

KAUA'I PLANNING COMMISSION
REGULAR MEETING
January 9, 2018

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair pro tem Keawe at 9:04 a.m., at the Lihue Civic Center, Mo'ikeha Building, in meeting room 2A-2B. The following Commissioners were present:

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

Absent and Excused:
Ms. Kanoë Ahuna
Mr. Wade Lord

The following staff members were present: Planning Department – Director Michael Dahilig, Deputy Director Ka'āina Hull, Chance Bukoski, Dale Cua, Leslie Takasaki; Office of the County Attorney – Deputy County Attorney Jodi Higuchi Sayegusa; Office of Boards and Commissions – Commission Support Clerk Darcie Agaran

Prior to the start of the meeting, Council Administrative Assistant Eddie Topenio gave the Oath of Office to reappointed Commission Members Roy Ho and Kimo Keawe.

Discussion of the meeting, in effect, ensued:

CALL TO ORDER BY CHAIR PRO TEM

Chair pro tem Keawe called the meeting to order at 9:04 a.m.

ROLL CALL

Chair pro tem Keawe: Roll call, please.

Planning Director Michael Dahilig: Commissioner Apisa.

Ms. Apisa: Here.

Mr. Dahilig: Commissioner Ho.

Mr. Ho: Here.

Mr. Dahilig: Commissioner Lord. Commissioner Streufert.

Ms. Nogami Streufert: Here.

Mr. Dahilig: Commissioner Mahoney.

Mr. Mahoney: Here.

Mr. Dahilig: Commissioner Ahuna. Commissioner Keawe.

Chair pro tem Keawe: Here.

Mr. Dahilig: Mr. Chair pro tem, we have five (5) members present this morning.

Chair pro tem Keawe: Thank you.

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

Chair pro tem Keawe: Our first item of business on the agenda is the election of officers. At this time, nominations are now in order for the position of Planning Commission Chair. Nominations need not be seconded. Are there any nominations?

Mr. Mahoney: Chair, I would like to nominate Donna Apisa for Chair.

Chair pro tem Keawe: Are there any further nominations? If not, may I have a motion to close the nominations?

Mr. Ho: Move to close.

Mr. Mahoney: Second.

Chair pro tem Keawe: It has been moved and seconded to close the nominations. All those in favor? (Unanimous voice vote) Motion carries 5:0.

At this point, we have Donna Apisa as the candidate for Chair. All those in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 5:0. Congratulations Donna.

Chair Apisa: Thank you. Nominations are now in order for the position of the Planning Commission Vice Chair. Nominations need not be seconded. Are there any nominations?

Mr. Mahoney: Chair, I would like to nominate Glenda Nogami Streufert for Vice Chair.

Mr. Keawe: I second the motion.

Chair Apisa: A motion has been made and seconded to appoint (Commissioner) Streufert as our Vice Chair. All in favor? (Unanimous voice vote) Any opposed? (None) Abstentions? (None) Motion carried 5:0. Congratulations.

Now we will go to the Subdivision Committee appointment. I would like to appoint Commissioner Ho as our Sub-committee Chairperson, Commissioner Lord as the Vice Chair, and Commissioner Mahoney as the committee member. Commissioner Keawe would be appointed as the temporary, alternate member in order to achieve a quorum and to take action in cases where members are absent. May I have a motion to approve?

Ms. Nogami Streufert: I move to approve.

Chair Apisa: A second?

Mr. Mahoney: I will second the motion.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Abstentions? (None) Motion carried 5:0. Congratulations to our Sub-committee. Thank you.

Mr. Dahilig: Thank you, Madame Chair, and again, thank you to you and Commissioner Streufert for serving as our leadership this year. I would like to thank, on behalf of the Department, Commissioner Keawe and Commissioner Ho for serving as Chair and Vice Chair last year.

APPROVAL OF AGENDA

Mr. Dahilig: With that, Madame Chair, we seek approval of the agenda. The Department would recommend taking the agenda in order this morning.

Mr. Keawe: I move to approve the agenda as listed.

Mr. Mahoney: Second.

Chair Apisa: The motion has been made and seconded to approve the agenda. All in favor? (Unanimous voice vote) Any opposed? (None) Abstentions? (None) Motion carried 5:0.

Mr. Dahilig: Thank you, Madame Chair.

MINUTES of the meeting(s) of the Planning Commission

Regular Meeting of November 14, 2017
Contested Case Calendar of November 14, 2017

Mr. Dahilig: We are now on Item E. These are the minutes of the Planning Commission for both November 14, 2017 and the Contested Case Calendar of November 14, 2017.

Chair Apisa: Do we have a motion to approve the Regular Meeting of November 14, 2017?

Ms. Nogami Streufert: I would like to make one (1) correction on that because names are really important. Mr. Kamuela Cobb-Adams' name is misspelt in there. It is "Kamu", so if we could have that corrected.

Chair Apisa: A motion to approve the minutes as corrected?

Ms. Nogami Streufert: I move to accept the minutes as corrected.

Mr. Mahoney: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Abstentions? (None) Motion carried 5:0; meeting of November 14, 2017 minutes are approved.

We need a motion to approve the Contested Case Calendar of November 14, 2017.

Mr. Mahoney: Chair, move to approve Contested Case Calendar of November 14, 2017.

Chair Apisa: Do we have a second?

Ms. Nogami Streufert: Second.

Chair Apisa: All in favor?

Mr. Keawe: Can we have a discussion about the minutes first?

Chair Apisa: Discussion, yes please.

Mr. Keawe: We had received a letter from the Intervenor basically saying that she would like changes to the minutes of the Contested Case. I think the majority of those are grammatical; however, I want to make sure that the changes don't change the issue by changing a word. So I would just like, maybe, a quick opinion from our attorney to make sure that there is nothing within those changes that would change the essence of that particular issue.

Deputy County Attorney Jodi Higuchi Sayegusa: Right. Perhaps a suggestion would be to, maybe, handle the proposed amendments during the Contested Case portion of the day and that way we can seek the opinions of the parties. Just for clarity sake, yes, our rules just require not verbatim transcripts, and also in Chapter 91, transcripts aren't necessary unless requested or unless there is a court...subject to court review or court order. But in any case, I suggest we visit that issue--

Mr. Keawe: So we would defer this to the Contested Case?

Ms. Higuchi Sayegusa: Yes.

Mr. Ho: Which Contested Case are you talking about, Kimo?

Mr. Keawe: The bike path.

Mr. Ho: Okay.

Mr. Keawe: Do we need a motion, Mike, to defer? I will make a motion to defer the minutes of the Contested Case Hearing [sic] of November 14th to the Contested Case Calendar later today.

Ms. Nogami Streufert: Second.

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

Mr. Dahilig: Thank you, Madame Chair.

RECEIPT OF ITEMS FOR THE RECORD

Mr. Dahilig: We do have Item F. This is Receipt of Items for the Record. There are no supplemental items for the record to add to any of the Director's Reports this morning.

HEARINGS AND PUBLIC COMMENT

Continued Agency Hearing

Mr. Dahilig: Item G. This is Hearings and Public Comment. Continued Agency Hearing – we have none this morning.

New Agency Hearing

Mr. Dahilig: Or any New Agency Hearing – we have none.

Continued Public Hearing

Zoning Amendment ZA-2018-2: A bill for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, introducing legislation that addresses "Additional Rental Units." The proposal amends Section 8-1.5 of the KCC by adding the definition of "Additional Rental Unit" and Chapter 8 of the KCC by adding a new article, entitled "Additional Rental Units" = *Kaua'i County Council*. [Director's Report received and hearing cont'd 11/14/17.]

Mr. Dahilig: We do have a Continued Public Hearing. This is Item G.3. at the top of page 2. Zoning Amendment ZA-2018-2. This is a bill for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, introducing legislation that addresses "Additional Rental Units." The proposal amends Section 8-1.5 of the Kaua'i County Code by adding the definition of "Additional Rental Unit" and Chapter 8 of the Kaua'i County Code by adding a new article entitled "Additional Rental Units". This is a bill that has come down from the Kaua'i County Council, and there is a Director's Report that was received on November 14, 2017, and there is a Supplemental No. 1 Director's Report pertaining to this matter.

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

Chair Apisa: We (will) open the public hearing.

Mr. Dahilig: Madame Chair, given the sign-ups, there is nobody signed up to testify on this particular agenda item. The Department would recommend that the Commission make a motion to close the public hearing at this time.

Chair Apisa: Do I have a motion to close this public hearing?

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

Chair Apisa: Second?

Mr. Ho: Second.

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

Mr. Dahilig: Thank you, Madame Chair.

New Public Hearing

Mr. Dahilig: We are on Item G.4. This is New Public Hearing. We have none for this morning.

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

Mr. Dahilig: We are on Item G.5. This is all remaining public testimony pursuant to HRS 92. This is the Sunshine Law. We have circulated, to the Commissioners, a letter from Barbara Robeson and Caren Diamond pertaining to a posted Shoreline Setback Determination that is required under Chapter 27 of the Code for notification; that has been circulated to the Commissioners for their review. No action is actually required on this particular item; however, Ms. Robeson [sic] is present and she may elect to testify if given the opportunity to.

Chair Apisa: Would anyone like to testify on that?

Ms. Caren Diamond: Good morning, Commissioners. Caren Diamond. Congratulations on your chairmanship.

Chair Apisa: Thank you.

Ms. Diamond: I am testifying this morning on the shoreline setback exemption that was given for the Leadley property, which is a riverfront parcel in Waihi. It actually abuts the Waihi Ocean [sic] as well so that you have the sandbar that crosses in front of this where the ocean washes over the sandbar into the river, and this dock is now part of that river.

As community members in Waihi, we really don't understand how a dock can be put on the Waihi River. If you look at the application, it says the dock is 5 feet. They call it a deck and they say it is 5 feet above sea level. I don't really know what that means. I know that the river in Waihi rises and falls on a regular basis. It floods on a regular basis. "Waihi" means raging, angry water. It is often raging, angry water. Not only is the river that, often the ocean in front of it is. During the winter, the ocean washes up into the river and abuts this land. I think it is really a safety hazard to actually put a deck on a property like this. It is a vacation rental – it is not a residence – so you have unsuspecting tourists who come, people who have no clue that it is unsafe, that can get there at night, and end up in the Waihi River. In fact, somebody did fall into the river and die at this property. So for the County to come along now and give an exemption to our shoreline setback laws and just approve this feels really insulting to the community.

I picked up my mail on Sunday and Barbara did as well, and we saw this. We have no ability to get the SMA documents, no ability to get the stipulation that is referred to, and so we filed this appeal to preserve our rights. Because we live in this neighborhood, we know that the deck was not part of the original structure. The original structure was owned by a friend of ours. We were in it, we were there, (and) it didn't have this. So to read that this is pre-CZO and part of the original structure, that is wrong and so we would like to give our Kama'āina evidence, we would like a chance to present information different than what the applicant seems to have presented, and therefore we ask for this appeal. Thank you.

Chair Apisa: Thank you. Further testimony?

Mr. Jonathan Chun: Happy New Year, members of the Commission and Madame Chair. I was not planning on making any presentation on this matter; however, I did want to just raise the objection on behalf of Victoria Leadley. For the record, Jonathan Chun on behalf of Ms. Leadley. I am the attorney representing her on this matter. Just for the record, I just want to raise an objection as to the procedural correctness of filing an appeal at this late stage in the ballgame, so I am just raising that as an objection to an appeal.

But just as a matter of correction, there seems to be a misunderstanding that there is a dock on the Waihi River. There is not a dock on the...my understanding is there is not a dock. Part of their agreement with the Planning Commission as referred to by the appellants was that there was a settlement agreement. Yes, there was and part of the settlement agreement was anything touching the water, any dock area, was to be removed. As part of that, the Planning Department

required the applicant to submit the contractor's invoice showing the removal and also provide pictures to the Planning Department that the proposed dock area was removed. My understanding is that was done, and I told Ms. Diamond I didn't go there myself personally, but she is welcome to go and look to see to confirm that that dock was removed. So if it is just a misunderstanding, we have no problems of having Ms. Diamond and the appellants look to see if the dock was, in fact, removed as required by the settlement agreement and have the Planning Department provide the pictures that were provided to them by the applicant. Hopefully this can all be resolved by just having somebody confirm that that dock area was removed. I believe that was the main issue between Ms. Diamond and Ms. Robeson.

If there are any questions, I would be happy. If not, like I said, that is all I needed to say.

Chair Apisa: Does anyone have any questions?

Mr. Dahilig: Madame Chair, given the form and character of the testimony that was submitted by Ms. Diamond that is referencing their desire to reserve the right to appeal, I think it would be appropriate to have the attorney address the matter in terms of procedure on how to handle this communication from the public.

Ms. Higuchi Sayegusa: Under the Shoreline Setback Ordinance, the Department is required to notify you folks of any determination, particularly the exemptions, and so within thirty (30) days of that, any person who can show direct probable harm to his or her person or property interest may appeal, and so that is what we may have received today. What we will do is put this on the agenda for the next hearing because what we have on the agenda today, in compliance with Chapter 92 Sunshine (Law), is just the determination. We can place this appeal on the agenda next time and then we can talk about next steps then.

Chair Apisa: Do we need a motion to defer?

Ms. Higuchi Sayegusa: No, nothing at this point.

Chair Apisa: Okay.

Mr. Dahilig: Just for record purposes, maybe if we could just have this testimony, just formality-wise, received for the record so that we can, then, process it and schedule it for...I guess it would be initiation of an appeal proceeding pursuant to the rules of the Commission on January 23, 2018.

Mr. Keawe: Do we need a motion to accept?

Mr. Dahilig: I say receive; just receive the communication.

Mr. Keawe: Motion to receive.

Mr. Mahoney: Second.

Chair Apisa: Question?

Mr. Ho: Jodi, how much time from the time it is appealed that we have to hear it? Is there a time limit?

Ms. Higuchi Sayegusa: Well, assuming...let's see. I think we still have to look at whether the threshold requirements of Chapter 9 and the Shoreline Setback Ordinance have been met. Assuming you folks have officially accepted the appeal and decided whether you folks want to go through the Contested Case yourselves or refer it to a Hearing Officer, then it is in this Contested Case period which could take however long it takes to go through the evidence.

Ms. Nogami Streufert: (Inaudible) that according to Mr. Chun, it has been removed. But according to the Intervenors, it has not been removed. Is this just a simple case of is it or is it not?

Ms. Higuchi Sayegusa: I think that is sort of getting into the factual matters of the issue, so I don't want to get into it at this point.

Mr. Dahilig: Just, again, as clarification, the Shoreline Setback Determinations as notified in the Planning Commission agendas is a requirement under Article 27, Chapter 8 of the Code. The reason why the Council did this was because they wanted heightened notice on any administrative decisions that were exercised for this particular type of authority so that if the public has a concern about the Department's exercise of authority, there was more notice for them to initiate an appeal. The appeal rights are specifically vested in the Code for this. So the only way to resolve a question like that, Commissioner, would be through a Contested Case hearing where it becomes an evidentiary type of weighing whether or not you believe the veracity of what is being presented in front of you at that time, so it is a right that is granted based off of ordinance.

Ms. Nogami Streufert: An observation does not count?

Mr. Dahilig: It is what it is. With that, I think our recommendation, again, on this is that we would post this up for disposition on the request for an appeal on the January 23rd meeting (agenda).

Mr. Keawe: Did we vote on that? To receive?

Chair Apisa: No, I think there was a question. I think it was on the floor and then there was a question. Are we ready to take a vote on it? Any other questions? All in favor? (Unanimous voice vote) Any opposed? (None) Abstentions? (None) Motion passed 5:0.

Mr. Dahilig: Thank you, Madame Chair.

The Department would make a recommendation to make a final call for any further public testimony on any other agenda item this morning.

Chair Apisa: Would you like to speak?

Unidentified Speaker: This is going to be on another issue for Maui Asphalt.

Chair Apisa: That, I think, will come on later in our agenda. Hearing nothing further, we will move on.

CONSENT CALENDAR

Status Reports

Director's Report(s) for Project(s) Scheduled for Agency Hearing on 1/23/18

Class IV Zoning Permit Z-IV-2018-3, Use Permit U-2018-2 and Special Permit SP-2018-2 to allow operation of a Child Care Home facility within an existing residence on a parcel along the southern side of Olohena Road in Wailua Homestead, and Variance Permit V-2018-2 to deviate from the parking standards specified in Section 8-6.3(e) of the Kaua'i County Code (1987) as amended, further identified as 6287D Olohena Road, Tax Map Key: (4) 4-4-009:028, and affecting a portion of a parcel containing 1.166 acres = *Leaps and Bounds Preschool, LLC*. [APPLICATION WITHDRAWN BY APPLICANT.]

Class IV Zoning Permit Z-IV-2018-4 and Use Permit U-2018-3 to allow conversion of an existing single-family residence into an Administrative Office on a parcel located along the mauka side of Kōloa Road in Lāwa'i, situated approx. 200 ft. east of the Iwipoo Road/Kōloa Road intersection, further identified as 3691 Kōloa Road, Tax Map Key: (4) 2-5-011:077, and containing a total area of 10,326 sq. ft. = *'Ohana Home Health, LLC*.

Mr. Dahilig: Okay. We are on Item H. This is Consent Calendar. You have two (2) items set for agency hearing on 1/23/18; however, one of the applications is being withdrawn by the applicant. The Department's recommendation is to let the Consent Calendar stand provided no two (2) Commissioners want to discuss this item in greater detail at this time.

Chair Apisa: Does anyone have a desire to discuss this further?

Ms. Nogami Streufert: I would like to discuss the second one, the Class IV Zoning Permit Z-IV-2018-4 and Use Permit U-2018-3 that allows a conversion of an existing single-family residence into an Administrative Office on a parcel located along the mauka side of Kōloa Road in Lāwa'i.

Chair Apisa: Okay. We need two (2) members to consent. Is there anyone else who would consent to discussing this further?

Mr. Ho: I would.

Chair Apisa: Okay. We may proceed then.

Mr. Dahilig: Madame Chair, given that, we will move Item H.2. to New Business for discussion. As a reminder to the Commissioners, no action can be taken because no hearing has been set yet for this.

EXECUTIVE SESSION

Mr. Dahilig: Item I. This is the Executive Session. We do not have any for this morning.

GENERAL BUSINESS MATTERS

Petition to Modify Condition Nos. 1 and 2 of Class IV Zoning Permit Z-IV-2015-16, Use Permit U-2015-15, Variance Permit V-2015-2, and Special Permit SP-2015-4; Exhibit List; Exhibit "A" = Maui Asphalt X-IV, LLC.

Mr. Dahilig: Item J. This is General Business Matters. Item J.1. This is a petition to modify Condition Nos. 1 and 2 of Class IV Zoning Permit Z-IV-2015-16, Use Permit U-2015-15, Variance Permit V-2015-2, and Special Permit SP-2015-4, and there is an exhibit list, Exhibit A. The applicant is Maui Asphalt X-IV, LLC and there is a Director's Report pertaining to the matter.

Madame Chair, we do have an individual that does want to testify on this item; probably best after the Department's presentation that you provide allowance for that. Dale will be providing the presentation on behalf of the Department.

Chair Apisa: Is the applicant here?

Mr. Dahilig: Yes. We will go with Dale first and then (inaudible).

Chair Apisa: Okay. Dale, would you like to proceed?

Staff Planner Dale Cua: Sure.

Chair Apisa: Thank you.

Mr. Cua: Good morning, Madame Chair and members of the Planning Commission. At this time, I will just summarize the Director's Report before you. I will just highlight some points of the report.

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

Mr. Cua: At this time, I will just present the findings, and I will defer the recommendation to the end.

Chair Apisa: Okay. The applicant would speak at this time. Lorna.

Ms. Lorna Nishimitsu: I am Lorna Nishimitsu, attorney for the applicant, and I am accompanied by Michael Lingaton who is the representative for one of the subsidiaries of Maui Asphalt. Maui Asphalt is the paving supplier. Michael's company...or the company he works for, Maui Kupono, is the paving contractor. I thank you for this opportunity.

Maui Asphalt, the applicant, has been a limited liability company with its principal place of business on Maui. It won the bid to do the Kaunualii resurfacing project, which it completed in approximately September of 2017. But because of the punch-list or warranty (inaudible), it is not going to be completed or finalized by the State until September of 2018 because it may have to go back in to finish up work that the State determines is necessary. In the interim, the County and the State awarded bids/contracts to the paving contractor to do additional resurfacing work. All of the State work is pretty much done at night. It is the County work and some private work that is done during the daytime.

During the Fall of 2017, I was notified by the Planning Department that there was a complaint about odor which was generated by Waimea Canyon School. The applicant was contacted by me and they immediately made arrangements to bring in the school representative who is the Vice Principal, I believe, Brian Godsill, and they also met with State Department of Health representatives Gerald Takamura and Gary Ueunten at the site for them to be able to look at how the operations were. During that site inspection by the State, one of the State representatives commented to Michael Lingaton that it was kind of odd that there were no odors because they were using an odor suppressant. I have circulated materials or print outs describing that product. For whatever reason, the product was already in use when the Department of Education, Waimea Canyon School, had made that complaint about odors. We have narrowed it down to the following. Before the Fall of 2017, Maui Asphalt was using a product from Valero California. It originated from petroleum products out of Alaska, so these were out of state products. In the interest of trying to go local, they started using this product from...was it Pasero? Pasero. That was when the odor complaint from Waimea Canyon School originated. (The) Department of Health also received an additional complaint during the Fall of 2017 from a resident – they didn't tell us where the resident was from – about odors. The odd thing about this island is that if the winds are blowing trades in Kapa'a, you would think that it would blow trades on the west side and blow the odors away towards Ni'ihau. Michael Lingaton was in Kapa'a on a day that one of the odor complaints originated, so he headed out to Waimea to find out what was going on. He found that the winds there were not blowing trades, they were blowing differently. So there is this issue of trying to figure out when you can run your batches, but we believe that when the Valero product comes back to Kaua'i – the product that we used to use – and it is scheduled to arrive on Kaua'i on January 16th, we should be able to reduce the amount of odors that might affect the students at Waimea Canyon School or any residents in the area.

I think what you will find is that Maui Asphalt and Maui Kupono are more than willing to try and address community concerns about odors. The odors, in and of themselves, are not toxic, but they are probably irritating. It is like if you live upwind of a pig farm; the smell won't kill you, it is just really irritating. So they are trying their best and have worked with using the odor

suppressant, and then bringing back the product that didn't appear to create any odor issues so that they can continue to work on Kaua'i.

Michael has been largely responsible because he is on Kaua'i to try and work with other landowners to find out if there are any sites available for a relocation. But I think the Commission is well-aware that a batch plant cannot fit on a 10,000-square foot industrial lot anywhere on this island, which basically leaves only Ag and Open lands available for this type of operation, and it is an operation that the State and County supports because they have been awarding contracts to this company. In fact, after this meeting, there is one more site that they are going to look at – it is in Anahola, the owner is Hawaiian Homelands – to see if it would be possible to work out a relocation. Since it seems like most of the State highway work on the west side has been completed and is moving out in the other direction, it would probably be an opportune time to move if a deal can be brokered. But for those reasons, the need to continue to provide product for the contracts that it has, we are before you for a first extension.

If you have any more technical questions about how the odor suppressant product works or how it is supplied, etc., I've got Michael. We also have with us other representatives from Maui Asphalt sitting in the back who might be the ones more appropriate to answer or address your concerns.

Chair Apisa: Thank you.

Mr. Keawe: Madame Chair.

Chair Apisa: Question? Comment?

Mr. Keawe: Prior to this Valero product, which you are assuming causes that odor, were there any complaints? Because the original permit was back in 2015.

Ms. Nishimitsu: Actually, Valero is the one that, while in use, didn't generate any complaints.

Mr. Keawe: Oh, okay. Well, whatever one it was that didn't generate the smell, were there any complaints using that product? Because, I mean, you are talking a couple years, right?

Ms. Nishimitsu: Yes. None that they were notified about. The first complaints came in the Fall of 2017 and there were two (2). When I asked the representatives of Maui Asphalt what would account for the difference in the odors, because tar is tar, and they explained it might be part of the refinement process that the companies use to refine the product to make the tar which becomes asphalt. So in a nutshell, no, no complaints before when Valero was being used; complaints were with the Pasero product.

Mr. Keawe: So you are assuming that if your product comes in this month, in January, because you have isolated the smell specifically to the product you have been using, that you won't get any more complaints. Is that fair?

Mr. Michael Lingaton: Well, we are hoping so. Like was said, using the product that we are using now is when the complaints came, and prior to that, we had no complaints.

Mr. Keawe: Okay.

Chair Apisa: Any other questions?

Ms. Nogami Streufert: You said that when you had that inspection, there was a Department of Health employee or inspector that was there. What did they find from that? What were their findings?

Mr. Lingaton: Unfortunately, we don't have the report yet, but I was there with them at the site visit. We visited first at the plant site, and we just started using the suppressant. Like Lorna said, the comment was made by one of them that said, "What is that sweet smell that I am smelling?" You know, so it was very evident that the suppressant was working near the plant. After they made their inspection at the plant and looked around, we drove up Waimea Canyon Drive to try to see if we could detect some odor up there and actually kind of see where the plant was located, see how the winds were blowing. Unfortunately, that particular day, the winds were not blowing directly towards the school; they weren't trades, but they were blowing up mauka.

Ms. Nogami Streufert: Did they, at that time, take any air quality samples?

Mr. Lingaton: No, they just took some wind readings; no air samples.

Ms. Nogami Streufert: Okay.

Mr. Keawe: Madame Chair, may I? Lorna, you had mentioned that the products are non-toxic. What does that mean?

Ms. Nishimitsu: That the smell won't kill you is what I meant, or I guess it could make you feel nauseous if it was overwhelming, like pig pen smells could be overwhelming and could make you nauseous. The odd thing is, according to Maui Asphalt, the school is about a mile away from the batch plant, so they couldn't really account for why the odors weren't being dissipated over that distance. We could surmise that maybe somebody was doing reroofing at that time. We just don't know why. The only thing we can pinpoint is that the product itself...there is a difference between the nature of the refinement, which makes the odors stronger in the Pasero product versus the Valero product, which, while it was in use, did not generate any complaints that we have been notified about.

Mr. Keawe: Based on Commissioner Streufert's question, there have been no air quality samples taken during this process?

Mr. Lingaton: No.

Ms. Nishimitsu: What Mr. Lingaton did tell me is that when he spoke to Department of Health to find out, because they kept telling him you got to go online to get the report of their findings,

when he finally called again on Friday to find out where the report is, he was told they were working on it. So we have no report to produce that would give you or us any idea of what any recommendations might be. It is not like we are trying to avoid it. It is like–

Mr. Keawe: Yes, it is just not available.

Ms. Nishimitsu: Yes.

Chair Apisa: Any other questions from the Commissioners?

Ms. Nogami Streufert: There was one other concern that was in there, in the Department of Health concerns, about the waste disposal. Has that been addressed? Earlier on in one of the reports that is in my–

Mr. Lingaton: In regards to waste, what kind of waste?

Ms. Nogami Streufert: Waste disposal from the plant; that if there were any waste disposals that it was properly disposed of.

Mr. Lingaton: I mean...no–

Ms. Nogami Streufert: Have there been any problems or any complaints–

Mr. Lingaton: No, not that I am aware of. The product that we use...I'm trying to figure out what you mean by the waste product, but we recycle asphalt, so a lot of the stuff that is there that we don't...

Ms. Nishimitsu: Apply.

Mr. Lingaton: Yes, we can reuse, so there is a minimum (amount) of waste.

Ms. Nogami Streufert: I guess this was in the original application and that was one of the concerns, so my question, I guess, is really, has there been anything on the waste disposal side that has had to be addressed or any complaints or anything like that?

Mr. Lingaton: No.

Ms. Nogami Streufert: And that was with wastewater or...I think it was with runoff as I recall.

Mr. Lingaton: No. We don't have a water source at the plant, so there is no runoff.

Ms. Nogami Streufert: Although the report is not available from the Department of Health, you don't think that they took any kind of air quality samples, so waiting for it on the basis to find out the results of that is not really going to help us on that. Is that correct?

Mr. Lingaton: I would say so, yes. I mean, if we are looking for specific air quality, then yes, that was not done.

Chair Apisa: Any other questions from the Commissioners? One more.

Ms. Nogami Streufert: You wanted to change two (2) conditions. One was Condition No. 1, which was a modification to any buildings and that was not part of the recommendation on the Director's Report.

Mr. Cua: Right. As I noted in the evaluation, in the last paragraph of the evaluation, I can read you what the Department recommended, but essentially it says that the Department does not believe that an amendment to Condition No. 1 is necessary. The applicant is proposing an amendment such that operation of the facility and its configuration will be limited to the representations noted in Exhibits E and F of the original application. The Department considers the current requirement adequate in that if there are any changes, it would then warrant a review by the Department. If it is determined to be a significant change, it would then be evaluated by the Planning Commission.

Ms. Nogami Streufert: So there have been no changes?

Mr. Cua: To its configuration, no.

Ms. Nishimitsu: Commissioner Streufert, it was based on my being overly anal because I was concerned that if they moved a piece of equipment—

Ms. Nogami Streufert: I'm sorry, you were being conscientious.

Ms. Nishimitsu: If they move something from one boundary to another, different from what was depicted on the exhibit of how they were going to lay out everything, that it constituted a change, and I didn't want them considered to be in violation of a condition. So when Mr. Cua called me about it and I explained it to him, I think he was scratching his head about why I even brought it up, but I said I just was overly concerned, as you say.

Ms. Nogami Streufert: Thank you.

Chair Apisa: Anything further? Thank you very much. Does anyone from the public want to make a comment? Yes.

Mr. Brian Godsill: Good morning. My name is Brian Godsill. I am the Vice Principal at Waimea Canyon Middle School. Before I begin, I just want to express our gratitude toward Maui Asphalt and Maui Kupono Builders. They have been very open to dialog regarding this issue, so we do appreciate that.

Chair Apisa – I had to make some changes with names – and Vice Chair Streufert and members of the Committee [sic], Waimea Canyon Middle School strongly opposes the petition of Maui Asphalt X-IV, LLC to extend its permit to process and produce asphalt due to unresolved health

concerns to our students and staff. On four (4) separate occasions, October 25th through December 4th, 2017, noxious odors were detected on our campus emanating from asphalt production at the Maui Asphalt baseyard located approximately 1 mile west of Waimea Canyon Middle School. In three (3) of these incidents, the odor was significant enough that classes had to be relocated from affected buildings to the school library as a safety precaution. The Kaua'i Police Department, the Hawai'i Department of Health's Clean Air Branch, and the Hawai'i Department of Education's Safety, Security and Emergency Preparedness Branch were notified in each of these occurrences. According to the United States' Department of Labor, Office of Occupational Safety and Health Administration, OSHA, asphalt is a petroleum product used extensively in road paving, roofing, siding, and concrete work. Health effects from exposure to asphalt fumes include headache, skin rash, sensitization, fatigue, reduced appetite, throat and eye irritation, cough, and skin cancer. While no student or staff members have yet been overcome by the noxious odors, we have strong concerns that exposure to fumes by our students has not been addressed or corrected by Maui Asphalt. The odors have become a distraction that has hindered our students' ability to learn and may further result in the loss of teacher and support staff workforce at our school. Waimea Canyon Middle School respectfully requests your careful consideration of the health of our student body and staff in your deliberations in opposing this petition. Thank you for your kōkua.

And a few points that I would like to address regarding some of the discussion that came up – the winds do vary on a regular basis where our school is located, and when these odors were first detected on our school, there was a low cloud covering. I am not a meteorologist, but there was a very low cloud covering, there were variable winds. The winds were coming toward the school from the Kekaha location in a northwesterly direction. When the winds would kind of circle around and maybe blow trade for a little bit, the odor would dissipate on campus. When members from the County did come to our campus, the winds were blowing the trades direction or easterly direction. So it really depends on the direction of the winds, but the winds do vary in those directions at any given time. When they are blowing from that direction – where the plant is located toward the school – that is when the odor is detected on campus.

There was a time when they were processing without the suppressant and then they introduced the suppressant, but the odor was still detected by students and staff members on campus, and we are talking 11-, 12-, 13-, 14-year old children, right? While I may not or somebody else may not be as sensitive to that, others are. When we were invited over to the facility, the members who were operating, they were commenting that they couldn't smell it once they introduce the suppressant. But my thinking was that when you work with something on a daily basis, you become desensitized to that smell, so while they may not be able to smell it, others on our campus – children, staff members – were still able to smell it. It was getting to a point where we did have to relocate for safety concerns.

That being said, we are strongly opposed toward this renewal of the permit.

Chair Apisa: Thank you. Questions? Mike, you have a–

Mr. Dahilig: Yes. If I could just get a clarification because we've heard from the applicant that we have no, I guess, complaints during the period that they were using the suppressant early on;

you are speaking to the contrary on that. Did you file any complaints with any agencies during that time when they were actually using the suppressant?

Mr. Godsill: There were four (4) separate incidents and the last one, I believe being December 4th, was when they were using the suppressant. There was also some concern regarding processing at night. There was a willingness on Maui Asphalt's part that they wanted to process at night. Because of the lights and the shearwaters, they could not until a certain date. Again, I think there was a willingness on their part to try to work with us to keep that processing happening during school hours, but there were some limitations with that as well.

Mr. Dahilig: So it is only during shearwater season that this is an issue concerning them processing at night?

Mr. Godsill: They couldn't process at night.

Mr. Dahilig: You wouldn't have any objections if they are processing at night?

Mr. Godsill: Not at all on behalf of the school. I'm not...you know.

Mr. Dahilig: Okay. The reason why I am asking is because I think we've heard the contrary where they don't have suppressant and the suppressant is coming in, so the usage of it on December 4th may or may not necessarily have been the case. Again, I will leave it up to the testimony to resolve whether that is the case or not. But does the school have any objections to allowing the operations to continue in a manner that we can properly identify whether or not the suppressant is or is not working? Because I think that is the question right now; whether or not the suppressant is or is not working. For a shorter amount of time, rather than a 3-year period, would the school be objectionable to actually allowing that type of monitoring to be, I guess, conducted and be able to actually pinpoint whether or not this thing is actually working?

Mr. Godsill: Well again, on December 4th, they were using...I believe it was a vanilla fragrance suppressant and we were still receiving complaints from children and staff members at our school that they could smell the asphalt through that odor suppressant. So there is a concern that the odor suppressant isn't entirely working.

Mr. Dahilig: Okay. I guess you can probably, Madame Chair, just clarify from the applicant if and when these things were being used. I think that's, at least from a departmental final recommendation standpoint, I don't think we are not entirely clear whether there is, from a chronology standpoint, an ability to specifically pinpoint when these things were or were not being used. That's all.

Chair Apisa: Okay.

Mr. Keawe: One question.

Chair Apisa: Question?

Mr. Keawe: The shearwater fledging period is from September 15th to December 15th, and you had indicated that you are willing to have them process at night. Is that correct?

Mr. Godsill: Yes. That wouldn't be affecting us. Our school hours are approximately 7:45 to 2:15.

Mr. Keawe: Right. So if they process at night past the December 15th date that by Federal law they can't do it, that would not be objectionable, would it?

Mr. Godsill: No.

Mr. Keawe: Okay.

Chair Apisa: Any other Commissioners have questions? Alright, thank you very much.

Mr. Godsill: Thank you.

Ms. Nogami Streufert: I'm sorry, I guess I do have one (1) question. I'm sorry. The four (4) dates that you talked about were from October to December of 2017. Is that correct?

Mr. Godsill: Yes.

Ms. Nogami Streufert: So prior to October 2017, there were no problems?

Mr. Godsill: Not to my awareness. I have been at the school for two (2) years. This was the first time, to my knowledge, that a concern had been made.

Ms. Nogami Streufert: Okay. So prior to that, there was an odor suppressant. My concern is not really with odor suppressants or not. My concern is really with health. But you have not had any air quality studies done either, so it is pretty difficult to make a determination.

Mr. Godsill: Yes, and it is always difficult, too, when the County did come, the winds were blowing from an entirely different direction. So they were taking some readings, some tests, but they were blowing from a northeasterly direction from the school toward the plant.

Ms. Nogami Streufert: It wouldn't make a difference. If they were doing air quality studies, where you take that sample is just really based upon a radius, a distance from it regardless of which direction it goes.

Mr. Godsill: The concern was the fumes coming from the plant toward the school that were causing the headaches, the nausea expressed by students and staff.

Ms. Nogami Streufert: Thanks.

Chair Apisa: Alright, thank you very much. I would like to take a short recess.

The Commission recessed this portion of the meeting at 10:00 a.m.
The Commission reconvened this portion of the meeting at 10:13 a.m.

Chair Apisa: I would like to call the meeting back to order.

Mr. Dahilig: Madame Chair, we have become aware that the applicant may have some additional information to provide to the Commission concerning some of the questions that were raised by the Vice Principal, so if she could be asked to come to the mic to explain some of the information that could be helpful in the Commission's deliberation.

Chair Apisa: Yes.

Mr. Dahilig: And you will probably have a request at the end of that discussion, Madame Chair.

Chair Apisa: Please.

Ms. Nishimitsu: I just wanted to—

Chair Apisa: You need to identify yourself again, just for the record.

Ms. Nishimitsu: I'm sorry. Lorna Nishimitsu, attorney for the applicant, Maui Asphalt, and with me is Erik Rhinelandt out of Maui Asphalt.

First, I misspoke when I said there were no air quality tests. According to Mr. Rhinelandt, Department of Health requires annual air quality tests, so the last one was done in November of 2017. He is going to have his staff send me the report so that I can get it over to Mr. Cua today. But the net effect is that there was no diminishment of air quality. This is required on an annual basis.

I just wanted to clarify, though, that the odor complaints that Mr. Godsill described apparently had nothing to do with whether or not the odor suppressant was in use. It had to do with when the asphalt product producer was changed; when Maui Asphalt decided to go local rather than getting it from a mainland source. Because when it was using the mainland source, and based on Mr. Godsill's testimony, from October 25th through December 7th is when the complaints occurred, that was all a local product. Previous to that, the mainland product hadn't been generating, to our knowledge, any complaints, and we are hopeful that come January 16th, when the new old product is back on island again, coupled with the use of the odor suppressant, the students and staff at Waimea Canyon School will go back to their experiences of pre-local product.

But in any event, because we understand that the Commissioners are concerned about impacts to the students, etc. and questions have come about air quality or air sampling/testing, we would like to get that report to the Commission so that it has a more fleshed out basis on which to make a decision.

Chair Apisa: I think that is a good idea. Commissioner Ho.

Mr. Ho: Is this report...is it from a private contractor? Or is it the State that did the air quality (test)?

Mr. Erik Rhineland: It is by a third party, independent contractor that submits it to the State DOH.

Mr. Ho: Is there another report that we could maybe get a baseline or comparison from it? Is there something like that?

Mr. Rhineland: We do it annually, so we can probably submit our initial report and then the report just recently done.

Mr. Ho: Good. Thank you.

Chair Apisa: So I am hearing a suggestion that this be deferred to a future meeting so we could get the report.

Ms. Nishimitsu: It seemed to me that the Commission would have a higher comfort level about making a decision once we can submit more information to you.

Ms. Nogami Streufert: I move that we defer this matter for more discussion for...would two (2) weeks give you enough—

Mr. Dahilig: January 23rd.

Ms. Nogami Streufert: January 23rd. Would that be enough time for you to produce that?

Ms. Nishimitsu: Yes. They are already in possession of the report, so I just need to get them and submit them to Mr. Cua.

Ms. Nogami Streufert: Great. Until January 23rd.

Mr. Ho: Second.

Chair Apisa: We have a motion and a second to defer this to our January 23rd meeting. All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 5:0.

Ms. Nishimitsu: Thank you.

Mr. Dahilig: Thank you, Madame Chair.

In the matter of The Appeal of the Planning Director's Decision Related to an Additional Dwelling Unit Recertification Application for Property Situated in Kapa'a, Kaua'i, Hawai'i, identified by Kaua'i TMK No. (4) 4-6-012:006, and containing a total area of 1.6 acres, Contested Case No. CC-2015-19 = Neill H. Sams and Fely D. Sams

Mr. Dahilig: We are now on Item J.2. This is in the matter of the appeal of the Planning Director's decision related to an Additional Dwelling Unit Recertification Application for property situated in Kapa'a, Kaua'i, Hawai'i, identified as Tax Map Key: (4) 4-6-012 Parcel 006, and containing a total area of 1.6 acres, Contested Case Hearing No. CC-2015-19. The appellants were Neill Sams and Fely Sams. There is a return on the Hearing Officer's report and recommendation of the Contested Case Hearing that has been circulated to the Commission as dated October 20, 2017. I will turn this over to the Attorney for guidance.

Chair Apisa: Is the Attorney present?

Mr. Dahilig: Your attorney.

Chair Apisa: Oh, our attorney; the Planning Commission's attorney.

Ms. Higuchi Sayegusa: This case was something that you folks referred to the Hearing Officer to engage in the evidentiary portion of the Contested Case; that portion was completed. The Hearing Officer submitted their report and recommendation dated October 20, 2017. At this point, you folks have the option to decide whether you want to reverse, modify, or adopt as recommended the Hearing Officer's report and recommendation. My understanding is there haven't been any exceptions filed, so I think those are your options at this point.

Chair Apisa: Commissioners, questions? Comments?

Ms. Nogami Streufert: I move to accept the report.

Mr. Ho: Second.

Chair Apisa: Alright, we have a first [sic] and a second. Any further comment? Is there anyone in the public that would like to speak?

Mr. Neill Sams: Yes, my name is Neill Sams. This is my wife--

Ms. Fely Sams: Fely Sams.

Mr. Sams: We've gone through a long process with this and it has been quite an ordeal. Harlan Kimura has done, for the most part, an exceptional job in weighing all this evidence. Everything went from a change when they decided they were going to change the ADU laws, so we started out with a situation where there were no extensions. An extension was granted by the Council based on testimony from the Planning Director. My only concern here is that there was, in that testimony, erroneous Findings of Facts that we presented to Harlan Kimura in the form of video, which is not mentioned in his response here. That is my concern, that it wasn't included.

Ms. Higuchi Sayegusa: Sorry. I don't want to interrupt, but at this point, what we have is the report and recommendation. I just want to caution the Body whether you want to rehash the evidence and rehash the substantive matters of the case. I think at this point, in fairness, I guess...the process was had and the process that you folks elected to have was to have the

Hearing Officer wave through the evidence, so what you have before you is the report and recommendation.

Mr. Sams: He did a detailed analysis of all of the other objections in there other than this one, which–

Ms. Higuchi Sayegusa: Again, I'm sorry, but because this was a formalized Contested Case process, the method and the means by which you could have provided any objection was through filing exceptions to the Hearing Officer's report and recommendation, so that is beyond us at this point.

Mr. Sams: Oh, okay. I wasn't aware we could do that. Okay.

Ms. Higuchi Sayegusa: At this point it is just the report and recommendation. Thank you.

Chair Apisa: So is there anything further that would be admissible here?

Mr. Sams: No, unless there was a way to send it back and have him at least address those issues, and I don't know if there is or isn't – it sounds like there isn't – but that was the only thing I wanted to see was what were his comments on those specific issues. If he can't, he can't, and if he can, he can, but we have at least made it clear that we would like to have seen what his response to those Finding of Facts issues were.

Chair Apisa: Alright, well, thank you very much. So we have a motion on the floor.

Mr. Keawe: Right.

Chair Apisa: Are we ready to take the vote?

Mr. Mahoney: Yes.

Chair Apisa: All in favor?

Ms. Higuchi Sayegusa: I'm sorry, one second, so sorry. In fairness, perhaps, since the party was able to have an opportunity to speak... I see the representative for the Planning Department–

Chair Apisa: Oh, just to make it equal. Yes, thank you.

First Deputy County Attorney Matthew Bracken: Thank you, Chair. Just real briefly, and just to address what Mr. Sams was talking about, that was–

Mr. Keawe: Can you pull the mic up and introduce yourself?

Mr. Bracken: Sorry, I apologize. Matthew Bracken, First Deputy County Attorney on behalf of the Planning Department.

Mr. Keawe: We know who you are. We just want to make sure.

Mr. Bracken: To what Mr. Sams was referring to, that was presented to the Hearing Officer. We had a full day of hearing in front of the Hearing Officer. There were many status conferences after the initial hearing, and this was all presented to the Hearing Officer. In his report, he actually does refer to the hearing that Mr. Sams is referring to, so that is built into his report. And I will leave it at that because everything else was presented and argued in front of the Hearing Officer. Thank you very much.

Chair Apisa: Thank you.

Ms. Higuchi Sayegusa: Again, yes, I think we currently have a motion and a second on the floor if you folks want to have further discussion on any of it.

Chair Apisa: Do you want to repeat your motion as it was a while ago?

Ms. Nogami Streufert: I move to accept the Hearing Officer's report and recommendation of Contested Case Hearing, Certificate of Service.

Ms. Higuchi Sayegusa: Apologies. Just want to...just one (1) word difference. It is either reverse, modify, or adopt.

Ms. Nogami Streufert: Adopt.

Ms. Higuchi Sayegusa: Okay.

Ms. Nogami Streufert: I'm sorry; adopt. I move to adopt the Hearing Officer's report and recommendation.

Mr. Keawe: Second.

Chair Apisa: Alright. All in favor? (Unanimous voice vote) Motion carried 5:0.

Mr. Dahilig: Thank you, Madame Chair.

Director's Report for a Petition to Revoke, Amend, or Modify Special Permit SP-2012-3 for a non-conforming transient accommodation use on State Land Use Districted "Agricultural" land, by applicant Vard Stephen Hunt, and to set a date for an Order to show Cause, at TMK 510050280001, 4613 E Waiakalua Street, East Waiakalua, Kīlauea, Kaua'i

Mr. Dahilig: We are now on Item J.3. This is the Director's Report for a petition to revoke, amend, or modify Special Permit SP-2012-3 for a non-conforming transient accommodation use on State land designated Agricultural land by applicant Vard Stephen Hunt, and to set a date for an Order to Show Cause at TMK 510050280001 at 4613 East Waiakalua Street in East Waiakalua, Kīlauea, Kaua'i.

Madame Chair, the Department has transmitted, pursuant to the Rules of Practice and Procedure of the Commission, an evaluation of the Department, as well as a petition to have the Commission issue an Order to Show Cause. As part of the enforcement mechanism of the Commission, we are recommending the Commission issue the Order to Show Cause in order to provide due process to the holder of the permit in the event that the Commission chooses to revoke the permit. The Department is not recommending, at this point, an actual action other than that. We do have evidence to prove that there is a violation and would like to open up a due process hearing in order to present that evidence to the Commission to determine whether or not the Special Permit should, in fact, be revoked or modified. I do believe that the permit holder is not available, but Mr. Chun is in place of the permit holder, and we do not believe, absent his attendance, that the Commission cannot move forward with holding a due process hearing. Again, we are not asking for an action to revoke or modify at this point. What we are asking for is to initiate the due process hearing for this thing.

I think, in fairness, it would be appropriate for Mr. Chun to—

Chair Apisa: Mr. Chun, would you like to comment?

Mr. Chun: Yes. Good morning. Jonathan Chun on behalf of Vard Stephen Hunt. I represented Mr. Hunt initially in his TVR applications way back, years ago. Apparently the Director's Report focuses on activities that are occurring on property that is not part of the application for the TVR, and I am not quibbling with that. I believe Mr. Hunt is out of the country. Actually, he is out of state today. He leaves for...out of the country, I think, tomorrow, and he would have loved to have an opportunity to sit down with the Planning Department to try to address any of the confusion that might be going on in terms of the other units on the property. He would want to have that opportunity. He is going to be out of the country until February 20th, and we are just requesting a time to allow Mr. Hunt to sit down and talk with the Planning Director and the Planning Department to try to resolve this matter as opposed to going on to a potential Contested Case hearing on this. Again, I believe...and I haven't had a chance to look at everything going on – I just got on to this case yesterday – but I believe it possibly could be resolved. I believe it could be a misunderstanding between Mr. Hunt and the Planning Department. I think the request from Mr. Hunt – and I talked to him yesterday afternoon – was to see if we can continue this matter, see if we can sit down and talk with the Planning Director and the Planning Department regarding any kind of controversy or allegations regarding his use of his other units, and see if it can be resolved. If it can be resolved, fine, then any kind of action regarding this petition to revoke, amend, or modify would not be required. So I am just asking for a continuance to allow him time to be back within the County of Kaua'i. He is scheduled to be back on February 20th.

Mr. Keawe: Madame Chair, can I ask a question?

Chair Apisa: Yes.

Mr. Keawe: Mr. Chun, you are suggesting that your client meet with the Planning Department prior to the action of (an) Order to Show Cause?

Mr. Chun: Yes. Initially...I mean, like I said, I just got on this yesterday, but my understanding is when Mr. Hunt got the Notice of Violation, he did respond to the Planning Department. I don't have a copy of that, but my understanding is he did respond. I believe, based on my conversation yesterday, his response basically was it was a misunderstanding, we didn't do it, we are not going to rent out any other house on his other CPRs, and gave assurances to the Planning Department of that. Now, I don't know whether or not he gave any proof to the Planning Department about that or not, and I think in hearing from the Planning Department just briefly yesterday, I believe there is nothing in the record to verify anything...what Mr. Hunt was saying in his letter response. I think the Department is very well within the rights to request that kind of verification. It is unfortunate...I just don't have the opportunity or have the time to talk with Mr. Hunt in terms of hey, it is good to say these things, but you got to provide verification. You just can't say it and hopefully everything goes away. That is the kind of time I request to have with the Planning Department and Mr. Hunt to see if we can get whatever documents they need to verify whatever Mr. Hunt was saying in his written response. My understanding is – and I need, again, verification from the Planning...provide the Planning Department – is to make sure that it doesn't happen again, also, which is another legitimate position from the Planning Department, which I don't know whether Mr. Hunt provided the verification or not. But I think, at this point in time, Mr. Hunt definitely said he is willing to work with the Department to get whatever information or verification they need to ensure the Department that it hasn't happened and it will not happen again.

Ms. Nogami Streufert: Can I ask...

Chair Apisa: Yes, please.

Ms. Nogami Streufert: Can I ask a question of the County Attorney? If the Planning Department were to issue and serve the owners of the property an Order to Show Cause, does that preclude anything that Mr. Chun is saying that Mr. Hunt is willing to discuss with the Department? So it can go on parallel; both things can go on parallel?

Ms. Higuchi Sayegusa: The rules require the...once you folks vote to issue and serve upon the party an Order to Show Cause, that has to happen within thirty (30) days before the hearing. I guess technically, depending on timing and scheduling, perhaps you folks can decide upon a date out.

Mr. Chun: It is a timing issue.

Ms. Higuchi Sayegusa: Yes. The rules technically say thirty (30) days; the notice has to be served thirty (30) days before a designated hearing.

Ms. Nogami Streufert: At least thirty (30) days?

Ms. Higuchi Sayegusa: Yes.

Mr. Dahilig: And because it is a Contested Case hearing – just to weigh in on that – there are opportunities for resolution and settlement and withdrawal of the request, so our department is

certainly open to any of those alternative remedies. I do say, though, that we do not reach this stage of a permit revocation without attempts to resolve these matters without bringing it to the Commission first, so I think this is an extraordinary remedy for us to implement our enforcement activities. The fact that we have reached this stage is not without communication to the permit holder prior to this.

Mr. Keawe: So basically what you are saying is the Order to Show Cause is not going to make any difference because if you want to try to settle it, i.e. he would have probably tried to do it before he got to this point, and this is just more of a formalization of okay, fine, we tried to work it out and we couldn't so let's see your evidence. Is that basically it?

Mr. Dahilig: The evidence, at the end of the day, is up for interpretation by who is reviewing it. In as much as the permit holder may see the evidence one way, the Department may see it another way. The appropriate forum to have that weighing is in a Contested Case hearing through a formal process before this Commission. So we are not, at this point, going to make any claims concerning whether what Mr. Chun is saying, as represented to him by the permit holder, is or is not true, but we do believe that there is, at this point, a difference in opinion concerning how the evidence that we have in hand is being interpreted and we believe that what is the best course of action is to have that disagreement resolved via a formal process, and the only way for us to initiate that formal process is through an Order to Show Cause.

Chair Apisa: Commissioner Ho.

Mr. Ho: So what is going to happen is we can serve this and it is a parallel course; I would like to see that done. To have something deferred...I believe that we should do our business. He has been served, you know, coming up, he's on the Commission...he can pitch his case, he chose not to, so I believe it is on our agenda, we should—

Ms. Higuchi Sayegusa: I will just say I think what you folks have to consider at this point is whether there is reasonable cause to believe that there is a failure to performing in accordance to the permit that was issued, and so that is what you are considering now and that is the threshold question of whether you should issue and serve the Order to Show Cause. The details of whether they were actually complying with the permit or going beyond it, that is when we will decide that, but whether we get to...or issue the Order to Show Cause, there is that threshold of whether you folks agree that there is reasonable cause to believe that there is such a failure.

Mr. Dahilig: And I will say, also, Commissioners, that when we go into any type of Contested Case hearing, it is practice for our attorneys to always seek a resolution or a point of agreement before we reach the Commission for a formal hearing. So we will not...and you have my commitment in terms of instructing our attorneys as such to try to mediate this out if that is a possibility to reach that resolution, so we will not seek the extraordinary remedy of actually conducting the whole hearing if we are able to reach an agreement ahead of time.

Mr. Chun: If I may, Madame Chair.

Chair Apisa: Yes, please.

Mr. Chun: I don't disagree with anything the Director is saying. It is an extraordinary (inaudible). Most of the time, ninety-nine percent (99%), at least from my understanding, the Department does sit down and discuss it with the applicant to try to see if any of these kinds of differences of opinion can be resolved. Unfortunately, you know, the applicant – I am not saying (it's) the Department's fault – but the applicant chose, instead, to just write a letter; that's from my understanding of what happened, and that is what happened. Now, I am just trying to see if we can give the applicant another chance to try and resolve these things without having to go to the formal... It is...yes, you could do...I think the only issue with that is there are certain time periods once you issue the Order to Show Cause, which the parties can go and stipulate to continue it later on (inaudible) comes an issue. I just want to avoid those procedural complications at this point in time, but it is the Commission's call on how they want to do it. It's just that, for me, it is easier, rather than face the procedural stipulations, to continue things and la la la la. I just rather sit down – hey, can we sit down and talk, get this thing resolved. And if we can't, fine, move forward. I would like to give Mr. Hunt an opportunity to have that face to face as opposed to just sending – what he did – a letter previously.

Mr. Keawe: Well, my opinion is, to get to this point, there was probably a lot of opportunity for Mr. Hunt to call the Department and say hey, I want to come in and clear this up if he was serious about doing it. So I think to get to this point, I think a lot of that kind of activity had already taken place, and for him to just write a letter thinking that was going to be enough to stop the process shows that this is really not that important, you know, I'm going to continue to do what I'm going to be doing, so I think that is my concern. We need to make sure that...and like the Director said, I'm sure we don't want to have to have everything go to a Contested Case hearing; it's time, it's involvement, it's a lot of effort on a lot of people's part. We are more than willing to go ahead and try to settle something, quote unquote, but the settlement has got to be within the boundaries of the law. So in my opinion, I think we are at this point where we need to go ahead and subject the property owner to an Order to Show Cause.

Chair Apisa: Go ahead.

Ms. Nogami Streufert: I move that the Planning Commission and the Planning Department issue and serve upon the owners of the subject property an Order to Show Cause.

Mr. Keawe: I second the motion.

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

Mr. Dahilig: Thank you, Madame Chair.

Chair Apisa: Thank you.

COMMUNICATION (For Action)

Mr. Dahilig: We are on Item K, Communication. We have none for action today.

COMMITTEE REPORTS

Subdivision

Mr. Dahilig: Committee Reports are Item L. We have circulated the Subdivision Committee report for everybody.

GENERAL BUSINESS MATTERS (Continued)

Director's Report for a Petition to Revoke, Amend, or Modify Special Permit SP-2012-3 for a non-conforming transient accommodation use on State Land Use Districted "Agricultural" land, by applicant Vard Stephen Hunt, and to set a date for an Order to show Cause, at TMK 510050280001, 4613 E Waiakalua Street, East Waiakalua, Kīlauea, Kaua'i

Mr. Dahilig: Actually, if I could, just for the Commission's sake, I do need a date – I'm sorry – for the Order to Show Cause to be...for the hearing to be set. If I could request March 27, 2018 as the date. Is that objectionable?

Mr. Chun: No, that will be fine.

Mr. Dahilig: Okay.

Ms. Nogami Streufert: If that date could be inserted into the motion then. Or do you want a new motion?

Ms. Higuchi Sayegusa: I think, just for the record, we can note that that's when the hearing will be set.

Mr. Keawe: Mr. Chun, he will be back, right, from his...? We are not going to get another "oh, I'm still traveling" kind of deal.

Mr. Chun: I know he is back on February 20th and he is out of email contact. He is going to be somewhere in the South Pacific, but I will inform him of that date. Normally, he is...he does live on Kaua'i, so I don't anticipate him traveling outside after February 20th.

Mr. Keawe: Okay.

Mr. Chun: But I will inform him. As far as I know, that date would be okay.

Mr. Keawe: Alright.

Mr. Dahilig: And if you could just let him know to make an appointment with our office if he is serious about wanting to sit down.

Mr. Chun: Yes, I will discuss that...if it is okay, I will discuss setting an appointment with your department as soon as he gets back.

Mr. Dahilig: Okay, thanks.

Chair Apisa: And then the date of the hearing will on March 27, 2018.

Mr. Chun: Yes, thank you.

Chair Apisa: March 27, 2018.

Mr. Dahilig: Sorry, Madame Chair, I just wanted to take care of that date item.

Chair Apisa: No, thank you.

COMMITTEE REPORTS (Continued)

Subdivision

Mr. Dahilig: So we have circulated the Subdivision Committee report to all the Commissioners. I believe the Chairperson of the Subdivision Committee can present the report.

Chair Apisa: Chair Ho, would you make a motion for approval?

Mr. Ho: For?

Mr. Keawe: The Subdivision report.

Chair Apisa: Subdivision report.

Mr. Ho: Alright. Two (2) items of business were before the Commission [sic] this morning. Horton Schuler Homes – they had an approval for final subdivision map. And an extension request for Moloa'a Land Company – an extension to 2018, I believe. I'm sorry, I don't have that, but it is an approval for an extension to 2018; December, I believe. That was our report.

Chair Apisa: Do we have a motion to approve the—

Mr. Mahoney: Move to approve, Chair.

Chair Apisa: A second?

Mr. Ho: Second.

Chair Apisa: All in favor? (Voice vote) Any opposed?

Ms. Nogami Streufert: Abstain.

Ms. Higuchi Sayegusa: Just want to mention that our rules don't require...no silent or abstention, it goes with the majority. Thank you.

Chair Apisa: So it is approved. Motion approved [sic] 5:0.

Mr. Dahilig: Thank you, Madame Chair.

UNFINISHED BUSINESS (For Action)

Mr. Dahilig: We are now on Item M, Unfinished Business for Action. We have no items unfinished for action.

NEW BUSINESS

Class IV Zoning Permit Z-IV-2018-4 and Use Permit U-2018-3 to allow conversion of an existing single-family residence into an Administrative Office on a parcel located along the mauka side of Kōloa Road in Lāwa'i, situated approx. 200 ft. east of the Iwipoo Road/Kōloa Road intersection, further identified as 3691 Kōloa Road, Tax Map Key: (4) 2-5-011:077, and containing a total area of 10,326 sq. ft. = 'Ohana Home Health, LLC.

Mr. Dahilig: We are on Item N. This is New Business. We do have one (1) Consent Calendar item that was referred for further information from the Commissioners. This is Item H.2. I have asked Mr. Bukoski to be available for any questions from the Commissioners concerning this Director's Report. I guess, if there are any questions.

Chair Apisa: Any questions?

Mr. Dahilig: I guess, Commissioner Streufert, this is the 'Ohana Home request. If there are any questions for the Planner concerning the—

Chair Apisa: It was on our agenda earlier and it was deferred [sic] to New Business.

Ms. Nogami Streufert: This is the Lāwa'i Hillside as I recall. Is there any other business that is in that location or in that area?

Staff Planner Chance Bukoski: There are multiple mixed-use businesses in that area. If you go further down the road, there is Shipwrecked [sic], there are some retail stores as well. I know they do gatherings nightly in that area, also. There was Lāwa'i General Store (inaudible).

Ms. Nogami Streufert: That is across the street; this is the Hillside.

Mr. Bukoski: The Hillside – the only thing I have is Hale Opio, which is adjacent to them, and then, also, right across the street is Lāwa‘i Cannery.

Ms. Nogami Streufert: Right. As I understand it, all of the...and I’ve gone past there because I live in Kalāheo. All of that area...where they would want to put a business, it is really a residential neighborhood right now; totally residential neighborhood. The only things that are there is the Trading Post, which is at a corner, and then there is a Seventh Day Adventist. But all the other businesses that are in that area are across the street on the makai side. Is that correct?

Mr. Bukoski: Correct.

Ms. Nogami Streufert: Thank you.

Mr. Ho: Chance, has there been any comments from the community regarding this application?

Mr. Bukoski: To current date, I haven’t had any public comment or testimony from anyone to this current date.

Mr. Ho: If you do a business in a neighborhood like this, don’t you have to ask or circulate some kind of notice–

Mr. Bukoski: Correct.

Mr. Ho: –that you are going to open a business?

Mr. Bukoski: Within the Class IV Zoning Permit, there is this thing called an affidavit and you have to send it out to eighty-five percent (85%) of property owners within 300 feet of the adjacent property.

Mr. Ho: Has this been done?

Mr. Bukoski: Yes, correct.

Mr. Ho: And no response back?

Mr. Bukoski: No response back, sir.

Ms. Nogami Streufert: 300 feet – how many people does that include?

Mr. Bukoski: From the property boundary and then the radius of the...

Ms. Nogami Streufert: So that is only one (1) more house.

Mr. Bukoski: I believe...let me check real quick.

Mr. Keawe: There is an aerial photo on our iPad. It actually shows where the house is and then all the homes that are within that particular area and you can see where the Cannery is across the street.

Ms. Nogami Streufert: Right. The Cannery is across the street, but in that area, they want to do...it is a total residential area.

Mr. Keawe: Yes, pretty much except for the Hale Opiopuna one, which is--

Ms. Nogami Streufert: Which is also a residential halfway house.

Mr. Keawe: Yes.

Mr. Bukoski: I would just like to clarify as well that this business is not specifically a business in that area. It is just for administrative purposes. They will have a maximum of five (5) employees at all times in that area. So they are not generating any commercial use where they are coming in and out with different type of patients and what not, so it is just strictly an administrative office.

Mr. Dahilig: Commissioners, just for discussion purposes, the action, technically, on this report today is to receive the Director's Report and set a hearing. There is no approval or any type of, I guess, weighing or judicial weighing of the application at this point absent an opening of the public hearing. However, this is a good opportunity that if there is information you feel is necessary to add to the Director's Report in a Supplement Report at the next meeting, then that is certainly what would help us. But ultimately, the underlying action is a receiving of the report and a setting of the hearing on January 23rd.

Mr. Ho: With that in mind, five (5) employees and parking...could you have them tell us if there is parking? They are on an easement driveway, aren't they? They share an easement driveway.

Mr. Bukoski: Correct. Within the application, there is some justification on why they would be using four (4) parking stalls within their driveway and also, in conversion from residential to commercial use, there is a requirement within the CZO that requires 200 square feet per parking stall, depending on the building office size in that sense.

Mr. Ho: So the question would be, would they have enough parking for five (5) people? Five (5) cars?

Mr. Bukoski: Four (4) cars, sir.

Mr. Ho: They would have enough for four (4)?

Ms. Nogami Streufert: Could I also ask...they say that they will have wound care supplies, but no medications. Don't wound care supplies include medications, like creams and things?

Mr. Bukoski: I am not too sure on the terminology; however, when I was going through the applicant's application, it was reading that they would have supplies as a point to where other employees, the field employees per se, could come by and stock up on materials and pursue to the patient's home.

Ms. Nogami Streufert: I like the business, but the question is...it is right next to Hale Opio and if you have wound care supplies that could...I don't know what that means.

Mr. Keawe: I guess we could ask the applicant at the next meeting all of those technical questions about what do you guys do and what kind of supplies are we talking about.

Ms. Nogami Streufert: I guess I also have a question for the attorney. If this property were, then, to be given a variance so that it becomes a business within a residential area, does that, then, carry forth with the property or does that stay with the business?

Ms. Higuchi Sayegusa: I think the permit applied for was the Class IV and Use Permit. But yes, the entitlement would run with the land.

Ms. Nogami Streufert: It would run with the land?

Ms. Higuchi Sayegusa: Yes.

Ms. Nogami Streufert: So anyone who took over--

Ms. Higuchi Sayegusa: But you folks could consider types of conditions that are proportionate to any impact that you foresee, and that is something you can consider for the next time.

Ms. Nogami Streufert: Thank you.

Chair Apisa: So I think as the Planning Director indicated, today's purpose is to receive the report and set a hearing date.

Ms. Nogami Streufert: I move to accept the report and set a hearing date for January 23rd.

Mr. Keawe: Second.

Chair Apisa: We have a motion on the floor to receive the report and set a hearing date of January 23rd. All in favor? (Unanimous voice vote) Any opposed? (None) Approved. Motion carries 5:0. Thank you.

Mr. Dahilig: Commissioners, given some of the questions concerning the report, we will forward that on to the applicant to make sure that they are prepared to answer those questions at the next meeting.

At this point, Madame Chair, given that the next item may be a bit dense concerning the Additional Rental Units, it may be advantageous to take a break at this juncture.

Chair Apisa: Yes. I think we have been going almost an hour. We will take a short break.

The Commission recessed this portion of the meeting at 10:55 a.m.

The Commission reconvened this portion of the meeting at 11:10 a.m.

Chair Apisa: Call the meeting back to order.

Zoning Amendment ZA-2018-2: A bill for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, introducing legislation that addresses "Additional Rental Units." The proposal amends Section 8-1.5 of the KCC by adding the definition of "Additional Rental Unit" and Chapter 8 of the KCC by adding a new article, entitled "Additional Rental Units" = Kaua'i County Council. [Director's Report received and hearing cont'd 11/14/17.]

Deputy Planning Director Ka'āina Hull: Good afternoon, Madame Chair and members of the Commission. We are now on Agenda Item N., New Business for Action, which is the only remaining agenda item. Zoning Amendment ZA-2018-2 is a continued public hearing for a bill for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, introducing legislation that addresses "Additional Rental Units." The proposal amends Section 8-1.5 of the Kaua'i County Code by adding the definition of "Additional Rental Unit" and Chapter 8 of the Kaua'i County Code by adding a new article entitled "Additional Rental Units", introduced by the Kaua'i County Council.

The Commission reviewed this back at the close of 2017, and just as a refresher, the Commission has been discussing this notion of "Additional Rental Units" for quite some time now. About two (2) years ago, the Department introduced legislation to allow for Additional Rental Units in the Līhu'e Planning Area, which encompasses Puhī, Līhu'e, and Hanamā'ulu. The nutshell of it is to allow an additional dwelling unit, so to speak, up to 800 square feet for property owners to use for rental purposes should they want to house kupuna aging in place, or their children returning home from college, or just rent it out into the general rental market. So there is a prohibition on subdividing or CPR'ing the structure off so that it can't be sold into the speculative market. It has to be maintained within the property owner's portfolio solely for providing housing for Kaua'i's much-needed housing stock.

That Līhu'e proposal was ultimately approved by this Body and sent up to the Kaua'i County Council. During Council discussions, some councilmembers expressed concern over restricting this ARU entitlement solely to the Līhu'e area and asked the Department to look into the veracity and capacity in which the island could have the ARU entitlement island-wide. The Department did meet with several community organizations, as well as industry experts and professional organizations to determine whether or not the ARUs would be warranted in areas outside of Līhu'e.

Ultimately, in working with those organizations, with various groups, and the County Council, Councilmember Chock and Councilmember Brun introduced the proposal you have before you folks today, which is the Additional Rental Unit entitlement for the island of Kaua'i as a whole. It is to be only in the residential areas, and again, like I said, it is an additional dwelling unit that

cannot be sold off, and it is restricted to 800 square feet. That restriction is primarily in looking at just the size of the properties themselves and as well as aiming it at the entry-level market, so to speak, as well as to the kupuna market, which most housing experts on Kaua'i indeed...well, Kaua'i and much of Hawai'i is in a housing crisis. One of the biggest lags that Kaua'i has, among others, is that entry-level, smaller home market, or inventory I should say.

So you folks had it, like I said, at the close of 2017. There wasn't too much discussion on that one. However, there was some public testimony; one of which was from the Contractors Association which they had concerns about the ARU entitlement circumventing Hawai'i Revised Statutes Section 444 which requires, for safety and welfare, that any residential structure be constructed by a certified contractor. There are homeowner build exemptions within Section 444 and so there was some discussion at the Commission level at that time, so the Department went back and has a proposal for you folks to amend the draft ordinance to include a section that states, "The permitting and construction of an Additional Rental Unit shall conform to Chapter 444 of the Hawai'i Revised Statutes." That just ensures that nothing will be used to circumvent that section of the Hawai'i Revised Statutes.

Secondly, the Department also included an additional amendment concerning lot coverage. This pertains to the fact that many have voiced concern about the inability of several properties in the Residential Zoning District to construct an ARU, and that is because so many of the properties have already been built out to the Residential Zoning District's maximum lot coverage of fifty percent (50%). So we included additional language to recommend to you folks to adopt to allow for up to ten percent (10%) beyond the fifty percent (50%) in the Residential Zoning District solely for the purposes of constructing an Additional Rental Unit and its associated parking stalls. The measure that we have in our Supplement to the Director's Report states, "An additional ten percent (10%) land coverage beyond the land coverage maximum established under Section 8-4.3 shall be provided to the respective property for the construction of an Additional Rental Unit(s) and any required off-street parking stalls(s) provided the Public Works Engineering Division does not object."

Just real briefly, the Department would like to verbally amend our report and recommendation. There is no substantive change to it, but grammatically and sentence syntax, it just makes it a bit more concise and clear to amend the provision for "provided the Public Works" is a prepositional clause; it should go in the introduction of the sentence. So we would amend our report to recommend providing Section 8-26.1(a)(6) read, "Provided the Public Works Engineering Division does not object, an additional ten percent (10%) land coverage beyond the land coverage maximum established under Section 8-4.3 shall be provided to the respective property for the construction of an Additional Rental Unit(s) and any required off-street parking stall(s)."

That is all we have. If you guys have any questions, we are open.

Chair Apisa: Streufert.

Ms. Nogami Streufert: Yes. I have a question about this. You are allowing more coverage; ten percent (10%) more land coverage for an Additional Rental Unit. Does that also cover for an ADU?

Mr. Hull: No. It would solely be for the Additional Rental Unit purposes.

Ms. Nogami Streufert: And not for a primary residence either?

Mr. Hull: No. Well, to be clear, the primary residence and ADUs and their accessory structures already have the ability to go up to fifty percent (50%) of lot coverage. So should this draft ordinance be adopted in the way it is drafted right now, the Department would only allow for going beyond that fifty percent (50%) if the purposes were solely for either the ARU itself and its associated parking.

Mr. Keawe: But that is the additional ten percent (10%).

Mr. Hull: Correct.

Ms. Nogami Streufert: I read somewhere that the analysis of the Department of Health concerns was that the fifty percent (50%) lot coverage was based upon rainwater runoff and those kinds of concerns. Is that not a concern?

Mr. Hull: No, so it is not the Department of Health. It is with the Department of Public Works Engineering Division that...they did voice that in some scenarios, there would be concern because of rainwater runoff, but not in all areas. There are some places that have a fair amount of land coverage and not an adequate enough runoff solution for them, and in those areas, the Department of Public Works would not be okay with some of these properties having the ability to go higher. But there are other areas where they would be okay with it, so it would be on a case-by-case situation. Much in the way that the ADUs program currently functions, before even submitting a Zoning Permit or a Building Permit application, you first have to do an ADU Clearance Form; that is just to go to all the agencies to make sure that the agencies are okay with you getting an ADU, and it does, in a sense, protect the property owner if they have an interest in building an ADU because before they get all the plans stamped and certified, architectural engineering requirements, they are just going to make sure whether or not they can build it, infrastructure-wise, whether or not the County would approve it. So we are taking that similar requirement that's on ADUs and putting it on the ARUs to say, before you get your Building Permits, go and make sure all the agencies will sign-off. Because, let's say, if the Water Department doesn't have the adequate water line in the area, they are not going to sign-off on a Building Permit, so, first, get that Clearance Form; as well as Fire or other agencies. So one (1) requirement on this ARU Clearance Form would be the ten percent (10%) lot coverage, and the Public Works Engineering Division would sign-off on that saying you are allowed...we have no objection to the ten percent (10%) or we do object and therefore cannot sign-off.

Ms. Nogami Streufert: Okay, thank you. Is there a sunset date on this?

Mr. Hull: There isn't. In the original Līhu'e bill, there was a sunset date, and that was in discussions much with the Housing Agency in saying having a sunset date really pushes property owners to build these units because we are in a housing crisis and we need to build these things out. On a second look at it, while that sometimes works at the large-scale residential development standard of having sunset dates and pushing developers to move then, it may not work from this bottom upper push because this is a supply side bill to provide more provisions and entitlements to supply the housing inventory, but it is not aimed at large-scale developers. It is aimed at the individual, small landowners just to, individually, provide for more housing in the inventory. And in looking at the ADU Bill and how that has accomplished several housing opportunities – I think the last count in the Residential Zoning District – the ADU Law provided for an additional one thousand (1,000) units or roughly about that much for Kaua'i, but that was constructed over a period of thirty (30) years. It wasn't constructed in first few years. It was when each individual property owner had enough capital to build those units, then they could. So in looking at the ARU, we just said, you know, it may not be advantageous to compel property owners to build by using a sunset date. We might want to take that away and just allow it for when they can build these things.

Chair Apisa: Commissioner Ho.

Mr. Ho: This ARU – if you put it in the Visitor Destination Area, if you have a TVR and you put on the ARU, do you automatically get a TVR for the ARU?

Mr. Hull: The way that the Bill was written is that the ARUs could not be used for vacation rentals or homestays, regardless of being in a VDA or not. Now, I will say that the enforcement of that will be a little bit tricky, quite honestly. It could put a little bit more inventory illegally on the internet. The Department currently does have a ramped up enforcement of illegal vacation rentals, but right now, to be honest, that enforcement is focused outside of the VDA because in the VDA, TVRs are right now allowed. So it would just take active monitoring on the part of the Department that, when we get an ARU application and we see that it is in the VDA, to actively monitor those to make sure that they are not put into the vacation rental inventory.

Mr. Keawe: Madame Chair?

Chair Apisa: Yes.

Mr. Keawe: Ka'āina, with this bill or this ordinance, do you have any estimates of how that would affect the market as far as the number of units that potentially could be built? Because now you are taking it from Līhu'e and the whole island, but you are still limiting it by how it is written with regard to cesspools and sewers and all that kind of stuff, so it is still going to come back to where it was beginning, pretty much.

Mr. Hull: For the most part, because – I know we had this discussion previously on the floor – while the entitlement would allow it in all Residential Zoning Districts, the reality of Department of Health's requirement to say you have to have a septic system to service this or a sewer system, and in many scenarios, the homeowner is first going to build his primary dwelling unit, then he is going to build his ADU because he has that capacity. It is not until he is moving for the third

unit would he actually build an ARU. Given Department of Health's requirement that a septic system can only service two (2) dwelling units, they would have to put a second septic system, and most residential properties cannot accommodate a second septic system given the size. For the most part, the ARU entitlement will be restricted via the infrastructure to those areas that are sewerred. So we have – and I apologize, I don't have those numbers on me right now – but we have tracked how many units within the Residential Zoning District are within a close proximity to a sewer system and would have access to sewer system. I apologize, I don't have those numbers on me, but we do have those numbers.

Mr. Keawe: Are we talking hundreds or less than a hundred?

Mr. Hull: No, we are talking hundreds. We are talking hundreds of properties. But at the end of the day, even when you have all the necessary infrastructure in place, these units can still be somewhat costly to build. When you are talking about a standalone new unit, the estimates we've gotten from contractors are \$120- to \$150,000 and upward for an 800-square foot unit or smaller. Many of the contractors we spoke to envision a lot of the properties – just because of the cost of construction now – that a lot of these property owners aren't going to have the available capital to necessarily build a standalone structure. Some will, but they anticipate most of them taking three-, four-, five-bedroom homes and converting them where you are not building any new footprint, but actually putting a wall between two (2) bedrooms and converting those two (2) bedrooms into, say, a kitchen and a studio; that is what they anticipate. And they looked at, you know, an average estimate given for one of the houses we were looking at, said they could bring it in at about \$45- to \$60,000 for that conversion, which they anticipate most people doing. But what I am trying to get at in a long, roundabout way, Commissioner, is, at the end of the day, it is whether or not the property owner has the capital to invest it and the willingness to invest it into it. There is a strong desire to do this, we understand, because many homes have, quite frankly, converted themselves illegally into these types of units. So we know there is a desire and people are doing it out there, and we are quite honestly saying even though, technically under the Code, those illegal conversions are illegal, at the same time we recognize that they are servicing...the black market is servicing a pent-up demand that is out there – a need for housing. So how many people decide to take advantage of it? It is really hard to speculate. Like I said, in the past thirty (30) years, the ADU entitlement has rendered about a thousand (1,000) units within the Residential Zoning District. Could we expect something like that with the ARU? I don't think it would be that much, quite honestly, but if it is at the tune of ten (10) or twenty (20) or thirty (30) a year, that is adding to a stock that right now there is not much stock out there. We are watching the rental prices climb exceedingly high and that is just because there is really no new inventory going in while our population is growing.

Chair Apisa: I have a question. So you could make it an attached duplex?

Mr. Hull: Mhmm.

Chair Apisa: Okay, it doesn't have to be detached.

Mr. Hull: Yes, it doesn't have to be detached, and in fact...what was it? About a year or a year and a half ago, Councilmember Kaneshiro introduced the ability to have multi-family housing in

all Residential Zoning Districts, which you folks reviewed and ultimately sent back to them with a stamp of approval. So that ability is already out there; to have attached units in all Residential Zoning Districts.

One area of concern that I will also point out, and we have hatched over this several times, but I just wanted to point it out because it was at the...the Council had the Līhu‘e bill this past Wednesday, and their inclination is to hold on to the Līhu‘e bill until you folks are done reviewing the island-wide bill. They kind of want to review it in tandem.

One concern that comes up and is always a point of concern with the ARU entitlement is parking. If we require the two (2) stalls that are necessary, there are many properties out there that may not qualify for it because they are getting close (to) or have already hit that fifty percent (50%) lot coverage. If we require no parking stalls, of course that is going to have an impact on the neighborhood because you will have more on-street parking. The ultimate conclusion the Department is saying is that, you know, in looking at things like the General Plan, which you folks just reviewed, and looking at how to handle our growth rate and the fact that much of our growth rate is not coming from the mainland invasion – it is from our own birth rates, it is our own children, it is our own keiki – and we need to begin addressing how do we grow for them. Much of the concern has been we need to maintain our rural landscape, our open landscape, our agricultural land. We need to maintain those, but we need more housing, so the only way you can really do that is look at infill development, which this bill, to a certain degree, is very much along the lines of infill development and further developing our urban corridors. But in doing that, we do have to accept that there will be more on-street parking, period. Whether we arrive at whether or not one (1) stall or two (2) stalls will remain to be seen, and I think it is an important point. Right now, it is at the one (1) stall. The Department is in agreement with Councilmember Brun and Councilmember Chock to have that one (1) stall, but I think it is an area of discussion that is going to continuously be had back up at Council.

Ms. Nogami Streufert: Could I ask a question? Is each property only allowed one (1) ARU? In other words, could you do a two-story ARU so that you’ve got one (1) above and one (1) below?

Mr. Hull: So the ARU entitlement as it is drafted – it would function as an accessory to a primary dwelling. For as many dwelling units as a specific property qualifies for, then it would also qualify to that same amount of ARUs. To put it in a nutshell, every single residential property on the County of Kaua‘i, at least for zoning purposes – and just Residential, we are not talking Ag or Open, but just in the Residential Zoning District – qualifies for at least two (2) units. Either you qualify for two (2) dwelling units or more–

Ms. Nogami Streufert: Unless it is CPR’d.

Mr. Hull: Unless it is CPR’d, yes. And if we take the CPR evaluation out of the picture and because, also, this bill prohibits CPR’ing ARU units, but for every lot of record, you are either allowed two (2) dwelling units or more, or you are allowed...if you are only allowed one (1) dwelling unit, that is where the ADU provision came in and said well, then, you can build an ADU. So every property qualifies for two (2) dwelling units or more, and if you qualify for two

(2) dwelling units, then each one of those dwelling units qualifies, under the proposal, for an ARU.

Chair Apisa: I guess I have another question. If there is black market ARU rentals, now they could come forth and be legal?

Mr. Hull: Correct. They could come forth and be legal under the Zoning Code, right? Like this would allow them to become legitimate zoning-wise. Now, the issue that they may stumble on is if you have a black market ARU in a place that doesn't have access to a sewer system, then the State Department of Health isn't going to sign-off on their Building Permit.

Chair Apisa: It still has to be (inaudible).

Mr. Hull: Yes, so it begins to allow for them to be legitimized, but it doesn't give a carte blanche waiver to every single black market one.

Chair Apisa: You have to have the waste disposal and the parking.

Mr. Hull: They have to still meet the Building Code for health and safety reasons.

Mr. Keawe: Madame Chair, I had a question, you know, just from your opinion. Do you think the Bill as it is written will have any effect on the current market now – real estate market – for potential buyers coming in?

Chair Apisa: Will it have any impact?

Mr. Keawe: Well, based on, you know, the median price is what? \$600-, \$700,000. You know, that kind of property, will this have any effect on that market at all as far as an additional benefit for buying a specific house?

Chair Apisa: I think it would.

Mr. Keawe: Okay.

Mr. Mahoney: Chair, could I say something?

Chair Apisa: Yes, please.

Mr. Mahoney: I think, in the discussion process, this is part of a solution. We know we have an incredible housing shortage over here, and this is a methodology to ease this for some of the families that live here to get starts. Is it perfect? Probably not, but I think it is a good start that we need to pursue. I think through the discussion that Ka'āina has told us and some of the laws that hold things in check, you know, the Health Department, etc., those steps all have to be taken forward. But what it does is part of a housing solution that allows a lot of families to maybe have some of their 'ohana have a place to start off because there is no inventory and prices are outrageous that don't meet most people's budget. So I think we should move forward with this

bill and turn it back up to the Council with approval, and I am willing to make a motion in that regard.

Chair Apisa: I am impressed that it seems like it has been pretty well thought through as far as prohibiting CPRs and cannot be used as a TVR. I think you have addressed...

Mr. Hull: Thank you.

Mr. Mahoney: I would like to make a motion to--

Chair Apisa: Go ahead.

Mr. Mahoney: --approve Zoning Amendment ZA-2018-2 with amendments.

Ms. Nogami Streufert: Second.

Chair Apisa: We have a motion and a second. Any other discussion on this? We have a motion to approve Zoning Amendment ZA-2018-2, a bill for an ordinance amending Chapter 8 of the Kaua'i County Code 1987, as amended. All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 5:0.

Mr. Hull: Thank you, Commission Madame Chair.

ANNOUNCEMENTS

Topics for Future Meetings

Mr. Hull: The next and final set of agenda items are Agenda Item O, Announcements, Topics for Future Meetings. You folks are in receipt of the pending applications for upcoming Planning Commission (meetings). You reviewed a couple of them and the Director's Reports today for the Leaps and Bounds Preschool (and) 'Ohana Home Healthcare [sic]. We've got a few residential proposals coming up, as well as the Waimea Middle School play court area. Are there any questions or concerns about any of the pending applications? Seeing none. If any of you guys have any questions and want to talk offline, our staff is definitely available.

The following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter at the Līhu'e Civic Center, Mo'ikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Līhu'e, Kaua'i, Hawai'i 96766 on Tuesday, January 23, 2018.

Mr. Hull: 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, January 23, 2018. And that completes this agenda.

ADJOURNMENT

Chair Apisa: Call for a motion to adjourn.

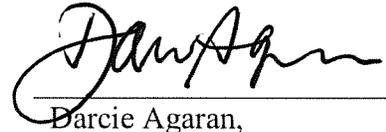
Mr. Keawe: I move to adjourn.

Ms. Nogami Streufert: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Motion carried 5:0. Meeting adjourned.

Chair Apisa adjourned the meeting at 11:37 a.m.

Respectfully submitted by:



Darcie Agaran,
Commission Support Clerk

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

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