

KAUA‘I PLANNING COMMISSION
REGULAR MEETING
January 28, 2020

The regular meeting of the Planning Commission of the County of Kaua‘i was called to order by Chair Sean Mahoney at 9:22 a.m., at the Līhu‘e Civic Center, Mo‘ikeha Building, in meeting room 2A-2B. The following Commissioners were present:

Mr. Sean Mahoney
Ms. Glenda Nogami Streufert
Mr. Roy Ho
Ms. Donna Apisa
Lori Otsuka

Absent:

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

CALL TO ORDER

Chair Mahoney: Called the meeting to order at 9:22 a.m.

ROLL CALL

Planning Director Mr. Kaaina Hull: Good morning Chair and members of the Commission. First order of business is roll call. Commissioner Ho.

Mr. Ho: Here.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Here.

Mr. Hull: Commissioner Streufert.

Ms. Nogami Streufert: Here.

Mr. Hull: Commissioner Otsuka.

Ms. Otsuka: Here.

Mr. Hull: Chair Mahoney.

Chair Mahoney: Here.

Mr. Hull: Chair, you do have a quorum.

**SELECTION OF CHAIRPERSON AND VICE CHAIRPERSON APPOINTMENT OF
SUBDIVISION COMMITTEE CHAIRPERSON, VICE CHAIRPERSON**

Mr. Hull: The next order of business is Selection of Chairperson and Vice Chairperson and appointment of the Subdivision Committee Chairperson, Vice Chairperson. So I think the first order of business is we take nominations for the Chairperson.

Chair Mahoney: Nominations are now in order for the position of Planning Commission Chair, Nomination need not be seconded. Are there any nominations? Commissioner Ho?

Mr. Ho: I nominate Glenda Streufert for Chairman.

Chair Mahoney: Are there any other nominations? Hearing none. Are there any further nominations? If not, may I have a motion to close nominations?

Ms. Apisa: I move to close nominations for Chairperson.

Chair Mahoney: Is there a second?

Ms. Otsuka: I second.

Chair Mahoney: It's been moved and seconded. All in favor, signify by saying, aye. Aye. (Unanimous voice vote). Opposed? (None). Motion carried. 5:0. Congratulation's we have a new Chair.

Mr. Hull: Congratulations to Chair Streufert. The next section on this Agenda Item is the nomination and selection of a Vice Chairperson.

Ms. Nogami Streufert: Nominations are now in order for the position of Planning Commission Vice Chair. Nominations may not be seconded. Are there any nominations?

Mr. Ho: I nominate Donna Apisa for Vice Chair.

Ms. Nogami Streufert: Are there any further nominations? If not, may I have a motion to close the nominations?

Ms. Otsuka: I make a motion to close the nomination.

Ms. Nogami Streufert: Is there a second?

Mr. Ho: Seconded.

Chair Nogami Streufert: It's been moved and seconded to close the nominations. All in favor, signify by saying, aye. Aye. (Unanimous voice vote). Opposed? (None). Motion carried. 5:0.

Commissioner Donna Apisa has been nominated to fill the position of Commission Chairman, Planning Commission Vice Chair. Are there any request for a secret ballot vote? If not, all those in favor of Commissioner Apisa, please raise your right hand. All those opposed? Unanimity of members have voted in favor of Commissioner Apisa and she is duly elected to serve as Planning Commission Vice Chair. Congratulations.

Ms. Apisa: Thank you.

Mr. Hull: The next Chairperson, is the appointment of the Subdivision Committee members.

Chair Nogami Streufert: As one of my prerogatives, I get to appoint the Subdivision Committee members and I would like to appoint Commissioner Ho as Subdivision Committee Chairperson, Commissioner Apisa as Vice Chair, and Commissioner Mahoney as a Committee Member. May I have a motion to approve?

Ms. Apisa: So moved.

Chair Nogami Streufert: Second?

Mr. Ho: Seconded.

Chair Nogami Streufert: Motion has been seconded. All in favor, signify by saying, aye. Aye. (Unanimous voice vote). Opposed? (None). Motion carried. 5:0.

APPROVAL OF AGENDA

Mr. Hull: Congratulations all. The next Agenda Item Madame Chair, is Approval of the Agenda. The Department recommends given the sizeable audience here today for an array of different agenda items and and in the interest of the public, at least being able to hear their items first. We recommend the Executive Session be moved to the end of the Agenda with the closing of the Meeting to follow.

Chair Nogami Streufert: Do I have a motion to accept the amended agenda?

Mr. Mahoney: Chair, I move to accept the amended agenda.

Ms. Apisa: Second.

Chair Nogami Streufert: It's been moved and seconded. All in favor, signify by saying, aye. Aye. (Unanimous voice vote). Opposed? (None). Motion carried. 5:0. Agenda has been amended.

MINUTES of the meeting(s) of the Planning Commission

Mr. Hull: Next Agenda Item is the Minutes of the Meeting August 13, 2019, November 12, 2019, and January 14th 2020.

Ms. Apisa: I move that we approve the Minutes of August 13, 2019, November 12, 2019, and January 14, 2020.

Mr. Ho: Seconded.

Chair Nogami Streufert: It's been moved and seconded that we approve the Minutes of the meetings of August 13, November 12, 2019, and January 14, 2020. Any discussion? All in favor, signify by saying, aye. Aye. (Unanimous voice vote). Opposed? (None). Motion carried. 5:0.

RECEIPT OF ITEMS FOR THE RECORD (None)

Mr. Hull: There are no receipt of items for the record.

HEARINGS AND PUBLIC COMMENT

Mr. Hull: We are moving on to Hearings and Public Comment. At this time there are specific Agency Hearings for Agenda Items. But if there is any member of the public that would like to testify right now on any of the agenda items, this opportunity is afforded to you.

Mr. Kevin Kuzma: Hello—

Mr. Hull: If you can speak your name into the microphone and you have three minutes to provide your public testimony.

Mr. Kuzma: Hello, my name is Kevin Kuzma and I'm here today to testify in favor of Kahili Adventist School being able to use the Yoshida property. The Agenda Item is Matthew Yoshida. So I'm Kevin Kuzma and I run Canyon Learning Center a small alternative homeschool on Koloa Road. And I would like to testify that the small impact a school like that has on a neighborhood we live in...we're in a small neighborhood where the students are only at school about 180 days out of the year, which is less than half the year. As far as noise, there is really only a couple hours a day that there is actual noise from the students. They are school students and so they are working in class during morning recess and lunch is when they are noisy. They are all gone from school by 3:00, and the rest of the afternoon is quiet regular neighborhood.

Because of the nature of being a Seventh Day Adventist operation, one of our focuses is on service. And so our school and I'm sure Kahili Adventist School does the same thing. We try and serve our neighbors we've helped our neighbors haul some of their green waste and we've helped them with their yard work and we do whatever we can to be a service to our neighbors. Small schools are a benefit to our neighborhood in that it gives the opportunity to for people to attend something that's different, that gives them an option especially for students that struggle in a regular public school system. I know that our school since we've started operating in 2012, we've been bursting at the seams and we have to turn people away, because there are so many people that are looking for an option to have a different option than the public school option. And so, I just really believe that giving Kahili the opportunity to be up there in that neighborhood would be a benefit. Any questions?

Ms. Apisa: Thank you.

Chair Nogami Streufert: Any questions? Thank you.

Mr. Kuzma: Thank you.

Mr. Hull: Is there any further public testimony on any of the agenda items before we go on to the specific agenda items at this time? Seeing none.

Continued Agency Hearing

Mr. Hull: Moving on to the Agenda Item G. 1. There are no Continued Agency Hearings.

New Agency Hearing

Class IV Zoning Permit Z-IV- 2020-7 and Use Permit U-2020-6 to allow construction of a two (2) farmworker housing units on a parcel located along the Makai side of Koolau Road in Moloaa, situated approx. ½-mile east of its intersection with Kuhio Highway and further identified as 6020 Koolau Road, Tax Map Key: (4) 4-9-009:012, CPR unit 71, and affecting an area approx. 5.225 acres of a large parcel= Joseph Schwartz. [Director's Report received by Commission Clerk 12/2319.]

1. Director's Report pertaining to this matter.
2. Supplement No. 1 to Director's Report pertaining to this matter.
3. Supplement No. 2 to Director's Report pertaining to this matter.

Director's Report pertaining to this matter.

Mr. Hull: So moving on to New Agency Hearings G. 2. Class IV Zoning Permit Z-IV- 2020-7 and Use Permit U-2020-6 to allow construction of a two (2) farmworker housing units on a parcel located along the Makai side of Koolau Road in Moloaa, situated approx. ½-mile east of its intersection with Kuhio Highway and further identified as 6020 Koolau Road, Tax Map Key: (4) 4-9-009:012, the applicant is Joseph Schwartz. Is there any members of the public...I don't have any sign-ups but is there any members of the audience that would like to testify on the Joseph Schwartz application? Seeing none, the department would recommend closing the agency hearing.

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

Ms. Apisa: Second.

Chair Nogami Streufert: It's been moved and seconded to close the Hearings. All in favor, signify by saying, aye. Aye. (Unanimous voice vote). Opposed? (None). Motion carried. 5:0.

Special Management Area Use Permit SMA (U)-2020-5 to construct a single family residence and associated amenities on a parcel situated along the southern side and near the terminus of Hanalei Plantation Road in Princeville, immediately adjacent to property identified as 5211 Hanalei Plantation Road, involving Tax Map Key: (4) 5-4-004:009, Unit 1, and affecting an area approx. 0.20 acre of a larger parcel. =22 Degrees Designs LLC.

1. Director's Report pertaining to this matter.
2. Supplement No. 1 to Director's Report pertaining to this matter.

Mr. Hull: Motion Passes. Next Agenda Item is G. 2b. Special Management Area Use Permit SMA (U)-2020-5 to construct a single family residence and associated amenities on a parcel situated along the southern side and near the terminus of Hanalei Plantation Road in Princeville, Tax Map Key: (4) 5-4-004:009, The applicant is 22 Degrees Design, LLC. There was no one signed up to testify, is there anybody in the audience who would like to testify on the on the application for 22 Degrees Design, LLC? Seeing None. The Department would recommend closing the agency hearing.

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

Mr. Ho: Second.

Chair Nogami Streufert: It's been moved and seconded to close the Agency Hearings on this topic. All in favor, signify by saying, aye. Aye. (Unanimous voice vote). Opposed? (None). Motion carried. 5:0.

Special Management Area Use Permit SMA-(U)-2020-6 to allow reconstruction of a Maintenance/Recreational Building containing multi-purpose rooms, office, storage, and laundry facilities, and Class IV Zoning Permit Z-IV-2020-8 and Use Permit U-2020-7 to allow a height deviation from the North Shore Planning Area, on a parcel situated on the makai side of Kuhio Highway in Wainiha, approx. 300 ft. east of the Kuhio Highway/Oneone Road intersection, further identified as 5-7130 Kuhio Highway, Tax Map Key: (4) 5-8-011:027, and containing a total area of 3.689 acres = Hanalei Colony Resort AOA. [Director's Report and Supplement No. 1 to Director's Report received by Commission Clerk 12/23/19.]

1. Director's Report pertaining to this matter.
2. Supplement No. 1 to Director's Report.
3. Supplement No. 2 to Director's Report.

Mr. Hull: So next is Item G.2.c. Special Management Area Use Permit SMA-(U)-2020-6 to allow reconstruction of a Maintenance/Recreational Building containing multi-purpose rooms, office, storage, and laundry facilities, and Class IV Zoning Permit Z-IV-2020-8 and Use Permit U-2020-7 to allow a height deviation from the North Shore Planning Area, on a parcel situated on the makai side of Kuhio Highway in Wainiha, further identified as Tax Map Key: (4) 5-8-011:027. The applicant is Hanalei Colony Resort AOA. There was nobody signed up to

testify, is there any member of the audience that would like to testify on the application from Hanalei Colony Resort AOA? Seeing none. The Department will recommend closing the agency hearing.

Ms. Otsuka: I move that we close the agency hearing.

Mr. Ho: Second.

Chair Nogami Streufert: It's been moved and seconded to close the Agency Hearings. All in favor, signify by saying, aye. Aye. (Unanimous voice vote). Opposed? (None). Motion carried. 5:0.

Continued Public Hearing

Zoning Amendment ZA-2016-3: A bill (2755) for an ordinance Amending Chapter 8, Kauai County Code 1987, as amended, relating to Definitions = County of Kauai, Planning Department. [Director's Report received & hearing deferred 2/23/16, Supplement No. 1 to Director's Report received & hearing deferred 3/18/16, Supplement No. 2 received & hearing deferred 6/14/16.]

1. Supplement No. 3 to Director's Report pertaining to this matter.

Mr. Hull: Motion Passes. Moving on to Agenda Item G. 3, Continued Public Hearing Zoning Amendment ZA-2016-3: A bill (2755) for an ordinance Amending Chapter 8, Kauai County Code 1987, as amended, relating to Definitions. The applicant is the County of Kauai, Planning Department. And the Deputy Director is the Planner on this so I will turn it over to Jodi.

Ms. Higuchi Sayegusa read the Summary, Project Description and Use, and Applicant's Reasons/Justification sections of the Director's Report for the record (on file with the Planning Department).

Deputy Planning Director Jodi Higuchi Sayegusa: Good morning Commissioner, Chair. So this matter originally came before the Commission back in 2016. Originally, it was a proposal just to amend the definition of "applicant" under the Kaua'i County Code 8-1.5. In addition, we are also seeking to clarify the definition of "owner" under Kauai County Code 8-1.5. The current definitions under the Kaua'i County Code currently allows any person having a controlling interest, seventy-five percent (75%) or more equitable and legal title to submit an application. Likewise, the definition of "owner" includes that seventy-five percent (75%) threshold of... seventy-five percent (75%) of the equitable and legal title of the lot. The current definitions led to some difficulties in applying, and both by the members of the public in addition to the Department and some difficulties in calculating seventy-five percent (75%). Particularly, when there is many co-owners or CPR owners. We have received applications owned by trust, partnerships, and corporations. So the difficulties in implementing the definition and calculating that seventy-five percent 75% threshold are as vast as there are property ownership mechanisms and types.

In addition, it's an effort to make certain that the Department is accepting and processing and eventually approving applications for the right people who have the proper authorization to do so. So aside from any difficulties or even calculating any percentage or quantity of ownership, it's an issue of making sure that whoever is applying is actually the person who fully and completely owns the property or has proper authorization from the owner to do so. I've iterated a bit more in my report the issues we have faced recently. There was a relatively recent intermediate Court of Appeals case that did speak to concerns about ambiguities under the current definitions.

In addition, just too briefly iterate, the current definitions do sometimes lead to disputes among co-owners or CPR unit owners and those civil disputes have spilled over and involved the Department in the past in the form of intervention or contested Case or even litigation against the Department for accepting an application wrongfully. So again, the amended bill eliminates the seventy-five percent (75%) or more equitable and legal title threshold. And instead, the following individuals may submit zoning applications, one owner having full equitable and legal title of land in fee simple.

Any person leasing the land of another under recorded lease having a stated term of not less than five years or any person who has full written authorization of the owner or another having a recorded lease for a stated term of not less than five years. So the amendment, we seek to encourage agreement and arrangement and arrangements amongst owners prior to any one individual applying or submitting an application with the Department. And so again, it clears up ambiguities and also prevents the Department from becoming involved with what we see as essentially, as private property issues. I'm here for any questions.

Chair Nogami Streufert: Any questions?

Mr. Ho: Could you reiterate what you said about the CPR requirements, please?

Ms. Higuchi Sayegusa: CPR requirements. So I'm just highlighting some issues that have come up. For instance, if one owner of a CPR unit applies, we faced issues with other CPR unit owners not agreeing to an application. And so under the seventy-five percent (75%) threshold we faced issues where a unit owner was excluded from getting or signing off or providing assent for a unit owner to submit an application. And so, that sometimes spills over instead of taking care of authorization amongst the owners prior to submitting an application, it spills over into a request for an intervention after the Department has accepted the permit. It's perhaps before you folks for consideration for a Class IV Zoning Use Permit and then we get lodged an intervention request, or sometimes it could lead to a lawsuit against the Department for accepting the application when one of the disagreeing unit owners says, "Hey, I didn't authorize my other co-owner to submit an application."

Ms. Apisa: If I could just insert to clarify, I think the County doesn't recognize the CPR owner. So they recognize the parcel owners. So that's why each individual CPR owner has to agree, because they only recognize the parcel and not the individual CPRs, is that correct?

Ms. Higuchi Sayegusa: Right. And again, we see this as the first step really in offering us some help to put the gate and make sure that whatever authorization is arranged amongst owners before we even accept it. We do acknowledge that again, there are various contours of property ownership. We might have to look at rules and how we're making clear to the public and what we're going to be accepting I.E., whether it's notarized statements amongst the owners, whether it's, "please provide us within our CPR declaration the sheet that says there is already a "Power of Attorney" given to any singular unit owner." Or what have you. So this is the first step to amend the Ordinance, and we may come back with rules.

Ms. Apisa: I have a question. So what you are doing is making the seventy-five percent (75%) rule a hundred percent (100%).

Ms. Higuchi Sayegusa: Yes, in effect.

Chair Nogami Streufert: Any other questions? Could I ask a question? One of the things it says in here is could be a recorded lease for stated term of not less than five years.

Ms. Higuchi Sayegusa: Yes.

Chair Nogami Streufert: That's unexpired five years, is that not? Rather than...in other words, if I had a lease for five years and I'm at the last six months I cannot apply for this? I cannot apply as an applicant?

Ms. Higuchi Sayegusa: So I'm sorry, so if there's?

Chair Nogami Streufert: It says right now a stated term of not less than five years.

Ms. Higuchi Sayegusa: Yes.

Chair Nogami Streufert: Is that the total term of the lease? Or the unexpired part of the lease?

Ms. Higuchi Sayegusa: I believe we look at the total five years, that there is a holder of five years.

Chair Nogami Streufert: So if I were in the last six months of that five-year lease I could still be an applicant?

Ms. Higuchi Sayegusa: That is something we could look at in administrative rules to clarify. That portion we did not amend in the definition. I think as written we would have to ...I'm not sure if the attorney has anything to weigh-in on? But I think we would look at it as any holder of a lease with five years, whether it's expired or not.

Deputy County Attorney Nicholas Courson: Yes, I would agree with the Deputy Director, that is how it would read. If that's not the public policy will of this body though, that is up for discussion and could be changed.

Chair Nogami Streufert: I think it's a little unfair, if you have a five-year lease and you are at the last month of your five-year lease you could still be an applicant.

Ms. Apisa: I would agree with that, it should be five years remaining on a lease unexpired.

Ms. Higuchi Sayegusa: Okay. And we wouldn't have a problem with that type of amendment, if the Commission feels that it's a necessary one.

Mr. Hull: There's some nuance to that Chairperson and Commissioner Apisa. So in looking at trying to craft...we have no objections as the Deputy Director was saying. Trying to craft something to that effect to ensure it meets the full intent of what the desire to protect and ensure that it's not just at the end of the lease. I would say we need a little more bit time to make an amendment proposal on the floor. I would ask for a two-week deferral until our next meeting. So we can provide a possible amendment.

Chair Nogami Streufert: Okay.

Ms. Apisa: I move we grant a two week extension, if that is appropriate at this time?

Mr. Hull: Ultimately, you might want to ask for public testimony before motions are made. If your done with questions from Jodi and myself.

Chair Nogami Streufert: Any other questions from the Commission members? Anyone from the audience or the public?

Mr. Hull: Seeing none the Department would ask that the Commission defer this agenda item to February 11th which is the next Planning Commission Meeting.

Ms. Apisa: I move that this agenda item be referred to February 11, 2020.

Mr. Ho: Seconded.

Chair Nogami Streufert: It's been moved and seconded to defer this action until February 11th or this discussion until February 11th, 2020. All in favor, signify by saying, aye. Aye. (Unanimous voice vote). Opposed? (None). Motion carried. 5:0.

New Public Hearing

Zoning Amendment ZA-2020-5: A bill (2755) for an ordinance amending Chapter 8, Kauai County Code 1987, as amended, relating to Comprehensive Zoning Ordinance (CZO). The proposal amends Section 8-4.3(a) of the Kauai County Code relating to development standards for residential structures not involving a subdivision = County of Kauai, Planning Department. [Director's Report received & hearing deferred 2/23/16, Supplement No. 1 to the Director's Report received & hearing deferred to 3/8/16, Supplement No. 2 received & hearing deferred 6/14/16.]

2. Supplement No. 3 to Director's Report pertaining to this matter.

Mr. Hull: The next Agenda Item is Agenda Item G.4. New Public Hearings for Zoning Amendment ZA-2020-5: A bill (2755) for an Ordinance amending Chapter 8, Kauai County Code 1987, as amended, relating to Comprehensive Zoning Ordinance (CZO). The proposal amends Section 8-4.3(a) of the Kauai County Code relating to development standards for residential structures not involving a subdivision. I apologize, this states the County of Kauai Planning Department is the applicant. For clarification, this is actually initiated by the County Council. But the Department and Dale as we'll get into it is in support of the recommendation, but ultimately, the County Council is the applicant. And Dale is our planner and will turn it over to Dale.

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

Staff Planning Dale Cua: Good morning, Madame Chair and members of the Planning Commission. At this time I will go ahead and summarize the Director's Report. The Department has received comments from various agencies, and that concludes the Departments Directors Report at this time.

Chair Nogami Streufert: Any questions from the Commissioners? Anyone from the public wanting to speak on this? I guess I do have a question. Clarification. There is no requirement for minimum size of the lot. But all the other requirements stand? Department of Health, Sewage, and Waste?

Mr. Cua: Correct. Those regulations still apply.

Chair Nogami Streufert: So it's just square footage that we're talking about.

Mr. Cua: Right. It eliminates the minimum lot size requirement.

Mr. Hull: Just for a little clarification. A couple years ago, Council member Kaneshiro introduced a proposal to allow multi-family construction in all residential zoning Districts because for several years some R-1 to R-6 and just for clarification. R-1, being you could build one house per acre and R-6, you could build up to six houses per acre. Council member Kaneshiro introduced that amendment to basically say you have the density. You can only construct so many dwelling units per lot on record and giving your zoning and its respective size.

There shouldn't be any prohibitions on being able to take advantage of shared wall construction because shared wall construction is essentially cheaper. So when you attach two dwelling units it can be financially cheaper to construct those units. That proposal was introduced at Council and came before this body and this body had like ten minutes of deliberation on it, because it saw the benefit of that, adopted it, and sent it back to Council and Council approved that amendment. This is just a further step in what...previous amendment was doing and essentially is saying we are going to take away the lot requirement size which you can have shared wall construction.

What we are looking at is multi-family construction or attached single family construction and just saying you still are subject to the Department of Health requirements for a septic systems, and still subject to the setback requirements of the zoning code and so on and so forth. It's just that regardless of the lot size, you as the property owner can take advantage of shared walled construction essentially. So it really is just a clean-up measure and a little...definitely not a panacea in the housing crisis. But I think part of Council members Chock and Evslin who introduced this amendment, it's one of many lines that the County is trying to cast into the water to try to reduce the cost of construction of housing units.

Chair Nogami Streufert: But the R-6 or R-2 designation still holds?

Mr. Hull: Correct. The density still stands. So it doesn't mean you can build more units, it just means if you're property is entitled to build more than two units and it's a certain footage, regardless of square foot you can do shared wall construction.

Chair Nogami Streufert: Any discussion? Do you have a motion?

Mr. Mahoney: Chair, move to approve Zoning Amendment ZA-2020-5.

Ms. Apisa: Seconded.

Chair Nogami Streufert: I'm sorry, we haven't ask for the conclusion and your recommendation.

Mr. Cua: Sure.

Chair Nogami Streufert: The Department's recommendation, I'm sorry, I got ahead of myself.

Mr. Cua: Based on the foregoing the Department is recommends approval of bill No. 2755. Zoning application, Zoning Amendment ZA-2020-5.

Chair Nogami Streufert: Now may I have a motion?

Mr. Mahoney: Chair, I move to approve Zoning Amendment ZA-2020-5, bill 2755.

Ms. Apisa: Seconded

Chair Nogami Streufert: It's been moved and seconded to approve the Amendment. All in favor, signify by saying, aye. Aye. (Unanimous voice vote). Opposed? (None). Motion carried. 5:0.

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

CONSENT CALENDAR

Status Reports

Director's Report(s) for Project(s) Scheduled for Agency Hearing on Tuesday, February 11, 2020.

Mr. Hull: Moving on to Agenda Item H, there's no Consent Calendar items.

EXECUTIVE SESSION

Pursuant to Hawai'i Revised Statutes 92-4 and 92-5(a) (4), the purpose of this executive session to consult with County's legal counsel on questions, issues, and procedural matters. This consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Commission and the County as they relate to Civil No. 18-1-0192 (JKW), Class IV Zoning Permit Z-IV-2007-1, Use Permit U-2007-1, Special Permit SP-2007-1 for property located at Tax Map Key (4) 2-8-002; por. 005: *Kauai Springs, Inc.*

Mr. Hull: The Commission has moved the Executive Session.

GENERAL BUSINESS MATTERS

In the Matter of Petition to Appeal Decision of the Planning Director Relating to the Denial of Non-conforming Use Certificate 2019 Renewal Packet submitted on November 15, 2019 for Non-Conforming Use Certificate TVNCU #4308 (4176 Pilikai Road), Anahola, Kauai Tax Map Key: 48007002, *Elizabeth Kendrick and Joe Chaulklin*, [Contested Case No. CC-2020-3].

- a. Clerk of the Commission's Recommendation to Refer an Appeal of the Planning Director's Decision Related to the Denial of a 2019 renewal packet by *Elizabeth Kendrick and Joe Chaulklin* for TVRNCU #4308 due to a failure to timely renew in 2017, Tax Map Key: (4)48007002, Anahola, Kauai, received on January 17, 2020 via email for referral to Boards and Commissions as Contested Case File No. CC-2020-3.

Mr. Hull: So moving on to General Business. J.1. In the Matter of Petition to Appeal Decision of the Planning Director Relating to the Denial of Non-conforming Use Certificate 2019 Renewal Packet submitted on November 15, 2019 for Non-Conforming Use Certificate TVNCU #4308, in Anahola, Kauai Tax Map Key: 4-8-007:002, the applicant is Elizabeth Kendrick and Joe Chaulklin. Ultimately the Department has transmitted a communication requesting that you refer this matter over to a Contested Case Hearings Officer. We are here for any questions, if you have any.

Chair Nogami Streufert: Any questions from the Commission members? Commissioners? Any questions from the audience? Is the applicant here? Seeing that the applicant is not here, are there any last comments or discussion? Chair entertains a motion.

Mr. Mahoney: Chair, I move to a Hearings Officer.

Mr. Ho: Seconded.

Chair Nogami Streufert: It's been moved and seconded that this case should be moved to a Hearings Officer. All in favor, signify by saying, aye. Aye. (Unanimous voice vote). Opposed? (None). Motion carried. 5:0.

In the Matter of Petition to Appeal of the Planning Director's Notice of Violation & Order to Pay Fines for the continued operation of a forfeited transient vacation rental in 2017 for failure to timely renew, Elizabeth Kendrick and Joe Chaulklin, TVRNCU #4308 (4176 Pilikai Road). Tax Map Key: (4)48007002, Anahola, Kauai, received on January 17, 2020 via email [Contested Case File No. CC-2020-4].

- a. Clerk of the Commission's Recommendation to Refer an Appeal of the Planning Director's Notice of Violation & Order to Pay Fines for the continued operation of a forfeited transient vacation rental in 2017 for failure to timely renew, Tax Map Key (4)48007002, Anahola, Kauai, received on January 17, 2020, via email, for referral to Boards and Commissions as Contested Case File No. CC-2020-4.

Mr. Hull: So moving on to General Business. J.2. In the Matter of Petition to Appeal of the Planning Director's notice of violation & order to pay fines for the continued operation of a forfeited transient vacation rental in 2017 for failure to timely renew, Elizabeth Kendrick and Joe Chaulklin, TVRNCU #4308. Tax Map Key: (4)4-8-007:002. Very similar to the previous case in fact, it's the exact same operators. The Department also in this situation is recommending that you, the Commission refer this to a Hearings Officer for the Contested-Case. We're here for any questions or concerns.

Chair Nogami Streufert: Commissioners, any questions? Yes, Commissioner Ho.

Mr. Ho: Can this two matters be folded into one?

Mr. Hull: More than likely the Hearings officer will do that, but I think we'd recommend that if you decide to refer to a Hearings Officer, you allow him or her the latitude.

Mr. Courson: Yes, I agree with the Director. Sending them over as distinct matters makes for a clear record and then for administrative efficiency the Hearings officer can actually have a hearing on rather to consolidate them. And they will do that early on and make that decision.

Mr. Ho: Just as a follow-up, is there a chance that one might be approved and the other not by the Hearings Officer?

Mr. Hull: I'll defer to the Hearings Officer.

Mr. Courson: It's theoretically possible. It's the sort of thing we'd intervene in, because that would be...that would cause chaos, but a Hearings Officer does cost us money. So, I can't say

there is no chance to that. We do have practical limitations, but I think, we'd find a way to make sure that doesn't happen.

Chair Nogami Streufert: Any other questions?

Mr. Hull: And just for clarification, the first one you folks heard today of the Hearings Officer, is the appeal of the Director's to revoke their renewal application, pursuant to the timeline set up by the by the Transient Vacation Rental Ordinance. And the second one, is an appeal of the actual violation notice and finds that we have issued to the operation for operating without the appropriate certificate.

Chair Nogami Streufert: Can I ask a questions? For the second one, which is for forfeited transient vacation rental in 2017. Then does this include 2018 and 2019 also?

Mr. Hull: The appeal is that they be allowed to reinstate, yes.

Ms. Apisa: I guess once you lose it 2017, it's gone.

Chair Nogami Streufert: Exactly. So I'm wondering, how this would work with all the other ones that is coming after this? Okay.

Mr. Mahoney: Chair, I make a motion to a move to present this matter to Hearings Officer, TVRNCU #4308 Item J.2.

Ms. Otsuka: Seconded.

Chair Nogami Streufert: It's been moved and seconded that the TVRNCU #4308 be referred to a Hearings Officer. Any discussion? All in favor, signify by saying, aye. Aye. (Unanimous voice vote). Opposed? (None). Motion carried. 5:0.

COMMUNICATION (For Action)

Mr. Hull: Moving on there was no Communication for Action.

COMMITTEE REPORTS

Subdivision: Subdivision Action matters listed in the Subdivision Committee Agenda (attached).

Mr. Hull: On to the next Agenda Item L. Committee Report Subdivision Action matters listed in the Subdivision Committee agenda. Subdivision report?

Mr. Ho: Subdivision Committee Report. Two for tentative map approval Garden Isle, LLC, Baird Family were approved. Two for Final Map Approval, Kukui'ula Development Company and Coco Palms, both were approved. Subdivision extension request, Kilauea Plateau Subdivision approved. I recommend that the Commission accepts the Subdivision Report.

Chair Nogami Streufert: I entertain a motion to accept this—

Ms. Apisa: I move we accept the subdivision report.

Mr. Mahoney: Second.

Chair Nogami Streufert: It's been moved and seconded to approve the Subdivision report. Any discussion? All in favor, signify by saying, aye. Aye. (Unanimous voice vote). Opposed? (None). Motion carried. 5:0. Thank you.

UNFINISHED BUSINESS (For Action)

Consideration of Class IV Zoning Permit Z-IV-2001-21, Use Permit U-2001-16, and Special Permit SP-2001-9 to amend Condition No. 1 that would allow an increase in the number of tours per day and amount of patrons (300 max.) and the construction of three (3) additional structures on the subject property situated south of Kaumualii Highway, approx. one mile south of its intersection with Kipu Road, further identified as Tax Map Key: (4) 3-1-002:001, and containing a total land area of approx. 2,843 acres = Kipu Ranch Tours. [Director's Report received by Commission Clerk 10/8/19, hearing closed and action deferred 10/22/19, Supplement No. 1 to Director's Report received and matter deferred 11/12/19.]

- a. Supplement No. 2 to Director's Report pertaining to this matter.

Mr. Hull: Next Agenda Item M. 1, Unfinished Business. M.1, Consideration of Class IV Zoning Permit Z-IV-2001-21, Use Permit U-2001-16, and Special Permit SP-2001-9 to amend Condition No. 1 that would allow an increase in the number of tours per day and amount of patrons (300 max.) and the construction of three (3) additional structures on the subject property situated south of Kaumualii Highway, approx. one mile south of its intersection with Kipu Road, further identified as Tax Map Key: (4) 3-1-002:001, Kipu Ranch Tours and the Planners Chance.

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

Staff Planner Chance Bukoski: Good morning, Chair and members of the Commissioners. I'll just briefly summarize the Commission action we have before you, and also, the additional supplemental that we have for this agenda item. In conclusion, the Department stands on its recommendation to approve the proposed amendments. And also, Commissioners, I would like to add, besides amending Condition No. 1. I would like to amend Condition No. 2, which previously mentioned in the original application. Which is additional 18 off-street parking stalls. So, Condition No. 6, is currently for nine parking stalls. So by adding 18 additional it would come out to 27 off-street parking stalls, and also, I can read that off for the Commissioners if you would like during the recommendation.

Chair Nogami Streufert: Yes, please.

Mr. Bukoski: Okay. Condition No. 6, as represented, the applicant shall provide an area on the property to accommodate at least 27 off-street stalls. These parking stalls shall need not be paved.

Chair Nogami Streufert: Any questions, Commissioners?

Mr. Ho: Chance that was non-paved parking stalls?

Mr. Bukoski: Correct, off-street parking.

Mr. Ho: How do you determine a parking stall is not paved?

Mr. Bukoski: Just the area which...since this is zoned Agriculture, and Agricultural, and the subject property is only utilized for this operation and only 6-9 acres, rather than having I guess, more lot coverage for run-off purposes. Rather, just keep it off-street, and this is what the original permits requested. So by improving or increasing the patrons per day and also the max 300 possibly at its highest potential, it would be feasible for the applicant to provide more off-street parking stalls, but rather than putting up that cost of expensive paving, just keep it as off-street parking.

Mr. Hull: I also, would like to interject, Commissioners. If this body would like to have the off-street parking be paved, I don't think we would have any strong objections to that, it's just that, because as Chance, is pointing out, this is agricultural land, we generally try not to push too much impervious surface on to agriculture land, so that, should they want to restore or use the site for agricultural cultivation, they could. We don't have any objections if you want to require pervious pavement though.

Chair Nogami Streufert: Any other questions?

Mr. Hull: I believe the applicant is here. If you had any questions for the applicant or if the applicant wanted to make a presentation.

Chair Nogami Streufert: Is the applicant here?

Mr. Donald Wilson: Yes, Madame Chair.

Chair Nogami Streufert: Please, come to the front and state your name.

Mr. Wilson: Good morning, Madame Chair, members of the Commission, my name is Donald Wilson. I'm the attorney for the the applicant Kipu Ranch Adventures. We have submitted information, I think, that addresses concerns raised by the adjacent landowner. Representatives of Kipu Ranch Adventures are here and available to answer any questions you have on operational safety matters that may be on your mind. Ask away, if you have any questions.

Mr. Hull: I think, also, Mr. Wilson is getting at, there has been some objections by neighboring properties that Chance, touched on in his report. The bulk of those objections have been voice over ownership rights and easement rights concerning the property owner and that adjacent property. And at this point, the Department has made a determination that indeed, the applicant does have authorization to apply for these permits, concerning the debate about the legal easement rights over it, and trying to...the opposing party was attempting to get the Planning Commission to weigh-in on those easement rights. And it's the Departments position it's neither our, nor the Planning Commission's purview, and it needs to be resolved civilly between the two parties. And the Planning Department is standing by its recommendation, and recommending that the Commission move forward on this. As Chance, has pointed out, we are recommending approval and we think, we have exhausted as much negotiations and discussions as we can between those two parties. At some point, we're saying this is that point, and they need to resolve it civilly. It can be moved forward as well.

Chair Nogami Streufert: Is there anyone...excuse me, is there anyone opposed to this that wanted to speak? Seeing none.

Mr. Hull: Just for clarification to, as Chair, was pointing out, if there is anybody in opposition, now is the time to speak and anyone members of the public that would like to speak just in general, now would be the time. Seeing none, Chair.

Chair Nogami Streufert: May we have the Departments recommendation, please?

Mr. Bukoski: Preliminary recommendations, based on the foregoing Findings and Evaluations and Conclusions, it is hereby recommended that the Condition No. 1 and No. 6 of the subject permit be amended to read as follows: Madame Chair, would you like me to read all the Conditions or just the amended changes?

Chair Nogami Streufert: Just the ones that are amended.

Mr. Bukoski: Condition No. 1, as represented by the applicant, the ATV tours are limited to eight tours per day with maximum of 15 patrons per tour and not to exceed a maximum of 300 patrons and ten guides per day. Condition No. 6, as represented, the applicant shall provide an area on the property to accommodate at least 27 off-street parking stalls. These stalls need not to be paved. And that concludes my recommendation.

Chair Nogami Streufert: Do you have any objections to those Conditions?

Mr. Wilson: No.

Chair Nogami Streufert: Chair, will entertain a motion.

Mr. Mahoney: Chair, I move to approve the Class IV Zoning permit Zoning Amendment Z-IV-2001-21, Use Permit U-2001-16, and Special Permit SP-2001-9 with amended Conditions.

Mr. Ho: Seconded.

Chair Nogami Streufert: It's been moved and seconded approve the Zoning Permit, Use Permit, and Special Permit for Kipu Ranch Tours. Any discussion? All in favor, signify by saying, aye. Aye. (Unanimous voice vote). Opposed? (None). Motion carried. 5:0. Motion passes.

Class IV Zoning Permit Z-IV-2020-2, Use Permit U-2020-2, and Special Permit SP-2020-1 to operate a school facility on a parcel situated on the southern side of Kawaihau Road in Kapahi, approx. 900ft. west of the Kawaihau Road/Makaleha Place intersection, further identified as 6525 Kawaihau Road, Tax Map Key: (4) 4-6-007:057, and affecting a portion of a larger parcel approx. 6.231 acres in size = Matthew and Naomi Yoshida. [Director's Report received by Commission Clerk 10/8/19, hearing closed and deferred 10/22/19; Supplement Nos. 1 and 2 to Director's Report received, hearing closed and deferred 10/22/19; Supplement Nos. 3 and 4 to Director's Reports received 12/10/19.]

b. Supplement No. 5 to Director's Report pertaining to this matter.

Mr. Hull: Moving on to Agenda Item. Agenda item M.2, Class IV Zoning Permit Z-IV-2020-2, Use Permit U-2020-2, and Special Permit SP-2020-1 to operate a school facility on a parcel situated on the southern side of Kawaihau Road in Kapahi, approx., excuse me, located at 6525 Kawaihau Road, Tax Map Key: (4) 4-6-007:057, and affecting a portion of a larger parcel approx. 6.231 acres in size. The applicants are Matthew and Naomi Yoshida. And our Planner on this is Jody.

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

Staff Planner Jody Galinato: Good morning, Madame Chair and members of the Commissioners. This item was held over from the December 10th meeting, and I've given you Supplement No. 5 with some additional correspondence with the applicant. And letters in favor and against. This morning, I gave you Supplement No. 6, that had another letter in opposition, and then, we received a memo from Public Works this morning.

Mr. Hull: So, I'll state as transmitted in the Supplemental Report, there are still a number letters came in concerning this application that you now have in receipt. The applicant has resolved the issues concerning Public Works. The driveway study analysis, Public Works is finding in that study and keeping with what is necessary concerning their roadway access issues. There is still the State Historic Preservation Division request for additional information that the applicant is working with State Historic Preservation Division (SHPD) to get them that information. We still haven't received the confirmation back from SHPD at this point yet. So, if you have any questions concerning the application, or the commenting agencies, we're here for you to respond to those, as well as I believe there is a significant audience participation that they may want to testify. So if you want to open it up for public testimony as well.

Chair Nogami Streufert: Before we do that, are there any questions by the Commissioners for the Planner?

Mr. Mahoney: What about the request of SHPD. What is the hold up with that? Is there...the last item? Missing?

Ms. Galinato: Yes. There's a new requirement that they want to submit...a new submittal process basically. Just to verify if there's anything significant there.

Chair Nogami Streufert: Any other questions? Yes.

Mr. Ho: Jody was there a traffic report to from the Department?

Ms. Galinato: What there is, there's a Driveway Site Analysis.

Chair Nogami Streufert: I think they submitted one in the last testimony.

Ms. Galinato: I don't think there was an official one, it was an unofficial. It wasn't from a Traffic Engineer.

Mr. Ho: Yes, that's the one I'm referring to.

Ms. Galinato: That was given to you in the last meeting. I have a copy if you need it.

Mr. Ho: No. I have it.

Chair Nogami Streufert: Okay. Is the applicant here?

Ms. Debbie Nakamura: Good morning, Madame Chair and Commissioners.

Chair Nogami Streufert: Please state your name.

Ms. Nakamura: My name is Debbie Nakamura. Since the last meeting, we did send out a letter to...we hand delivered a letter to the immediate neighbors asking if they would be willing to meet to talk about the issues that have been raised with this project. We've talked about issues with traffic. We talked about issues with noise. We talked about the General Plan and Policies, and the use of agricultural land. These have all been addressed in previous meetings. But the response that we have received one response from one neighbor and that was that they didn't feel there was any point in talking in talking about the matter. I know Mrs. Yoshida had conversation with a couple of the neighbors as well.

The interest comes down to in spite of all the other issues that we've talked about and we feel like Kahili has a reasonable approach, a reasonable response to concerns that have been raised. And has offered to do...sit down with a memorandum of agreement with the neighbors, with issues such as limiting the size of the school. Which we stated from the beginning with the application, when we first talked with the neighbors before we ever put in our application, we

talked about the issue that it would be a small school, similar to the one that Mr. Kuzma talked about with his home school probably it's the same amount...basically same number of students. So we talked about that, and that we would limit the size. That's our choice. We have no desire to be a large school. And that we would be utilizing the existing buildings that are on the property that we're not going to be building any more structures on that property. That if we ever sold the property, we would want it to revert back to another agricultural use, that we would not be selling it for another commercial use, such as a commercial strip mall, which a rumor is going around. And I'm trying to think of what other things were brought up? A lot issues.

There's been a lot of rumor going around, that we have tried to disseminate truthful information and trying got minimize things that are rumor. The size of school, for instance, there is a rumor going around that it's going to be a big school like Kapa'a Middle School and that is not our intent to be that big of a school. We also gave our neighbors a sampling of the produce that comes from the school orchard, to give then the idea, that this is a legitimate agricultural endeavor that the school is doing. So after all that is said and done, and the attitude that we are receiving back, is they just don't want change, and we appreciate that they have said they are not opposed to the school itself per se, or a church per se. They just don't want a change in their neighborhood. As far as that goes, change is difficult, change is difficult for us, too. We have gone through changes ourselves and it's our position that we would try to minimize any negative impact it would have. As Mr. Kuzma said, we also do a Vice-oriented aspect to our school and the same types of things he does for his neighbors, is the same sort of thing we would do for our neighbors. If they want to participate help with things we can do for them, we would do that, if they don't, we would stay out of their business, you know? We're not trying to impose ourselves on them.

We recognize we are coming in asking to be part of the community. And there are people in the community who do support, who would be favorable to having the school in that area. And so the school after the first hearing, we made a decision at the board that we would not flood this neighborhood with phone calls and fliers, and knocking at their doors, because we understood that we wanted to keep a respectful distance. Because we do have favorable friends within the community, maybe those voices would be able to be heard? And would be able to prevent some of the wrong information that was going out? But they have to live in that neighborhood, too. They have to love in that community. So it's difficult for people to want to go against the wishes of the outspoken voices. So, we're here today because we want to continue the process. Process is important. We recognize a decision like this a big decision, and for us to make a decision after the first hearing was short...just a short time. And it takes time to be able to process information especially for neighbors who are looking at how much impact will this have on them? So the time, the three months since that first meeting that we had here, we had hoped that would give them enough time to kind of look at the reality of what the school has to offer, and what it would be like to have them in their community. And that is where we are at.

Chair Nogami Streufert: Any questions? Is there anyone?

Mr. Mahoney: Getting back to that Historical Preservation.

Ms. Nakamura: Yes.

Mr. Mahoney: Why is that lagging?

Ms. Nakamura: Thank you for asking. That letter came to us on the 17th or 18th of January. Now in their letter, they indicated that they had received our application you guys had processed it to them, right? Back in September. But their letter back to the Planning Department was dated January 8th. And so the letter came to us on January 17th wasn't that Jody?

Ms. Galinato: Yes. We received it on the 16th and then I sent it to you that day.

Ms. Nakamura: Yes. So when I initially looked at it, it was like well do we have enough time before this hearing? But we did fill out the form for them and re-submitted that on, I believe the 22nd. Whatever day it was that Jody got it, we sent it to Jody as well. So we had completed the form, I think they sent an email saying they had received it, but there was no attachment to that email from them.

Ms. Galinato: Yes, the 24th.

Mr. Mahoney: Thank you.

Chair Nogami Streufert: Any other questions?

Mr. Hull: At this time Madame Chair, I would recommend asking for public testimony. You can take a seat ma'am.

Chair Nogami Streufert: Thank you. Is there anyone in the Public who would like to testify on this or submit information on it? Yes, please.

Mr. Hull: Are you a member of the public? Or are you part of the application?

[Inaudible audience talking]

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

Mr. John Nakamura: John Nakamura. Dear Planning Commission. I would like to testify today by way of a true story. It was a year 2003, the year of the SARS epidemic, which was killing both healthy and infirmed people indiscriminately. The epicenter was Guangzhou, China and my wife Debbie and I were scheduled to travel to China to pick up our 17 month-old daughter, who we had never met. All that we had were some pictures of her that we gazed upon lovingly many times a day. As the time to travel approached the death toll from SARS continued to raise and eventually nearly 800 people died from Severe Acute Respiratory Syndrome (SARS). It's amazing the thoughts go through your mind when you are facing possible death. I thought about the easy way out, just canceling the trip. I did not want to die of SARS in China. Then I realized if we cancelled our trip, our daughter would be stuck in the hot zone and might contract SARS, and die. We had to go to China, no matter what the risk, and rescue our daughter. I was determined that we must put our daughter first before our needs or our fears. We did go to China

in the middle of the SARS epidemic. After our group returned, China closed doors to travel of any future adoptive parents during the SARS. Today our daughter is in college in California, and we are so happy that we took the risk. Planning Commission and neighbors, please take the small risk and put the children of Kaua'i first, for indeed, Kahili Adventist School serves the children of Kaua'i with two-third of the students in the preschool program being non-Seventh Day Adventist and one-third of the students in elementary program being non-Seventh Day Adventist, and please see the bigger picture (inaudible) for the sake of the children. Our children are this island's future. Thank you.

Chair Nogami Streufert: Thank you. Anyone else like to speak?

Mr. Mike De Silva: Mike De Silva, for the record. Here we are in the third meeting about the same agenda, Yeah? So, you guys don't need to be reminded of the General Plan to consider a school here, which is a few miles outside of the proper zoning area is totally against the General Plan from what I understand. We, the surrounding neighbors, will not have any short or long-term benefit at all from this school. It is not compatible with the area, allowing this school to come in will cause unnecessary tension, which we all don't want. Nobody wants tension. We're all humans, yeah?

So from what I understand, it's the only way from the land use to be...could be changed is that it needs to be compatible with the area, which it isn't. Now put yourself, you guys, in our shoes, being here surrounded by family, born and raised in this quiet, peaceful land that was passed down from my great grandpa, and all of a sudden, here comes the school in the middle of us. How would you feel if you were one of the retired uncles or aunties which was once an oasis, now next to a school? Put the school next to your house and see how you would feel, you know? Let's be real, people. I can guarantee that you wouldn't be very happy.

After reviewing the last two meetings, I noticed that those in favor of the school are all members of the church and don't live in our neighborhood besides the Nakamura's who are also members and which is cool. I understand where they are coming from. Put the school next to your house...put the school next to their house, perhaps maybe the school should approach someone like grove farm, who has donated land in the past for purposes like this? As my wife said in the last hearing the Yoshida's intend to sell and leave the island obviously not caring what happens to our neighborhood, which is very, very sad. As the school/business, why would you keep pushing to come into our neighborhood, where nobody wants you?

The kids are innocent in this matter and if they knew how us neighbors felt about it, I'm sure they wouldn't want to come into a place where the school is not wanted, yeah? We as adults supposed to teach our kids right from wrong and I don't see this happening in this situation from the staff. We're also supposed to teach morals amongst many other things in their young minds and hat is not what I see happening right now. Now all of your panel are educated human that are in charge of planning and development of our island; right? We need to stick to the General Plan, because it was put together by educated individuals which I believe was a couple of you.

Mr. Hull: Three minutes Madame Chair.

Chair Nogami Streufert: You got two minutes, could you please summarize?

Mr. De Silva: A couple of you... anyway, bottom line you guys this is my neighborhood, I born and raised here. Putting a school here is just the wrong thing to do. It's not the moral thing to do. I understand that the school staff is awesome, I'm sure they... whatever... there's other places on the island for one school. Not in my neighborhood. You guys it's going to cause a lot of tension and this is speaking from my heart right now. I have kids I'm raising here... I'm going to die on this land. If the school comes in, it's going to change my home, if you guys can understand that? It's going to change my home forever. Like I said, there is no short-term or long-term benefit. We benefit zero from this. Thank you guys for your time and make the right decision, aloha.

Chair Nogami Streufert: Thank you. Anyone else like to speak?

Mr. Nainoa De Silva: Aloha Planning Commission.

Chair Nogami Streufert: State your name, please?

Mr. De Silva: My name is Nainoa De Silva. The Planning Commission influenced and played an important role in the creation of the General Plan. The committee needs to abide by the rules, regulations, and guidelines in which it states, that the commercial and Vice use along with any type of commercial entity is not permissible in the Kaphai Homestead area and only permitted to take place at the Kauai Athletic Club, which is located at the north part of Kawaihau Road. Because the master plan establishes such a clear conformation that Kapahi is indicated to be and I quote "a future village place-type" that should inform this bodies decision.

The reason I mention the General Plan is because this Commission was aware of these policies, and this public due process would not have accrued and the school could not have proceeded this far in the proposal. The master plan is being neglected, modified, and contradicted in order to achieve the schools satisfaction. Kapahi's deemed residential agriculture. The surrounding neighbors and community would like to keep that intention of Kapahi remaining as it currently is, the incompatible school is not wanted in our neighborhood. I'm the fourth generation to reside on one of the several lots purchased by my great, great grandfather in Francisco Silva, in the early 1920s and my family has inherited the land ever since.

Although, relatives unfortunately, no longer possess ownership of the property that is currently owned by Mr. and Mrs. Yoshida, which we are aware of, we do retain bordering lots. The adjacent neighbors to Matthew and Naomi agree, that by all means to participate and having the final voice in what we feel is appropriate, acceptable, and what the property use is for the number of large lots should be. Commercialization is not one of them, this will not improve our quality of life and have a negative impact our community. My great, great grandfather did not envision this land being used for commercial purposes and to this day my family has the same vision and do not see the need for that to change. To my knowledge, the school has been working on this proposal since 2018. We, the surrounding neighbors were not notified of this proposal until roughly two weeks prior to the first public hearing which was held on October 22, 2019.

For one year communication had not been received from any individual representing the school and the neighbors were completely unaware of this proposed development. What does that tell you, yeah? When the Director's Report came out, it said that they have been working on this since 2018 but they didn't come to use until a week-and-a-half to two-weeks. I think the solution to this controversial issue is to place the school in a community that support this proposal. We disagree with the planned school development. However, proponents claim to have to positive feedback about Kahili grade school. So situating the school next to their homes similar to how it's currently in our neighborhood would be an excellent idea. I think. I strongly urge the Commission to deny Matthew and Naomi's application for Use Permit, Special Permit, and Zoning Permit. Thank you.

Chair Nogami Streufert: Thank you. Anyone else?

Ms. Dawn Silva: Good morning. Dawn De Silva. Two weeks prior to our first meeting Kahili Adventist School since 2018 already put their plan in motion to move their school to Kapahi and only after the second meeting on December 10th that we received communication by way of letter that they cared to meet and discuss our concerns. After much thought and deliberation, we declined. We declined because by then there was no reason to meet. They had already created a plan, went through the motions and applied for permits that would possibly enable them to move forward, and there wasn't anything we could say that would change...anything they could say that would change our minds about the way we felt.

After two meetings and hearing opposition from neighbors and family members alike, who this school would negatively affect the most, actually baffles my mind, that we are here again asking and practically begging for the three applications submitted by the Yoshida and Kahili Adventist School to be denied. I find it hard to believe that the requested location which sits directly in between our family's properties in a homestead, agriculturally zoned area 4.2 miles from the main highway at almost the top of Kawaihau Road is the only place on Kauai they could find to relocate their school. The 500 plus page Kauai General Plan was established for a reason and I'm sure it took many hours, time, money, studies, collaborating efforts of various agencies and drafts to create. This plan in a sense should be the law of the land, saving you guys the headache and discussion of having to deny something that wasn't part of it, and also protect not just us, but everyone else who live here from growth in areas that are not compatible with the particular area.

I'm not sure if you've noticed, but not everyone here has ever asked or have ever said in any testimony how will this school located next door to me affect my property value? And there is a reason for that. It's because we aren't investors who recently moved here and bought our homes to later sell it for profit. My children are the fourth generation to live on this land, and we have every intention to pass it on to them and have them do the same. So we aren't here just because. We're here because we are trying to save our safe peaceful neighborhood from unnecessary and unwanted over development. As mentioned before we are not against education or the school, but against the school location. And with all due respect, it doesn't take a college degree or just common sense to see that this particular location is not the proper place. I'm fortunate to work for a company that manages 100's of condominium and homeowner associations here and throughout the State, and I recognize that our community and neighborhood is not an association

governed by rules and by-laws. But we are still a community that is governed by the General Plan.

Mr. Hull: Three minutes Chair.

Ms. Silva: So I just ask that you guys please make the right decision not just for us, but for everybody else that lives here. And just, you know, do what is right for the community and I appreciate it. Thank you.

Chair Nogami Streufert: Thank you. Anyone else?

Ms. Ruth Carvalho: Aloha my name is Ruth Carvalho and this is the third time I'm coming up here and I don't have a prepared speech other than I will just say everybody has a story, and no disrespect to the church or the children. I, myself, have ten grandchildren and a great. And I just need to speak from my heart. This land is so precious to us, where they want put the school we have family on both sides of the school. And this may not be big for everybody else, but to own land on Kaua'i, to be able to pass it down to our children, and their children, is so important to us. It's so special to us. That is why we come up here and just got this notice at the beginning of October, but it seems like it's been in the works for a long time. And that is like years...it goes back generations for our family, so from my heart, I am talking the the same.

Everybody has a story and so do we. Change is fine, but for people, it's for change when we talk about changes, it's to pass it down to our children, my husband's great grandfather he fought, he worked hard the land and gave us land to pass it down to our children and local people have very few pieces of land that they own. We bought our place, so we know what it's like to work hard and get a piece of property and it means so much to us. We are trying to help our siblings, you know the cost of Hawaii, and you know about the home issues here? That's what we are trying to do, no disrespect to the school. But I believe there is some other commercial properties that don't need a land use permit to build on. So please look around, and find someplace else. But we want to keep ours sacred for ourselves and for our families. Thank you.

Chair Nogami Streufert: Thank you. Anyone else that would like to speak?

Mr. Manual Mackey De Silva: Commissioners, for the record Manual Mackey De Silva. I'm opposed to the school and I will stand by my letter dated January 8, 2020, that Debbie Nakamura, of the Adventist School and I gave the Planning Department copies of that. This is just opposite of the General Plan from what we have read and I strongly urge you to make the right decision. No school. Thank you.

Chair Nogami Streufert: Thank you. Anyone else? If not, we'll close the public comments. And do we have the recommendation?

Mr. Hull: So the preliminary recommendation of the Planning Department was submitted back in September. It was a preliminary recommendation of approval for the project. Additional time has passed, in which a series of agencies' requirements are requested. One particularly being the Department of Engineering, and that was just met this morning from the comments we got. So

there is still an outstanding State Historic Preservation request that if the body wants to wait for it that was the impression of the Department to wait for it. At the same time, that's to address specific agencies comments. The Special Permit and there is two permits, essentially, being waived here the Class IV Zoning Permit is a procedural, but the two permits really being weighed here are the Special Permit, which is proposed essentially for an urban type of use on agricultural land. And the other one is the Use Permit which is concerning compatibility.

Whether or not the proposal is compatible with the surrounding area, surrounding residents? What the Department has found concerning, the Special Permit there is an agricultural component to this. That is why there was, and I would still say a recommendation that it meets that component of the agriculture threshold, that is necessary under the Special Permit process. As we've gone through the process concerning compatibility, and that's the issue that has been coming up again and again and again from the neighbors. The reason why any proposal such as the school in an area that is not explicitly designated for it has to get a Use permit and it's to ensure that it is again, compatible with the area. This body and the Department has been receipt of a multitude of testimony, some in support, and quite honestly a lot in opposition from the surrounding neighborhood, saying "it's just not compatible with our Residential Use and the structures we have there." We haven't...well, that is ultimately, what the Commission has to weigh. Whether or not this is compatible? I will say we haven't amended our report at this time, because we were looking at waiting for the State Historic Preservation just to ensure that we got all the agencies' comments in.

Whether or not they meet the threshold of compatibility is significant concern of the Department at this point. I think some of the testifiers...whether there was an attempt as it appears and we appreciate the applicant reaching out to every single property owner in the immediate area. But in initial meetings we have with applicants is to make sure the compatibility threshold is met you need to work with these property owners well in advance and have that dialogue occurring and what we heard from a lot of property owners last hearing was is no dialogue had occurred at all, and that was particularly, concerning to the Department. And so that was why Jody kind of conveyed to the applicant, you really need to engage in dialogue and what we're hearing from the applicant and what we are hearing from some neighbors is that, that ship has sailed and that an impasse has been reached essentially.

And we don't think there is going to be quite honestly from the Departments perspective any further compromise or negotiations between the two parties. And so that is particularly concerning for the Department as to whether or not they meet compatibility threshold. So, we don't have an official recommendation for you folks, because as I said, we're looking at getting all of the agencies comments in. So that's why you don't have an official recommendation from us at this point. If you folks want to wait for those agency comments and for us to come up with our final and official recommendation, that is your purview. Or if you folks have gathered enough information and testimony from the applicant, as well as the public and would like to move on this agenda today, that is also your purview. So I kind of will leave it up to you folks what direction you want to take on this?

Chair Nogami Streufert: So I guess...Commissioner Ho?

Mr. Ho: This is the discussion for the Commission now. I think it's gone on long enough. I think delaying it one more time will not serve any purpose, useful purpose for us. Again, compatibility, that's the cornerstone of the the Use permit. It has not met the test. We've have let the many uses go on Ag. Lots. We let a warehouse, we let a store, and we let a motorcycle repair shop. I mean, there has to be an end to some of the uses you can do on an Ag. Lot and I think right now a school will not fit in this community. This community is solid family, elderly, all intend to pass it on. I think right now it should not be in that neighborhood.

Mr. Mahoney: Chair, I concur with Commissioner Ho. I think the compatibility is not there right now. And it is strong family, and they have their rights, and they want to protect what they have. And I think that the school, you know, it's a noble quest that their after, but I don't see it as a compatible place to have it. I concur with with Commissioner Ho.

Chair Nogami Streufert: Any other comments or discussions?

Ms. Otsuka: I also concur with Commissioner Ho.

Chair Nogami Streufert: So do we have a motion?

Mr. Ho: The motion before us, I would make a motion that we deny the permits to Kahili Adventist School.

Ms. Otsuka: I second.

Chair Nogami Streufert: It's been moved and seconded that we deny the Use Permit, Special Permit, and Zoning Permit for the Matthew and Naomi Yoshida. Any further discussion?

Mr. Hull: Do you want a roll call Madame Chair?

Chair Nogami Streufert: For this one, because it's a contentious issue, roll call. Would you restate the—

Mr. Hull: The motion is to deny Class IV Zoning Permit Z-IV -2020-2, Use Permit U-2020-2, and Special Permit 2020-1 applicants Matthew and Naomi Yoshida. So in a vote in the "affirmative" that is a "yes" vote would be to deny the permit and a "no" vote would be to "not deny" the permit. So if you are in favor of the permit...in favor of the motion denying then you would give a yes vote. So roll call.

Mr. Hull: Commissioner Ho?

Mr. Ho: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner Streufert?

Chair Nogami Streufert: Aye.

Mr. Hull: Sorry, I apologize, I still have the old roll call. Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Mahoney?

Mr. Mahoney: Aye.

Mr. Hull: Chair Streufert?

Chair Nogami Streufert: Aye.

Mr. Hull: Motion passes, Chair. 5:0. Moving on to the next Agenda Item.

Mr. Mahoney: Can we take a break?

Mr. Hull: Will take a ten minute caption recess.

The Commission took a ten minute caption break at 10:45 a.m.

The Commission reconvened from caption break at 10:58 a.m.

Chair Nogami Streufert: Call the meeting back to order.

NEW BUSINESS

Class IV Zoning Permit Z-IV- 2020-7 and Use Permit U-2020-6 to allow construction of a two (2) farmworker housing units on a parcel located along the Makai side of Koolau Road in Moloaa, situated approx. ½-mile east of its intersection with Kuhio Highway and further identified as 6020 Koolau Road, Tax Map Key: (4) 4-9-009:012, CPR unit 71, and affecting an area approx. 5.225 acres of a large parcel= Joseph Schwartz. [Director's Report received by Commission Clerk 12/2319.]

4. Director's Report pertaining to this matter.

5. Supplement No. 1 to Director's Report pertaining to this matter.

6. Supplement No. 2 to Director's Report pertaining to this matter.

Director's Report pertaining to this matter.

Mr. Hull: Next Agenda Item is going to New Business. So returning back to Class IV Zoning Permit Z-IV- 2020-7 and Use Permit U-2020-6 to allow construction of a two (2) farmworker housing units on a parcel located along the Makai side of Koolau Road in Moloaa, further

identified Tax Map Key: (4) 4-9-009:012, the applicant is Joseph Schwartz. And the Deputy Director is the Planner on this so I will turn it over to Jodi.

Ms. Higuchi Sayegusa read the Summary, Project Description and Use, and Applicant's Reasons/Justification sections of the Director's Report for the record (on file with the Planning Department).

Deputy Planning Director Jodi Higuchi Sayegusa: Hello again, Commissioners and Madame Chair. Just I'll...if it's okay with you, Madame Chair, I will summarize portions of the Director's Report just a brief the Commission. The applicant is proposing to construct two farmworker housing structures on the parcel. Both structures would be purported for housing in connection with the farm operation on the property. This CPR unit is about 5.22 acres of a much larger CPR parcel, and also a part of Moloa'a Hui 1. The surrounding properties are agricultural in nature, with related uses. For instance, neighboring CPR units within Moloa'a Hui 1, engage in agriculture activities including ginger and turmeric farming, and a ten acre composting facility, and to the west is a 28-acre organic far, and also to the east is a 5-acre longan farm. Turning to the evaluation of the application under the respective County and State laws. Under Hawaii Revised Statutes 205-4.5(a) 4, employee housing is an outright permitted use in the State land use Agriculture District and the definition does prescribe there does include farm dwellings, as a permitted use.

Several visions and goals detailed in the General Plan directly support a proposal for farmworker housing structures, and a detailed analysis is provided in the Directors Report. Kaua'i County Code 8-8.6 prescribes additional specific requirements for farmworker housing structures. The applicant hasn't met all the requirements for one farmworker housing structure. The application does request two, but the commercial farming must generate a minimum of of \$35,000 of gross sales per agriculture structure under 8-8.6. The applicant has submitted three year's evidence by way of tax forms, State and IRS tax forms, the schedule F, that reflect that they've met the \$35,000 grossed sales threshold. However, it would need \$70,000 of gross sales for two structures. The applicant has dedicated the CPR limited common elements to the Agricultural Use pursuant to Kauai County Code 5a-9.1. The applicant CPR limited common element has provided a Commercial Farm Plan that demonstrates feasibility of the farm and the agricultural production pursuant to KCC 8-8.6(c).

The applicant CPR units is part of a subject CPR that received an effective date for the final public report, and the limited common element received an Ag. Dedication. Again, as I mentioned, pursuant to KCC 8.8-.6(d) the proposed construction and use of the structure for the farmworker housing compatible and to neighboring uses. And the housing will house workers of the farm and is compatible and not detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing and working in the surrounding area. And also the farmworker housing structure will not cause any substantial harmful environmental consequences. So based upon the type of agricultural activities, size of of commercial farm, and farming methodologies, the applicant has demonstrated a compelling need for one farmworker housing structure. And the Department does note that the subject CPR unit and limited common element does not have any other permissible density. So that concludes the evaluation under the State County laws.

Chair Nogami Streufert: Are there questions for the Planner? So if I understand you correctly, this land is now eligible for one farm dwelling, but not two?

Ms. Higuchi Sayegusa: That's correct.

Chair Nogami Streufert: Because what they proposed was or application was for two, as opposed to one.

Ms. Higuchi Sayegusa: Correct. Based on the again, the gross sales. You would need a minimum of \$70,000 grossed sales from the agriculture product for two consecutive years prior to the application being submitted.

Chair Nogami Streufert: Okay. Thank you for the clarification. Any other questions for the Planner? Is the applicant here? Is there anyone else who wants to speak on this? Seeing none, Chair entertains a motion. Oh, can we get the recommendation?

Ms. Higuchi Sayegusa: Just to note that, I was in contact with the applicant. I'm not certain why he is not here today. And I did communicate with him that the Department was recommending approval for one farmworker structure, and he understood. However, I'm not sure if ...I could certainly read my recommendation.

Mr. Hall: Well, I think the Department stands by the recommendation of approval and Conditions of approval as noted. Which the Planner also amended to reflect one farmworker housing unit and not two. So we stand by that, unless you would like Jodi to recite each Condition of approval.

Chair Nogami Streufert: The Chair entertains a motion.

Mr. Mahoney: Chair, I move to approve Class IV Zoning Permit Z-IV-2020-7 and use Permit U-2020-6 with the amendment stated.

Ms. Apisa: To allow one farm housing?

Mr. Mahoney: Yes, that's the amendment.

Chair Nogami Streufert: To allow one farm housing unit.

Ms. Higuchi Sayegusa: Sorry, just to further clarify, I think the amended recommendation and any relevant Conditions of approval as contained in supplemental 2.

Mr. Mahoney: So to include...inclusive of what the Deputy Director said, the supplemental to the motion. Is that acceptable? Should I start from scratch?

Mr. Courson: The proper procedure is that the way the Chair restates the motion is the final read on it. If you like, Chair, you can restate the motion or you can ask for it to be restated by the mover.

Chair Nogami Streufert: Rather than doing that, if we could have the amended preliminary recommendation and only the ones that have been changed.

Ms. Higuchi Sayegusa: Okay. So on page 2, of the supplemental Director's Report No. 2. One, it states one farmworker housing structure shall be permitted for construction and the farmworker housing structure shall be constructed and operated as represented. Any additional farmworker housing structure or changes to the operation and/or the respected structure shall be reviewed by the Department to determine whether the Planning Commission review and approval is required. Two, prior to our submitting an application for a building permit the applicant shall submit a revised preliminary drawing for their proposed farmworker housing structure to the Department to ensure compliance with Kaua'i County Code Section 8-8.6, the preliminary drawings should reflect the following site plan, floor plan, exterior elevation, and typical cross-sections. 3, the commercial farm at the subject site shall maintain gross annual sales of agricultural products of at least \$35,000 for each farmworker housing structure. Failure to comply may result in forfeiture of subject permits for the farmworker housing structure. And there are other recommendations for Conditions of approval from No. 4 through 22 as stated in the supplemental No. 2.

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

Ms. Apisa: I would just like to clarify that, that \$35,000 per structure minimum income is per year.

Ms. Higuchi Sayegusa: Per year. Yes.

Ms. Apisa: Thank you.

Chair Nogami Streufert: Any other questions? Chair entertains a motion.

Mr. Mahoney: I move to approve Use Permit U-2020-6 and Class IV Zoning Permit Z-IV-2020-7 to be approved with amended Conditions as just stated.

Chair Nogami Streufert: Is there a second?

Mr. Ho: Second.

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

Special Management Area Use Permit SMA (U)-2020-5 to construct a single family residence and associated amenities on a parcel situated along the southern side and near the terminus of Hanalei Plantation Road in Princeville, immediately adjacent to

property identified as 5211 Hanalei Plantation Road, involving Tax Map Key: (4) 5-4-004:009, Unit 1, and affecting an area approx. 0.20 acre of a larger parcel. =22 Degrees Designs LLC.

3. Director's Report pertaining to this matter.
4. Supplement No. 1 to Director's Report pertaining to this matter.

Mr. Hull: Next Agenda Item is G. 2b. Special Management Area Use Permit SMA (U)-2020-5 to construct a single family residence and associated amenities on a parcel situated along the southern side and near the terminus of Hanalei Plantation Road in Princeville, further identified as Tax Map Key: (4) 5-4-004:009, The applicant is 22 Degrees Design, LLC. Romio is our Planner and I will turn it over to Romio.

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

Staff Planner Romio Indica: Aloha, Madame Chair and fellow Commissioners. This is my summary of the Director's Report. Consideration of Special Management Area Use Permit to allow construction of a single family residents Permit application No. SMA (U)-2020-5 applicant is 22 Degrees Designs LLC. I will hold off on my recommendations with any questions for the applicant or myself.

Chair Nogami Streufert: Any questions for the Planner? Earlier, there was something about you are awaiting a letter from SHPD.

Mr. Indica: Yes, we are still awaiting a letter from SHPD, yes that is correct.

Mr. Ian Jung: Good morning, Madame Chair, members of the Commission. Ian Jung on behalf of the applicant, 22 Degrees Designs, LLC., Just to address the preliminary questions on SHPD, we did submit the H.R. S. 60 form and got a response on December 31st which I can give to the Planner. That there's no Historic Properties affected. So with regard to...with this particular property, it's up on Hanalei Plantation Road, over sets the ridge. So out of the 12 SMA considerations, the three we wanted to focus on obviously were historic issues, the view plain mitigation impacts, and then also the citing of the structure due the the topography. With regard to the historic component, we had an archeological consultant go out and take a surface reconnaissance of the property and we identified that there is no surface impacts.

So we had a report generated and sent over to SHPD and got the responsive letter, and I apologize for not getting it over to the Planner, but we got it from SHPD last week. So that's been resolved. With regard to the view plain consideration, I do have, I know it's nearing the lunch hour, but if you take a look at exhibits "E" and "E 2". What I recommended to the architect in this particular project, is that we take a look at the adjacent project, which is the Hanalei Garden Farms. It's an R-2 SMA Permit that came down in 1998 and we followed what often it's referred to as NZO or the Need to Zoning Ordinance. So we followed the color palette that they wanted to make sure that from a design guideline standpoint, that was set in that

project, this project would follow the same mold that was contemplated by the Planning Commission when they approved that project. So we went with earth tone palettes. It is of a modern architectural styles, it doesn't have the pitch roof. But as you can see from the color board and the materials, samples, we did take a colored dark grey roof material. So it would blend into the landscape with the existing structures that are on the bluff there.

And then lastly, with regard to the slope issue. We had a geotechnical analysis done of the property. It drops off quite significantly and why you have as the planner indicated, the main floor with a subfloor are sort of as a basement room and then the second-floor above the main floor. What we did, as recommendation in the report, is create two bench slab areas and have 12" concrete slabs to stabilize that slope area. So we can have the structure be built right into the hillside there. So other than that, I think it's relatively straightforward. This is the only SMA Permit. The Zoning is open with State land use Urban in this area. So if you folks have any questions you can certainly address it. The reason why we are going for an SMA on this, this is the third residents on a 5 unit CPR. So after the first exempt, it's under 7500 square foot, we bump to SMA Permits for all remaining residence on that lot of record.

Chair Nogami Streufert: Any questions for the applicant? Is there anyone else who would like to speak on this? I did have a question on this. There's a consideration of what would happen to run-off during the construction? And that would be put on the side, but there is obviously a concern about run-off. In the future after the construction is completed, what are the plans to deal with run-off? We've seen what kinds of rains can come down in Hanalei and it sits right above all this land and it goes directly into the Hanalei River. What kinds of mitigations are you doing for that to ensure that nothing like that happens?

Mr. Jung: Yes. So typically, a grading permit is not required if your re under footprint of the actual structure, but in this case we are a grading permit and we can circulate that to the Planning Department. But there will be best management practices during the course of the grading work, because we do have to create those two benches to stabilize that slope. But then post approval, the property goes down about 73 acres of land before it gets the river. So if there's run-off, it will be contained on that lot 4. And it's pretty well vegetated, the hillside. So you kind of have these natural buffers that accept the water as it runs off. But the footprint is actually small. The total print of the hardscaping, which we call land coverage is 3128 square feet. And because the roofs flat obviously the water would be contained and down-spouted away from the structure itself. But from a standpoint of a lot of run-off, it's probably really minimal, because the house footprint is so small. Because the unit it's on is a relatively small unit compared to the other units. It's only .99 acres.

Chair Nogami Streufert: So after the construction there will be re-planting of the area that were cleared off?

Mr. Jung: Yes. So if you looked at exhibit E.1, there's a landscape plan that shows the two coconut trees to help mitigate façade and vegetated with ground cover, so it's not exposed earth.

Chair Nogami Streufert: Any questions?

Mr. Ho: Romio, how do you determine the height of this building? Do you take it from the level of the land?

Mr. Indica: We take it from the finished grade.

Mr. Ho: Finish grade?

Mr. Indica: That is correct.

Mr. Ho: On the lowest part of the structure?

Mr. Indica: When a property is sloped like that, we usually take an average ground level, meaning we take the plate height dimensions from the finished grade to at least maybe 3 or 4 points of the buildings wall and we come up with an average.

Mr. Ho: Well, just a question does this building meet code height?

Mr. Indica: Well, right now as one of the Conditions as it states, we're asking the applicant to submit an off-site plan or elevation showing the height of the, I believe the west side elevations. West side property line to ensure that it does have the minimum site setback.

Mr. Ho: Height setback.

Mr. Indica: Yes. Height setback.

Mr. Ho: Thank you.

Chair Nogami Streufert: Any other questions?

Ms. Apisa: Question. I guess the flat roof is to keep within the height limits?

Mr. Jung: Yes. If you take a look at sheet 11 of E.1, it does show that the structure is below the 25' north shore development plan requirement for the height. With regards to the side yard setback in that the Planner noted, we inset the second floor. So it's off the plate height. So it can be offset versus straight up as a wall plate for the massing on that side.

Ms. Apisa: I don't think it pertains our body, but just have to comment on the flat roof if that's practical on the north shore of Kaua'i.

Mr. Jung: I try not give my perspective on architectural styles in kind, because I have my own preferences, but it is of a modern design flat roof. Hence, the water being contained.

Chair Nogami Streufert: Any other questions from the Commissioners? Anyone else wish to speak from the audience? Okay, Romio.

Mr. Indica: Preliminary recommendation based on the foregoing conclusion it's recommended that the Special Management Area Use Permit SMA (U)-2020-5 be approved subject to the following Conditions outlined in the Director's Report.

Chair Nogami Streufert: Rather than going through, do the Commissioners want hear all the Conditions? Is the applicant in agreement with all of the Conditions?

Mr. Jung: Yes, the applicants reviewed the Conditions and accepted.

Chair Nogami Streufert: I'll entertain a motion.

Mr. Mahoney: I move to approve SMA (U)-2020-5 to construct a single family residence Tax Map Key: (4)-5-4-004:009 22, Degrees Design, LLC.

Chair Nogami Streufert: Is there a second?

Ms. Apisa: Second.

Chair Nogami Streufert: It's been moved and seconded. Any discussion before we go to the vote? All those in favor, signify by saying, aye. Aye. (Unanimous voice vote). Opposed? (None). Motion carried. 5:0.

Mr. Ho: Mr. Jung, before you escape, what is associated amenities?

Mr. Jung: The amenity is the container pool and the outdoor shower. So it's within the deck itself. Thank you, Commissioners.

Chair Nogami Streufert: Thank you.

Special Management Area Use Permit SMA-(U)-2020-6 to allow reconstruction of a Maintenance/Recreational Building containing multi-purpose rooms, office, storage, and laundry facilities, and Class IV Zoning Permit Z-IV-2020-8 and Use Permit U-2020-7 to allow a height deviation from the North Shore Planning Area, on a parcel situated on the makai side of Kuhio Highway in Wainiha, approx. 300 ft. east of the Kuhio Highway/Oneone Road intersection, further identified as 5-7130 Kuhio Highway, Tax Map Key: (4) 5-8-011:027, and containing a total area of 3.689 acres = Hanalei Colony Resort AOA. [Director's Report and Supplement No. 1 to Director's Report received by Commission Clerk 12/23/19.]

1. Director's Report pertaining to this matter.
2. Supplement No. 1 to Director's Report.
3. Supplement No. 2 to Director's Report.

Mr. Hull: Moving on to the next Agenda Item is G. 2c., Special Management Area Use Permit SMA-(U)-2020-6 to allow reconstruction of a Maintenance/Recreational Building containing multi-purpose rooms, office, storage, and laundry facilities, and Class IV Zoning Permit Z-IV-

2020-8 and Use Permit U-2020-7 to allow a height deviation from the North Shore Planning Area, on a parcel identified as Tax Map Key: (4) 5-8-011:027. The applicant is Hanalei Colony Resort AOA. And our Planner is Romio again, so I will turn it over to Romio.

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

Staff Planner Romio Indica: Aloha, Madame Chair and fellow Commissioners. The summary for the Director's Report is consideration of Class IV Zoning Permit and Special Management Are Use Permit to allow the construction of a new back of house recreational building. So I will hold off with my recommendations, if you have any questions for myself or the applicant?

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

Ms. Apisa: I was just curious about the elevator. But that would be more for the applicant.

Ms. Otsuka: I have a question. If we were to allow this height deviation, does that open a can of worms for future development? They can go back to this and say you approved Hanalei Colony, so why can't you approve us? Is that something we have to consider?

Mr. Hull: Commissioner, no. In all these cases they are all case-by-case scenario. Some appeals that essentially end up before a judge that would set case law. Indeed, those things can set a precedence. When they are just asking for the Department's analysis and ultimately this body's review it's a case-by-case analysis as to whether or not, and again, the litmus test for permit is compatibility. Is it compatible with the surrounding area? And the primary issue of compatibility with a use permit for height deviation is it can have a visual impact that needs to be mitigated or could be problematic.

In the Department's analysis we're finding no, it's negligible and nominal at best. So we are recommending that it can be accommodated, but ultimately you folks as your individual Commissioner roles need to come to that assessment whether it is nominal and does mitigate the visual impact or any impact that might come with it or it's appropriate or not? The various...I won't say unique, but it's different from Variances for height deviations that are pretty standard. So there's height restrictions on various zoning districts like commercial district is 50'. The residential district is 35' or 20' depending on the type of structure you're proposing. But they have all kinds of height limits and Kaua'i takes height limits very sacredly. There's a particular unique attribute of Kaua'i that we maintain. In the Variance permit process, when applicants come before this body to go beyond that height limitation a variance threshold, you have to demonstrate as an applicant how your property geographically situated, deprives you from the same utility or rights that a neighboring property enjoys. That is the threshold for Variance and it's very hard to meet.

And in many cases, you know, when we get applications they don't meet our analysis. To be clear, this isn't a Variance permit. The North Shore Development Plan sets a height limit of 25' but the North Shore Development Plan is very clear you don't have to apply for a Variance to get

the deviation I.E., you don't have to meet that threshold of showing how your property uniquely deprives you of the rights of the other property owners. North Shore Development Plans says, you need to get a use permit to get that deviation beyond that 25'. So that's the compatibility factor when that comes in. So it's just a litmus test. Where you as a Commissioner, and ultimately as a body, whether or not you find that 4' deviation is compatible or not with the proposal? I hope I didn't drone on, but I wanted to make that distinction.

Ms. Otsuka: Thank you.

Chair Nogami Streufert: So is that 4' over the 25'?

Ms. Otsuka: No. It's 4' over 39'?

Mr. Hull: Okay so hold on, we are getting even more convoluted. So the 25' is accommodated for the North Shore Development Plan. That's the height. But you're allowed to have and to meet the flood the requirements where you are allowed to alleviate your structure. You are allowed to have that 25' above what the flood requirements are. So if you have to alleviate your structure by 10' to meet the flood requirements, than your threshold becomes 39' and so on and so forth. So that's...I don't want to get convoluted anymore, but that is what that comes into. If they are looking at going beyond the 50' of the zoning itself, then a Variance would get triggered. But then again, they are not quite going there yet.

Ms. Otsuka: Thank you.

Mr. Mahoney: This is for an elevator, correct?

Mr. Hull: The use permit for the deviation. But overall they also need an SMA Permit for the proposal.

Chair Nogami Streufert: Is the applicant here?

Mr. Melvin Nakaoka: Hi, Madame Chair and members—

Chair Nogami Streufert: Please state your name.

Mr. Nakaoka: My name is Melvin Nakaoka and this is.

Mr. Ramir Belmez: Ramer Belmez.

Mr. Nakaoka: We are with the design team, and we also have members of the design team here as well as the cultural advisor, as well as represented from Hanalei Colony Resort.

Chair Nogami Streufert: Before we get started and I don't want to interrupt you. We need to have a caption change here or film change. If we could just take another ten-minute break to do that and then you could have your time.

The Commission took a ten minute caption break at 11:35 a.m.
The Commission reconvened from caption break at 10:40 a.m.

Chair Nogami Streufert: Call the meeting back to order. Could you restate your name, please?

Mr. Nakaoka: My name is Melvin Nakaoka.

Mr. Ramir Belmez: Ramer Belmez.

Chair Nogami Streufert: Would you like to present anything or say anything?

Mr. Nakaoka: Well, if there are any questions first, we'd be happy to answer questions first.

Chair Nogami Streufert: You put up two...diagram and a photo there. Would you like to explain that a little bit?

Mr. Nakaoka: Sure. Is it okay if I go up?

Chair Nogami Streufert: Yes.

Mr. Hull: Hold one second sir, Romio is going to give you his mic to get this recorded.

Mr. Nakaoka: Thank you. So for the most part, the 4' that we're asking for is within this elevator enclosure here. Right now the elevator is roughly 2' above the height limit, that's with a flat roof. We thought that having a flat roof in this area is not a good thing. So we put a pitched roof on it, which made it a little higher by about 2'. The other portion of the roof that Romio had mentioned, which is about 1'3" higher than the envelope is this portion here. So it's this portion here and there's a little portion on this side that is encroaching on that height setback.

Ms. Apisa: And the purpose of the elevator is?

Mr. Nakaoka: It's for ADA purposes to get the hotel users up to that level. So it comes from the ground level up to this back of house area, where we have laundry areas and we have guest laundry also up there. So we need to provide an elevator up there for those users.

Chair Nogami Streufert: For ADA purposes. Do you have an elevator in each one of your buildings?

Mr. Nakaoka: No, because this building is new, we're required to provide access for ADA. All the other buildings are grandfathered right now.

Ms. Apisa: Another question. Noise factor of the elevator, I mean, it's new and modern, is it quiet? Because there are homes nearby.

Mr. Nakaoka: Yes, it's very quiet, the machine room less elevator is very quiet. First, it's hydraulic, it's a little noisier, but more modern ones are just as quiet as well. We picked the

machine room less because of the quiet and as well as for environmental purposes. With hydraulic, you have hydraulic fuel, so if there is some inundation coming, you might have oil mixed in with the water that comes in and inundates the property.

Ms. Apisa: So this elevator is what type?

Mr. Nakaoka: Its machine room less. So it's geared, all the gears are at the top, which is why it has to be a little bit taller.

Chair Nogami Streufert: Commissioner Ho.

Mr. Ho: Was this...was the original building burnt down?

Mr. Nakaoka: Correct.

Mr. Ho: And do you have to retain any of the original footprint?

Mr. Nakaoka: We are pretty much utilizing the original footprint. It's just that because of the FEMA requirements, we're required to raise it up 25' in the air. So it is basically embodying the same footprint. It's just that we have to have stairs and an elevator to get up there now.

Mr. Ho: So access to the elevator, there is no stair or curb to hinder you access to the elevator?

Mr. Nakaoka: No.

Mr. Ho: It's direct right into it?

Mr. Nakaoka: Yes, they go right into it.

Ms. Apisa: FEMA regulations is 25' above sea-level.

Mr. Nakaoka: For us its 24' and we placed it at 1 foot higher below. So right now, this line here represents our FEMA base flood elevation and then we're required to go 1 foot above that and then have our structure, beam support. So because of the large spans here, our beams are quite large, which also influences the height of the building.

Chair Nogami Streufert: Commissioner Ho.

Mr. Ho: So now that you rebuilt it on a burned-out structure, so you have a fire safety things in there now?

Mr. Nakaoka: As far as, we'll have the smoke detection systems in there.

Mr. Ho: Sprinkler system?

Mr. Nakaoka: Not right now, no. Because of cost.

Mr. Ho: I thought it was a part of the fire code?

Mr. Nakaoka: For this building it's not required because of the size. The footprint is not very big. It's about 2300 sq. ft. Yes, it's small. It's basically, what originally was there.

Ms. Apisa: Speaking of fire, I recall there was a barbeque area before, there's no barbeque area now?

Mr. Nakaoka: The barbeque areas? No, there is no barbeque area.

Mr. Ho: One question. If you build a two-story like that, can you utilize the bottom space for anything, any living space? Can it be utilized for that, the bottom space?

Mr. Nakaoka: No. For FEMA regulations we're not allowed to have any living areas below the base flood elevation. It's only storage and for utilizing the rest of the space for amenity space.

Chair Nogami Streufert: But the other buildings have been grandfathered?

Mr. Nakaoka: Correct.

Chair Nogami Streufert: Any other questions?

Mr. Mahoney: So just to reiterate, the extra height is needed for that elevator for ADA purposes?

Mr. Nakaoka: Correct.

Mr. Mahoney: Thank you.

Chair Nogami Streufert: Anyone else wants to speak? Any other questions from the Commissioners? Thank you. I'll entertain a motion.

Mr. Mahoney: Your recommendation?

Chair Nogami Streufert: Sorry, would you like to give us your recommendations.

Mr. Indica: Sure, Madame Chair. Based on the foregoing evaluation and conclusion, it is hereby recommended that Class IV Zoning Permit Z-IV 2020-8, Use Permit U-2020-7, and Special Management Permit Area Use Permit SMA U-2020-6 be approved with the Conditions that are outlined in the Director's Report.

Chair Nogami Streufert: There are thirteen (13) Conditions. Does the applicant agree with the thirteen Conditions?

Mr. Nakaoka: Yes, we are.

Mr. Mahoney: Chair, I move to approve SMA U-2020-6, Class IV Zoning Permit Z-IV-2020-8, and Use Permit U-2020-7 with the existing Conditions.

Mr. Ho: Second.

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

Mr. Nakaoka: Thank you very much.

ANNOUNCEMENTS

Topics for Future Meetings

The following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter at the Līhu'e Civic Center, Moikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Līhu'e, Kaua'i, Hawai'i 96766 on Tuesday, February 11, 2020.

Mr. Hull: Next and the last Agenda Item before you folks go into Executive Session is Announcement for Topics for Future Meetings. So you folks have a receipt of a list of upcoming meetings. The first four or five are concerning ones that were reviewed today, the Kahili Adventist, farmworker housing, and so on and so forth. The vast majority of the agenda items we are looking at in the coming future are going to be concerning the West Kauai's Community Plan update. There is a plan itself, as well as attached to the plan a series of Zoning Amendments and General Plan Amendments. We will be giving the presentation and submitting the plan to you folks next coming February 11th Planning Commission Meeting, but the Zoning Amendments will not be a part of that.

The Zoning Amendments will be at the subsequent meeting the second meeting in February, which we anticipate a robust amount of community and property owner participation. But to kind of prep and get ready with the introductory overview. We will also be scheduling two by two meetings with you folks individually if you like for us to actually sit down and go over with you guys individually before the meeting about the West Kauai's Community Plan and what is in that draft. Other than that, we have a series of other Zoning Amendments concerning the commercial district as well as the residential district in which we are tweaking a few of the current ordinances to allow for a little more mix housing opportunities. If you guys have any questions on those upcoming meeting topics, and as you folks, as individuals

Commission members just as a reminder, if you want to look at getting something specifically on the Agenda, the Department works with the Chair to establish the Agenda if there's issues or concerns or topics that you would like to either contact Chair or contact the Department and we can arrange that as well. So with that, I will turn it over to Nick.

EXECUTIVE SESSION

Pursuant to Hawai'i Revised Statutes 92-4 and 92-5(a) (4), the purpose of this executive session to consult with County's legal counsel on questions, issues, and procedural matters. This consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Commission and the County as they relate to Civil No. 18-1-0192 (JKW), Class IV Zoning Permit Z-IV-2007-1, Use Permit U-2007-1, Special Permit SP-2007-1 for property located at Tax Map Key (4) 2-8-002; por. 005: *Kauai Springs, Inc.*

Mr. Courson: So we had moved Item I, Executive Session to the end of the Agenda. Pursuit to Hawaii Revised Statues Section 92-4 and 92-5(a) (4), the purpose of this executive session to consult with County's legal counsel on questions, issues, status, and procedural matters. This consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Commission and the County as they relate to Civil No 18-1-0192 (JKW), Class IV Zoning Permit Z-IV-2007-1, Use Permit U-2007-1, Special Permit SP-2007-1 for property located at Tax Map Key (4) 2-8-002; por. 005: Kauai Springs, Inc. So it would be appropriate to have a motion to enter into executive session.

Mr. Mahoney: Chair, I move to go into Executive Session and shortly thereafter adjourn.

Mr. Ho: Second.

Chair Nogami Streufert: All in favor, signify by saying, aye. Aye. (Unanimous voice vote). Opposed? (None). Motion carried. 5:0. Thank you.

Chair Nogami Streufert: We are in executive session.

The Commission went into Executive Session at 12:04 p.m.

ADJOURNMENT

Chair Nogami Streufert adjourned the meeting 12:21 p.m.

Respectfully submitted by:



Arleen Kuwamura,
Commission Support Clerk

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

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