So I don't have any speech but I would like to thank Ka'aina and Jodi and Mike Lareta and then my enforcement team. They really help me get to where I'm at and thank you for recognizing me this way. Thank you.

Chair Nogami Streufert: Thank you Ho'olai.

Ms. Ludington: Thank you.

Mr. Keawe: Thank you.

Mr. Hull: And Ho'olai maybe if you stick around you'd be willing to take a picture with us... we can do a photo opt.

### **COMMUNICATIONS (For Action)**

Mr. Hull: Moving on to the last of the Agenda Items. We have no Communications.

### **COMMITTEE REPORTS**

#### **Subdivision**

Mr. Hull: Next up is the Committee Reports, Subdivision Committee.

Mr. Keawe: Subdivision Committee met this morning we took up four (4) cases and approved all of them including one amended approval for an extension for a Moloa'a Valley One, LLC. So I would move that the Commission would move and accept the Report of the subdivision minutes.

Ms. Apisa: Seconded.

Chair Nogami Streufert: All those in favor? Aye. (Unanimous voice vote) Any opposed? (None) Motion carries 4:0.

### **UNFINISHED BUSINESS (For Action)**

Mr. Hull: We have no Unfinished Business.

### **NEW BUSINESS (For Action)**

Mr. Hull: We have no New Business.

## ANNOUNCEMENTS

### Topics for Future Meetings

Mr. Hull: Announcements, so we have a slate of things coming before you folks, one of them in particular Smoky Mountain Helicopters we do expect some contention with that because of surrounding property owners and operations (inaudible) this is in the vicinity of Salt Pond. We also have a series of LBD Coffee, Farmer for Housing coming up and then we have a slew of as I kind of discuss previously we have a slew of Zoning amendments mainly to implement many of the General Plan priorities that were set in the General Plan updates. The first one you see is not quite so much the General Plan it actually pertains to South Kauai Farm Base Code, you folks will be getting that in the end of June. There are some area of the Farm Base Code that was adopted over Koloa and Kalaheo are more prohibited than we anticipated those (inaudible) areas to be. There is certain commercial uses that the Farm base Code as it was written are actually more restrictive then the town cores. That definitely isn't the intent of what we were going after especially with the General Plan adoption to focus our growth in the town core. We are coming here to kind of ease up some of those restrictions. And as it was proposed when the Farm Base Code was originally pitched if you will, is that it is a pilot project there really is a FBC or Farm Based Code in the State of Hawaii which is one of the first comprehensive Farmers Code adopted. And so this is...we are not saying it's... there are error across the board, yet there are some issues we need to address but so far it is working. Other than that-

Mr. Ho: Ka'aina, Dale alerted me that Coco Palms is due for a briefing on its permitting?

Mr. Hull: Yes. I believe is the end of June but I can double check.

Mr. Keawe: Have you heard anything Ka'aina at this point, do you know anything that's going on?

Mr. Hull: I can't say any more than what the newspapers say. I think I need to officially agendazise it then we can discuss it.

Chair Nogami Streufert: Can we put it on the next Agenda?

Mr. Hull: Yes that will be slated for the June meeting.

Mr. Keawe: The next meeting again is slated for June 25<sup>th</sup>?

Mr. Hull: Yes, correct.

The following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter at the Lihue Civic Center, Moikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Lihue, Hawaii 96766 on Tuesday, June 25, 2019.

**ADJOURNMENT**

Chair Nogami Streufert: I move to entertain a motion to adjourn.

Ms. Apisa: Move to adjourn.

Mr. Keawe: Seconded.

Chair Nogami Streufert: All in favor say aye. (Unanimous voice vote) Opposed? (None)  
Motion carries 4:0. Meeting Adjourned. Thank you.

Chair Nogami Streufert adjourned the meeting 11:34 a.m.

Respectfully submitted by:



Arleen Kuwamura,  
Commission Support Clerk

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

( X ) Approved as amended. See minutes of July 23, 2019 meeting.