

KAUA‘I PLANNING COMMISSION
REGULAR MEETING
October 13, 2020

The regular meeting of the Planning Commission of the County of Kaua‘i was called to order by Chair Glenda Nogami Streufert at 9:05 a.m., - Microsoft Teams Audio +1 469-848-0234, Conference ID: 236 848 0234# The following Commissioners were present:

Ms. Glenda Nogami Streufert
Ms. Donna Apisa (*Left at 11:53 a.m.*)
Mr. Melvin Chiba
Ms. Helen Cox
Mr. Francis DeGracia
Mr. Roy Ho
Ms. Lori Otsuka

The following staff members were present: Planning Department – Director Kaaina Hull, Deputy Director Jodi Higuchi Sayegusa, Myles Hironaka, Dale Cua, Romeo Idica, and Planning Commission Secretary Leslie Takasaki; Office of the County Attorney – First Deputy County Attorney Mahealani Krafft, Deputy County Attorney Denny Cowger; Office of Boards and Commissions – Administrator Ellen Ching, Support Clerk Arleen Kuwamura

Discussion of the meeting, in effect, ensued:

CALL TO ORDER

Chair Nogami Streufert: Called the meeting to order at 9:05 a.m.

ROLL CALL

Planning Director Mr. Kaaina Hull: I do believe everybody who planned on calling in has called in or logged in. Do you want to start the meeting now?

Chair Nogami Streufert: Yes, please. Could we have the roll call?

Mr. Hull: Roll call, Madame Chair. Commissioner Apisa? I see her there. Commissioner Apisa, are you present? I guess she is on the phone. I will go on. Commissioner Chiba?

Mr. Hull: Commissioner Chiba?

Mr. Chiba: Here.

Mr. Hull: Commissioner Cox?

Ms. Cox: Here.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Here.

Mr. Hull: Commissioner Ho?

Mr. Ho: Here.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Here.

Mr. Hull: Commissioner Apisa, are you present? I believe she is on the phone, but noting that she is present and on the screen. We will call her. Chair Streufert?

Mr. Hull: Chair Streufert.

Chair Nogami Streufert: Here.

Mr. Hull: You have a quorum, Madame Chair. Seven present.

APPROVAL OF AGENDA

Mr. Hull: Madam Chair, you have a quorum. The next order of business is approving the Agenda. The Department has two recommended changes to the Agenda. One is that the Agency Hearing Section F, be heard in tandem with Sections L, and M, so that the Agenda discussions can occur right after the Agency Hearing portions. And we are recommending that General Business I... General Business I.4., for Ahe Group be moved and be after I.2., Kauai Blue, Inc. We anticipate it being a relative short discussion so hence the move. So we are recommending those two changes to the Agenda.

Chair Nogami Streufert: Do I hear a motion to approve the Agenda as amended?

Ms. Cox: I move we change the Agenda; we amend the Agenda as noted.

Mr. Ho: Second.

Chair Nogami Streufert: It has been moved and seconded that we approve the modified Agenda. Is there discussion? If not, all those in favor - let us do this just as a voice vote. All those in favor? Aye (Unanimous voice vote).

Commissioners: Aye.

Chair Nogami Streufert: All those opposed, "nay." Motion carried. 7:0. The Agenda has been approved as modified.

MINUTES of the meeting(s) of the Planning Commission

Mr. Hull: There are no minutes to be accepted.

RECEIPT OF ITEMS FOR THE RECORD (None)

Mr. Hull: Next on the Agenda, there are no Receipt of Items for the record.

HEARINGS AND PUBLIC COMMENT

Mr. Hull: We are now into Agenda Item F, Hearings and Public Comment. The Planning Commission accepts written testimony at least 24 hours in advance to the Agenda. We have received of number of written testimonies for various Agenda items that I will read onto the record once we get to those Agenda items. But for anybody or any member of the public - not the Applicants. Applicants will have time to discuss their Agenda items when they come up. But is there any member of the public who has called in who would like to testify on any Agenda item at this time? If so, please state your name. I will hold for five seconds to see if anybody here is calling in.

Mr. Carl Imparato: Hi. This is Carl Imparato. I would like to speak on the Agenda item for the Hanalei Commercial, please.

Mr. Hull: Carl, just to check, we will be moving into the specific Agency hearings. Did you want to speak during that specific Agency hearing?

Mr. Imparato: Correct, during the hearing. Thank you. I—

Mr. Hull: Okay. It - it's - its following right next, but - but this is just in case anybody has to leave before their Agenda items. Is there anybody else from the members of the public who is calling in who does not want to wait for their specific Agenda item to come up that would like to speak on any Agenda item at this time? We will hold for five seconds. Seeing none.

Continued Agency Hearing

Special Management Area Use Permit SMA (U)-2020-7, Class IV Zoning Permit Z-IV - 2020-16, and Use Permit U-2020-13 to allow construction of a new craft brewery building and associated site improvements including on-site parking, driveway, pedestrian bridge, private wastewater system, and operation of food trucks, AND Amendments to Special Management Area Use Permit SMA(U)-88-4, Use Permit U-88-25, Variance Permit V-88-6, Class IV Zoning Permit Z-IV-88-30, as amended, and SMA(U)-2006-1, Project Development Use Permit PDU-2006-1, and Class IV Zoning Permit Z-IV-2006-1 to accommodate parking for the proposed development, allow increased land coverage, and reduction in the number of permitted Employee Housing within the eastern portion of Lot

17, involving parcels situated on the mauka side of Kuhio Highway in Hanalei Town, approx. 550 ft. east of the Kuhio Highway/Aku Road intersection, immediately adjacent to property identified as 5-5091 Kuhio Highway, Tax Map Keys: (4) 5-5-009:008 & 009, and containing a total area of 4.165 acres = Hanalei Commercial Company, Inc/Na Pali Brewing Company, LLC. [Director's Report, S1DR and attachments to S2DR received by Commission Clerk 7/28/20; Addition to Agenda received and hearing deferred 8/11/20; S3DR and S4DR received by Commission Clerk 8/18/20; Second & Third Addition to Agenda received and hearing continued 9/8/20.]

Mr. Hull: We will move into F.1, Continued Agency Hearing, Special Management Area Use Permit SMA(U)-2020-7, Class IV Zoning Permit Z-IV-2020-16 and Use Permit U-2020-13, to allow construction of a new craft brewery building and associated site improvements, including onsite parking, driveway-pedestrian bridge, private wastewater system, and operation of food trucks. And amendments to SMA(U)-88-4, a Use Permit U-88-25, a Variance Permit V-88-6, and Class IV Zoning Permit Z-IV-88-30, as amended, and SMA(U)-2006-1, Project Development Use Permit PDU-2006-1, and Class IV Zoning Permit Z-IV-2006-1, to accommodate parking for the proposed development, allow increased land coverage, and a reduction in the number of permitted employee housing within the eastern portion of Lot 17. This proposal is located 550 feet east of the Kuhio Highway up-the-road intersection immediately adjacent to the property identified as 5-5091 Kuhio Highway. The Tax Map Keys: is 5-5-009:008 and 009. The Applicant is the Hanalei Commercial Company, Inc., and Na Pali Brewing Company LLC.

This is the Agency Hearing portion, so I know Carl was calling in. Carl, did you want to present your three minutes of your testimony now?

Chair Nogami Streufert: Kaaina before we start- before we start out on this, if I could make a slight deviation to the Agenda to just introduce our Counsel to the Planning Commission. It is a new Counsel and I would like people to know who he is because as we continue the discussions today, this may come up and we want to have, him weigh in on it. So Denny, uh—

Deputy County Attorney Mr. Denny Cowger: Hi, everyone. My name is Denny Cowger. I am the new Deputy County Attorney for the Planning Commission.

Chair Nogami Streufert: Well welcome to the Commission.

Mr. Cowger: Thank you.

Ms. Apisa: Excuse me, Chair. If I could, I tried to, I intended to unmute myself but I had actually muted the whole thing so I missed the roll call. I just wanted to make sure you got me in.

Chair Nogami Streufert: We do have you. Thank you, Donna.

Ms. Apisa: Thank you.

Chair Nogami Streufert: Okay. So now, we are on the Continued Agency Hearing on the Special Management Area Use Permit and Class IV Zoning Permit Z-IV-2020-16, Use Permit U-2020-13 on the new Craft Brewery building. All right.

Mr. Hull: Yes. And so for those members of the public that called in, I believe Carl Imparato, you had mentioned that you would like to speak on this Agency hearing?

Mr. Imparato: Yes, please. And I - should I go ahead right now?

Mr. Hull: Go ahead, Carl.

Mr. Imparato: Thank you. Good morning, Planning Commissioners. My name is Carl Imparato. I am speaking on behalf of the Board of or appearing of the Hanalei Hokuala Community Association. We have submitted some testimony, but it was late, so, I just want to summarize two very important points. First of all, in supporting the withdrawal of the request for the permits for the proposed retail development on the open-zone land. We think it's important to point out that a brewery, alcohol sales, tasting room, food truck, and dining area are uses that are not even remotely similar in nature to any of the allowable uses in the Open-Zoning District under CZO Section 8-.24. In that, if the CZO intended that uses of that nature should be allowable in the Open-Zoning District, the CZO's table of allowable uses would have explicitly included retail uses in the list, as it does for the residential, resort, commercial, and industry zoning district, but it does not for the open and agricultural zoning districts. I think that is an important point to keep in mind as you go forward with this application and future ones. Pardon me.

Our one major remaining is the Applicant's request to delete Condition 4.e., from its existing 2006 permit. Now the 2006 agreement between the County and the Applicant was that in return for being allowed to increase parking and place - or housing units on the open-zone portion of Lot 17, and that would be the County's increasing the allowable lot coverage by almost 6000 square feet. In return for that, the Applicant agreed to reduce the maximum allowable amount of retail on the commercial-zone portion of the lot by about 2500 square feet. That is Condition 4.e. Now that was the agreed-upon tradeoff, uh, and if not for that tradeoff, the Applicant would have been required to locate all the additional parking on the commercially zoned part of the lot. Now the Applicant wants the County to rewrite the deal by keeping the increased land coverage that it got in 2006 on the open-zoned portion of the land, but not having to reduce the maximum retail square footage on the commercial-zoned portion of the land. And we believe that there is no reason or justification for unconditionally deleting this Condition. It just allows the Applicant to walk away from the obligation to the 2006 agreement while retaining the benefits of the agreement.

So we ask that you, the Commission, do not decide on this until you thoroughly understand what this means. First, what is the current land coverage on the commercially zoned land? Second, if the Applicant were allowed to delete Condition 4.e., where would the additional 2500-square feet

of retail development be located? Finally, unless there would be sufficient public benefit from the deletion of Condition 4.e., for example, by created a requirement than permission; a requirement to construct within two years employee housing that is permanently affordable. Unless there is some public benefit like that, then we believe Condition 4.e., should remain in force. I thank you for your time and attention and, uh, appreciate the opportunity to speak to you. Thank you.

Mr. Hull: Are there any other members of the public who have called in that would like to speak on this Agency hear- hearing concerning the Hanalei Commercial Company and the Na Pali Brewing Company.

Chair Nogami Streufert: Does Robert want to speak or was that just a joining in?

Mr. Hull: I will call for any—

Robert: Just joining in.

Mr. Hull: Okay. Again, one more call. Any members of the public that would like to testify in this Agency hearing for Hanalei Commercial Company or Na Pali Brewing Company. Seeing none.

The Department would recommend closing the Agency hearing.

Ms. Apisa: I move we close the Agency Hearing.

Chair Nogami Streufert: Is there a second?

Ms. Otsuka: I second.

Chair Nogami Streufert: It's been moved and seconded that we close the Agency Hearing. Is there any discussion on that? If not, let us do a rollcall vote on this, please.

Mr. Hull: Roll call. Commissioner Apisa?

Ms. Apisa: Yes. Aye.

Mr. Hull: Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ho?

Mr. Ho: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Streufert?

Chair Nogami Streufert: Aye.

Mr. Hull: The motion passes. 7:0. Madam Chair.

Special Management Area Use Permit SMA (U)-2020-7, Class IV Zoning Permit Z-IV - 2020-16, and Use Permit U-2020-13 to allow construction of a new craft brewery building and associated site improvements including on-site parking, driveway, pedestrian bridge, private wastewater system, and operation of food trucks, AND Amendments to Special Management Area Use Permit SMA(U)-88-4, Use Permit U-88-25, Variance Permit V-88-6, Class IV Zoning Permit Z-IV-88-30, as amended, and SMA(U)-2006-1, Project Development Use Permit PDU-2006-1, and Class IV Zoning Permit Z-IV-2006-1 to accommodate parking for the proposed development, allow increased land coverage, and reduction in the number of permitted Employee Housing within the eastern portion of Lot 17, involving parcels situated on the mauka side of Kuhio Highway in Hanalei Town, approx. 550 ft. east of the Kuhio Highway/Aku Road intersection, immediately adjacent to property identified as 5-5091 Kuhio Highway, Tax Map Keys: (4) 5-5-009:008 & 009, and containing a total area of 4.165 acres = Hanalei Commercial Company, Inc/Na Pali Brewing Company, LLC. [Director's Report, S1DR and attachments to S2DR received by Commission Clerk 7/28/20; Addition to Agenda received and hearing deferred 8/11/20; S3DR and S4DR received by Commission Clerk 8/18/20; Second & Third Addition to Agenda received and hearing continued 9/8/20.]

Mr. Hull: So as the Commission has amended the Agenda so that the review of the actual Application will follow immediately after the Agency hearing. We move directly into the actual review of the Application and Petition. I will turn it over to Romio, who is our Planner for this particular project.

Staff Planner Mr. Romeo Idica: Good morning, Madam Chair, Fellow Commissioners. Regarding Class IV Zone Permit Z-IV-2020-16, Use Permit U-2020-13, Special Management Area Use Permit SMA(U)-2020-7, to amend Special Management Area SMA(U)-88-4, amend Use Permit U-88-25, amend Variance Permit V-88-6, amend Class IV Zoning Permit Z-IV-88-30, amend Project Development Permit PDU-20 - 2006-1, amend Special Management Area SMA(U) 2006-1, amend Class IV Zoning Permit Z-IV-2006-1. Applicant, Hanalei Commercial Na Pali Brew- Brewery.

Mr. Idica read the 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: They are still proposing the installation of new parking spaces, which it's - 35 new geogrid parking spaces, the installation of hardened surfaces, the driveway, and relocation of the taro, the kalo field, access. And to construct the two new employee houses that was granted in previous permits. That is pretty much about it. I can answer some questions or maybe defer to the Applicant. You guys can question the Applicant on this proposal.

Chair Nogami Streufert: Are there any questions for the Planner?

Ms. Apisa: Well this is - I would say, well, I you have to do a patch job and, you know go ahead. We have a board meeting.

Chair Nogami Streufert: I think that is not - she is not responding to this—

Mr. Hull: Okay. Is that—?

Mr. Hull: If I could, Commissioner Apisa – but are there any questions for the Planning Department concerning the - the Petition?

Chair Nogami Streufert: Yes, I do have one. You said that they have withdrawn their request to increase lot coverage, and so now, we are back down to 33 1/3%. Is that correct?

Mr. Idica: Yes that is correct, Madam Chair.

Chair Nogami Streufert: So with increasing of either Lot 17 or Lot 9?

Mr. Idica: No.

Chair Nogami Streufert: All right. And the two new employee housing, that was as originally planned?

Mr. Idica: They are planning to construct, yes.

Chair Nogami Streufert: Are there any questions for the Planner from the Commissioners?

Mr. Ho: Madam Chair, a question, please.

Chair Nogami Streufert: Yes.

Mr. Ho: I believe there is a procedure requesting here that the Applicant has three years to make, substantial progress on the permit? Yes, no? If the Planning Department determined that no progress is being made, does that cancel the Permits automatically?

Mr. Hull: Let me just dive into that, just a little bit of - quickly there. Previously and for years now, the County Attorney's position was that unless the Planning Commission takes affirmative action to nullify the permits or to issue in order to show cause, that the Planning Department on its own could not nullify these permits. There has been a little bit of a change in the legal landscape in the recent Watanabe ruling concerning an SMA Permit that had not completed - that the Court determined had not completed substantial construction. And so the Planning Department is going through an assessment on all the SMA Permits that have that Condition in it to discuss with those property owners whether or not it still meets the threshold of substantial construction. The issue here is, of course, that a large amount of the construction has been completed years ago as far as the commercial development, the parking lots, and whatnot. So much of that substantially has been completed. Concerning the, you know, two affordable house - or two employee housing units, it could apply specifically to that as far as it being nullified after three years. But, that would take a certain amount of consultation with the County Attorney's Office should we hit that three-year threshold and substantial construction has not been completed. Sorry that seems like a waffling answer. It is just we are within a new somewhat unique legal landscape as far as our recent ruling.

Mr. Ho: To your question, Kaaina how do you determine substantial progress? Do they meet, let us say, a monetary value on the amount of the Permit? If they make, you know, 3.3 million and they do a million dollar of the work, is that substantial progress to you or do you have to see something physically done?

Mr. Hull: Typically and standardly it's the foundational principle applies where if they put in the infrastructure and set the foundations within the time parameters set, that that would constitute substantial construction.

Chair Nogami Streufert: Are SMA Permits usually - do they usually expire in two years or three years or is that discretionary?

Mr. Hull: Pursuant to the Special Management Area Rules and Regulations, they expire after two years unless otherwise set by the Planning Commission. So if the Planning Commission sets a longer timeframe or a longer time-period, then that longer timeframe set by the Commission would hold.

Mr. Ho: Kaaina, now for clarifications. If the Applicant cannot meet the three-year deadline, but comes before, where does he have to go to extend that deadline? Is it from you or from the Commission?

Mr. Hull: It would be from the Commission. So in exercising prudence and caution, should the Applicant be coming close to that sunset window of three years, it would be best for the Applicant to come in to the Commission should they have not completed construction to request an extension.

Chair Nogami Streufert: Is there a reason why this would be three years as opposed to two years? Is there something in the plan that would require three years as opposed to two for substantial construction or substantial improvement?

Mr. Hull: I think that it would have to - we - the Department has no objections to this. This is in discussions with the Applicant, so that may be a question you may want - the Commission may want to pose to the Applicant.

Chair Nogami Streufert: Okay. If there, are no other questions, would the Applicant to - for - makes a statement?

Mr. Max Graham: Yes. This is Max Graham, and I represent the Applicant. And as you know we, uh, originally had a joint application between Hanalei Commercial, Inc., and Gaylord pre-uh, Wilcox is the president of that entity and Na Pali Brewing Company, and the members of that entity were Katie Conant and Blake Conant. The - the, uh, portion of the Application relating to Na Pali Brewing Company was the construction and development of the brewery on Parcel 9. That has been withdrawn now. And so, the only issues left are the, um, matters relating to the additional parking and the construction of the two additional employee housing on the open portion of Lot 17, which is the lot which is, uh, is the site of the Hanalei Commercial Center.

So let me just quickly summarize what we are asking for. We are asking, as I just said, that the request for the brewery be withdrawn and because we do not need the brewery or the extra parking associated with the brewery, we are, uh, withdrawing the request to increase the land coverage in the open district. So we'll just be using the current land coverage of 33 1/3%. Uh, with regarding to parking, the Applicant proposes to construct 35 new improved parking spaces to the east side of the Auwai, and associated with the new parking will be the extension of the sidewalk along Kuhio Highway, the construction of a pedestrian bridge across Auwai. If necessary, the relocation of the taro access road that goes from Kuhio Highway to the mauka side of the property to the taro fields. The, and we're asking to amend former Condition 4.d., to allow the employee housing to be used not only for current employees, but also retired employees. Finally, we are asking that the Condition 4.e., from the 2006 Permit be deleted. That Condition requires the -that 50% of the land coverage associated with the employee housing be used to calculate the permissible total gross floor space of the commercial center.

So the total gross floor space in the commercial center limited is limited to 25,000 square feet, uh, and there has been an exchange of Conditions on - which apply to the open district and which apply to the commercial district. And all of them - all of that has been associated with the overall intent of having a commercial center that is located on the mauka side of the Lot 17, with an open lawn area on the makai side, and that's what you see now at the Hanalei Commercial Center. So the whole frontage of the property is open. In order to accomplish that, rather than trying to put parking in the commercial area, the Planning Commission allowed the parking to

put on the open side. So that is why you have the increased in - that is why you have the increase in the land coverage on the - the open side. And in addition, the Applicant has been trying to construct employee housing, so it - so far we have two employee houses. The Applicant would like the opportunity to construct an additional two and, at this point we - uh, it's proposed that they would be located in front of and on the makai side of the two existing employee houses. Unfortunately having the Condition that says half of the employee housing land coverage should be allocated against the commercial gross floor area encourages the developer to make smaller homes for employees to save on the amount that might be assessed on the total floor area on the commercial side.

So in retrospect, I don't think it makes sense. I think you want to encourage the owner to develop employee housing that is the same size as normal homes for everyone else. So, for example, the two current homes have - I think the interior floor area is 2000 square feet, and that equates to about 2000 square foot land coverage, as well. So in our opinion, it doesn't make sense to have that restriction. There is still a restriction on total gross floor area on the commercial side, which will ensure that the shopping center remains primarily the way it looks now. Just to give you an example, the total land coverage on the commercial side of Lot 17 permitted would be 80%, which equates to about 81,000 square feet, and right now, there is about 68,000 square feet of land coverage. So it's not exceeding land coverage on the commercial side. Anyway, so that is the - the reason for the request for the deletion of 4.e.

In terms of the additional time, it's really - it's a matter of the economics of the current, our current situation with COVID and the owner just feels that he may need additional time to develop the employee housing and you know, we're hoping that in that 2021 everyone is back to some kind of normalcy, but we don't know. And, it may not be until 2022 when - when commercial, activities are - are somewhat similar to what was happening before the, uh, COVID crisis. So, uh, that's the reason for the request for the extension. The Applicant is willing to continue to - or is willing to submit annual reports to the Commission to let the Commission know what's happening in terms of the development of the afford- the employee housing, but does request that he be granted this additional time to commence substantial progress. And, by the way, I have with me in this - in my office and Dan Friesho who is the engineer, just in case you had any - uh, you have any technical questions.

Chair Nogami Streufert: Okay. Are there any questions from the Commissioner to the Applicant? Max, I do have a couple of them. The first one is you said additional - two additional employee housing. There were originally, I think it's on the 2006 allowed three. So is this in addition to the three so it's now five as opposed to three what - what is the intent there?

Mr. Graham: The, and I have to apologize. It is a little bit - I have not been clear in - in describing what is happening there. So when the, uh, commercial center was first approved, there was an old house...

Chair Nogami Streufert: Correct. Which is—

Mr. Graham: The (Inaudible) house.

Chair Nogami Streufert: Yes.

Mr. Graham: And so the proposal was to renovate the (inaudible) house and then build, three additional employee houses so that—

Chair Nogami Streufert: Two (inaudible).

Mr. Graham: Actually, it was three. If you - if you look through there, it - the idea was to, eh, build three addition - in add- additional houses and then the (inaudible) house would be a renovation.

Chair Nogami Streufert: Correct, the DUWA house was.

Mr. Graham: And so what happened is the (inaudible) house was renovated, but essentially, it was reconstructed completely. So if you look at the property now, you'll see a brand-new house where the (inaudible) house was. There is a second house adjacent to it on the sort of along the mauka boundary. And just to clarify this whole issue where it's specifically saying we want to build two more homes and the idea is to build them in front of the two existing homes. Just so, this - 'cause I think it is a little bit confusing as to whether it's three or four. The - the fifth house is actually not on Lot 17. It is on another lot on the west side of Lot 17, which is owned by the Applicant, but it has - the - that lot is not part of this application. And there's a house there that is used there for an employee. But we're not talking about that house. So four employee housing for on Lot 17 is what is being requested.

Chair Nogami Streufert: That Romio, if I could ask you a question. Was that your understanding, that to be four as opposed to two additional houses?

Mr. Idica: Yes. I mean, in the beginning there was five because the other was house was located on Lot 40 - 149. And there were - the (inaudible) house, which was reconstructed and then the other one, I believe was done - I could be wrong, so I don't want to, like, state the date. But there are two - there are three houses right now, one of them located on Lot 149. Then when they construct these other two residence (inaudible) get back a total of five.

Chair Nogami Streufert: Okay. Any other questions for the Applicant from the Commissioners?

Mr. Ho: I have one, please. Mr. Graham - Mr. Graham, because this employee housing will become a Condition, we're asking for if you should complete the commercial portion of your permit and the - and do not do the employee housing, can that be leveraged against your, uh, Certificate of Occupancy?

Mr. Graham: Um—

Mr. Ho: And a copy work against the, uh, Certificate of Occupancy?

Mr. Graham: The employee housing is not a Condition of the Permit. It is a substantive request by the Applicant. So - so I think of it, my answer is that unless you made it Condition, the fact that the Applicant failed to complete all of the employee housing, would not affect the status of the Permit.

Chair Nogami Streufert: Without that Condition, would that also mean that it could be rented out as for non-employees, also?

Mr. Graham: No. I think that - so I will say no. Just a flat no because what we are requesting is that those homes be used for employee housing, and we understand that the Condition of approval by the Planning Commission is that they be used for employee housing and there is a - that is why we are asking the condition to be amended to allow retired employees. So it is current or retired employees, employee housing on- only. If the Applicant wanted to rent to anyone else, the Applicant would have to come back to the Planning Commission and ask for a change in that Condition and that approval and certainly if the - to me, that it would be a violation of the Permit if the Applicant used those homes for non-employee housing purposes.

Chair Nogami Streufert: Okay. I have another question, Max. You said right now the commercial area, it, uh, has an 80% coverage and that would include approximately - the total would be 81,000 square feet. Right now, you said that there are 68,000 square feet that are encumbered. That leaves a total of 13,000 square feet. Do you really need that many more square feet for two employee housing?

Mr. Graham: That is the commercial side, so we do not need - a- actually I do not anticipate on the commercial side any increase in the, lot coverage.

Chair Nogami Streufert: So if you - if we took up the 50% land coverage for employee housing in the total, what percentage of the lot would be would be covered would have land coverage, would be encumbered? If you took out the 50% versus 50%; added, 50%, would be delated from it.

Mr. Graham: Okay. So let us assume that the homes are -- and I think this is fair -- 2000-square foot each. The total land coverage for four homes would be 8000 square feet. 50% of that would be 4000 square feet. So you would have 4000-square foot less total gross floor area on the commercial side, and that 4000-square feet, if the only way to add that was to add new land coverage; in other words, a new building that's 4000-square feet. That would be the amount that the land coverage on the commercial side would be increased by, 4000-square feet, if you did not have the Condition 4.e. That is the most that could happen there. And what I'm saying is you'd still be well below the total amount of permitted square footage of land coverage on the commercial side.

Chair Nogami Streufert: Thanks. Any other questions for the Applicant?

Mr. Hull: Commissioner Apisa, I believe you are muted.

Ms. Apisa: Max, how many bedrooms are in these houses? Is it a three-bedroom?

Mr. Freshio: The houses are not designed—

Mr. Graham: Of the existing.

Mr. Freshio: Oh, the existing? I will have to check on that.

Ms. Apisa: I am just curious it is 2000-square feet. I mean, that is a decent-sized house and I was just curious.

Mr. Graham: I am sorry. I do not have that information handy.

Ms. Apisa: Okay. Yep. That's - that is fine.

Mr. Freshio: I believe that on the County website the houses are listed respectively about - I want to say 1100 be and like one at around 1000. So they're actually smaller because their living area is stacked on top of - you know, the parking are underneath. So they are actually not 2000 square-foot homes, but—

Chair Nogami Streufert: The 35 new improved parking that you are including in your - is that has that been included in the total lot coverage?

Mr. Graham: That - that will be part of the total lot coverage, yes. So we still can't exceed 33 1/3%, so however we do it, we have to make sure we don't exceed that amount, which is we suggested using the geogrid material for parking because that's it's more porous than you know asphalt parking and allows a great- uh, more flexibility.

Chair Nogami Streufert: So the new - the 35 new parking spaces and the extended driveway, sidewalk, pedestrian bridge, and the employee housing will be on the commercial side or on the others.

Mr. Freshio: No, they will be on the - on the open - on the open side.

Chair Nogami Streufert: On the open side. So including all of this on the open side, what is the total coverage, land coverage?

Mr. Freshio: It is going to be within the 33 - eh, again, we have not - you know, we - basically there was a withdrawal. There was a designing place for the brewery. Now that has gone away, so we need to redesign. But I believe that the the total allowable coverage on the - in the open district was around 23,800 square feet, and so, and that's based at - on 33.33%, allowable because that opened an area of 71,000. And so that's what we have to, you know, work with

that. And currently, again it's - currently the situation is that there is some existing drive (inaudible) that was that is, you know, as built, and there's some very, very informal parking that's been taking place. People are parking past the Auwai anywhere. So we need to do a redesign, and that redesign will then limit, you know, the coverage in the open district, too, what's allowable or 23,833 is, you know, the best number I have right now.

Mr. Graham: So again, the short answer is that we cannot exceed the 33 1/13%, land coverage, which in the open area would amount to 23,800 square feet.

Mr. Freshio: Correct.

Chair Nogami Streufert: But that also is where employee housing is going to be, is that correct; on the open space?

Mr. Graham: Yes.

Chair Nogami Streufert: So that is also going to have to be calculated into your - your, uh, total—

Mr. Graham: Yes.

Chair Nogami Streufert: A lot?

Ms. Cox: Yeah, and I want to come back to a statement you had earlier. This is Helen. Um, because you said that the reason for trying to strike or to withdraw the Condition of 4.e., was so that the houses could be the same size of other houses. But we just heard that the two houses that are already on there are quite a bit small than 2000-square feet. So I'm wondering if the condition for 4.e., remains, I know you haven't done the design yet, but what size housing, do you imagine would be possible uh - on Lot 17?

Mr. Freshio: Again, it depends on the design. If they were comparable house, both houses, probably out - that would be at in the area of below 15000. But we also have to consider each house (inaudible) we've got some (inaudible) and their a- ability to park and so on and so forth. So - but that is part of the work that needs to be done is to determine what can be fit in there. I think the point is that the current restriction puts more constrains on the size of housing that would be possible. And, you know, is that - is that a - is that a good thing to do or not? I mean, that - that is not my decision. But, you know, what we'd - what we'd like to do is achieve a - a balance between what the workforce will need on the lot and also continuing to support the commercial activity, uh, per the original, you know, agreements. Again, I think you also have to keep in mind that overall, uh, Mr. Wilcox's - has been, you know, ha- this lot is very open, even on the commercial side compared to, you know, other nearby lots. And so it's not as if there's a pattern of, you know, we trying to get more coverage out of what's available. I mean, we're just trying to come up with the right balance between, you know, what should be done on the lot and - and there's other considerations, as well, on the mauka side with respect to the view plains and

so on. And so it's - it's going to all go into the new design process now that we're no longer focused on the brewery.

Ms. Cox: Thank you.

Chair Nogami Streufert: Any other questions for the - either the Applicant or the Planning Department?

Ms. Apisa: I guess just a comment. I mean, I am obviously all for housing and comfort. But, um, my understanding is the - the biggest need for employee housing are one- or two-bedroom, and so that's reason I had asked how many bedrooms. But then again, it is for retired employees, also. But, I guess it's just comment. I am curious of how - how large or - of homes are needed and, um - can...

Mr. Graham: Can, uh—

Mr. Freshio: Can—

Mr. Graham: So I am actually what—

Ms. Apisa: Just a comment

Mr. Freshio: I am sorry. I am actually looking at the website here. So both houses are two bedrooms currently.

Ms. Apisa: And they are—

Mr. Freshio: They are not large houses.

Chair Nogami Streufert: And they are about 1100 square feet you said, is that correct?

Mr. Freshio: That is what the County records show. I mean, you know, we have not gone on there and back there or checked anything. But right now one bedroom - one house is two bedrooms, one bath. The other house is two bedrooms, two baths. So they are, you know, relatively, small houses, but they're - they're single fam- single-family residential homes. So, you know, I think - and there's - there are constraints on that lot in terms of, you know, where you can put these additional houses. So it's not if you're going to be able to put, you know, a 3000-square foot house there, either. Probably looking at, you know, comparable housing so what's already there once you factor in the garages, which will be probably underneath, the - it - you know, based on the current design, which is also suitable in a flood zone, and so and so forth.

Chair Nogami Streufert: That - if that is the case, then is it necessary to delete 4.e.

Mr. Graham: It is not going to kill the project, if that is what you mean. I would - you know, we are asking. It would be better for the Applicant if we could, but any way, and by the way, I

apologize. Now that I - I just got on the website, too, the tax, and see that, uh - that, yeah, the homes are smaller, actually than I thought. I thought they were 2000-square feet.

Mr. Freshio: Let me make a comment, and this goes to, I think, a something that was said by Collin Brotto, which is a fair comment, which is I think he pointed out there has to be some benefit to the community to make this - to delete this Condition. Uh... Well Mr. Wilcox is (inaudible) that will - that will improve safety along Kuhio Highway, you know, for everyone. And anybody that's been to Hanalei, you know, walking around Hanalei, that could be - well it - right now it's not a problem because there's no traffic, but when there's a traffic you know, you got to watch out. So I think having a sidewalk along the, you know, the mauka side there of the highway is a benefit to the community and it is going to make everything safe, as well. So again, that is going to use up coverage on in the open zone. And so, you know, one could argue that the relief from restriction of the coverage as it relates to the commercial side is - is sort of offset by Mr. Wilcox using up his coverage to do a public sidewalk and pedestrian bridge, which isn't inexpensive. I mean, that's - that would be my comment.

Chair Nogami Streufert: Okay. Donna, you are muted.

Ms. Apisa: Sidewalks are very much needed in Hanalei, so I acknowledge that.

Chair Nogami Streufert: Are there any other questions? Okay. Do I have a motion to approve, either to modify, to add Conditions, or to deny this?

Mr. Ho: Madam Chair, please?

Chair Nogami Streufert: Yes, please.

Mr. Ho: As a matter of for consideration by the other Commissioners, would making the employee housing a Condition of the Permit be in order.

Chair Nogami Streufert: If you would like to add that as a Condition, that could be done. And does that include retired employees or only current employees?

Mr. Ho: No, I would like that verbiage in there; retired or current employees.

Chair Nogami Streufert: Okay. Is that all?

Mr. Ho: Any of the commissioners have any comment on that or request. The reason is because I am looking at a letter from Adam Roversi, it said that because there was nothing (inaudible) on the prior agreements, he say he has no leverage to input employee housing or his comment on it. I am seeking comments from the other Commissioners on this idea.

Ms. Apisa: So, Roy, just to clarify, you want to be sure that they are specifically employee housing and not just general housing?

Mr. Ho: Yes, employee housing for either current or retired employees.

Mr. Hull: I can - if I can just add a clarifying comment. I do not want, you know, any stifle any conversations, especially on Commissioner Ho's, position. But just as a clarifying comment, to go a little bit back, originally their request for this housing is because it's in the open district and they didn't have the density. So they were - the Applicant requested to have additional housing for the specific purposes of housing employees of the commercial operation. And so, what they're requesting now is that they still be allowed to continue to house employees on these additional densities that were granted previous, in addition to these employees, retirees, as well. So in the event that the Commission takes action in the affirmative of these - of these - of this request, should the Applicant try to house anybody that is not either an employee or retiree of the center. The Department would issue a Violation Notice as far as issuing cease and desist as well as fines because that would be a violation of the Permits. And to go to Adam's point, I think Director Roversi for the Housing Agency doesn't have specific leverage pertaining to this because the application was approved was before the Housing Ordinance. So the way that the housing ordinance is set up is that the - a certain percentage of proposed housing - if you propose more than ten units, a certain percentage of that has to meet the thresholds for affordable housing, um, requirements. And so indeed this particular project does not apply, one, because it was approved prior to the housing ordinance being adopted and then, two, it doesn't even have the threshold of ten. But to go back, they are essentially - because they are asking for that additional density, under the Conditions that it be for employees and now retirees, any alteration of that, would be a violation of their Permit.

Chair Nogami Streufert: But it - if it were to be put in as a Condition?

Mr. Hull: No, currently.

Ms. Cox: So Kaaina, I have a question that, um, which I think I misunderstood what Roy was saying originally and I understand what he's seeing now, but what about could - could they develop the - because if we got rid of the Condition of 4.e, that means they can develop more on the commercial side and the - right? Could - can they develop more on the commercial side without ever doing the employee housing? Because I thought that is what Roy was, trying to get at was that in order to do the commercial stuff, you have to do the housing. But may- but I don't - that's not what he was saying. But I'm just wondering is that true, that you could do the commercial without the housing?

Mr. Ho: No. Kaaina, you are correct on your interpretation of what I said.

Ms. Cox: Oh, okay. Okay. Because that is the real question for me. I would hate to see the commercial part develop without the housing ever, yeah. And I just wondered if that's possibly what's happening.

Mr. Hull: Yeah, as far as they stay within that 33% threshold of lot coverage, overall for the lot of record, they could, correct.

Ms. Cox: And in that case I kind of support Roy's, idea. I do not know if - I do not know how the wording should be, but that idea that, you know, if the commercial is going to be developed, then the housing has to come in.

Mr. Hull: Before that—

Ms. Otsuka: I have a question.

Mr. Hull: Well, I am sorry. Go ahead, Commissioner Otsuka.

Ms. Otsuka: Is there - will there ever be a scenario with any employee or any retired employee is not interested in a home and now the Applicant is...would like to fill the home in? How do they do it without, uh, then a violation? Should something be written to protect the Applicant if no employees were interested?

Mr. Hull: Yes. If no employees were interested, the Applicants' hands would essentially be tied because they cannot rent or provide to anybody aside from an employee or retiree. But they could come back to the Planning to Commission, say, to change that requirement whereby they are allowed to open it up to a different level or category of tenants.

Chair Nogami Streufert: Now that whatever...Permits that we issue now run with the land? They do not run with the current owner of the land.

Mr. Hull: Correct. The land use entitlements run with the property and not the - the owner.

Chair Nogami Streufert: So anyone who buys this, should this property be sold, if we put this stipulation in there, it would not be - it would not be enforceable?

Mr. Hull: As far as the affordable housing? Or, I'm sorry. The employee-housing requirement?

Ms. Cox: Yes.

Mr. Hull: That is correct. I would have to say you - you're going to want - if the Commission is entertaining looking at that as a specific condition as opposed to an entitlement because right now it's entitlement that they enjoy to further develop the open portion of this property for employee housing purposes. If the Commission wants to somewhat apply it no longer as an entitlement, but an actual Condition or requirement, you - you're going to have to - I think it's - it's prudent to ask the Applicant if they are willing to accept that as a Condition.

Chair Nogami Streufert: How would you word it if you were - and this is just a - I am just putting it out there? How do you word - how would it be worded if one were to say that housing

or residence or houses can only be built for employees or retirees? If housing is to be built, it should be for employees or retirees. Is there a way to do that?

Mr. Hull: There's a way to craft it, but again I would, uh, recommend that the Commission ask the Applicant as to whether or not they are willing to accept that as a Condition. Because this does lend itself to, you know, whether or not there is a legal analysis as far as proportional nexus or requiring that housing pursuant to the proposal that Applicant has before you. Right? So from the Affordable Housing Ordinance, they, it would have to go through a - what we've seen in houses, they have to go through a proportional nexus study to demonstrate that the proposal warrants and the measures of requiring certain amounts of housing is in proportional, has a proportional nexus to the proposal at hand. And so requiring free housing as opposed to entitling free housing is - is a proportional nexus that is going to have to happen should the Applicant be unwilling to accept that.

Chair Nogami Streufert: Are there any other discussion? And to the Applicant, if something like that were to be proposed, how would you feel?

Mr. Graham: The 2006 Permit approval contains Condition 4.d. Now we are - we will forget about 4.e., 4.d., 4.d, says that the employee residences shall not be used for any use or purpose other than employee housing, so it's already a Condition. And that those Conditions and the approvals were incorporated into a land development agreement between the Applicant and the County, which was recorded. So we're already subject to that Condition.

Chair Nogami Streufert: Does that also include the next - the additional houses that you are looking at here?

Mr. Graham: Yes, it is all the - it is all the houses.

Mr. Ho: Max. Max, to be fair, that Condition 4.d, reads both current and retired employees to be to be occupants of your housing? It would also cover the two additional units you propose to build.

Mr. Graham: Yes. And - and remember, I'm - we're asking that 4.d, be amended to include retired employees, so there would be a change and I would have to file then an additional an amended land belt and agreement that incorporated that change into the restrictions on the project. And because this recorded and because it's a - a condition of zoning approvals, it runs with the land and applies to any future owners of the property. So there's no way that a future owner could take those homes and suddenly decide to use them as market housing, not unless the owner came back to the Planning Commission and asked for a change. So I think the County is already protected.

Chair Nogami Streufert: I think that was...it - it would be to a—

Ms. Cox: It seems to me.

Chair Nogami Streufert: No problem. I am sorry. Helen is that one?

Ms. Cox: Yeah. It seems to me you are right, that the County is protected in terms of having the employee housing. My question, can you speak to the idea of developing the additional retail space on the commercial side without ever doing the housing? Because it seems that, the way this is written right now, that could happen; because it does not say you have to do the housing. It is right now it is an opportunity to do the housing. But we've given you permission to extend the commercial. Can you speak to that a little bit? Do you understand what I am saying?

Mr. Graham: Yes. And you are correct, that the - because the employee housing is not a Condition of approval, theoretically the Applicant could develop the remaining total floor area that's left. And I think there's about -- I don't know -- 3000-, 4000-, square feet that could be developed. So that could be developed and it is possible that the new - that the Applicant would never do the employee housing. They are not linked and yes, you are correct. The Applicant has been operating in good faith and has been doing things that he would not otherwise be required to do, including providing employee housing and would prefer not to have Conditions - you know, further Conditions that link the employee housing construction to future development. But your analysis is correct, that he - that it could be - the remaining gross floor area could be constructed even if the employee housing, the additional two units, were not.

Ms. Cox: And because this runs with the land, if the ownership changes, then that - the new person who might not be acting in quite as good a faith could develop it?

Mr. Graham: Yes, they could. There is not much left to be developed, but, yes, they could.

Ms. Cox: Thank you, Max.

Chair Nogami Streufert: Okay. Any other questions or discussion?

Mr. Ho: Madam Chair? Madam Chair?

Chair Nogami Streufert: Yes.

Mr. Ho: I believe Helen has it correct. Okay. She is looking at it through the same pair of glasses that I am wearing. That's - that's - that's - what do - what do I call it? That is the fear that I have; that we have no leverage to come back against someone who decides to proceed and not fulfill its obligation. And, I don't know if you would call it leverage, but, yes, I certainly would call it leverage. The County, too, have a way of saying that Conditions were imposed, you agreed to it, and it should be lived up to it.

Chair Nogami Streufert: So if I understand this correctly, you want to you trade development, commercial development, to having the employee housing. Is that correct?

Mr. Ho: Yes.

Mr. Graham: Could - could I - could I just mention something?

Chair Nogami Streufert: Yes, that is fine.

Mr. Graham: Uh, so the - the approval to construct up to 25,000-square feet of gross floor area is part of a prior approval. There was no Condition linking that approval to the employee housing. I think that is a right that the Applicant presently has. That is the agreement. I do not think you can now change that agreement from the County's point of view and say, "Okay. Now we've decided that you can't really build that all up unless you do employee housing." You can Condition the construction of the parking, the new parking, on the building of employee housing, but I do not think you can go back in time and put a new Condition on, uh, prior approvals.

Ms. Cox: That may be true, Max. I'm sure you understand it better than I do, but can you explain it then what 4.e, because I thought 4.e, kind of related to this because there was a agreement to swap getting some additional building ability on the commercial instead of the housing. And now if we don't say you have to do the housing, then they still get that additional, land or that additional building allowance. Is that correct?

Mr. Graham: Well if you leave 4.e, the way it is right now.

Ms. Cox: Yeah.

Mr. Graham: Okay. So you just leave it the way it is—

Ms. Cox: But—

Mr. Graham: Right - right now.

Ms. Cox: But that - you are asking to delete, it, right?

Mr. Graham: I am.

Ms. Cox: So I'm just trying to say if you delete it, doesn't that mean that what has happened is that the allowance for building remains, but - and the way - the reason you got that allowance was because of the employee housing and now we're not - now the employee housing is no longer linked. I may be misunderstanding, but I am just trying to understand what it is, how - by getting rid of 4.e, have you not gotten rid of you are not getting rid of one-half it. You are still getting the gain, but—

Mr. Graham: That is correct

Ms. Cox: That is what I was just trying to understand.

Mr. Graham: Yeah, that is correct. So—

Ms. Cox: Okay.

Mr. Graham: Getting rid of 4.e, means that the owner gets the gain of being able to build out the gross floor area and there is no penalty for building employee housing and there is no link between the two. But you're correct.

Ms. Cox: Okay.

Chair Nogami Streufert: Are there any other comments or questions? If I could ask Ka can a - can a Condition be, put together that would tie more growth or more commercial growth to housing for employee housing or employee or retiree housing?

Mr. Hull: One can. But if the Commission is looking at down that, I would strongly urge you folks to consult with the attorney's office. Because, again, I have to attend to that proportional nexus standard unless the Applicant is willing to take it and move the project along. That is why I was kind of pushing the Commission to ask if Applicant is willing to accept that. But from a proportional nexus standpoint, it would be akin to - and Max is kind of addressing it. The project has been previously entitled and constructed (inaudible). Now if you look at this additional, say, 3000-square feet of commercial space and parking area. If a brand-new permit was spun out for a separate property, in which they are proposing 3000-square feet of commercial space, a parking lot, and the Planning Commission proposed to Condition it that two affordable employee-housing units be constructed in tandem with that as a requirement? There would be considerable legal objections. And so that's why I'm saying if Max and his team are willing to accept that as a Condition, then I think we can. But if the Commission would like to if Max - you guys are stressing concern and objection, then I'd have to turn to you folks to say you really need to consult with an attorney as to whether or not this is meets the muster of the constitutional taking precedent.

Ms. Cox: So I'm just - like our the options at the moment would be to either have Max and the Applicant agreeable to this linking or we could leave in we - our proposal could accept everything that has that is being requested except that we leave in 4.e?

Mr. Hull: Correct. That think that would be an appropriate course of action. I do not think there's any - and I'll leave it to Denny, too, to chime in as far as if 4.e, is left alone, if there's a legal concern there.

Mr. Cowger: Yes, I agree with that, Kaaina. I think that is my understanding, as well. We cannot really go back in time and stop what has already been approved.

Chair Nogami Streufert: Okay. And the 4.d, where it says employee housing, that would still - that would still follow through? Is that correct- still apply for any ones?

Mr. Hull: Correct.

Chair Nogami Streufert: Okay. So are we ready to...would you like to have more time to discuss this or would you like some time to discuss the attorney or to - or are you ready to make a motion?

Ms. Cox: I am ready to make a motion, but I am going to need help with the wording. I would like to move that we accept the Applicant's withdrawal of and all their Conditions, which includes the withdrawal of the brewery, and all the other Conditions except the removal of 4.e, and I would like to move that we - the motion would include that we do not delete 4.e. Sorry. I do not know how to word that.

Mr. Hull: I believe that that would work. I think, Ms. Cox, if you would rephrase that instead of "accept" to "approve" as requested and recommended by the Department with the exception that Condition 4.e, be left-in.

Ms. Cox: Okay. I, move that we approve the request as requested except - with the exception that 4.e, remain in.

Ms. Apisa: Second.

Chair Nogami Streufert: There is - there has been a motion to approve the amended, Application plus with the exception of Condition 4.d.

Mr. Ho: e., e.

Chair Nogami Streufert: Or any discussion?

Mr. Ho: No.

Chair Nogami Streufert: I am sorry. 4. e.

Mr. Ho: 4.e.

Chair Nogami Streufert: I am sorry. 4.e. Sorry. 4.e. Is it...

Mr. Ho: Madam Chair. Madam Chair? Uh—

Chair Nogami Streufert: Yes.

Mr. Ho: I know. I know we have - we have discussed it maybe just a little late in the game. Kaaina uh – Kaaina we—

Mr. Hull: Yeah.

Mr. Ho: Could you read 4.e, for us?

Mr. Hull: Hold on one second. 4. e, reads - 4 - Condition 4 reads, "Applicants shall incorporate into the deed for the subject property the following." And going down to 4.e, it states, "50% of

the lot coverage of each of the three employee residential improvements shall be applied towards the total gross floor space at - of 25,000 square feet."

Mr. Ho: Thank you.

Chair Nogami Streufert: Are there any other discussion?

Mr. Hull: If there is no further discussion, I - it may be appropriate to ask the Applicant if they are willing to accept the - the motion as recommended or as stated.

Chair Nogami Streufert: Max?

Mr. Gaylord Wilcox: Hello?

Chair Nogami Streufert: Yes.

Mr. Hull: Yes.

Mr. Gaylord Wilcox: May I speak?

Mr. Hull: Yeah.

Mr. Gaylord Wilcox: This is Gaylord Wilcox. Yeah, we will accept it. I will accept, but it is disincentive to do employee housing, so I do not know if I will be building any employee housing, but I will certainly accept it.

Ms. Cox: Are we allowed to ask questions of you, Gaylord, because I would like to ask why it is a disincentive given the size of the existing houses now? Because I certainly do not think that is the intent is to disincentize employee housing. Can you speak to that, please?

Mr. Wilcox: Yes, because it brings down the total gross floor space that is allowed. And, you know, that was allowed from the beginning, and already that's about - I'd say if - if I wanted to maximize the floor space on the lot and put all the parking on the commercial side, I could easily double that amount, put two stories, put one big two-story building. Use 80% of the lot. So, you know, 25,000 square feet is already a - not that much. And I just don't think, you know, the fact that we're doing some housing on the next thing, housing which the Planning Department was going to deny in 2006. I was on the way to the Planning Commission meeting, and that was the day the dam broke. And I hadn't found out. Really, I was trying to work with the Planner to get him to interpret the Zoning Code to say that, yes, you - in that situation you can actually more on a house. Then I found out that was not gone be the interpretation, so that the hearing was sort of and I said, "Max, I need some help. I don't know how to, you know, do this" and Max was able to figure out how to get approval for these houses. Then, of course, you put this 50% lot coverage thing on it. Now what am I going to do? Say no, I do not want to accept that? I - I'll just forget the housing?" No. I said, "Okay." That is it. I did - but here I am before the Commission again and I do not think it is fair that the housing should have any effect on the

25,000-square feet that I am allowed. And so we're asking for it. And if you're going to say, uh, you know, this Condition, you're going to keep that Condition? No. The Condition will be there, but it will be a disincentive. I will have to consider and treat people in the future. We will have to consider whether they want to build any more housing.

Ms. Cox: Thank you.

Chair Nogami Streufert: But as it stands now, it has not to change what is already there? I think you are reading it from the amendment here. It does not change what was already in 2006. Are we ready for the vote or?

Ms. Apisa: Kaaina can I order - can I withdraw my second- I do understand that and I - I know our dire need for housing and I think the developer has been very responsible. He is incentivized to do the housing no matter what because his employees in the area need housing and a - it is certainly he is incentivized to build the housing in order to provide housing to get employees. So, I mean, there is a natural incentive and incentive for him - for him to do the housing without that requirement. So I do not know. If it is appropriate, I would would like my second and kind of start over with allowing that 4.e, in there.

Mr. Hull: I think, Commission Apisa and...

Ms. Apisa: Or else we could just vote on it and see where it goes.

Mr. Hull: Yeah, that's yeah, I think it will - two options, either taking the vote or if Commissioner Apisa withdraws her second, essentially whether or no Commissioner Cox would want to withdraw her motion if she wants to let the motion stand, if another Commissioner is willing to - the second option.

Ms. Apisa: Or could we amend the motion?

Chair Nogami Streufert: That was a - for the...

Ms. Apisa: It would probably be cleaner or to withdraw or it vote it.

Chair Nogami Streufert: Or vote it, yeah.

Ms. Cox: I think it probably makes more sense to withdraw it and then to restate the motion the way we want it. And I guess, I you know for me, this is a case where we have to trust, a respected member of our community who has done well in the past, getting employee housing and just, I guess, hope that the land doesn't end up at some other - I mean, I just -it's - to me it's - it's sad because the employee housing is really, really important. And, but if the Applicant is feeling disincentized to build employee housing if we have this motion the way it stands now, then I guess I withdraw my motion.

Ms. Apisa: My understanding is that in the disincentive comes in the fact of that - part of the square footage. I think he will still build it. It just limits his square footage. That is my understanding.

Chair Nogami Streufert: Let us remember the rights to this go with the land and not with the owner.

Ms. Cox: Yes, and that is what concerns me. Because if we knew that this housing was going to be built in the next little bit, then probably we are okay, but there is nothing 'saying' that it is going to happen. And Donna, I maybe I misunderstood, but I understood there to be a disincentive to build house- employee housing at all if we do this. I thought that is what I heard.

Mr. Hull: Yeah. If I could just chime in a little bit. I mean, the Department has no objections to the motion now as it was phrased, but to what the Applicant was saying. The Department would say some insight as far as, you know, watching the development industry and housing in particular on Kaua'i for the past 10, 15 years. If the builder/property owner has to pick where the three - where the 5000 square feet is going to get divvied up, if he has to choose between housing units or commercial space and it's an either/or scenario, in almost all scenarios they're going to choose the commercial space.

So I think, you know, as much as you folks have faith in the particular Applicant today, I would have very - from the Department's perspective, we would have very you know, little anticipation of the housing being built if the developer has to choose between commercial and housing. It is very similar to what you are watching at the County Council in which the requirement was 30% of ten units and you know everybody expected the developer to be able to readily and easily build that 30%. What you are seeing has happened for the past ten years is developers are saying, "I'm not going to build that then" and then saying, "I can pencil it out." And so I think what we're seeing here is what's the developer going to choose between and - and like - like I said, the Department has no objections to it moving this ball forward; however, we would not expect the housing to be built, quite honestly.

Chair Nogami Streufert: But deleting 4.d, or 4.e, I am sorry; I am getting these two mixed up. Deleting 4.d - e, does not mean that he is going to build any housing or employee housing, anyway? It's not a requirement. It's, if you will, an entitlement that he is able to should he want to, but he could still build those 5000 square-foot commercial with an even after we - it - further delete - can still do the commercial and not do the housing? Is that correct?

Mr. Hull: That is correct, Madam Chair.

Chair Nogami Streufert: Okay. Helen, would you like to restate a motion or it was a good enough?

Ms. Cox: Yeah, I guess I am really torn on this. But, actually, I would rather have somebody else state the motion and I will think about how I want to vote.

Ms. Apisa: I think if I remember how you did it so well, Helen, I move that we approve the developer's request as stated because that would include the 4.e, withdrawal. Right? Kaaina? If we just approve it as requested?

Chair Nogami Streufert: So it has to approve the Planning Director's report, essentially, is how without no - things - no additional with no additional (inaudible).

Mr. Hull: Correct.

Ms. Apisa: Right.

Ms. Apisa: We approve the Director's Report as submitted.

Chair Nogami Streufert: Is there a second?

Mr. DeGracia: Seconded.

Ms. Otsuka: I second.

Chair Nogami Streufert: It has been moved and seconded. Any discussion? Any further discussion before we move onto the vote?

Ms. Cox: Yeah, I do not know. At this time, Kaaina, I guess I want to know whether this is or report - maybe it is our attorney that I am a- I'm asking is it okay if we ask the owner whether his intent is to build the housing or not? I mean, obviously that is a gentleman's agreement. Now he could say yes today and then not do it, but I am wondering if it is even okay to - to ask about that.

Mr. Hull: I believe that unless Denny has objections, I believe that would be an appropriate question.

Cowger: Yeah, it would be appropriate. As you said, it's kind of like an agreement, so...

Ms. Cox: Exactly, You know, this is a community that is based on relationship to a certain extent and therefore I would - I would, uh - I would actually like to hear a response.

Cowger: Okay.

Mr. Wilcox: Sure. I do hope to build more but based on cash flow at the center right now, there would not be any money to build it. So the other factor, of course, is demand and do have demand. I would like to build one right away, but I do not have the cash flow to do it. So that's my answer. Um, um, hopefully do it someday, but I do not know when.

Ms. Cox: Thank you.

Mr. Ho: At...Madam Chair.

Chair Nogami Streufert: Yes, please.

Mr. Ho: Madam Chair, I am very glad that the Commission had an opportunity to discuss this and see both sides of the coin. Right now, it's going to come down to whether we trust the Applicant. I do. Or whether we trust Max Graham. I do. So let us move on to the vote.

Chair Nogami Streufert: Are there any questions? Then we will do a rollcall vote.

Ms. Apisa: Can I ask one more question?

Chair Nogami Streufert: All right.

Ms. Apisa: I am (inaudible). So the motion on the floor right now I keep - he can build the housing, but he doesn't have to do right away, at any point he could? Is that right, Kaaina?

Mr. Hull: Correct.

Chair Nogami Streufert: Base any - I mean, this is just about the 25 - the 50% coverage? Okay. This is... so are we ready for the vote. Kaaina, if you would - before we take the vote, please state what exactly it is we are doing so we are all clear as to what it is we are doing here.

Mr. Hull: The motion is to approve as recommended in the Planning Director's Report and that is essentially accepting the withdrawal of the brewery and associated improvements with it; however, approval of the expansion of the parking facilities, to 30 units. Sorry. Or keeping within 33% of overall lot coverage. As well as the pedestrian bridge and sidewalk improvement, as well as additional employee housing that can also be utilized for retirees.

Chair Nogami Streufert: Okay. Is that clear?

Ms. Cox: And - well, no, because Kaaina, I think you forgot the removal of the 4.e.

Mr. Hull: Right. I am and inclusive that the housing units would not count towards the overall 25,000-square feet allotment for commercial space. Okay.

Chair Nogami Streufert: Is that everyone? All right. Let us have a rollcall vote, please.

Mr. Hull: Roll call, Madam Chair. Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner Chiba.

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ho?

Mr. Ho: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Streufert?

Chair Nogami Streufert: No.

Mr. Hull: Motion passes. 6 aye's: 1 nay. Madam Chair.

Chair Nogami Streufert: Thank you.

Mr. Hull: Madam Chair, could we take a ten-minute break?

Chair Nogami Streufert: Yes.

Ms. Cox: Okay. Yeah.

Mr. Graham: Thank you very much, Commissioners.

Mr. Wilcox: Thank you.

Chair Nogami Streufert: All righty. Thank you.

Mr. Hull: Okay. For all those that have called in...we are going to take a ten-minute break. It is 10:35, so we will be returning at 10:45. Please do not hang up. Just leave your lines live; otherwise it creates a - a fair amount of technical disturbance. So we will be returning at 10:45 a.m.

The Commission recessed this portion of the meeting at 10:35 a.m.

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

Chair Nogami Streufert: Call the meeting back to order after the recess.

Mr. Hull: I cannot see everybody, so I am not quite sure. So we can do the rollcall. Okay. Roll call. Commissioner Apisa?

Ms. Apisa: Here.

Mr. Hull: Commissioner Chiba? Commissioner Chiba? Commissioner Cox?

Ms. Cox: Here.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Here.

Mr. Hull: Commissioner Ho?

Mr. Ho: Here.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Here.

Mr. Hull: Chair Streufert?

Chair Nogami Streufert: Here.

Mr. Hull: Actually, you have a quorum, 6:0. But do you want to wait or keep moving?

Chair Nogami Streufert: Could we, could someone call Mr. Chiba and see whether we could - he would like to join us?

Mr. Hull: Hold on one second. I will try to call.

Chair Nogami Streufert: Let us wait one minute while we, uh, try to contact Mr. Chiba. Okay.

Mr. Hull: Commissioner Chiba, are you online now?

Mr. Chiba: Yes, I am. Thank you.

Mr. Hull: Okay. We have a full quorum, Seven, Madam Chair.

Chair Nogami Streufert: Great.

New Agency Hearing

Special Management Area Use Permit SMA (U)-2021-1, Class IV Zoning Permit Z-IV -2021-3, and Use Permit U-2021-2 to allow operation of a retail

facility, conduct agriculture tours & host community events, and associated site improvements that include an unimproved parking area on parcels situated on the mauka side of Kuhio Highway in Hanalei Town, approx. 900ft. east of the Kuhio Highway/Aku Road intersection, further identified as 5-5067 Kuhio Highway, Tax Map Keys: (4) 5-5099:013 & 5-4003:001 (Por.) and affecting a total area of 13.54 acres = Laird Superfood, Inc.[Director's Report received by Commission Clerk 9/22/20.

Mr. Hull: Moving on to the next Agenda item, Special Management Area Use Permit SMA(U)-2021-1, Class IV Zoning Permit Z-IV-2021-3, and Use Permit U-2021-2, to allow operation of a retail facility, conduct agriculture tours, and host community events and associated site improvements that include an unimproved parking area on parcels situation on the mauka side of Kuhio Highway in Hanalei Town, approximately 900 feet east of the Kuhio Highway-Aku Road intersection, further identified as 5-5067 Kuhio Highway, Tax Map 5-5-009:013 and 5-4-003:001, and affecting a total of 13.54 acres.

The applicant is Laird Superfoods, Incorporated. This is the Agency Hearing portion, so is there anyone who had called in, a member of the public that would like to testify on this Agenda item?

Mr. Carl Imparato: Yes. Carl Imparato.

Mr. Hull: Okay, Carl. Go ahead.

Mr. Imparato: Okay. It should be brief. Uh, my name is Carl Imparato. I am speaking on behalf of Hanalei-to-Ha'ena Community Association Board of Directors. I just want to, uh, No. 1, to say that we appreciate that the Applicant is going to be meeting with the Board and the community to clarify its proposal, and therefore we also urge that the Commission, uh, defer to November as the Applicant's spirit as they have requested. Thank you.

Mr. Hull: Thank you, Carl.

Mr. Imparato: Thank you.

Mr. Hull: Is there anyone else from the public who has called in, is participating, and would like to testify on this Agenda item for the Laird Superfoods, Incorporated, and Application?

Ms. Aleia Asaka: Hi. My name is Aleia Asaka and I sent a letter in yesterday, um, and I do not mind reading the letter if given the chance.

Mr. Hull: Yes, ma'am, you can feel free to read the letter and speak. You have - you have three minutes.

Ms. Asaka: Okay. Thank you. Now?

Mr. Hull: Yeah. Yeah.

Ms. Asaka: Okay. I am going to apologize 'cause there is a neighbor that has a shredder on and, um, and trimming trees, so if you cannot hear me. Um, I know, like, a lot - Planning Commission Members, uh, thank you for your time and please consider my thoughts and testimony before you make any decisions on this matter. Um, to give you some insight, we are located on Parcel 10, three doors from Parcel 13, which is the home on G next to the formerly proposed, uh, Na Pali Craft Brewery. Um, but I - in Hanalei we already have two very well established community centers, Hale Halawai 'Ohana O Hanalei and Waipahu. Both of these locations are equipped to serve and handle the community's needs. They allow for community meetings and events, such as the - the surf and ocean education films, outdoor movie nights, the live entertainment. And as requested on the Application is a learning and resource center for cultural, historical, and agricultural preservation. Um, and then regarding the live entertainment part, we already have live music in the center of Hanalei, which is surrounded by the shops and eateries.

and then I - I would like to address the growth of the - the growth of the acai palms. So from an agricultural standpoint, Hanalei has been taro, rice, and then back to taro. Um, I'm not against agricultural. Uh, I am a fourth-generation farmer. In fact, I believe we need to go back to agricultural to help our community, maybe not so much more tourist. Uh, what I'm against is having these Acai palms in Hanalei and then the introduction of this plant that is native to South America. We don't know impact of this to our ecosystem. What happens when it floods and the berry seeds float way, when the birds eat the berries and they move the seeds? Will the property then become a problem? You know, furthermore, I believe that the acai palm, um, they will attract the parakeet bird population, and we surely don't need them in Hanalei. I do have a suggestions. Let's say the acai palms have been proven to be safe and won't spread like the obelia tree, um, why not utilize the old sugar plantation land? It seems we have these things are open and they have irrigation, something that the Hanalei farmers struggle with. Um, as for the retail presentation, uh, the LSF brand is found everywhere. I don't see the need for another retail shop that is located in an area that is not designated for it. Uh, for some of these - for these reasons, I believe you should deny the Application. And, once again, thank you for your time and I'd like to reserve the right to submit additional concerns if any arise. So thank you for listening to me.

Chair Nogami Streufert: Thank you very much.

Mr. Hull: Again, this is an Agency hearing. Are there any other members of the public that have called in that would like to testify on this Application for the Laird Superfood, Incorporated? Seeing none, Madam Chairman, and the Applicant has conveyed to the Department that they intend to defer - request to defer all this item as, I believe the first speaker, Mr. Imperato referenced that they will be meeting with them. So given that, the Department would actually ask that the Agency hearing be deferred to November - excuse me. November 10th.

Chair Nogami Streufert: Do we have a motion to defer this or would you like to discuss this? Would the Commission like to discuss this before?

Mr. Hull: Oh, so sorry. It's because we kind of smashed the Agency hearing and the review of it, so we're just asking that the Agency Hearing be deferred. Is - should you take action on the

Agency hearing, then we'll move right into the actual Planning Department's Report, as well as discussion with the Applicant. I would also be asking for a deferral on that one.

Ms. Otsuka: Okay. And so the motion now is to defer? Is that correct?

Mr. Hull: The Department is requesting that, but it's ultimately up to the Commission.

Ms. Otsuka: I would like to make a motion to defer this Agency Hearing of today to November 10, 2020, our next Planning Commission meeting.

Ms. Cox: I'll second that motion.

Chair Nogami Streufert: It's been moved and seconded that we defer the Special Management Area Use Permit 20- 2021-1, Class IV Zoning Permit, Z-IV-20213, and Use Permit U-2021-2, to allow operation of a retail facility, conduct agricultural tours, and host community events and associated site improvements that include an unimproved parking area on parcels situated on the mauka side of Kuhio Highway in Hanalei town. It's the Laird Superfood. Do we have any discussion? If not, could we have a rollcall vote, please? And I'm sorry that we're doing the rollcall votes, but because it's very difficult. We can't see people. We don't know and it's not always easy to distinguish how many "ayes" there are. Let's do a - a rollcall vote.

Mr. Hull: Roll call, Madam Chair. Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ho?

Mr. Ho: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Streufert?

Chair Nogami Streufert: Aye.

Mr. Hull: The motion passes. 7:0. Madam Chair.

Special Management Area Use Permit SMA (U)-2021-1, Class IV Zoning Permit Z-IV -2021-3, and Use Permit U-2021-2 to allow operation of a retail facility, conduct agriculture tours & host community events, and associated site improvements that include an unimproved parking area on parcels situated on the mauka side of Kuhio Highway in Hanalei Town, approx. 900ft. east of the Kuhio Highway/Aku Road intersection, further identified as 5-5067 Kuhio Highway, Tax Map Keys: (4) 5-5099:013 & 5-4003:001 (Por.) and affecting a total area of 13.54 acres = Laird Superfood, Inc.[Director's Report received by Commission Clerk 9/22/20.

Mr. Hull: So now we will go directly into the actual Agenda item itself, um, for the Special Management Area Use Permit 2021-1, Class IV Zoning Permit 2021-3 and Use Permit and 2021-2. Uh, this is again for Laird Superfoods, Incorporated. Romio is the Department Planner on this, so I'll turn this over to him for a brief overview. It is going to be, also, if folks have any questions of the Applicant. As I stated earlier, the Applicant has conveyed to us that they'd like additional time and deferral so they can meet with community members. So, Romio, I'll turn it over to you, sir.

Staff Planner Mr. Romeo Idica: Good morning again, Madam Chair and Planning Commissioners. So this is consideration for a Class IV Zoning Permit Z-IV-2021-3 and Use Permit U-2021-2, Special Mangement Area Use Permit SMA(U)-2021-1 for Laird Superfoods, or LSF.

Mr. Idica read the 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: On Parcel 1 right now it's vacant, uh, adjacent to taro fields. W- but in the past it was used for taro, coffee, and rice and also pasturing. LSF is proposing to use the - the Parcel 1 as ecotours to showcase the LSF products and also continue the agricultural uses. LSF is proposing to plant banana trees, papaya trees, coconut, asai, tumeric, cane, citrus, lemon and oranges and also lettuce, uh, on Parcel 1. And that's pretty much about. That just kind of wraps it up. There is no other developments; again, only of the parking lot and the driveway. Other than that, it is all strictly use-orientated. Okay. Any questions for myself or the Applicant?

Chair Nogami Streufert: Are there any questions the Planning Department?

Ms. Otsuka: Is it - is it being currently being used now, the Mission House?

Mr. Idica: To my understanding, no.

Ms. Otsuka: Thank you.

Chair Nogami Streufert: To the - uh, for the farm tours, there's something about a 13.4 acres that's gonna be used for the farm tours?

Mr. Idica: Yes.

Chair Nogami Streufert: All right. Is that the driveway, parking, and is there a building for the farm tour or how is that going to be

Mr. Idica: No.

Mr. Idica: There's no other developments within Parcel 1. The total lot area for Parcel 1 is... Well done. It's 719 acres. So LSF is only using a portion of it, which will consist of 13.4 acres.

Chair Nogami Streufert: So that's about 2 percent?

Mr. Idica: Yes.

Chair Nogami Streufert: Do we know what happens if the two - the, uh - if you have a - a loss of, uh - of this acreage, four - 13.4 acreage, for drainage? Or is that a concern? 'Cause Hanalei always seems to flood.

Mr. Idica: Right now, this particular area is within the wetland, so as far as extreme runoff, it'll pretty much stay on property.

Chair Nogami Streufert: And the con- the, flooding of that, the, uh seeds from the acia trees could - or palms could go to - is that reasonable?

Mr. Idica: Well right now we're looking at the agricultural use of the property. As far as the effects of the acai berries actually falling and floating downstream, that I would probably have to defer to the Applicant and have them answer if they have any mitigations regarding this type of planting.

Chair Nogami Streufert: Alright, okay. Any other questions for the, uh, Planner? All right. If not, could we have the Applicant?

Mr. Ian Jung: Good morning Chair - Chairperson and Members of the Commission. This is Ian Jung on behalf of Applicant Laird Superfoods, Incorporated. Um, just to represent what the Planning Director said and the Planner, we are asking for a deferment on this matter. Uh, we've been engaged with the Hanalei-Hokuaka Community Association, uh, Board to try and rectify some of the issues that they've, uh, raised. We recently got Ms. Asaka's letter and I spoke with her yesterday and I think she raises some valid points about the issue with the acai berry. We have been working with the NRCS to develop an Ag. plan, uh, but we are kind of reshifting how we're gonna sort through that Ag. plan so we can, uh, create more of a food forest rather than introduce species that aren't too common here in Hawaii. So I think some valid concerns have been raised the community and we're adjusting to, uh, deal with those concerns.

So what we've set up now is we're gonna try and schedule another community meeting out there in Hanalei to try and address some of these concerns with the immediate neighbors, as well as the Hanalei-Hokuaka Community Association. So I've been in contact with those folks, uh, to relocate some of the proposed uses and locations of those uses that are part of the site plan that is in Exhibit B-1. So we anticipate moving forward. We will submit a revised site plan, as well as a revised ag plan to deal with the adjustments that we're contemplating right now. So just by way of background, uh, Laird Superfood was cofounded by Mr. Laird Hamilton, who was raised here on Kaua'i. Um, the idea of - of the project was to kind of showcase what the Laird Superfood products are with the Leno, which is a two brick, some coconuts, um, the citrus elements that are all used in the products. Um, the idea was to create a s- a more of a three-acre, um, ag component that showcases these product, um, as well as a food forest that would be in the background. Uh, but all these uses, obviously, are allowable on ag land. Um, our request for the Use Permit and SMA Permit is more tailored to the ecotours that were gonna take place on, uh, Parcel 1, as well as the - the commercial component that was gonna go into Parcel 13, which is the existing Mission House. And I - I think if you read through our Application, the history of the Mission House is, um, interesting and by way of the fact that it was located to Hanalei in 1986; was a, uh, realty office and then converted into a bed and breakfast vacation rental, uh, and then now, uh, vacant, but has this entitlement for a learning and resource center for ag, educational opportunities, and those cultural opportunities.

So the premises of the project is an adaptive reuse of the, uh, existing building, but we need to work further with the community and to kind of refine that use to try and cordone off how much square footage we can allocate for the sale of the Laird Superfood Products, as well as how we're gonna strategize on the art gallery component and then also the Class III, which I personally framed as the learning resource center, but the idea is to kind of convert it into a little bit of a museum down there. So, uh, we're working through that right now with the community, and that's why we're asking for a deferral on that. And I'll save, uh, your folks' time and then for the presentation at the upcoming meeting on how we're gonna, uh, revise our exhibits to show you what we're, uh, reinventing on the project as compared to what our submittal was. But I'm happy to answer any questions if you have now; uh, otherwise we'd be happy to, uh, repropose the project back on November 10 once we get a little more feedback and concensus on certain issues.

Chair Nogami Streufert: Okay. Are there any questions from the Commissioners? I guess I do have a question on the Mission House.

Mr. Jung: Yes.

Chair Nogami Streufert: It is his- it has been determined to be historic. So what parts of it are you planning on keeping for the historic of it and - and what parts will be revi- or, uh, reconstructed or - or revised to - for your purposes?

Mr. Jung: Yeah. So the structure will remain intact with no alterations at all to the - either the exterior or the interior. Um, the idea that we have is, um, probably to set up some shelving unit as well, uh, some countertops, which will be essentially fixtures in the building, so we're not

gonna structually alter the building at all. Uh, there is - the history on - on the building was it was on the National and State Registeries, uh, while it was located in Kapaa. But once - once relocated, um, the building itself was the his- was historic, but the location of the existing property now and the current TMK that it sits, was not put on the Registry. So although the structure is historic by virute of the nature of it being over 50 years old, it's not on the Registry. But we don't intend to make any, uh, significant alterations to it, let alone, you know, minor alterations to it other the adaptive reuse, some paint, countertops, and, possible shelving to show case the products.

Chair Nogami Streufert: All right. Commissioners, are there any other questions or? If not, are we ready to take action on this, to defer this, or to take action on it?

Ms. Cox: I move that we defer this to the November 10, meeting so that we get an accurate updated plan and here from the Applicant at that time.

Chair Nogami Streufert: Is there a second?

Mr. Chiba: Second.

Chair Nogami Streufert: It's been moved and seconded that we defer this until the November 11 - or the - I'm sorry. November 10 meeting. Any discussion? If not, can we have a rollcall vote, please?

Mr. Hull: Roll call, Madam Chair. Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commisioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ho?

Mr. Ho: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Streufert?

Chair Nogami Streufert: Aye.

Mr. Hull: Motion passed. 7:0. Madam Chair.

Mr. Jung: Okay. Thank you, Commissions. I look forward to November 10.

Chair Nogami Streufert: We will. And the—

New Agency Hearing (Cont.)

Special Management Area Use Permit SMA (U)-2021-2, Class IV Zoning Permit Z-IV - 2021-4, and Use Permit U-2021-3 to allow installation of a statue of King Kaumuali'i within the Russian Fort Elizabeth State Historic Park in Waimea, along the makai side of Kaumuali'i Highway, approx. 800 ft. east of Waimea Town, further identified as Tax Map Key: (4)-1-7-005:003, and containing a total area of 17.26 acres = Friends of King Kaumuali'i. [Director's Report received by Commission Clerk 9/22/20.]

Mr. Hull: Next we have up for the Agency Hearing, Special Mangement Area Use Permit SMA(U)-2021-2, Class IV Zoning Permit Z-IV-2021-4, and Use Permit U-2021-3, to allow installation of a - a statute of King Kamuali'I within the the Russian Ford Elizabeth State Histork Park in Waimea along the makai side of Kauuali'i Highway, approximately 800 feast of Waimea Town, further identified as Tax Map Key 1-7-005:003 and containing a total are of 17.26 acres. The Applicant is Friends of King Kaumuli'i. And this is the Agency hearing part, so for the members of the public who have called in, are there are any members of the public that have called in that would like to testify for this Agency hearing? Seeing none, the Department the Department would recommend that the Agency hearing be closed on this particular item.

Chair Nogami Streufert: Could we have a motion to close to hear- the Agency hearing?

Ms. Apisa: I move to close the agency hearing.

Ms. Cox: I second that.

Chair Nogami Streufert: It's moved and seconded to close the Agency Hearing. Any discussion? Let's do a voice vote on this one. All those in favor of closing the Agency Hearing? Say, "aye". (Unanimous voice vote) It is very difficult. Any opposed? (None) It's been moved and passed. Motion carried 7:0.

Chair Streufert announced that the Agency Hearing in closed

Mr. Hull: Okay. Moving on the actual Agenda item, so again we're on Special Management Area SMA(U)-2021-2, the Class IV Zoning Permit 2021-4 and Use Permit 2021-3, and this

Applicant for Friends of King Kaumuali'i. Dale is our Planner, so I'll turn it over to Dale for his report on this Agenda item.

Staff Planner Dale Cua: Good morning, Madame Chair and members of the Planning Commission. At this time I'll summarize the Director's Report. Actions required, consideration of Class IV Zoning Permit, Use Permit, and Special Management Area Use Permit to allow construction and installation of a cultural display statute and associated site improvements. the State Land Use Designation for the property is agricultural; however, the, um, shoreline area is within the Conservation District.

Mr. Cua read the 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. Cua: Agency comments have been attached to the Director's Report, as well, as subsequent, um, supplement - supplemental reports. And that's pretty much concludes the Director's Report for this Application.

Chair Nogami Streufert: All right. Are there any questions for the Planner? This is in the State Park, so do we - does this have to be ADA-complaint? I can't - I'm sorry. Your—

Mr. Cua: Yes, it would. Yes, it would.

Chair Nogami Streufert: And is this ADA-compliant then?

Ms. Asaka: Yes, it would be designed as such.

Chair Nogami Streufert: Any questions for the Planner? If not, would the Applicant - is there an Applicant here?

Mr. Hull: Sorry, ladies. Aletha and Maureen, ah, I believe you folks are still muted, so you have to press the, uh, unmute button on the screen. If you just toggle the mouse, it should come up with a microphone that you can click on to unmute yourself. So if you toggle your mouse, just move it around the screen, on the bottom a bar should come up, one that has a camera image and one that has a microphone image, and there should be like a bar between the microphone. If you just click that microphone, it should umute you.

Ms. Aletha Kaohi: Okay. I'm now - can you hear me now? Oh, thank you.

Chair Nogami Streufert: Give your name before you start, please?

Ms. Kaohi: I'm Aletha. I'm Aletha Kawelukawahineholoolimaloa Goodwin Kaohi. Okay. Before I begin, I want to a- you allow me to share my Hawaiian heritage and why the statute should be at this very historic site. I was born to William (inaudible) Goodwin and Margaret (inaudible). I was told I was born 25 hours short of the summer solstice. And the Kaumuali'i platform is about the moon and the summer solstice, the design. My father was a very knowledgeable man because he was raised by his great-grandpar- by his grandparents, my great-grandparents. My great-grandmother was a kahuna anaana, Black Magic. But she was the deflector of the sorcery. My great-grandfather was a Keeper of the Waters, ((Foreign Language Spoken 00:35:55)). These waters were used to wash the eyes of the children that were in my grandmother's Kahuna class. What they needed to do is they were able to hear, to see, and to feel, and if that did not happen, then these children were returned to their parents.

Hawaii was changing very rapidly when my father was born in 1819. There was unrest in Hawaii, and a few years later, Queen Lili'uokalani was dethroned and all of the Kahuna's had to go underground. I grew up in a home that was cluttered with artifacts, portraits of my ancestors on the wall. I lived the culture. Even though I shared for 38 years as a public librarian, where I could find books on Hawaii, the knowledge that I gained as a child with my father was far more richer. I'm the seventh child of eight children and was told that I was chosen from a very young age to follow the footsteps of my father.

One of the things that happened, in 1978 when Waimea had this great big 1978 big bicentennial of Cook's arrival, my father decided to - to show all of his artifacts, which had been documented by the Bishop Museum. These were artifacts from his grandparents. They were ancient. There were poi pounders, all kinds of tools. When he exhibited, he would have it insured by the Lloyd's of London. That was the only insurance company that would insure it. But when he brought it home, he would put it into an old shack with 1 x 12 walls, and there it was. It was safe. One day he drove - rode his bicycle down. He lived a mile and a half away from me. In a very soft voice he said, "Someone broke into the sh- into the shed and 90% of my artifacts are gone." I saw my papa age, and for two years he was very quiet. We reported it to the police Department. How do you find stones? How do you identify them? There's no numbers on them.

And again one day he came to me and he said, "You're gonna take a sabbatical. You're going to take time so that you can learn how to listen." Folks, I didn't know how to listen. I would hear, but I did not know how to listen. I was granted a sabbatical and spent a year with him. It took me four months before I knew how to listen. You listen with every other part of your senses; your eyes, your ears, your guts, and you're covered with chicken skin when you know you have the answer. "Why, Papa? Why am I chosen to do this?" And he said, "When my artifacts were stolen, I was in my late 80s. Death is going to take all of the knowledge that I have." "But, Papa, you said once that when you visited your grandmother as she was dying, she said to you

that she was going to take all of the teaching, all of the knowledge with her because Hawaii was changing and no one would understand the true and deep Hawaiian culture?" "This is why I've asked you to be with me for a year. A Tapa has been lifted and all of the knowledge that I learned from my great - from my grandmother has been restored and I will pass it on to you if you learn how to listen." Papa died at the age of 94.

But I recall one day when I went with him or many times fishing along the coastline below the Fort, and he would have me stand below the kai- high water tideline. Sugar cane was all around, surrounded the Fort. And on the wall of the Fort, "No trespassing. Keep out." But Papa slipped away from me and slipped into the - into the walls of the Fort. "Papa, what is inside of that fort," I said to him. "Memories of Papa Noi." That was the first I heard "Papa Noi". It is customary in our family after supper we gather for ohana to fully to sing, to have stories. Mama would read a Biblical story and Papa would tell us how he grew up, his hi- hunting and fishing expedition. As a guide for Bishop Museum, who published "The Archeology of Kaua'i", my father was the guide. So at one of these ohana, I said, "Papa, who is Papa Noi?" "Papa Noi is Kaumuali'i." "Huh?"

And this what he shared. The ruling families of Kauai were the highest Tabu on the Hawaiian Island and Kaumuali'i was born in 1778 to Holoholoku Heiau in Wailua, to Kamaka hele a high-ranking chiefess and Kaeo `o kalani. Kaumuali'i was carefully raised by his mother due to his birth, the highest-ranking at Pa'ula'ula. He rose in stature and governed with fairness, kindness, and aloha. His kingdom included Kaua'i, Ni-i-hau, Lehua ka'ula and Nihoa. Recognizing the value of trade, he learned English and welcomed all, include the missionaries who arrived in 1820. Kamehameha's quest to conquer Kaua'i and Niihau in 1796 and 1804 failed, and turning to a different (inaudible) of building his military force, Kaumuali'i declined all overtures. In 1810 Kaumuali'i succeeded Kaua'i and the Niihau to Kamehamea. Uniting the island under under Kamehameha I. Kaumuali'i, he chose peace, not war, to spare his people the horrors of war. He remained as ruler of Kaua'i. And (inaudible) King, it is for peaceful rule, no more war. Kaumuali'i returned to Kaua'i and ruled until 1821, when he was kidnapped by the Liho liho Kamehameha II. In 1822, Kaumuali'i visited Nihoa and returned to Kaua'i and built pa- in a - in a - his home, which he named Ni'hiau. He died in May of 26, 1824, buried at Waine'e Cemetary, La'haina, Maui, beloved of his people now and then.

Many in the past have tried to honor Kauai's last independent king. About 25 years ago Edie Ba andman and Barbara Bennett, who is still around, formed the Friends of King Kaumuali'i. Their mission was to build a statute in Hawai'i or at the Hawai'i Community College. After several years of parades, fundraising, the organization was defunct. In 1912, Barbara Bennett brings to meet me Lee Croft, a professor and author of "Arm Wrestling with Kaumual'i". As I fell through the pages, I saw a painting of a malu, a ruler. And I asked Lee Croft, "Is this Kaumuali'i?" And he asked me, "Why do you ask?" I was experiencing chicken skin big time, from the feet to the

head, from the head to the feet. Because there were no paintings of the king or portraits. Well there were two, one at the museum and one at Cocoa Palms. But I didn't get chicken skin from those. I was inspired by a Brook Parker's painting. So Barbara Bennett and I reactivated the Friends of King Kaumuali'i. I visited a class, fourth graders, and I asked, "Can any of you tell me who is King Kaumuali'i?" After stammering, scratching their head, "Highway 50." Oh, there's a school in Haunamalu. The Friends of King Kaumuali'i then launched an awareness program in partnership with Bill Arakaki, Kaua'i School Superintendent. We distributed 18 x 24 posters of Parker's painting and a historical timeline to all public schools via classrooms, home school, and charter schools. Kaua'i Hindu Monestery did the printing and donated thousands of 8 x 12 and thousands of cards. What else did we do for awareness? Poster contests for the children, new musical compositions, storytelling, and war, and ho'o lualea and all the songs about the king. The Friends of King Kaumuali'i firmly believe they are guided by Ke akua not by and Kupuna, and A mae aumakua. We are excited that the eight-foot statute will be leaving California in two weeks from the foundary. This statute of Kauai's beloved king is a symbol of peace. Mahalo nui for listening and understanding that Kaumuali'i's return to Hawaii only with you, your approval, that that statute will be erected at Pa'ula'ula, the wild compound. The ((Foreign Language Spoken 00:50:51)) will remain with best regards. President of the Friends of King Kaumuali'i and a sixth generation of King Kaumuali'i. Mahalo nui and blessings to all of you.

Chair Nogami Streufert: Thank you very much for your presentation.

Ms. Maureen Fudale: Thank you.

Chair Nogami Streufert: I've learned a lot from what you said about Kaua'i and Kaumuali'i and I'm very thankful for that information. Are there—

Ms. Fudale: I have—

Chair Nogami Streufert: Are - I'm sorry.

Ms. Fudale: I am here, Maureen Fodale if there are any questions.

Chair Nogami Streufert: Okay.

Chair Nogami Streufert: Good to have you. Are there any questions from the Commission to the, Petitioner? I have one question about this. The statute of Kaumuali'is going to be facing Ni'ihau. How did you come up with the determination of which - how we was going to facing?

Ms. Fudale: Okay. Well it, uh, there's - there, um, 'Olelo No'eau, that refer to Kaua'i as the place where the sun sets. Okay? And it actually sets over Ni'ihau in the west. So not just about

Kaua'i, but anything that is written about (inaudible), it's referring to that setting place. So actually it's pivoted, but it's - it's also, pointed toward a solstice and the design of the pā is aligned with the solistices, as well. So it's wanting to encompass the whole of Kaua'i and with the whole Islands at his back and in reference to that standing over many, many, many generations, hundreds of years of being the place where the sun sets.

Chair Nogami Streufert: Okay. Thank you. Are there any questions from the, uh, other Commissioners? All right. At this point, Kaainawhat are our options?

Mr. Hull: The Department is ready for action. We are commending approval for this. There was one outstanding issue previously brought up concerning, um, whether or not the site had, uh, gone through its 343 review as both State as it was historically-properties need to get an environmental assessment analysis, and we have confirmed with the State that this project does qualify for an exemption from that analysis and that exemption has been provided. So that was the one last outlying concern that the Department. So the Department is recommending approval on the proposal and we are ready for action. However, of course, we defer to the Commission if you folks have any other questions or concerns about the project.

Ms. Apisa: I'll just make a comment, uh, I - I don't think I have to make a disclosure but, you know, I'm very much support of that and then I've actually been a contributor to, uh, Friends of King Kaumuali'i, so I just like make that.

Chair Nogami Streufert: Okay.

Ms. Cox: I'd like a motion that we approve this and I want to thank you for the wonderful presentation to give us a full context. Thank you to Aletha.

Ms. Otsuka: Second.

Chair Nogami Streufert: Okay. It's been moved and seconded that we approve, the, uh, Kaumuali'i statute, uh, Application. Is there any discussion? If not, we can - could we have a rollcall vote, please, on this?

Mr. Hull: Roll call, Madam Chair. Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commisioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ho?

Mr. Ho: Aye.

Mr. Hull: Commissioner, uh - Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Oh, sorry. Co- uh, Chair Streufert?

Chair Nogami Streufert: Aye.

Mr. Hull: Motion passes. 7:0. Madam Chair.

Chair Nogami Streufert: Motion passed and congratulations.

Ms. Fudale: Thank you so much. Mahalo,

Ms. Kaohi: Mahalo and blessings to all of you. Join us when we have the public dedication. You are certainly welcome. Mahalo, Ke Akua.

Chair Nogami Streufert: We would love do that. Thank you.

GENERAL BUSINESS MATTERS

Continued Public Hearing

New Public Hearing

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.

2020 Annual Status Report for Special Management Area Use Permit SMA (U)-2005-08, Project Development Use Permit P.D U-2002-26, Use Permit U-2005-25, Class IV Zoning Permit Z-IV-2005-30, Tax Map Keys: (4) 3-5-001:027 (Por.), 168, 169, 171 (Por.), 172 (Por.), 175, and 176= Kauai Lagoons LLC & Mori Golf (Kauai) LLC.

Mr. Hull: Madame Chair, we are moving on to and - General Business I.1. This is the 2020 Annual Status report for Special Management Area Use Permit SM(U)-2005-08, Project Development Use Permit P.D. U-2005-26, Use Permit U-2005-25, Class IV Zoning Permit Z-IV-2005-30. This is for Tax Map Keys 3-5-001:027, uh, as well as 168, 169, 171, 172, 175, and 176. And the applicant Kaua'i - Kaua'i Lagoons LLC and MORI Golf LLC. Again, this isn't an application for a Use Permit. This is a Status report. And it's really our error. Somewhere in the teleconferencing scenario we inadvertently placed these two Agenda - this Agenda item under the next - under General Business when it should have actually been placed under the Consent Calendar Status Report. So it's not generally reviewed unless a Commissioner wants to take one of those out for specific discussion. But it's in here for General Business, so, you know, if any of the Commissioners have any questions or concern, Dale, myself, or the Applicant can go over them. But not seeing with any, we would just open it up for comments or concerns that the Commission may have concerning the Status Report.

Chair Nogami Streufert: Correct. This is for this is the 2020 Annual Status Report for Special Management Area Use Permit 2005-08, et cetera, for Kaua'i Lagoons LLC and MORI Golf LLC. Are there any questions or - is the Applicant on - or is the Kaua'i Lagoons also in attendance?

Mr. Gary Siracusa: Good morning, Madam Chair and Commissioners. This is Gary Siracusa, Director of Construction at Hokualea, representing Applicant.

Chair Nogami Streufert: Okay. Are there either questions for either - or for the Applicant? Or not Applicant. For the Annual Status Report, uh, representative? If I could make a suggestion on this and I'm not - not a - it's a comment. These Permits were issued in 2005, a 15-year timeframe. And we have on many of these we have, that they be complied with. And my question is when will this project be com- when - when is it anticipated that the project will be completed?

Mr. Siracusa: Chair, this is Gary Siracusa. Uh, we have ongoing discussions with the Planning Department. The current developer of the project purchased the 450 acres from MORI and VIC, uh, back in 2015. And so the current Developer, Kaua'i Lagoons has continued with development since that time; completed the Timbers Kaua'i Ocean Club and residences in 2018 and currently has projects in for Permit, as well.

Chair Nogami Streufert: Is there any anticipated completion date for the entire project?

Mr. Siracusa: Currently some of that is in discussion, again, with the Planning Department in order to complete the basic entitlement Conditions and also, uh, we've, as previous discussion and, uh, another development that's brought up, the, uh, the impacts of COVID on some of this development, uh, have created somewhat of a murky crystalball as we go forward. But, again, we're still in discussion, as well, as with other agencies on meeting all of our Conditions of approval.

Chair Nogami Streufert: Any questions or comments from the rest of co- Commission members? If I could make a suggestion and I think this is more for the Planning Department than for the Applicant, the Annual Status Report generally reflects everything that's been done from the time that the Permit was issued to the present day. There's really very - it's very difficult to determine what has been done in the last year. Since this is an annual report it should be from 2019 to 2020, what's been done. In the future, could that be added that there would be information on what has been done from 2020 to 2021, knowing full well that there are effects of COVID on plans, but that we have some idea as to - since this is an annual report, an Annual Status Report, we know what the status is- in that year as opposed to the year prior?

Mr. Hull: Yeah, Madam Chair, I think, the Department can work with all forthcoming or upcoming applica- Applicants that have Status Reports before the Commission to ensure that there's a breakdown on the year-by-year analysis in which place - in which those improvements or investments have taken place.

Chair Nogami Streufert: I think that would be helpful to identify how much work has been done. And I'm sure work has been done each year, but it's just a question of trying to figure this out and since everything is - it will be complied with or is under consideration or it is in planning, would be good to know or what stage.

Mr. Hull: Absolutely.

Chair Nogami Streufert: All right. Then do we have a motion to receive? If there's no other discussion or if there are no other questions, could we have a motion to receive?

Ms. Cox: I move... Yeah, I will move that we receive the Annual Status Report from the Kaua'i Lagoons LLC.

Chair Nogami Streufert: Is there a second?

Mr. DeGracia: I second it.

Chair Nogami Streufert: A second that we receive the receive the 2020 Annual Status Report for Kauai Lagoons LLC and MORI Golf LLC. Any further discussion? If not, can we have a - I think we can do this with - by voice vote. All those in favor of closing the Agency Hearing? Say, "Aye". (Unanimous voice vote) It is very difficult. Any opposed? (None) It has been moved and passed. Motion carried 7:0.

Chair Nogami Streufert: All those opposed? It's been passed. Accept the Annual Status Report for Kaua'i Lagoons LLC.

2020 Annual Status Report for Special Management Area Use Permit SMA (U)-2007-13, Class IV Zoning Permit Z-IV-2007-29, Project Development Use Permit P.D.U-2007-25, Tax Map Keys: (4) 2-8-015:043, 044, & 082; 2-8-016:003, 004, Kauai Poipu, = *Kauai Blue, Inc. (formerly SVO Pacific, Inc. & VSE Pacific, Inc.)*.

Mr. Hull: Thank you, Madam Chair. Moving on to the second Status Report, it's Agenda Item I, General Business I.2, 2020 Annual Status Report and Progress Report for Special Management Area Use Permit SMA(U)-2007-13, Class IV Zoning Permit Z-IV-2007-29 and Project Development Use Permit Use P.D.U-2007-25, Tax Map Keys 2-8-015:043, as well 044, 008 and 2-8-016:003, as well as 004. The locaton is in Poipu, Kauai, and the Applicant is Kaua'I Blue, Incorporated. Again, this was another oversight on my part this this is a Status Report and should have been on the Consent Calendar. I apologize for that oversight on the Department's, side. But, it is ultimately up for discussion should any of the Commissioners have concern. Of course, I think nothing, Chair Streufert's request that all future Status Reports include a timeline as far as when the improvements or investments were made, we will also follow up with this Applicant at the - should they - when they when they provide the next Status Repot to make sure that's included. Um, but if - and then the Department will just stand by that and - and - what we submitted, um, unless the Commissioner or Commissioners have questions or concerns they'd like to discuss.

Ms. Apisa: Could I just interrupt a point. I'm going to recuse myself from the meeting. I think we're almost done. Thank you.

Ms. Apisa left the meeting room at 11:53 a.m.

Chair Nogami Streufert: All right. Thank you. Okay. Are they any questions- is the Kaua'i Blue in attendance?

Mr. Hull: So, Dale, is the whole group - representative online?

Mr. Cua: They're being represented by Max's firm. I believe the submittal was prepared by Mr. Belles.

Chair Nogami Streufert: So they're not attendance? Is this - this correct?

Mr. Cua: Mr. Belles is right here.

Mr. Michael Belles: Good afternoon, Madam Chair, members of the Planning Commission. For the record, I'm Michael Belles here on behalf of Kaua'i Blue. I apologize for the delay. I was not indifferent or ignoring you. I just was having difficulty getting on the system here.

Chair Nogami Streufert: Okay. Are there any questions from the Commissioner to Mr. Belles or to our Planner on the Status Report? If not, could I have a motion to receive the report?

Ms. Cox: I move that we receive the report from the Annual 2020 Report from Kaua'i Blue, Inc.

Otsuka: I second.

Chair Nogami Streufert: It's moved and seconded that we accept - or that we receive the 2020 Status and Progress Report from Kaua'i Blue. Is there any discussion, any further discussion? If not, this will be another voice vote. All those in favor?

Commissioners: Aye.

Chair Nogami Streufert: All those opposed? It's been approved. Motioned Carried 6:0.

Mr. Belles: Thank you very much.

Chair Nogami Streufert: It has been received. Not approved.

Mr. Belles: Thank you.

Chair Nogami Streufert: All right.

Request to Amend Special management Area use4 Permit SMA(U)-2005-4, Project Development Use Permit P. D. U- 2005-7, and Class IV-2005-7, Tax Map Key: (4) 2-1-010-062, CPRs 0001-0075, Port Allen, Kauai = *Ahe Group*.

Mr. Hull: The next we're moving into as the Agenda was amended to I(4), Request to Amend Management Area Use Permit SMA(U)-2005-04, Project Development Use Permit P.D. U-2005-7, and Class IV Zoning Permit Z-IV-2005-7, Tax Map Key 2-1-010-062, CPR Unit 00001-0075. And the locaton is in Port Allen, Kaua'i. The applicant is AHE Group. While a Status Report

was included in this, there is actually an actual request to amend the Special Management Area Permit. I will turn it over to Dale for the Director's Report. So at this time I'll turn it over to Dale, who was our Planner for this project.

Staff Planner Dale Cua: Good morning, Commissioners. Yeah, just briefly summarizing the Director's Report, is required. It's considerations of Applicant's request to amend Condition 9 of the Special Management Area, Project Development Use Permit, and Class IV Zoning Permit to allow a completion of the project.

Mr. Cua read the 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. Cua: Since its approval in 2005, the single-family residential development has been completed through Subdivision Application No. S-2005-1 and it received, uh, final subdivision approval on September 28, 2006. So what you have before you is the Applicant's request to amend Condition No. 9 to allow a time extension to complete the project. And that pretty much summarizes the Director's Report.

Mr. Hull: Chair. You're muted, Chair. Yes, it's like—

Chair Nogami Streufert: Yeah. The completion date of February 22, 20- 2022?

Mr. Cua: Right.

Chair Nogami Streufert: Was that, that was not in their.

Mr. Cua: No, it was just I proposal date and, you know, it's subject to discussion. I just basically choose the anniversary date. I think the Applicant mentioned that they could conceivably complete the project by the end of 2021. So, I mean, it's just now up for discussion.

Chair Nogami Streufert: Okay. Are there any questions to the Planner? If not, is the Applicant available?

Mr. Maeva: Hi. Good morning, Madam Chair and Members of the Planning Commission. My name is Makani Maeva, and I'm the president of the Ahe Group, and we are available for any questions that you may have.

Chair Nogami Streufert: Is the completion date of February 22, 2022, it's kind of interesting. It's 02-02-2022. It's very good. Okay. Is that a something that is acceptable to you?

Mr. Maeva: That is, yes.

Chair Nogami Streufert: Okay.

Mr. Ho: Makani - Makini, are you the sole developer of this project. Do you have partners; like in partnership in with the County in any way or Habitat for Humanity?

Mr. Maeva: At this point in time we are the sole developer. I will not preclude us from partnering. We've had, as you mentioned, a successful relationship with Habitat and we've had a previous successful relationship with other nonprofit. We are trying to evaluate this effort. Of course, some you may know that Aha Group really focuses on affordable housing, affordable rental. We are talking with the County about the perfect structure for this. There may be a home ownership opportunity. So as we move forward, we may, we may, um, bring a partner who will help us to advance either the - uh, to advance our affordable goal. So - but at this time, Aha Group is exploring this opportunity to acquire this parcel and, um - and we have a structure that we know we could move forward and build. So just now, just us.

Mr. Ho: And you're offering this - uh, the property as sole ownership? It's not a rental or affordable housing units?

Mr. Maeva: I'm sorry? Could you repeat your question? I'm not sure I understand it.

Mr. Ho: You're offering this property to buyers who want sole ownership of it? It's not a - a lease or a rental agreement?

Mr. Maeva: We haven't decided exactly our ultimate structure. We're working with the County Housing Department and trying to understand if they have some other goals. As you know, we do primarily rental housing for those who make then 60% of AMI and we have a tax credit financing structure and that's the way we've been able to produce rental units over the past few years on Kaua'i. There may be an opportunity here to do both that in addition another four-step option. At this in point in time we haven't - we haven't committed to the ultimate use, but we do know that it will be affordable housing.

Chair Nogami Streufert: Okay.

Mr. Ho: Thank you.

Chair Nogami Streufert: Any other questions? If not, are we, uh, ready to move on this? Uh, Kaainais that one of the options, that we can accept this and move on or?

Mr. Hull: The Department is recommending approval of the Director's Report with the recommended extension to 2022. However - and if you folks are ready to take action, that is one option. You guys can look also look at if you have other concerns, then looking at Department or the Applicant addressing them. But if there's no further concerns, the Department is recommending action today, for the extension.

Chair Nogami Streufert: Commissioners, would you like to move on from this today or would you like more time to consider this?

Mr. Ho: I move that we grant extension to February 22, 2022, Aha Group - uh, to the Aha Group.

Ms. Cox: I'd second that.

Chair Nogami Streufert: It's been moved and seconded to grant the recommendation of the Planning Board and extend the completion date to February 22, 2022. Is there any discussion? Let's do this by a rollcall vote, please?

Mr. Hull: Roll call on motion to approve as recommended. Commissioner Apisa? Oh, I apologize. Commissioner Apisa is absent. Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ho?

Mr. Ho: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Streufert?

Chair Nogami Streufert: Aye.

Mr. Hull: Motion passes. 6:0. Madam Chair.

Chair Nogami Streufert: Congratulations. The Aha Group has been, uh - the deadline has been extended to February 22, 2022.

Ms. Maeve: Thank you very much, Madame.

Chair Nogami Streufert: Have a good day.

GENERAL BUSINESS MATTERS

Hearing Officer's Report and Recommendation regarding Contested Case CC-2017-4 Contested Case re Petition to Appeal Decision of the Planning Director's Decision Related to the Notice of Violation and Order to pay Fines for the Operation of an Illegal Transient Accommodation Use for Property Situated in Haena, Kauai, Hawaii, indentified TMK (4) 5-8-005:005 containing 26,092 sq. ft. = Patricia D. McConnell, Petitioner. [Deferred 5/12/20, Oral Arguments date set for 10/13/20 on 8/11/20.]

Petitioner's Exceptions to Hearing Officer's Report and Recommendation of Contested Case: Request for Oral Argument; Certificate of Service for Case No. CC-2017-4, TMK (4) 5-8-005:005 = Patricia D. McConnell, Petitioner. [Deferred 5/12/20, Oral Arguments date set for 10/13/20.]

Mr. Hull: As we move into the next Agenda item, this is a concerning a case that the Department is a party to. So I'm going to hand over the Agenda over to Denny and I'll sit with my representations, for this particular Agenda item.

Mr. Cowger: Thank you, Chair. Hello, everyone. My name is Denny Cowger and I'm the Deputy County Attorney for the Planning Commissioner, as you heard earlier. We're now moving onto General Business Item 1.I. 3, of today's Agenda. The Hearing Officer's Report and Recommendation regarding Contested Case CC-2017-4, a Contested Case re Petition to Appeal Decision of Planning Director's Decision Related to the Notice of Violation and Order to Pay fines for the Operation of an Illegal Transient Accomodation Use for Property Siutated in Haena, Kauai, identified as by Kaua'i Tax Map Key: 5-8-005:005, containing, 26,092 square feet. Uh, the Petitioner is Patricia D. McConnell. And today we'll be having oral arguments with this matter, uh, and I will turn it over to the Chair.

Chair Nogami Streufert: Thank you.

Mr. Ho: Uh—

Chair Nogami Streufert: I'm sorry.

Mr. Ho: Madam Chair?

Chair Nogami Streufert: Yes, please.

Mr. Ho: Before we continue, I would like make a motion that we go into executive session, please?

Chair Nogami Streufert: Do I have a second on that? This is to confer with our attorney or our counsel on some of the legal aspects of the case or just listening to the case? Is that correct?

Ms. Otsuka: I second.

Chair Nogami Streufert: It's been moved and seconded. All those in favor adjourning to an executive session to consult with our counsel? All in favor?

Commissioners: Aye.

Chair Nogami Streufert: All those opposed? Then we will go into executive session for 20 minutes and we also have a ten-minute - or a five-minute break with that and we will reconvene at about 12:30. Motion has passed 6:0. We will adjourn to Executive Session.

Chair Nogami Streufert: And we'll back in at about 12:30 p.m. or a little after 12:30 p.m.

The Commission moved into Executive Session at 12:12 p.m.

The Commission returned to Open Session at 12:46 p.m.

Chair Nogami Streufert: Call the meeting back to order.

Chair Nogami Streufert: Is the Petitioner also on?

Ms. Joanna Zeigler: Hi. Yes, I represent the Petitioner, Patricia McConnell.

Chair Nogami Streufert: Okay. And are there any intervenor are - also on this call?

Ms. Zeigler: There were no intervenors in this matter.

Chair Nogami Streufert: Okay. All right. Then if we can get started. All right. The Commissioner has received the Petitioner's Exceptions to the Hearing Officer's Report and Recommendation on the pe- on the Contested Case of the Petition to Appeal Decision of the Planning Director's Decision Related to the Notice of Violation and the Order to Pay Fines for the Operation of an Illegal Transient Accomodation for Property Sitatuion in Haena, Kuaa'i, Hawaii, by Kauai TMK: (4) 5-8-005:005, containing 26,096 square feet. Patricia D. McConnell is the Petitioner? Is that correct? Is that where we are? Just to make sure we're all on the same case. And we have a Petitioner's Request for Oral Argument. The Commissioner granted the Request for Oral Argument and we will proceed with that today. The way that we will proceed is we will first hear from the Petitioner, second from the Planning Department or the counsel for the Planning Department, and finally it's - since there are no intervenors, we will not have to worry about that. Each party will have ten minutes to present their - uh, their oral arguments. I will then allow brief closing or rebuttal arguments by the Petitioner for five minutes. Once these closing arguments are complete, the proceedings shall stand submitted for a decision by the Commission. The Commission will then render its decision after oral arguments. They can adopt the Hearing Officer's recommendation, reverse or modify the recommendation of the Hearing Officer based on its determination, or refer the matter to the Hearings Officer to reopen

the docket and take further evidence or such disposition of the case that is necessary under this - under the strict circumstances. Excuse me. Are there any questions?

Ms. Zeigler: Not from me.

Deputy County Attorney Mr. Chris Donahoe: Not from me, Chair.

Chair Nogami Streufert: All right not then, Counsel for the Petitioner, please state your name for the record?

Ms. Zeigler: Hi. Good afternoon, Chair and Members of the Planning Commission. My name is Joanna Zeigler and I represent Petitioner, uh, Patricia McConnell.

Chair Nogami Streufert: And Counsel for the Department, please.

Mr. Donahoe: Good morning, Chair. Good morning, Commission. Deputy County Attorney Chris Donahoe on behalf of the Planning Department.

Chair Nogami Streufert: In that case we can start with the Counsel for the Petitioner. Your time will start. You have ten minutes.

Ms. Zeigler: Thank you, Chairperson and the Commission, for reserving, uh, time this afternoon for oral argument on this matter. Um, we appreciate, uh, you taking the time to listen, uh, and just and sort of analyze the summary of the case and - and where it stands with the Hearing Officer's Report and the exceptions that were submitted by, um, the Petitioner. Um, and in this case, the oral argument is - is just that. It's to look at what did the Hearing Officer recommend and take that in context of the exceptions that were submitted, and only the Petitioner in this case submitted exceptions to the Hearing Officer Report. Um, and just along those same lines, I'd request that the Planning Commission disregard some written testimony that I believe was submitted that we received late yesterday evening by a community member, at least to the extent that it is permitted to additional evidence, uh, with regard to this contested case. The evidentiary area is closed. Uh, each of the parties have submitted, uh, their evidence. There was a contested case hearing closing arguments, and then a Report and Recommendation from the Hearing Officer.

So because, uh, the evidentiary portion of this contested case is closed, I would, uh, request that no further evidence be submitted. So what is this case about? Um, it's actually really very simple, although the Hearing Officer Report and Recommendation, uh, is seemingly quite complex. Uh, this case is about a homestay and whether or not, um, the Notice of Violation, um, was appropriately submitted to, um, the Petitioner in this case. Um, uh, the Notice of Violation, uh, ri- uh, sorry. The Notice of Violation addressed one alleged violation of the homestay ordinance. And so any reference to other sections of the ordinance; in particular, the transient vacation rental section, uh, should be disregarded. There's a lot of sort of side conversation from the Planning Department in its, uh, submissions and by the Hearing Officer regarding transient vacation rentals, but this is not a TVR case. This is about a homestay, whether or not, uh, the Petitioner, uh, could use her home as a homestay.

So why was Petitioner's homestay illegal? Well Petitioner purchased her property in 2004 and then she began renting a room in her home in 2005 on a short-term basis. But prior to renting, um, that room, Petitioner went to the Planning Department and asked what type of permit she would need to lawfully do so, and the Planning Department informed her that she needed to obtain a GET and TAT tax license, which she did. And this is reflected in the Hearing Officer's Finding of Fact 4. The Hearing Officer, in fact, found that the only thing that Petitioner needed to lawfully rent a room in her home on a short-term basis was these, uh, two tax licenses, and she did obtain these. In 2005 homestays were not regulated under the Kauai County Code and TVRs, for that matter, were not regulated, either. Neither of which were addressed, either. Um, neither of which were addressed in the Kauai County Code. It wasn't until 2016 that the Kauai County Code finally, uh, passed an ordinance which addressed, uh, home stays, and that was, um, now codified as CZO 8-18.1, and this is the alleged violation that was mentioned, uh, in the Notice of Violation submitted to Petitioner. However, because Petitioner lawfully utilized her home as a homestay prior to the passage of this ordinance, her home or her use as a homestay was grandfathered in as a nonconforming use, and that's specified in Kauai, Statute HRS 46-4 and in the CZO, uh, 13.2, uh, both of which say that if a use is in progress prior to the passage of a later ordinance, that use is grandfathered in. Um, and the Hearing Officer actually also found this. It's not 100% clear. It - there is a lot of writing around this, but the Hearing Officer analyzes that this use was a nonconforming use and, uh, concludes that she, in fact, did have a nonconforming use in Conclusion of Law 15.

And that is where the Hearing Officer should have ended his analysis, that the use was nonconforming and therefore the Notice of Violation should be dismissed. But rather than doing so, the Hearing Officer went on to analyze, uh, the fact that there was a momentary lapse in the use of her homestay, um, use, between April of 2018 and April 2019. Um, however, this conclusion is misleading because, as probably every in k- on Kauai knows, uh, during that period of time the emergency - uh, the Mayor's Emergency Rule No. 1 was in effect and, uh, stated that no short-term rentals in the area in which, uh, Petitioner's property is located, uh, were allowed. And so it wasn't that Petitioner ceased use of her property during that period, it was that, uh, the Mayor's Emergency Rule No. 1 prohibited it. So even setting that aside, the fact that she did not cease the use the Officer Officer should not have analyzed, uh, facts after the Notice of Violation was, um, submitted. The Notice of Violation is sort of the snapshot in time in which, uh, the Planning Department is saying, "Petitioner, you have violated the homestay ordinance." Um, subsequent facts are not relevant as to whether that Notice of Violation, uh, should be enacted. And so the - that is where - that is the major problem with the Hearing Officer's Report. He should not - he should have stopped at nonconforming use and not gone into analysis of whether that use had ceased later. Um, and - and not - the - those facts of the 2018 to 2019 road closure on Kuhio Highway are just wholly irrelevant to whether, um, a use in 2017 was lawful or not.

So because Petitioner had a nonconforming use, um, the Notice of Violation should be dismissed. Uh, and because the Hearing Officer does conclude this, but it is not as clear, Petitioner, uh, would encourage the Planning Commission to look at the Proposed Findings of Fact and Conclusions of Law that Petitioner submitted to the Hearing Officer because I think it is a clear and concise and logical path to, um, resolve this - this, um, contested case fairly and reasonable. Um, and lastly, I just, uh, state the obvious; that, uh, Petitioner agrees with the

Hearing Officer's, um, conclusion that no fine should be imposed, um, in this case, and that's based on the reasoning that Petitioner submitted in her brief and the reasoning that the Hearing Officer included in the, uh, exception. Or, excuse me. In the Report and Recommendation. Uh, so with that, I will just conclude that because Petitioner had a nonconforming use, uh, the Notice of Violation should be dismissed and no fines imposed. And I will wait to respond to the Planning Department. Thank you.

Chair Nogami Streufert: I'm sorry. I was muted.

Mr. Donahoe: Oh.

Chair Nogami Streufert: Counsel for the Department.

Mr. Donahoe: Yes. Thank you, Commissioner. Thank you, Commission. Uh, there - there are - and did - did the Commission receive and did, um, Ms. Zeigler, did you receive the, uh, the amendments to the calendar, to the exhibits, the two - uh, second, third, fourth, and fifth with all that information, uh, the statutes that the Planning Department submitted further testimony?

Ms. Zeigler: I saw something, but I thought that it was from the community member. I didn't see that there was Planning Department testimony. Um, to the extent that those attachments were Planning Department testimony, I would object to further, uh, testimony. There was a contested case. The Planning Department had, um, ample opportunity to present and all arguments to the Hearing Officer and, uh, at this point the - the subject matter of oral argument is with regard to the Hearing Officer Report and Recommendation and then the - the exceptions that Petitioner submitted. And, furthermore, the Planning Department did not submit any, uh, exceptions to the Hearing Officer's Report and Recommendation, um, and therefore has waived any - any and all objections.

Mr. Donahoe: Yeah. Well the purpose of the - my testimony today was to put forth clarification on the Department's position with regard to the Hearing Officer's Report and Recommendation. And there's several reasons why the Petitioner's property does not qualify as a legal nonconforming use and why the use of that subject property as a homestay should be terminated. One, Petitioner admitted to running a homestay operation since 2005. Petitioner's property falls outside the Visitor Destination Area. Petitioner has never had a Homestay Use Permit. So under Ordinance 864, which was approved on March 7, 2008, which true, it would apply to transit - transit vacation rentals, but it made it very clear that homestays are presently regulated through the Use Permit process.

So under the CZO under 8-2.2(d)(4), no building structure, no use, activity, or development shall be undertaken or established without first obtaining the permits required by this Chapter. And under Section 8-2.24(f)(6), requiring Use Permits, it includes dormitories, guests, and boarding houses, but not hotels and motels, which includes the Petitioner's, uh, property. So - and a Use Permit is specifically required under the CZO under 8-3.2(b), which states that "No person shall undertake any or carry on any activity for use for which a Use Permit is required without first obtaining a Use Permit." So the Petitioner never - has never obtained a Homestay Use Permit, never applied for one in 2005, not prior to passage of 864, which specifically states that

"Homestays are directed by the, uh, Use Permit qualifications." Then you have Ordinance 1002, which was adopted in - on June 3, 2016, which amended Section 8-18.1(b), which prohibits homestay operations outside the VDA. So prior to the enactment, the - the - so prior to this.

So prior to the enactment of Ordinance 1002, Petitioner's homestay was not even ever a lawful use because she was operating with the Use Permit required under KCC 8-3.2. So no - which states, "No person shall undertake an activity without first obtaining a Use Permit." That was never done. Um, so after passage of Ordinance 1002, because it was outed - because which specifically prohibited operation of a homestays outside the VDA, she could never at that point obtain a Use Permit. And she - and - and to this day still hasn't. And so it's the Department's position that it's never been a legal, a legal nonconforming use because she's never had the Use Permit which was required under prior to 864, after passage of 864, and after passage of Ordinance 1002. Um, Article 18 does not contain a nonconforming use provision, so to the extent that somehow even if you argue, uh, Petitioner's position that prior to Ordinance 1012, KC- KCC 18-13.2 could grandfather prior homestay uses. Um, Petitioner again still failed to prove she was continuously operating the valid homestay. The records shows that that and there was evidence on the record that it was being advertised as a dwelling, that she is the owner and was not even staying in. So that would have been had it been even a nonconforming use, it was still in violation of 18-18.1(a)(3).

And so it was contingent upon her getting a Use Permit and to this date never - never got a Use Permit. So that's what dictates here. And so when it's - when 8-18.1(b) states, "homestay operations were prohibited outside the visita- Visitor Destination Area," there could be no grandfathering on a homestead use because it had to have been a lawful use and it wasn't a lawful use because there was e- never any Use Permit applied for and received. Um, let's see. There's one more thing. The - and, oh, okay. So since the regulated by Use Permits, the Planning Department would agree that the termination of this use should be affirmed because it's not - it's not a law- legal as Petitioner argues. It's not a legal nonconforming use.

And so even after passage of - of 1002 she can't now apply for the Use Permit because since homestays are prohibited and can't be grandfathered in, it's - it's never going to be and never should be a valid non-conforming use. So with these clarifications in mind, it's the Department's position that the Planning Commission affirm the Hearing Officer Recommendation to affirm the Notice of Violation, ordering the Petitioner to cease and desist the homestay operation at the subject property. And it's also requested that the Planning commerc- uh, Commission allow the - or - or affirm the recommendation to remand the decision of the Planning Director so that the Planning Director can be given the opportunity to comply with the requirements of 8-3.5(b)(2) and notify the Petitioner that the Order would become final 30 days after the day of the delivery. And with that, thank you, Commission.

Chair Nogami Streufert: Okay. Counsel for the Petitioner, you have your chance for rebuttal for five minutes. Your time starts now.

Ms. Zeigler: Thank you. The Planning Department characterizes their argument today as clarification. However, it's really an after-the-fact argument. The Planning Department submitted a Motion for Summary Judgment in this case, a Prehearing Statement. There was a

Contested Case Hearing. And it wasn't until closing arguments that the Planning Department did mention this Use Permit argument. So we went through the entire process and Use Permit was never brought up; not in the Motion for Summary Judgment and not in their Prehearing Statement. There was testimony by a Planning Department Officer, Bambi Emayo, who testified that homestay operators could obtain a Use Permit. But the same Planning Department Officer also stated that prior to the passage of Ordinance 1002 there was no reference in the Kauai County Code to homestay and there was, uh, no definition of homestay and there was no way for a person to know that homestay were regulated.

So although this general catch-all Use Permit has always been in the Code, it was not clear in reading the Code that it applied to homestays. And the Planning Department had ample opportunity to present evidence as to why that portion of the code applied to Petitioner, but it did not. And so now, after the entire Contested Case Hearing and after a Hearing Officer's Report and Recommendation, the Planning Department is coming back with this after-the-fact argument, um, which should be disregarded because it was not presented earlier. Um, and - and that's also enforced by the fact that the Hearing Officer specifically found that the only requirement that Petitioner had to comply with was to obtain a GET and TAT tax license in the Finding of Fact 4, and the Planning Department did not object to this finding. So with that, I'll just go back to the fact that the Petitioner operated the homestay use prior to the passage of the Ordinance.

And the Planning Department is correct, that the ordinance that addresses homestays is unlike the ordinances that addresses transient vacation rentals where an operator has to obtain the Nonconfirming Use Certificate. It doesn't have that specific requirement. But that's just like any other ordinance or any other nonconforming is. I think Transient Vacation Rentals are the only use that requires that nonconforming use certificate. No other nonconforming use does, even outside of the realm of vacation rentals. So this is just like any other nonconforming use. It was in effect prior to the passage of an ordinance and therefore it's grandfathered in and is able to continue, pursuant to, HRS 46-4 and the CZO 18 or - excuse me. Yes. 18-13.2. Um, so that with, uh, I would just request that the Planning Commission uphold the - the, um, Hearing Officer's recommendation not to impose a fine, but to vacate the decision that the Petitioner must cease and desist her nonconforming use. Thank you.

Mr. Cowger: I'm sorry, Chair. I can't hear. You're - you may be muted again.

Ms. Otsuka: Glenda, you're on mute.

Chair Nogami Streufert: I am on mute. I'm sorry. At this point we will get into the Commission will get into deliberations and we thank you both for your closing arguments, as well as the rebuttal. Okay. So—

Ms. Zeigler: Thank you as well. And thanks for the opportunity to, uh, present via video. It's very convenient and I appreciate that.

Mr. Donahoe: Yes. Thank you, Commission. Thank you. Thank you, Chair. It was - it was convenient. Thank you.

Chair Nogami Streufert: Convenient, but it's not quite real time with this. At this point, uh, is there a motion - before we get into, uh, discussion of this, I think we need a motion before we get into the discussion phase of it. So is there a motion to either adopt the recommendation of the Hearing Officer, reverse or modify the recommendation of the hearing officer, or refer the matter back to the Hearing Officer to reopen the docket and take further evidence or such disposition of the case that is necessary under the circumstances? Is there a motion.

Mr. Ho: Madam Chair? Madam Chair.

Chair Nogami Streufert: Commissioner Ho.

Mr. Ho: I recommend that the Planning Commission adopt and the Report and Recommendation as provided by the Hearing Officer and to affirm the decision of the Planning Director. I would also like to add that if he deems fines to be levied, it would be at his discretion.

Chair Nogami Streufert: It would be a modification. I don't think - you can either adopt it or to modify.

Ms. Otsuka: Does Commissioner Ho have to repeat his motion?

Chair Nogami Streufert: Right, to either adopt it or to modify it or either adoption recommendation of the Hearing Officer is or you add a modification.

Mr. Ho: My motion would be to - that the Planning Commission adopt the Report and Recommendation as provided for by the Hearings Officers and to affirm the decision of the Planning Director.

Chair Nogami Streufert: Thank you. Is the motion to affirm the decision of the Planning Director. Is there a second?

Ms. Cox: Just a point of clarification. So the- if we are adopting it, we are also adopting reversing in part to assess fines.

Chair Nogami Streufert: That's correct. That is the entire report.

Ms. Cox: Right. Thank you.

Chair Nogami Streufert: Unless, Counsel Denny, if you would like to correct me at any point, I would stand corrected for anything.

Mr. Cowger: Okay. That is correct.

Chair Nogami Streufert: All right. So it's been moved. Do I have a second on that?

Ms. Otsuka: I second.

Chair Nogami Streufert: It's been moved and seconded to adopt the recommendation of the Hearing Officer - Hearings Officer and to affirm the decision of the Planning Director. Is there any discussion? If not, are we ready for a vote?

Ms. Cox: I - this may be just a - not necessary. But the wording of the report if we're adopting it says that it will reverse in part the decision of the Planning Director in regards to the fines. So I'm just - if we say we're adopting the report and we're affirming the Project Director - or the Planning Department's Decision, that doesn't sound like we're adopting the reverse in part, the decision of the Planning Director to assess fine. It's a wording issue. And maybe it isn't an issue, but it seemed a little confusing to me.

Chair Nogami Streufert: It is to - right now it is to adopt the Planning -the Hearings Officer's recommendations as written.

Ms. Cox: Okay. And I think we have to stop there rather than saying then to affirm the Project - the Planning Director's. Because, in fact, the report didn't accept all of the Planning Director's.

Chair Nogami Streufert: Okay.

Ms. Cox: Yeah.

Chair Nogami Streufert: Stand corrected.

Ms. Cox: Thank you. Yeah. Thanks.

Chair Nogami Streufert: Does that meet the Counsel - our Counsel's recommendatons, also?

Mr. Cowger: It - it's - yes, it's fine.

Chair Nogami Streufert: All right. Is there any more discussion. Okay. This is to adopt the recommendaton of the Hearings Officers' (inaudible). If there are no more discussions, then could we have a rollcall vote?

Mr. Cowger: Sure. I'll do the roll call, Madam Chair. Rollcall. Commissioner Otsuka?

Ms. Otsuka: Here. Oh, aye.

Mr. Cowger: Commissioner Degracia?

Ms. DeGracia: Aye.

Mr. Cowger: Commissioner Cox?

Ms. Cox: Aye.

Mr. Cowger: Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Cowger: Commissioner Ho?

Mr. Ho: Aye.

Mr. Cowger: Chair Strefert?

Chair Nogami Streufert: Aye.

Mr. Cowger: Motion passes to adopt the Commissioner - Hearing Officer's Report and Recommendation passes. 6:0.

Chair Nogami Streufert: Thank you for the Counsel for both the Petitioner, as well as for the Department.

Ms. Zeigler: Yeah.

Mr. Donahoe: Thank you.

Mr. Hull: Thanks, Denny.

Chair Nogami Streufert: Yes.

COMMUNICATIONS (For Action)

Mr. Hull: Moving right along, we have no Communications for Actions.

COMMITTEE REPORTS

Subdivision

Mr. Hull: For the rest of the Agenda, we actually have no subdivision committee reports at this time, Madam Chair.

UNFINISHED BUSINESS (For Action)

Mr. Hull: Moving on, there is no Unfinished Business.

NEW BUSINESS

Mr. Hull: Now moving on there is no further New Business.

For Action- See Agenda F for Project Descriptions

ANNOUNCEMENTS

Topics for Future Meetings

The following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter on November 10, 2020. The Planning Commission anticipates meeting via teleconference but will announce its intended meeting method via agenda electronically posted at least six days prior to the meeting date.

Mr. Hull: So we move into Announcements, Topics for Future Meetings. we have a few, the next meeting is on November 10 and we have a few Use Permits pertaining to that, but if there's any additional topics that Commissioners would like the Department to bring forward, um, we can do so right now or we can contact the Department on the site, as well.

ADJOURNMENT

Chair Nogami Streufert: Is there any - are there any topics that the Commissioner would like to add to the November agenda? If not, with no other business, could I have a motion to adjourn.

Ms. Cox: I move we adjourn.

Chair Nogami Streufert: Is there a second?

Ms Otsuka: I second. I second.

Chair Nogami Streufert: It's moved and seconded to adjourn. Do I rollcall vote. All those in favor? (Unanimous voice vote) Any opposed? (None) Motion Passed 6:0. The meeting is adjourned. Thank you very much.

Chair Nogami Streufert adjourned the meeting at 1:17 p.m.

Respectfully submitted by:

Arleen Kuwamura

Arleen Kuwamura,
Commission Support Clerk

- () Approved as circulated (add date of meeting approval)
- () Approved as amended. See minutes of _____ meeting.