

KAUA'I PLANNING COMMISSION
REGULAR MEETING
March 09, 2021

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Vice Chair Helen Cox at 9:03 a.m., - Microsoft Teams Audio +1 469-848-0234, Conference ID: 444 715 279# The following Commissioners were present:

Ms. Helen Cox
Ms. Glenda Nogami Streufert
Mr. Melvin Chiba
Mr. Francis DeGracia
Mr. Ho

Absent and Excused:
Ms. Donna Apisa
Lori Otsuka

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

Discussion of the meeting, in effect, ensued:

CALL TO ORDER

Vice Chair Cox: Called the meeting to order at 9:03 a.m.

ROLL CALL

Vice Chair Cox: So I think everybody is - okay so, I am going to call this meeting to order, welcome everyone. I will be chairing the meeting because Donna Apisa is not - our normal Chair is not able to get on this morning, maybe she will join us as soon as she can, but for now I am chairing the meeting. Kaaina, could you do a roll call, please?

Planning Director Mr. Kaaina Mr. Hull: Before we start, everybody's that called in, please mute your phones. If you have not mute your phone, we are getting a considerable amount of feedback. If you would like to testify and speak at a later time, in the agenda, the code is *62 to unmute your phone. But, again, everybody that's called in, please mute your phone or video conference capabilities, thank you. So Madam Chair, roll call - Commissioner Chiba?

Mr. Chiba: Here.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Here.

Mr. Hull: Commissioner Ho?

Mr. Ho: Here.

Mr. Hull: Commissioner Otsuka is excused. Commissioner Streufert?

Ms. Nogami Streufert: Here.

Mr. Hull: Commissioner Apisa is excused.

Chair Apisa: That's actually - Kaaina, I'm on the phone, I just can't my video going, but I'm present on the phone and I defer, Helen, Vice Chair Cox to run the meeting today.

Mr. Hull: Hold on, just hold on, let me just okay, Commissioner Apisa's present. Vice Chair Cox?

Vice Chair Cox: Here.

Mr. Hull: I sorry, I'm going to ask for a two-minute recess Madam Chair to defer with the County Attorney's on Commissioner - on Chair Apisa's presence on the meeting, yet unable to chair it may create an issue as far as she's supposed to chair it. So let me sidebar, if we could have a two-minute break there, Madam Chair.

Vice Chair Cox: All right, two-minute break, thank you Kaaina.

The Commission recessed this portion of the meeting at 9:06 a.m.

The Commission reconvened this portion of the meeting at 9:08 a.m.

Mr. Hull: We clarified that issued, if you want to call the meeting back into session.

Vice Chair Cox: Okay, I would like to call the meeting to order and back into session at 9:08. We already had the roll call, so I do not believe we need to repeat that do we, Kaaina?

Mr. Hull: No Madam Chair. We have five present. Just for the clarification for the Commission members as well as any of those who are calling into witness or testify in the meeting. Commissioner, Chair Apisa, is having technical issues, and so she is actually calling in as a member of the public to monitor but will not be participating in the meeting as a Commission member. So technically, she is excused as a Commissioner. Vice Chair Cox will be chairing this meeting. So moving on Madam Chair, sorry, were there any questions for any of

the Commissioners pertaining to that little hiccough? Okay hearing none. Thank you for your patience folks.

APPROVAL OF AGENDA

Mr. Hull: Next Madam Chair is the approval of the Agenda, The Department has one recommended change, it's a standard recommendation we make during the teleconferencing system and that's that Agenda Item F., excuse me, Agenda Item...sorry, Agenda Item - excuse me, we're recommending that Agenda Item M., be moved so that each of the New Agency Hearings be immediately followed by the review of the New Business pertaining to that particular matter, and that's the one amendment we will recommend.

Chair Cox: We need to have - can we have a motion to approve that change?

Ms. Nogami Streufert: I move to approve the Agenda as amended.

Chair Cox: Is there a second?

Mr. Ho: Second.

Mr. DeGracia: Second.

Chair Cox: Okay, I think this is an easy vote so, I will accept here - none of you is visuals so I guess, if there are any objections please state so now. Okay, hearing none. The change in the Agenda is approved. Motion carried. 5:0.

MINUTES of the meeting(s) of the Planning Commission

Chair Cox: So I believe we do not have Minutes.

RECEIPT OF ITEMS FOR THE RECORD (None)

Chair Cox: Do we have receipt of items for the record, Kaaina?

Mr. Hull: No, there are no additional Receipt of Items for the Record, Madam Chair.

HEARINGS AND PUBLIC COMMENT

Chair Cox: Okay, in that case we are moving right to the Hearing and Public Comments.

Mr. Hull: Oh, no go ahead.

Chair Cox: Okay.

Mr. Hull: No problem...

Chair Cox: We are moving right to Item F. Hearing and Public Comments, we have Continued Agency Hearings. The first one is...

Mr. Hull: Hold on Madam Chair.

Chair Cox: Yeah.

Mr. Hull: So prior to the Agency Hearing, we have F. Hearings and Public Comment.

Mr. Chiba: Yes.

Chair Cox: Oh, right, okay, sorry.

Mr. Hull: So again...

Chair Cox: Do we have any public testimony on any Items - I know Kaaina, you usually say what is appropriate at this point?

Mr. Hull: Yeah, thank you, Madame Chair, again, folks that have called into this meeting, we are getting considerable amounts of feedback. I need you folks to mute your phones, at this time and please unmute them when you are about to speak on a particular agenda item, thank you. Moving into Hearings and Public Comments, so the Planning Commission accepts written testimony for any Agenda Items, we have received a considerable amount of written testimony we will be reading into the record for the Agency Hearing. But we're also affording the opportunity for members of the public to call in and testify on any Agenda Item, and right now for Item F. this is the time for any member of the public that's called in for any Agenda Item to testify. The way that we are going to this, we have a fair amount of callers on the line right now, is that I'll be calling out each individual phone number and asking if you would like to testify on any of the Agenda Items. If you do so, you just unmute your phone with the *62 and provide three minutes of testimony and provide your name prior to giving testimony. So I am going to start calling the phone numbers at this point. Area code [REDACTED]; would you like to testify on any of the Agenda Items? Hearing none - area code [REDACTED], would you like to testify on any of the Agenda Items?

Roslyn Nicole Manawaiakea Cummings: Yes.

Mr. Hull: Okay, please state your name and you have three minutes, ma'am.

Ms. Cummings: Okay, I am Roslyn Nicole Manawaiakea Cummings. I am testifying a deferral for PDU-2008-11, to allow 50 additional multifamily residential units from 34 to 74 on Weliweli Road and Waikomo, 5469 Koloa Road, TMK: 2-8-008:001, Koloa Village, LLC. The reason why I deferred this because I'm a lineal descendant of burials that are located in this property that's about to get desecrated. I'm letting you know as a general public and a public servant that the burial of my ancestor, Nako'oko'o, my ancestor (inaudible), my ancestor Kawelomakalua, my ancestor Kapohinaokalani, my ancestor Luaniu are buried in that aina in a cave that's located underground. This is a house site of where they lived and these people go back - (inaudible) is

the god of Kahekili II and (inaudible) III. Kiha is the husband of Kamakahele and the father of Keawe. Kawelomakualua is from the Kawelo lineage that is well known. (inaudible) is from the (inaudible) lineage, and (inaudible) is the father of (inaudible) and they are buried in this area. I have submitted what's called a burial registration and a lineal descendants list, so this is what we called a new finding in hopes that SHPD can pick this up and do the permitting for the project in protection of these burials. Also I would like to let the general public know with further development you're going to find a lots encroaching on our burial systems, especially here. I would like to make it known that there is no drainage plan for the Koloa ahupua'a for the development that are upcoming upcoming. Um, there also is not a traffic evaluation plan as far as I know, or an evacuation place. So please let the general public be provided with these plans, and take care - Aloha and God Bless.

Chair Cox: Aloha, thank you for your testimony.

Mr. Hull: Thank you for your testimony. Next we have area c- or area code [REDACTED], would you like to provide testimony on any Agenda Item?

Ms. Allison Shaw: This is for Bruno—?

Mr. Hull: Okay, if...

Ms. Shaw: Call - yeah.

Mr. Hull: All right, are you a representative for the applicant of an Item, or would you like to testify as a member of the public?

Ms. Shaw: This is for Bruno text (inaudible), yeah; did you get the text from him? Well, he said to call in this - this particular call this morning to apply - to submit a testimony on an approval of (inaudible)...

Mr. Hull: Yeah ma'am, so if you would like to testify on the Kilauea Old Mill application, now would be your time to do so. You have - you can state your name a- and you have three minutes for testimony, ma'am.

Ms. Shaw: Are you talking to me?

Mr. Hull: Yes.

Ms. Shaw: Oh, my name's Allison Shaw, I am sorry, I did not (inaudible), me. My name's Allison Shaw and yes, I want to support the Kilauea, Old Mill application. Our family chose - our family has been involved with the Jujitsu Dojo and we our children have been going there for a few years - a couple years, and it supports so many families and such an incredible experience for all the children that go there. And we definitely support that it continues as it has been, um, it is vital for our community and so many lives are positively affected by the opportunity that, that has provided for this community and it's highly needed and an incredible experience for all these children for years - and adults. And we believe that is the absolute best use for that space -

so many other families know that it's supported by so many families and we definitely are in support of that continuing in that space. Uh, it would be a complete tragedy to this community up on the north shore to - for that to be changed in any way and my husband and I, and are supportive of that, and we want to, um - yeah, we are just testifying that, that - continues for the kids. It is vital for the - it's vital for our families and the children experience, it provides so much, so many good things come through that Dojo and the, uh, opportunity that provides. So we really - we really want to support that, it would - I mean, there's so many people we know that their children go there years and years, and they - and we know kids that have gone and trained with in that space for years and years, and so we highly support that, that continues in the community. It's been - it's vital, people love it, it is -the most wonderful teachers and coaches there and they provide, uh, a really interesting experiences for the kids. And this is part of - this is a huge part of this community it's having that space to do Jujitsu and all the training that's involved is an absolutely wonderful. It would be a complete tragedy for one person to come through and want to change that, not knowing all the families and lives that it affects - um, that it would negatively affect if that were to be taken away. And there's commercial space all over the place...

Mr. Hull: Ma'am, you (inaudible)...

Ms. Shaw: So we...

Mr. Hull: Ma'am, you have three minutes...

Ms. Shaw: Yeah?

Mr. Hull: Please wrap up your testimony, you have three minutes for testimony, there is a lot of testifiers and a lots business at hand, so if you could wrap up your (inaudible)...

Ms. Shaw: Yeah, I think - I think I said it - I think I said it...

Mr. Hull: Thank you.

Ms. Shaw: (Inaudible) support, it is the best thing for the community all around.

Mr. Hull: Thank you for your testimony.

Ms. Shaw: Thank - thank you so much, thank you so much for supporting the families in the community—

Mr. Hull: Next, we have...

Ms. Shaw: (Inaudible).

Mr. Hull: Next, we have area code [REDACTED]; would you like to provide testimony?
Hearing none, we have area code [REDACTED]; would you like to provide testimony? I am

moving on to area [REDACTED], would you like to provide testimony on any Agenda Item at this time.

Mr. Chris Schumacher: Yes, I would.

Mr. Hull: Okay, please state your name. You have three minutes.

Mr. Chris Schumacher: Okay, my name is Chris Schumacher, I am a teacher at Kilauea school, and I am support of the Longman Jujitsu Dojo. And as a teacher I've had a lots students - high risk students that have attended the Dojo and I feel it's a vital part of our community. My son also attends the Dojo, he has been going there three years and it has changed his life, in a lots areas. And I think the reason why is because Sensei Bruno, he took many (inaudible) that are creating community members - upstanding community members. The Dojo creates a community bonding that is beyond (inaudible) support because it happens year round. So the students that go there, a lot of them from high-risk situations, they just feel part of a family and like it's so important - I feel emotional just talking about it, it's a vital part of our community and I really would like to see it continue. And I will do everything in my power to support Bruno, our Sensei and can only say good things about Bruno as far as his membership in our community, what he's doing for our students, and (inaudible) of value and importance within our community, and that's it for me, thank you.

Mr. Hull: Please folks, if you could mute your microphones, otherwise I will mute on my end all the callers.

Mr. Schumacher: Okay, were you able to catch that what I was saying?

Chair Cox: Yes.

Mr. Hull: We did, thank you for your testimony Mr. Schumacher. Again, for all the callers that have called in, please mute your telephones, or else we will - we will mute every single caller on our side and you will have to *62 to get back in.

Mr. Schumacher: Okay, can I ask you one question, please (inaudible)?

Mr. Hull: Right now is not time for questions, sir.

Mr. Schumacher: Okay.

Mr. Hull: I am moving on area code [REDACTED]; would you like to testify on any Agenda Item?

Mr. Ryan Siebring: Yes, I would.

Mr. Hull: Please state your name; you have three minutes for testimony, sir.

Mr. Siebring: Hi, um, my name is Ryan Siebring. I am a 35-year resident of Kilauea. I am in full support of the Kilauea Old Mill application. I also emailed a support letter but I do not see it on the Agenda. Myself, and my three children have attended the Jujitsu Academy for the past eight years. We do it not only for physical health but also for mental health. And growing up in Kilauea - I mean, I used to (inaudible), I used to eat at (inaudible), that area has always been used in that way. My mother is the closest (inaudible) to the Kilauea Mill, and they are also in full support - she is a teacher, she is not able to be on today. But yeah, I'm in full support, and that's all, thank you.

Mr. Hull: Thank you for your testimony.

Mr. Siebring: Uh-huh.

Mr. Hull: Next, we have area code [REDACTED], would you like to provide testimony on any of the Agenda Items at this time? Again, area code [REDACTED], would you like to provide testimony on any Agenda Item? Hearing none, we are moving onto area code [REDACTED], would you like to provide testimony on any Agenda Item. Again, area code [REDACTED], would you like to provide - provide testimony on any Agenda Item?

Ms. Felicia Cowden: This is Councilmember Felicia Cowden; I am simply listening in, thank you.

Mr. Hull: Thank you Councilmember. Next, area code [REDACTED] would you like to provide testimony on any Agenda Item?

Woman: No.

Mr. Hull: Thank you. Next, area code [REDACTED], would you like to provide testimony on any Agenda Item? Again, area code [REDACTED] would you like to provide testimony on any Agenda Item? Hearing none, area code [REDACTED] would you like to provide testimony on any agenda item?

Mr. Vince Casso: Yes.

Mr. Hull: Please state your name and you have three minutes for testimony, sir.

Mr. Casso: Hi, my name's Vince Casso. I just want to promote my support for the Old Mill application for Longman Jujitsu. I am a newer resident to the area and was immediately welcomed into the community. I find it very supportive for the kids and the families in the area. I am a longtime Jujitsu advocate and someone who struggled with areas of self-confidence, and Jujitsu has been very beneficial for my career for my personal relationships, and I think it's a very positive thing for every kid to go through and - and overall I'm very supportive of the application.

Mr. Hull: Oh, thank you for your testimony Mr. Casso. And I apologize, this wasn't announced in the beginning of the meeting, but the meeting also is live streaming at the County of Kauai

website, through the webcast meeting. So I know previously there was some issues about calling in and not being able to see the actual interactions with the Planning Commissioners. So you can still call in and stay on your phone if you'd like to provide testimony, but if you're calling in just to listen in, you can also just listen and watch the proceedings live right now at the County of Kauai website, webcast meeting link. So yeah, thank you.

Moving next, area code [REDACTED] would you like to provide testimony? Again, area code [REDACTED], would you like to provide any testimony? Hearing none, moving onto area code [REDACTED], would you like to provide testimony on any Agenda Item? Again, area code [REDACTED], would you like to provide testimony on any of the Planning Commission Agenda Items? Hearing none, area code [REDACTED] would you like to provide testimony on any of the Agenda Items? Again, area code [REDACTED], would you like to provide testimony on any of the Planning Commission Agenda Items? Hearing none, moving onto area code [REDACTED], would you like to provide testimony on any of the Planning Commission Agenda Items today? Again, area code [REDACTED], would you like to provide testimony on any Agenda Items? Hearing none, moving onto area code [REDACTED] would you like to provide testimony on any of the Planning Commission Agenda Items today?

Mr. Bruno Ewald: Yes.

Mr. Hull: All right. Please state your name. And you have three minutes for testimony, sir?

Mr. Ewald: Hi Kaaina, good morning, this is Bruno calling. I just wanted to thank you guys for, being here for me and just want to use this time to let people know that...

Mr. Hull: Oh Bruno, Bruno...

Mr. Ewald: (Inaudible)...

Mr. Hull: Sorry to interrupt. Bruno, are you part of the Kilauea LLC Application for the Old Mill?

Mr. Ewald: I am a tenant (inaudible)...

Mr. Hull: Yes so, you will be speaking, you will be given time to speak during the application process. This is time for members of the public to speak; they are limited to three minutes as an applicant you have a specific time during the application process to speak.

Mr. Ewald: Yes, thank you Kaaina.

Mr. Hull: Okay.

Mr. Ewald: Okay, I will excuse myself, thank you.

Mr. Hull: Moving onto area code [REDACTED], would you like to testify on any of the Planning Commission Agenda Items today?

Woman: Yes.

Mr. Hull: Please state your name and you have three minutes for testimony.

Woman: Hi, my name is (inaudible), I would like to testify as a member of the public to support approval of the Kilauea Old Mill application and to support the Longman Jujitsu school. Um, my son attends Jujitsu with - Jujitsu with Professor Bruno twice a week and his recently turned 4-year old brother will hopefully begin attending class soon too. Um, we hold Professor Bruno, my husband and I do, in the highest regards. His is Jujitsu school is a positive aspect to the community in Kilauea and beyond. To lose it would be truly detrimental to our youth who rely on it every week as a way to boost self-confidence - learn to help others become physically fit, learn discipline and self-control, and also learn how not to be a target for bullies, and try to perfect the life of Jujitsu. There is so much to (inaudible) and we are in full support of this continuing and value it very highly, thank you.

Mr. Hull: Thank you for your testimony, ma'am. Moving onto area code 808-977-0109, would you like to provide testimony?

Kelly Sasaki: Yes, I would. My name is Kelly Sasaki, I am in community and I also live here in Kilauea - I also own a business here. We are in full support, my husband and I of the Kilauea Old Mill application. Our child attends Jujitsu class there consistently and has done so for over two years. (Inaudible) and our (inaudible) I (inaudible) Bruno just does not teach the Jujitsu classes, he teaches these children how to become (inaudible) leaders in the community, which is essential. A lot of these kids are building friendships (inaudible) come together and having a sense of community just (inaudible) so we are in full support and that's it, thank you so much for your time.

Mr. Hull: Thank you for your testimony. Moving onto area code [REDACTED], would you like to provide testimony on any Planning Commission Agenda Item? Again, area code [REDACTED] would you like to provide testimony on any Agenda Item at this time?

Mr. Peter Morimoto: Yes, I would.

Mr. Hull: Please state your name. You have three minutes.

Mr. Morimoto: My name's Peter...

Mr. Hull: Well sorry. Go ahead.

Mr. Morimoto: My name's Peter Morimoto, I am an attorney and I represent Jim and Shelly Spencer. The Spencer's have a real problem with the Public Hearing Notice provided to them. It conflicts with the Planning Commission's rules, specifically Rule 1-4-3, which states that, "The, uh, petitions for intervention be filed seven days prior to the Agency Hearing, uh, for which notice to the public had been published pursuant to law." There is no notice of an Agency Hearing and that's problem number one.

The second problem is that the petition - the Public Hearing Notice conflicts with the Agenda. If you look at the Agenda for today's, uh, hearing, it references a Public Hearing for something other than the Old Mill project, and when you go to the Agenda Hearing section - or the Agency Hearing section, you see that the Old Mill project listed under Agency Hearing section. So in other words the Public Hearing Notice failed to tell the neighboring properties that there was going to be a decision-making hearing held today, and instead misled them into thinking that it was only going to be a public hearing to solicit public input. Now the question is why did that happen, and I think the - the only solution for this is to re-notice this matter properly, to let the community know that the decision-making hearing is going to be made - or entered into on the date of the hearing. This misleads people into thinking, "Hey, you're just going to give public input - the Commission's going to, you know, take it in, think about it and then come up with, uh, a recommendation or a report. And it appears to me that, not to say the fix is in, but it appears to me that the Department's already made a recommendation to approve this thing without even hearing from the public. So anyway, that is my concern and - and I hope that the Commission rethinks this matter and republishes notice properly to give my client the due process, thank you.

Mr. Hull: Thank you for your testimony Mr. Morimoto, just as a quick question to you because this could represent possible litigation. Are - are you stating that if the Department republishes agency hearing within the Public Hearing Notice as opposed to Public Hearing, this would address your issue?

Mr. Morimoto: Uh, (inaudible)...

Mr. Hull: Mr. Morimoto, are you still hearing no response, moving onto area code [REDACTED], would you like to provide testimony on any of the Planning Commission Agenda Items?

Man: No.

Mr. Hull: Thank you. Moving onto area code [REDACTED], would you like to provide testimony on any Agenda Item of the Planning Commission today? Again, area code [REDACTED], would you like to provide testimony on any Agenda Item for the Planning Commission today? Hearing none, moving onto area code [REDACTED], would you like to provide testimony on any Agenda Item? Again, area code [REDACTED], would you like to provide testimony? Hearing none, moving onto area code [REDACTED], would you like to provide testimony on any of the Planning Commission's Agenda Items today?

Mr. Hull: Again, area code [REDACTED], would you like to provide testimony any Planning Commission Agenda Items today? Hearing none, area code [REDACTED], would you like to provide testimony on any of the Agenda Items for the Commission today? Again, area code [REDACTED], would you like to provide testimony on any of the Agenda Items today? Hearing none, moving onto area code [REDACTED], would you like to provide testimony on any of the Agenda Items today?

Mr. Steve Rex: Yes, I would.

Mr. Hull: State your name and you have three minutes for testimony.

Mr. Rex: Okay, thank you. My name is Steve Rex, I am a Pastor in the community of Kilauea, I live right across the street from the Old Mill, and I am calling as support to Longman Jujitsu. Bruno is a great man, loves the community - loves to help the children and families. We have a number of people in our congregation that attends this program, and are benefitting from it. I think it would be a tragedy to remove something like this where the kids needs someone who's actually teaching good morals, good values, help the elderly, be a blessing to the community, and not a problem. So I am in full favor of this continuing here. I live right across the street, there is no inconvenience by this group being there is nothing that gets in the way. It's a blessing to see all the kids riding their bikes down the street to come to class - um, it's been a real blessing to the community and we need more things like this for the community, thank you.

Mr. Hull: Thank you for testimony. Area code [REDACTED], would you like to provide testimony on any Agenda Item for the Planning Commission today?

Mr. John Johnson: Yes, this is John Johnson taxpayer, house homeowner in Kilauea. My family used the Old Mill - prior to Jujitsu, it was a restaurant, a motorcycle, repair shop - um, my kids go to Jujitsu, we also use - next to that we use the pharmacy, the doctor's office - I use the lumberyard - everything in this community I use and - and I'm all for the community, thank you.

Mr. Hull: Thank you for your testimony, sir. Moving onto [REDACTED], would you like to provide testimony on any Agenda Item today?

Mr. Brian Hoshide: Yes, I would.

Mr. Hull: Please give your name (inaudible)...

Mr. Hoshide: Yes, my name is Brian Hoshide. I lived on Kauai my whole life. I have trained martial arts in Kilauea when I was a kid - I trained with Bruno here at the Longman studio. I don't see any reason why they should change, I don't see any inconvenience to the community, it's a very positive outlet - my son trains with me, I think it's a great opportunity for the community to connect. I do not see the benefit in changing this to residential, I do not even personally - I am a contractor and I do not even really feel like this building is all suited for residential.

Mr. Hull: Is that all your testimony Mr. Hoshide?

Mr. Hoshide: Yes, yes that is all.

Mr. Hull: Okay, thank you for your testimony, sir. Next, we have area code [REDACTED] would you like to provide testimony on any Planning Commission Agenda Item today?

Mr. Waren Doi: Yes, I would.

Mr. Hull: Please go ahead and state your name and you have three minutes, sir.

Mr. Doi: My name is Warren Doi and I strongly support Bruno, and I would like to highlight the incredible work he does for our community. The Longman Jujitsu Academy at the Kilauea Old Mill has been the foundation of support for our keikei throughout the years. It is really hard to

describe just how much of an impact Bruno has made, he's instilled confidence, self-reliance, personal growth throughout our youth. He is also combatted bullying, drug abuse, and depression. Several years ago, Micah Kane, from the Hawaii Community Foundation brought us all together to focus our attention on the drastic increase in teen suicide, and since that point we've been doing' everything we can to combat that and we just simply cannot do this work without Bruno and the constructive environment that he's created. His Dojo and the Longman, jujitsu Academy is the highest and best use for our community period. Thank you.

Mr. Hull: Thank you for you testimony, sir. Area code [REDACTED], would you like to provide testimony on any of the Agenda Items for the Planning Commission today?

Mr. Van Skoubis: Yes, I would.

Mr. Hull: Please, go ahead state your name and proceed, sir.

Mr. Skoubis: My Van Skoubis. I am a HVAC Contractor on the island as well as a part-time Youth Pastor at a church. I would like to testify of the Old Mill, Project in Kilauea as well as Longman jujitsu. Just being here and working here with our youth here on this island, I can guarantee that these kinds of programs are absolutely vital to their health and survival. If we do not provide things like this for our youth to do, they will find other things and they are not productive, and they are very detrimental to the growth, both you know, physically and mentally. We do - we talked about suicide as well as drug use. These are - programs like this are directly affecting those numbers to go down, so we want to continue to support programs like this - (inaudible). So, yeah, I'm strongly in favor in support of that, thank you.

Mr. Hull: Thank you for your testimony. Next, we have [REDACTED], would you like to provide testimony on any of the Agenda Items today?

Mr. Mike Thornton: Yes, I would.

Mr. Hull: Please, go ahead state your name and proceed.

Mr. Thornton: My name is Mike Thornton, born and raised on the north shore of Kauai, which my kids are attending jujitsu at Bruno's academy for the last two years. I am in full support of this and for the other patrons that use this facility for its commercial use. There is not a lot of commercial space on the north shore and it is hard enough to do - and keep a business running in these hard times, so full support of the way the entire structure is used. Thank you that is it.

Mr. Hull: Thank you for your testimony. Next, we have [REDACTED], would you like to provide testimony on any of the Planning Commission Agenda Items today?

Mr. Raffa Wood: Yeah, I would, I would like to, (inaudible) - oh yeah, my name's Raffa Wood and I would love to testify in - in support of Longman jujitsu. I've been doing jujitsu since I was, like, three years old - I was raised in Kilauea and I just think that it's such a good outlet for the kids, you know, kids it's something better to do because there's so many ways that they go down the wrong path. I think that jujitsu does not only keep kids out of trouble but it teaches respect, and it teaches so many just great values that you should learn and it teaches you, um, how to be very humble and disciplined. I think that every kid needs jujitsu in their life, and same thing with adults, I think Jujitsu is a great outlet for a lot of adults who've wanted to change their lives

for the better, and I just think that it's a great thing for the community and there's no reason why it shouldn't - why it should change, thank you.

Mr. Hull: Thank you for your testimony. Next we have area code [REDACTED], would you like to provide testimony on any of the Agenda Items for the Planning Commission today?

Dr. Richard Blair: Yes, I would, sir.

Mr. Hull: Please go ahead and state your name, please?

Dr. Blair: My name is Dr. Richard Blair. I am a 50 years plus resident, I am an essential healthcare professional and I am calling to give my full support to Bruno. I have been training (inaudible) with Bruno for the last 15 plus years and not only has it been a positive experience in my health and well-being but even more important, I guess in a positive in all the children and young adults that have trained with Bruno. They are kinder, they are gentler, they have a better rapport and more respect for their parents and teachers. They are less apt to get in trouble and will grow up to be better citizens. Overall Bruno has been a great influence on our community and for that stop - for that to stop, that would be a bad thing, thank you so much.

Mr. Hull: Thank you for your testimony. Again, for all those who have called in or on tele-video system, please mute your system - please mute your phones. We're getting some feedback, somebody's playing a television right now and quite honestly they're 80 some odd people on this phone conference so that is being somewhat disruptive, so please mute your phones if you're not speaking. Moving onto area [REDACTED], would you like to provide testimony on any of the Agenda Items for the Planning Commission today?

Ms. Ana Mo Des: Yes, thank you - okay, can you hear me okay?

Mr. Hull: Oh, yeah go ahead state your name and proceed, ma'am - you have three minutes for testimony.

Ms. Mo Des: Okay thank you, good morning Kaaina and members of the Planning Commission. My name is Ana Mo Des and I am calling in support of the 40-unit increase in Koloa Village. There is as you are well aware, a huge problem on this island with housing that is attainable for local families. This developer is intending to do that, provide what can be attainable for local families. Everything that is a project right now is luxury and catering towards the visitor destination area and that I am extremely opposed to. Uh, this development has taken into landscape and history of this town Koloa and its people and created a space where small business and local families may thrive and prosper. In my opinion, it should only be developments like this that should have permission to construct their projects, only those developers that have a stake in the population they are building for should be allowed the privilege to develop on this island, and especially in this special town of Koloa. Honoring its history and bringing everyone together towards a bright future instead of appealing to just a visitor and luxury market. This developer has done just that, and in listening to communities need for attainable housing has changed the plan from 34 expensive units to 74 affordable units. Please grant the 40-unit increase so more local families can attain their feasible homes. I would ask the community to look at the project to what is happening in Koloa Village because this is who - what we need to target. Um, the commercial side of this project is only for local businesses, mom and pop stores that are dying right now. Every other commercial outlet is big dog stores and that does not serve

a local artistic community that wants to have an opportunity to thrive. And the affordable housing model itself doesn't work because for every 20% of, "Affordable housing," that has to be subsidized in perpetuity, there's 80% that has to be up-marked to an extreme degree, and that's the housing that goes on the market, and it does get sold and it always gets sold by someone on the mainland coming in. So we should only allow projects that are going to allow families to attain their homes, feasible - have a vested interest and be able to use equity to provide a future for their children - be able to go to college and use home equity as a possibility to get out from under the thumb of what's been happening on this island for so long. So this simple change can start to alleviate a big issue that we have, and have more attainable p- priced homes at \$300 thousand or so, on the market abused as price comparable, so that we can start to manage this huge influx of (inaudible) homes that always get (inaudible)...

Mr. Hull: There is three minutes (inaudible)...

Ms. Mo Des: Okay, my time is up, I appreciate, uh, being able to testify this morning, thank you so much.

Mr. Hull: Thank you for your testimony Ms. Mo Des. Uh, next is area code [REDACTED] would you like to testify on any of the Agenda Items for the Planning Commission today?

Ms. Shawn Nakaielua Villatora: Yes, I would, my name is can you hear me?

Mr. Hull: We can, ma'am, please proceed.

Ms. Shawn Nakaielua Villatora: My name is Shawn Villatora, also known by my Hawaiian name Nakaielua. I am a culture practitioner from Maui and I wanted to testify, um, primarily against, the Development project use permit U-2008-10, um, for actually Bill - the one for the Koloa Village, LLC, that is allowing 40 additional multifamily residential units between the Weliweli Road and Waikomo Road intersection. For me, I just, um, coming to knowledge that I am a lineal descendent of burial grounds located in that parcel, and with my, understanding of the Wailua of the Koloa aqueduct system and filtration system, all of Koloa - like, many people know that on top Kauai is one of the - is the youngest spot in our island chain and it is very famously known for their tube systems under - underground. For me personally - I mean, I'm not a resident of Koloa but my heart and my understanding that, that place definitely doesn't have the (inaudible) the representatives of actual Kanaka's letting people be aware that with all these additional developments coming into Koloa, which I believe is plans to be 22 in the next 10 to 15 - 20 years.

The system itself - that the underground system itself is not able to sustain all of those, um, developments that require a drainage plan, which I believe is not even provided for most of those developments there in Koloa, and evacuation plan. I mean, during 2018 there was a huge flooding of because of, um, (inaudible) reservoir and we're not guaranteeing our people, you know, nothing - even our residents that their safety being upheld if there is going to be an additional, affordable housing for our people. So me for me I'm testifying against it because I don't even believe that there - there should be a drainage plan provided to the public so that we understand that any more developments are not going to be affecting or ocean, our reef systems. And most of us know that Southside of Kauai water is - is incredibly contaminated and we - I

feel like the best way is just not to add to the problem but that's just what I feel. And I just wanted to be able to testify this money against that permit, uh, have a great day, Aloha.

Mr. Hull: Thank you for your testimony. Next, we have area code [REDACTED]; would you like to testify on any of the planning commission agenda items today?

Mr. Gary Pacheco: Yes. I would like...

Mr. Hull: Go ahead and state your name, you have three minutes for testimony.

Mr. Pacheco: Yeah, my name is Jared Pacheco from Kilauea, a lifetime resident here and I have known Bruno from when he first started. He started his business here in my garage with my son. My son has excelled in his life learning the good things about Bruno and his team. So I strongly support that Bruno's, business continues in his location. I had a business located in the same area a couple of years ago, and we were welcomed by the community. And Bruno is welcomed in the community because of the good things that he's done to the children who are our future leaders in the island and especially on the north shore. I strongly support Bruno and I hope you do to, mahalo for your time.

Mr. Hull: Thank you for your testimony Mr. Pacheco. Next we have area code [REDACTED] would you like to provide testimony on any of the Agenda Items for the Planning Commission today? Again, area code [REDACTED], would you like to provide testimony on any of the agenda items today?

Ms. Donna Apilado-Schumacher: Yes, I do.

Mr. Hull: Please state your name, ma'am, and you have three minutes for testimony.

Ms. Apilado-Schumacher: My name is Donna Apilado-Schumacher, I am a resident of Kilauea for 50 years, I was raised here. I am also a business owner located in Kilauea. I am in support of the Kilauea Old Mill and Longman jujitsu. My son is a student of the Longman jujitsu; he has been there for three years. And these are the reasons why Longman jujitsu is vital to our community, it provides this family atmosphere promoting a sense of belonging - it's fun for students learning not only self-defense but discipline and self-respect and respect for others while making you friends. It teaches life, discipline, life skills, social skills, and moral values. Its empowering students to present themselves with confidence. It is fostering community-oriented students; it is also fostering leadership and cooperation through students, teaching students jujitsu. It has a very strong emphasis on anti-drugs, it is also discouraging drugs through the presence of adult jujitsu athletes as role models and caretakers of the neighborhoods. It has an anti-bullying theme addressed within and outside of the dojo. It is building self-esteem, which not only prevents the future drug use, but also provides a solid foundation for better success for our youth. For these reasons, I strongly support Bruno and I hope you do as well, mahalo.

Mr. Hull: Okay, thank you for your testimony. Next we have area code [REDACTED], would you like to provide testimony on any of the Planning Commission Agenda Items today?

Man: Not today, thank you.

Mr. Hull: Thank you. Next is area code [REDACTED], would you like to provide testimony on any of the agenda items for the Planning Commission today? Again, area code [REDACTED] would you like to provide testimony on the Agenda today? Hearing none, area code [REDACTED], would you like to provide testimony on any of the Agenda Items today? Again, area code [REDACTED], would you like to provide testimony on any of the Agenda Items for the Planning Commission today? Hearing none. That is the list of numbers that we have called out, I want to make a call for anybody that has not spoken but would like to testify on any Agenda Item to make sure that nobody is left out - if there are multiple people, just please exercise some discretion on patients as we try to make our way through. So, call for anybody that has called in today that has not spoken that would like to speak on any Agenda Item listed today.

Mr. Morimoto: Hi Kaaina, this is Peter.

Mr. Hull: Hi, Peter.

Mr. Morimoto: I am sorry for hanging up; I understand you had a question.

Mr. Hull: You know, being that this is the - the testimony section, Peter, why do not we wait until we get to the actual Agenda Item and then there can be some discourse then.

Mr. Morimoto: Is there going to be a public hearing on this matter?

Mr. Hull: The - the agency hearing is scheduled, so...

Mr. Morimoto: What about the public hearing though, that as per the notice?

Mr. Hull: Yeah, we can get into the discussion, Mr. Morimoto with counsel when we actually get into the agency hearing which is - is, uh, two Agenda Items from now.

Mr. Morimoto: So there won't be a public hearing on this matter then?

Mr. Hull: Well, there is an agency hearing.

Mr. Morimoto: But will there be a public hearing?

Mr. Hull: With Mr. Morimoto, with respect to, you know the fact that there are again, 80 to 90 people on this call and this is the public testimony section...

Mr. Morimoto: Okay, I will wait for the agency hearing - do I call back for that then?

Mr. Hull: If you would like to.

Mr. Morimoto: Okay, thank you.

Mr. Hull: Is there anyone that has called into the meeting that has not testified that would like to testify on any Agenda Item, if so, please speak now.

Ms. Shelly Spencer: Yes, I would.

Mr. Hull: Go ahead, state your name ma'am, and - and you have three minutes for testimony.

Ms. Spencer: Hi, my name is Shelly Spencer, and Peter sent in the letter for us. I would like to point out to everyone that we are not against Bruno, Bruno does wonderful things. We are responding to the restaurant, the juice bar, they want to open that no one has spoken about. I think Bruno's thing is great - I am sad that he was spent paying rent and having been (inaudible), that is not his problem. So I'm sorry that this has become about Bruno - I support Bruno, never complained about his name. I am against that expansion of the use permits, which would put another thing into the building, that's (inaudible) one business. So just so we're clear, we are against the expansion of the use permits with the restaurant. And Bruno can be legal in there - we're supportive of him. I do not want more expansion of the area, so just to be clear on that for everyone, I feel the same way - everyone does about Bruno, but I don't want it to be just about Bruno. I want it to be about the fact of the use permit being expanded, and no one has spoken about the juice bar. And in our letter, we were informed who was (inaudible) the juice bar, but I am totally against the expansion of the juice bar, just to be clear, thank you.

Mr. Hull: Thank you for your testimony. Uh, again, is there anyone that has called into the meeting today that would like to testify that has not spoken on any Agenda Item that would still like to speak?

Ms. Elizabeth Okinaka: Yes, I would like to.

Mr. Hull: Well please go ahead and state your name, and you have three minutes.

Ms. Okinaka: Aloha, my name is Elizabeth Okinaka, so, this is for me expansion for the Koloa Village. I am not against affordable housing, but what I am against is the impact that this will have on the area. I would like to know if there has actually been a proper EIF study because of - this potential case and burials on the land and for a lot of these developments in Koloa. These EIF reports are for a huge general area and very vague - again, we have no proper drainage, no proper evacuation and direct - apart from this development, uh, more investors have just bought all of the other affordable housing units for \$4.5 million. So if you really care about the character of the local town, this will have a huge impact on it. So just be aware that, you know there is a huge development happening right now (inaudible), um, our waters are polluted and it's because a lot of these developments have not had the proper, you know, drainage traffic studies done. So thank you for letting me give testimony.

Mr. Hull: Thank you for your testimony. Again, is there anybody that has called in that has not testified that would like to testify on any of the Agenda Items listed for the Planning Commission today? Okay, again, is there anyone who would like to testify on any of the Agenda Items that has not testified, uh, at this point? If you like to testify, please state your name?

Continued Agency Hearing

Mr. Hull: We have no Continued Agency Hearing.

New Agency Hearing

Amendment to Project Development Use Permit PDU-2008-11, Use Permit U-2008-10, and Class IV Zoning Permit Z-IV-2008-12 to allow forty (40) additional multi-family residential units from 34 to 74 on a parcel situated at the Weliweli Road/Waikomo Road

intersection in Koloa Town, further identified as 5469 Koloa Road, Tax Map Key: 2-8-008:001, and containing a total area of 5.381 acres= Koloa Village, LLC.

Mr. Hull: Madam Chair, I think we can move onto Agenda Item F. 2. New Agency Hearing. So New Agency Hearing for a. Amendment to Project Development Use Permit PDU 2008-11, Use Permit 2008-10, a Class IV Zoning Permit Z-IV-2008-12, to allow 40 additional multifamily residential units from 34 to 74 on a parcel situated at the Weliweli Road - Waikomo Road intersection in Koloa Town, 56- excuse me, 5469 Koloa Road, Tax Map Key: 2-8-008:001, and containing a total area of 5.381 acres, Koloa Village, LLC.

At this point, there is the Agency Hearing. Is there anybody that is called in that has not testified that would like to speak on the agency hearing specifically for Koloa Village?

Ms. Shawn Villatora: If we testified earlier, could I give testimony again?

Mr. Hull: If you would like to know the Planning Commission received the testimony when you testified - if you testified earlier. If you would like to testify specifically for this Agency Hearing, you could do so, it is this Agency Hearing dedicated specifically for Koloa Village or you can reserve the testimony you gave previously, either one is your right to do, ma'am.

Ms. Shawn Villatora: Yeah, so I would like to give additional testimony for that, because I know there's a few of us that have been working together (inaudible)...

Mr. Hull: Sorry ma'am, if you can give your name again, and then you do have three minutes for this Agency Hearing portion.

Ms. Villatora: Okay, so aloha, my name is Shawn Villatora, I am apart of (inaudible), a nonprofit, um, I am able - so I have a group of us that we do a lot of work studies in Koloa. And like, I said, in my testimony before there's not a proper drainage plan or a - an evacuation plan for most of Koloa's development. We're just trying to make sure that any additional development an agricultural aqueduct system will be in compliance to giving - um, having the public be able to have information about whether or not they have had a proper drainage plat at - or evacuation plan for their residents. Or for the plan to have these affordable housing. There is burials located on that property - or on that parcel that we are aware of - um, there is a lineal descendanty form going out to (inaudible) right now, um, I believe today or yesterday was submitted and, just to let the Commission know that there is lineal descendanty out living to this day like me and a few others, um, that are aware of it that, um, us - right under our - part of it that are direct there is lava tubes that connect most of Hawaii together. And to be able to understand that if they're planning on putting their septic systems or their waste management systems straight into the lava tube, like most of the developments in Koloa. They will continue to add to the high amount of fecal matter in the ocean shores in the south side. And for me being, um - (inaudible) of this land, it's kind of just a continuation of a cycle of bad cycles continuously projected markets the Southside (inaudible) that the luxury high places for people to visit and then realizing that, you know, there's - there's (inaudible) wellbeing is not being upheld. And then that pretty much will cover, uh, my testimony for today.

Mr. Hull: Thank you for your testimony, ma'am. Is there anyone else who was called in though has not testified or would like to testify on the Agency Hearing for Koloa Village?

Alex Dotter: Yes, I would like to testify.

Mr. Hull: Please state your name and you have three minutes, ma'am.

Alex Dotter: My name is Alex Dotter, my testimony regarding the Koloa Village and what I do not understand is how they are able to market this as family-oriented, fee-simple units. When what I have seen on the video and on the website looks to be just a few one-bedroom and some two-bedroom units. So to me there is a disconnect between affordable housing and what we would actually be getting with this particular project, and I think throughout Koloa, there is an issue talking about the same thing. Thank you.

Mr. Hull: Thank you for your testimony. Is there anyone else would like to testify specifically the Agency Hearing for Koloa Village, LLC? Again, is there anyone on the line that has called in that would like to testify specifically on the Agency Hearing for Koloa Village, LLC? Seeing no further testimony, Madam Chair, the Department would recommend closing the Agency Hearing and moving directly into the Director's Report by the planner but that is at the discretion of the Commission.

The Department would recommend closing the agency hearing.

Deputy County Attorney Laura Barzilai: Excuse me, Madam Chair.

Chair Cox: I am muted, sorry. So may I ask for a motion to close the Agency Hearing so that we can move onto hearing the Director's Report?

Ms. Nogami Streufert: I moved to close the Agency Hearing.

Chair Cox: Thank you is there a second.

Mr. Chiba: Second.

Chair Cox: Thank you. Should we have a roll call, Kaaina?

Mr. Hull: Certainly Madam Chair, uh, roll call, Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ho?

Mr. Ho: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye.

Mr. Hull: Motion passes 5:0. Madam Chair.

At this point with the Amended Agenda, we move directly into the Director's Report and presentation. I will turn the Director's Report over to Dale for this particular matter. Dale, you want to provide the report.

Staff Planner Dale Cua: Sure, good morning. Madam Chair and members of the Planning Commission. I will summarize my Director's Report knowing we have a full agenda. So, I am required by the Planning Commission, consideration of applicant's request to amend Project Development Use Permit Class IV Zoning Permit and Use Permit to 40 additional multifamily residential units to the residential aspect of the project.

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

Mr. Cua: Our recent improvements related to the commercial phase of the development were made to both Waikomo and Weliweli Roads to accommodate sidewalks as well as on-street parking stalls. At this time, this concludes the Director's Report.

Chair Cox: Thank you, do we have any questions from the Commissioners for Dale?

Woman: Um, I had a question.

Chair Cox: Are you a Commissioner?

Woman: Oh no, I (inaudible) testimony...

Chair Cox: Public testimony, we have closed and so now, we are actually having the Commission be able to ask questions.

Woman: All right.

Chair Cox: Thanks. Any Commissioners have questions for Dale.

Ms. Nogami Streufert: Helen, this is Glenda.

Chair Cox: Hi Glenda.

Ms. Nogami Streufert: Dale, good morning.

Mr. Cua: Good morning.

Ms. Nogami Streufert: There have been several comments that have come in this morning about, uh, the (inaudible) underneath this area. Is there anything to justify that one or is there anything like that in the records?

Mr. Cua: In researching the file and dating back to 2008, when the project was initially, being evaluated the applicant or the representative at the time did consult with the state historic preservation division and did complete an AIS and archeological inventory survey. And based on the report that was submitted at the time, their conclusion was that there was no effect on archeology or historic properties.

Ms. Nogami Streufert: Okay, and then Condition 22 in the original approval, which says, "If historic cultural remains such as archeological artifacts, charcoal deposits or human burials are found during construction, the applicant shall stop work in the immediate area and shall contact the state's Historical Historic Preservation Division and the Planning Department to determine appropriate action." That is still - that still stands, is that correct?

Mr. Cua: Yes, absolutely.

Ms. Nogami Streufert: Okay, thank you.

Chair Cox: Thanks Glenda. Any other questions for Dale?

Mr. Ho: Madam Chair, please.

Chair Cox: Yes.

Mr. Ho: Dale, this is Roy, good morning. How does the new density fit in with the zoning and that - of the properties?

Mr. Cua: As I have mentioned in the Director's Report with the adoption of the South Kauai Community Plan, the development policies contained in that plan actually allows more units to be allocated to the property. While you know, the subject property does have residential zoning, you know, the development policies contained in the South Kauai Community Plan kind of work hand in hand with the CZO in a way such that, you know, it provides for more development, you know, in many residential zoned properties, so it's not just specifically to this property.

Mr. Ho: So would this - would this be considered a lack of a better word, would this be spot zoning, just targeting? Just certain...

Mr. Cua: No, not at all, actually, you know, currently, as I noted in the Director's Report, you know, the property is split-zoned. You know, currently is zoned commercial district and residential district for - so a- and of course there are surrounding properties in the area that are similarly zoned - or allow for more density because of the residential density, so those same development policies would apply to them as well.

Mr. Ho: Yeah, and I get that, surrounding properties can take advantage of the residential upgrades of this project, just as this project took advantage of now?

Mr. Cua: Yes.

Mr. Hull: Yeah, Commissioner Ho, I will just add a bit to Dale's statement in that it's actually the reverse of spot zoning. Spot zoning is where you go into say an agricultural district or a non-urban district, and just give a specific urban zoning for a particular property. This is in the reverse in going through the South Kauai Community Plans; there was a desire to provide for more housing opportunities, in so far they be met within the forming character of the building types that have historically existed in Koloa Town. So the South Kauai Community Plan makes a conscientious effort, you know, after years of working with that community to get that plan done, to allow for more infield development in the town core area, in so far again, as it meets the historical building as it has - have always existed in the past there. So it's recognizing and up zone of this entire area.

Mr. Ho: Thank you.

Chair Cox: Any other questions for Dale?

Ms. Nogami Streufert: Yeah, I do one more. I realized that Koloa is not considered a TVR approved area, and none of these units should be used that way. Should that not be a condition that is in there for - to ensure that this is not used that way? Right now, we have a letter that states that it is not an approved use. But there was no condition in there and it might be cleaner to have it as a condition, but none of these can be used as a TVR, that's something that can be done.

Mr. Hull: Yeah, Commissioner Streufert, I will just jump in real quick. So there is automatically an ordinance level prohibition as vacation rentals outside of the visitor destination area, and this particular area is not locating the visitor destination area. So, you know, we feel that the ordinance is adequate. However, at the same time, if the Commission would like to exercise in the abundance of caution to have that specific prohibition placed as a condition of approval. The Department would welcome a friendly amendment should there be a desire to take action on this to prohibit all residential units proposed at the site from being used as vacation rentals.

Ms. Nogami Streufert: I think I would be more comfortable with having something like that that is codified and in that - is publicized and codified in there.

Mr. Hull: But...

Ms. Nogami Streufert: But I will defer it to the other Commissioners also.

Mr. Hull: Okay, thank you.

Mr. Ho: Commissioner Cox, please.

Chair Cox: Yes?

Mr. Ho: A questions.

Chair Cox: Yes.

Mr. Ho: Kaaina, when we make it a condition for approval on this permit, does that also get attached to the deed of the property.

Mr. Ian Jung: Kaaina, hey, it's Ian, I think maybe if I could just present on the project, I can address that issue before we spend more time on that, just because there is not as many of, you know, this particular...

Mr. Hull: Hi Ian, Ian, Ian, hold on one second, Ian we will defer that question, Commissioner Ho to the applicant. Are there any other questions that the Commission has of the Department at this time?

Chair Cox: I actually have two but I am not sure therefore that they may be for the applicant rather than the, um, the Department, so I will wait.

Mr. Hull: Okay.

Chair Cox: Okay, are we ready to move to hear the applicant, any other questions before we move to the applicant?

Mr. Hull: Sorry, if there are not any, I just like the follow-up to the initial question that Commissioner Streufert had for Dale concerning some of the testimony that was just received. As Dale mentioned, this project and this site has done an archeological inventory survey that specifically addresses the archeological resources on the site. I can say as far as once has been submitted, as far as the lineal descendant and the location of burial specific on this property, we haven't been able to verify that in the short amount of time we'd gotten that list. So, you know, the applicant may be able to address it with their intimacy with them project, being it is their project, but at the same time if that cannot be addressed. The Department has no problem, you know, asking for deferrals so that we can further research to ensure that burials or archeological resources are not going to be negatively impacted.

Chair Cox: Thanks, Kaaina.

Mr. Hull: But again, you know, I would also defer to the applicant being that they have commissioned many of these studies so they may have a - have a bit more intimate knowledge, they may be able to address them here today, but I just wanted to open that up.

Chair Cox: Okay.

Ms. Nogami Streufert: Thank you.

Chair Cox: And Glenda, are you okay with us moving to the applicant before we also talk about your, friendly amendment for that?

Ms. Nogami Streufert: Absolutely.

Chair Cox: Okay.

Ms. Nogami Streufert: The question to Dale with that possibility.

Chair Cox: Okay, Ian, go ahead.

Mr. Jung: Okay, good morning Vice-Chair, and members of the Planning Commission. This is Ian Jung on behalf of the applicant of Koloa Village. Just right off the bat here, I will try to settle one issue, um, as - as many of you know, this was an old permit entitlement that we are asking for an amendment to. So a lot of the conditions that were imposed back in 2008 have been met and, um, recorded agreements have been executed with the County to achieve compliance with those conditions. Including one that is a non-occupancy agreement, which has a specific restriction on transportation rental use, by virtue of law; it is, you know, you cannot do TVRS outside of EDA. So I think at the time when this permit was being approved in 2008, they realized that there could be an ongoing issue so they required it as part of the condition from the original permit. And that agreement was recorded with the Bureau of Advances in 2015 so that's been satisfied and put to rest. So I think that will stave up that issue, if you want, I can email, Dale a copy of that just for his files.

Getting back to the project itself, so the location has been identified. With the recent amendments, the South Kauai Community Plan, as well as the form-based code, the new transect zones for which it allows an intensified use of the area and actually allow multifamily structures now. So the whole concept of doing this particular amendment, and I think as one of the speakers and testifiers had indicated is we can get to smaller units that are spread more across the property to allow for an increase of unit count. Which would lead to the additional 40 units, because right now, as many of you remember we did an amendment in 2020, put 14 of the smaller units into the phase one commercial mixed use component. So those were going to be kind of studio units, so that kind of ate up 14 of those original 34 dwelling units that were going to be allowed. So we have 20 left in her asking for the additional density be spread out into quad-flex buildings which would be - nature of what's the commercial context is from an architectural style. So those particular buildings would be four units in each building, two on each side, and the two bedrooms would be about 1100 square feet of living space - or of total space, and then the one bedrooms would be about 800 square feet of total space. And if you

want those plans, we can certainly show those on the exhibits. But our architect, you know, has been sensitive to the historic nature of Koloa Town and they aren't designed to take an approach as the old plantation style that was once there. The more historical data that was identified in our archeological inventory survey, as well as the phase one environmental site assessment detailed some of the old plantation homes as residential use on this lot. So the architect designed these homes to try to match that plantation style which I think the commercial, as many of you have seen the commercial side of it, you know, it does have that plantation style, uh, look to it. So I am getting to the question of the archeological information, this is the first we have heard that there may be, iwi or potential burial sites on the property.

You know, I know these issues are popping up more and more frequently now. The archeological report we did have back in 2004 as a part of the original permit process, and did not identify any of those sites. But as indicated, there is a condition that if any of those sites are found that we have a responsibility to contact SHPD (State Historic Preservation Division). Another thing to note is a lot of the grating, for the subject property has already occurred as is as a part of the phase one commercial side. So most of the grating work is done, there is a grating plan and a storm water management plan, that has been approved. The Department of Public Works required us to enter into a storm water management agreement, and a lot of that infrastructure is already in the ground out there. So the storm water management agreement will require us to - um, and I do not know the details on that - and Mr. Serpa of Koloa Village is with me so he can answer those questions. Those units have been installed and the drainage plan has been approved, but obviously as you folks know, when you do a site plan assessment - or an amendment, we're going to have to go back in and amend those grating plans to reflect the new siting layout for those new structures.

So there's a little more grating work that will be required. So with that, I'll turn it over to Mike Serpa and he can... I think there was one more question, actually, that the condo issue that - you know, there was a question of how these are going to be fee simple that one of the testifiers indicated. It is a condominium project and with the condominium, you can have a portion of the lot itself broken up into a condominium property using which those can be sold as fee simple interest, so that's how, you know, the hope for local families to be able to acquire some of these units will - will be achieved. So there will be your own separate unit within the building that can be bought and sold and can be recognized as a separate TMK as well as can be separately mortgaged and taxed from a real property standpoint. So with that we'll turn over for questions or if Mike is on, he can answer any questions as well.

Chair Cox: Mike?

Mr. Michael Serpa: Hi (inaudible) Commissioners, so hopefully, you can see me. I think I am on. Thank you very much for taking the time to go through this, there is so much work. I was looking at the Agenda packet. I think it was 928 pages. And I did, I don't know how - Kaaina, I don't know how you guys do that stuff, but I appreciate it, it's thorough and I welcome any and all questions that you guys have. I closed on this property in December of 2014, and when I closed on it, I was told the plans are done and ready to go and the project was ready to build, and it was not quite like that. When we went through it, essentially drainage came up because that was one of the issues in the set of plans - the civil plans, and this was a Honolulu civil engineer,

that had done the plans. But when we looked at the plans, we were not satisfied with the drainage plan in particular. So, we redid the entire civil engineering plan, Esaki Engineering, from Kauai did the plan and not only does this site absorb all of its own storm water, it also handles all of the storm water above it from the eastern side of all those property owners, the water that comes down from there.

In addition to that, the County Engineer asked that we - off our property, on old Koloa Town, there was a puddling at Koloa Road and Weliweli Road that happened there, would we - uh, we weren't required to do it, but would we install, more drainage there. So drainage has been discussed at - over and over, over many years. The commercial side of the site, the entire parking lot, there is a retention basin under that, that is nine feet deep on the residential side that has been graded you know, there is a similar retention basin underneath of that site. So the drainage is very substantial for this project. I am a 28-year; home developer and drainage and storm water management typically drive the design of your projects. So, when I came in to do my due diligence back in 2014, I spent two years, 2013 and '14 studying the former developers that had had this site, the State, studies, the EIS that was done - in particularly, and I have a long history in State and Federal resource agency permitting, so Army Corps of Engineers, United States Fish and Wildlife Service, you know, I'm - I'm very well versed at that.

So, in 2004, there was an archaeological study that was done, there was a developer that had his '07 - um, in '08, the EIS was approved. In '14, late '14, I bought it - in 2016, out of an abundance of caution, I had the State locate again, I have a State concurrence letter, when it comes to the archaeological remains. Then in 2019, of course, we did all the grating, and as I mentioned, we went down some nine feet, on the commercial side - the residential side, we have (inaudible) all the utilities, and we did not come across any artifacts or remains, or burials or caves or anything like that. Now that doesn't mean that when we go to construct a residential side of this, that we wouldn't come across something, and if we did, we would follow a protocol and we would immediately stop, and we would - and we'd follow the law, um, with respect to the state historic preservation. So, um, aspect - that's our professional approach, um, it is responsible. We think we have covered our basis on everything that we had to do, uh, the in County and state and involves along.

Quickly, with respect to the vacation destination. Koloa Village was re-planned, and the reason why we are here talking about this is because the prior plans that we are ready to build and all of that, those - when I did my homework on those, those would have to sell in the \$900,000 to be able to pay for all the site. Because this is a small site and there is a lot of off site construction that was required. Roads needed to be rebuilt and all those things. And I didn't think there was much of an on-island market for \$900,000 houses Koloa Town, I just didn't. And if we were truly going to be economically viable, we would have to have owner-occupied houses, not lock and leave. So in working with the County and talking with the community, we've done many community meetings in a (inaudible), it seemed like they get sold in the housing market that is half of that or less and smaller homes, so smaller homes, smaller prices. So that's where this whole idea came from, one-bedroom, one bath, and two-bedroom, two bath homes, um, that are designed to be in the center of a town with residents that will walk they could walk to their job in the shops - they could dine there, they can shop there without ever getting in a car.

And so I'm an infill developer, that's, you know, over my career, if you look at all the projects that I've done, it's infill, and, you know, I don't - I'm not interested in expanding the boundaries of a city or a town. But I go in the middle where the infrastructure is already there and you always have to improve and mitigate for your impacts with that. But that was the design of Koloa Village, and it didn't make sense to me to have these larger, more expensive homes that were going to be mainland buyers. Here we have homes that are attainable and I think it's the right thing to do in terms of development and I think, you know, it's a need that needs to be served. And I think that the south, Kauai Community Plan was well-done and well-conceived and it contemplated this sort of - this sort of drop, and so we're just - you know, we're trying to follow suit with that. So if, you know, and that if you guys have questions about anything that I've said or any of the public testimony, or what Ian said, you know, I'd be happy to do my best to respond.

Chair Cox: Questions from any of the Commissioners for either Mike or Ian, and thank you Ian and Mike.

Mr. Ho: A question Madam?

Chair Cox: Yeah.

Mr. Ho: There was a timeline given for completion of about June, 2022 with the building approved - or could be approved, are you still on that timeline, June 2022?

Mr. Serpa: Oh boy, that is a good question, but yeah, I would say we would take all of 2022. What - what's happening now - I mean, quite frankly I have to make sure I have my engineer with his pencil ready, you know, to design the plans, but I had to make sure that we get approved before we go do that. If we are approved here today and we start the improvement plans, Esaki's starts, those, those will take, oh two or three months. I would think we can - we could probably start this project toward the end of this year, this residential side. Um, Shio Construction is my general contractor, they are phenomenal - I think we could - the majority of this is done in 2022 but, I will definitely use all of 2022.

Mr. Jung: Now Commissioner Ho, we requested an extension just in case to 2024 just given the pandemic and whatnot but we can certainly work to adjust that if need be.

Mr. Serpa: Yeah - well thanks Ian for sayin' that because we just - you know, we do not know what we do not know at this point. So I always like to have a little extra time because we don't know.

Chair Cox: Other questions - okay, thank you Ian and Mike. Oh yeah, there is a question - Glenda, was that a question?

Ms. Nogami Streufert: Yes, it may be stating the obvious that we would put something in there about no TVR's because there was a letter and it is not in the visitor destination area, but would you have any objections if we were to put that in there and that would be a part of the land use?

Mr. Serpa: Me responding, no - I, zero because my - my whole objective for this community is that it'd be owner occupied and if I'm living in one of these, I would not want transients coming in weekly next door, that's not what this project, this whole village is intended to be. So, we do currently our public report is filed, as Ian mentioned with the State in our disclosure that we filed with the state does clearly state that, you know, this is not going to be vacation destination - rental sort of stuff. So I'm totally comfortable with that if there's a phrase or there's something that you all feel more comfortable with, happy with that, that's fine.

Ms. Nogami Streufert: Thank you, appreciate (inaudible).

Chair Cox: Anything else?

Mr. Jung: Yeah, we are fine; yeah we are fine with such a condition because the recorded declaration of restrictive covenants already prohibits it, so it would just be dovetailing on that.

Ms. Nogami Streufert: Great. And I understand that it is - and it's really stating the obvious because there are many different documents, but I would like you to state (inaudible) one more time just to be absolutely abundantly clear for all future.

Mr. Jung: Sure.

Chair Cox: Okay, any other questions? All right, Commissioners, I think we're ready to - weave the Directors Report that is recommending approval, so we need a motion either to approve or approve with an amendment - uh, defer or, uh, disapprove, I guess, uh, so is there a motion?

Ms. Nogami Streufert: But, before we do that, could we get that amendment or get that that, additional condition into the condition of - uh, the TVR conditioned into the conditions please.

Chair Cox: So make it two different motions, so one motion puts the amendment in - that friendly amendment in, and then a motion to approve or disapprove.

Mr. Hull: So Madam Chair, I can actually do it because - because it is the Director's Report, I hereby would amend on the floor orally that we are adding additional recommended Condition, Number 31, which would state, "All residential units shall be prohibited from operating as a transient vacation rental," and that would just be an amendment to our report.

Chair Cox: Okay, are there any objections that from any of the commissioners? Great - okay, so that is that, good.

Mr. Hull: And that's so Madam Chair, just as you, so succinctly put the Commission can either vote to approve as recommended by the Department, vote to approve as, you know, subject to additional amendments, vote to deny, or to defer. I think, you know, tentatively, the Department still holds by a recommended approval. However, like I stated earlier, I think, you know, our familiarity with the AIS, the archeological inventory survey for this property says that there is not an archeological feature that - or burial that will be impacted by the proposal, and then the

footprint is pretty much the exact same footprint as the 2008 proposal. But if the Commission would like additional time for the Department to further assess the AIS, the archeological inventory survey, as well as to dialogue with State Historic Preservation, or Review Division, um, we are open to a deferral as well.

Chair Cox: Okay, thank you. Any discussion about the possibility of a deferral as opposed to not a deferral? Then are we ready to have a motion to either approve, deny, or defer - or approval with additional amendments? Someone like to make a motion?

Ms. Nogami Streufert: I move to, I'll do it, I move to approve the modification of the site plan and the amended conditions for the Class IV Zoning Permit Z-IV-2008, 12 Project Development Use Permit PDU-2008-11, and Use Permit U-2008-10 as amended on the floor.

Chair Cox: Thank you, Glenda. A second?

Mr. DeGracia: I second.

Chair Cox: Yes, a second. Great, any further discussion. I guess I would like to say the - as, regarding the archaeological issue, because there was an additional look in 2016 and because substantial grating has already been done and the law would require us the - the builder to stop anyway, if they found something, I am comfortable without the deferment. If there is no further discussion, let us do a roll call vote.

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

Mr. Chiba: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ho?

Mr. Ho: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye.

Mr. Hull: Motion passes 5:0, Madam Chair.

Chair Cox: Thank you.

Mr. Jung: Great, thank you so much.

Class IV Zoning Permit Z-IV-2021-7 and Use Permit U-2021-6 to allow operation of an athletic health club within an existing warehouse building and operation of a commercial kitchen & retail business within the existing Old Mill building on a parcel situated at the Oka Street/Aalona Street intersection in Kilauea Town, further identified as 2430-A Oka Street, Tax Map Key: 5-2-014:049, and containing a total area of 20,389 sq. ft. = Kilauea Old Mill, LLC

Mr. Hull: Moving on to the next Agenda Item would be F. b. Agency Hearing for Class IV Zoning Permit Z-IV-2021-7 and Use Permit U-2021-6 to allow operation of an athletic health club within an existing warehouse building and operation of a course and retail business within the existing Old Mill building on a parcel situated the Oka Street along the street intersection to Kilauea Town further identified as 2430-A Oka Street, Tax Map Key: 5-2-014:049, and containing a total area of 20,389 square feet = Kilauea Old Mill, LLC. is the applicant.

This is the agency hearing, so a lot of testimony was provided during the initial part of the agenda. Is there anybody that has called in that would like to testify specifically on the Kilauea Old Mill application at this time, and if so please speak—?

Mr. Dustin Barca: Yes.

Mr. Hull: And state your name.

Mr. Barca: You ready.

Mr. Hull: Yes, you have three minutes; please state your name, sir.

Mr. Barca: Okay thank you, my name is Dustin Barca. I am a resident of Kilauea; I help Bruno Ewald teach Jujitsu at Longman JiuJitsu. I also have lived in Kilauea my whole life, and you know, the whole (inaudible) and everything has been a designated, commercial state for a long time, and you know, in Kilauea, there's a big problem with drugs and there's not too much positive outlets in our community for the next generation. And you know, the space that is there for the Jujitsu school has become one of the only positive outlets for our community for our next generation. We have a lot of kids in there, we are guiding them to - to secure them away from drugs, away from trouble - we are teaching them to be honest, good, respectful community leaders.

We have a lot of people who are ex-drug addicts, who we've saved. And you know, that space has always been a commercial space. What are they going to do, they are going to build one or two houses that are going to be too expensive for a local person to even afford? I mean, this is, like, um, a very important piece of our community as far as, like, positive outlets for our youth. I'm just - I'm asking you all to please take it into consideration that this is you know, it's nothing new they're asking for - asking for everything (inaudible) legal with (inaudible) school there. It

is just a really positive thing for our community and I'm just asking you guys to please, approve that to go through, that's all I have to say.

Mr. Hull: Thank you for your testimony. Is there anyone else that has called in that would like to testify specifically on the Agency Hearing for the Kilauea Old Mill, LLC, application?

Mr. Adam Roversi: Aloha Kaaina, this is Adam Roversi yeah, I would like to testify.

Mr. Hull: You can speak now Mr. Roversi; you have three minutes for you testimony.

Mr. Roversi: Aloha, Planning Commissioners, Chair, my name's Adam Roversi, I live within a 300-foot radius of the subject property on Oca Place in Kilauea. I have lived there for well more than a decade; generally, I support the petition and the proposed uses of the property. I know that there may be concerns about traffic issues, but as a local resident of that area whose well familiar with the current use as Longman Jujitsu, and the historic use of the Old Mill building for restaurants the potential traffic concerns are not a concern of mine as a resident of the area. So thank you for the opportunity to testify, I support the petition.

Mr. Hull: Thank you for your testimony, Mr. Roversi. Is there anyone else that has called in, that would also like to testify specifically for the Agency Hearing for the Kilauea Old Mill, LLC?

Ms. Felicia Cowden: This is Felicia Cowden, and I will just very simply say I stand on my written testimony that is in support of that building complex that has been not only, the Jujitsu Longman, which is less impactful than what it's been in the past. But there's also been a good provision over there since, I don't know, maybe 40 years has been in, uh, the - the building that used to have generator in it, and I support his position, thank you.

Mr. Hull: Thank you for your testimony councilmember. Again, is there anyone else who has called in, who would like to testify on the Agency Hearing specifically for the Kilauea Old Mill, LLC, application?

Mr. Peter Morimoto: Hi Kaaina, this is Peter Morimoto.

Mr. Hull: Hi Peter, I know we're going to have a discussion with your concerns if you can stand by, Peter, to see if there's still anybody else that would like to testify, are you okay with that?

Mr. Morimoto: Sure.

Mr. Hull: Thank you. Again, is there anyone else that w- has called and they would like to submit oral testimony at this time for the Kilauea Old Mill, LLC. Agency Hearing? Hearing none. So Mr. Morimoto's on the line, the Planning Commission is in receipt of a letter from Mr. Morimoto on behalf of his clients objecting to a publication and notification issue, this was essentially that it was published, and the property owners are notified that this would be a public

hearing when in fact it's an agency hearing. It is a small caveat, but there is potentially some legal issues. So I'd ask if the Commissioners and the Chair's okay with it, if things that were not talking with a specific impact but on an actual procedural issue. Madam Chair, is it okay if you folks suspend the rules to allow Mr. Morimoto, to provide additional insight into his letter, as well as possible questions from either the attorney, any Commission numbers or myself?

Chair Cox: Are there objections from any of the Commissioners to allowing this? Hearing none, go ahead.

Mr. Hull: Thank you. Madam Chair. So Mr. Morimoto, um, a question we had earlier for you was given the nature of your letter if we defer this Agenda Item so no action is taken and properly notice both in the newspaper, as well as the abutting properties within 300 feet, that it is an Agency Hearing that is being held, will that address your concern?

Mr. Morimoto: One of them, I'm also concerned about the manner in which the public hearing is held, when I look at the commission rules know specifies that, uh, public testimony is taken on a specific item. The way you have it set up, you know, the testimonies mixed up between several Agenda Items and the rules say that the record is supposed to be clear. No, I think it would be much clearer if you have testimony specific to an Agenda Item and then recess that item and then go onto the next item, and then take testimony about that specific item. Another issue that I have with the process is that the - there seems to be some kind of prejudgment here by the Department. Before any public input's given they make a recommendation and I'm not saying that you know, the recommendation is wrong, but I think the better procedure would be to hear from the public, hear your concerns and take that into consideration before rendering an advisory opinion or recommendation.

Finally, with regard to this specific project, you know, the problem that my client and I have is that you have a Chair of the Planning Commission owning this site. You know, and there are existing use permits, and, it's (inaudible) you know, since you entered into this lease with Bruno, and I have nothing bad to say about Bruno. You know, Bruno once, made me whole when another client stiffed me, so he's an honorable guy - you know. The lease violated the permit and people became accustomed to that illegal use, you know, and now the Chair of the Planning Commission is using those people to pressure you know, her fellow Commissioners to basically, give her an after the fact permit. You know, the - the question I have is why wasn't she told to stop the use? Why there was not some kind of notice of violation sent, or cease and desist order, and I am not saying that there is anything wrong, but it surely does not look right. And if we have a contested case, I intend to delve into that issue fully to determine whether or not the impropriety was merely in appearance or there was actual impropriety, and that's all I have to say.

Mr. Hull: Okay, thank you Mr. Morimoto. Commissioners, did you guys have any questions with Mr. Morimoto's clarification on his letter and submittal of testimony to you folks? Hearing

none. So the issue at hand is - is again, you know, I can state that, you know, the Commission Chair is not attending this meeting at all as a Commissioner and the fact if she had, she did tend to recuse herself. So on that note, you know, people run their everyday businesses and there are recusals. Secondly, you know, there have often been somewhat, you know, levying of the Department, casting prejudgment over - we're required by law to issue a report prior to the public hearing and that our agency hearing, if you will, and that, that report includes an analysis as well as a recommendation to the Commission.

So our reports are tentative recommendations. They can also of course be altered and amended concerning public testimony or additional agency comments or as well as, you know, Planning Commissions overall, dialogue and discussion over the issue. But what I think is a concern in particular for the Department, is there, is that particular issue of the publication notice stating public hearing as opposed to agency hearing. And while this seems like a relatively benign issue, should the landowner and the attorney decide that they do want to appeal this action, or take litigative action to the courts. You know, the Department would hate all the work that the Commission has done - the applicant has done, whichever action the Commission may take, that a year from now, litigation could essentially unravel this whole thing based on the notion of the term, "Public hearing," being used instead of, "Agency hearing." So with that the Department is actually going to ask that the Commission defer this Item to the May 11 Planning Commission Hearing – Meeting.

And during that time we will amend and update our public notification to the newspapers, as well as to the surrounding property owners that are titled to a notification and then we can pick this Agenda Item up after it's been properly noticed in that manner. I want hold off on - or without any objections and give, this...I want to hold off on our Department staff from giving the report at this time. I think if the applicant has any statements that they want to make or any presentations, they are afforded that right. But once the Commission has done with the discussion, if there is any discussion - ultimately the Department is asking for a deferral to May 11th, to re notice and re-published in the newspaper.

Ms. Barzilai: Madam Chair, County attorneys (inaudible) I think you should take some take (inaudible) opportunity to thoroughly review the procedural legal issues here before, uh, the Commission renders a decision.

Chair Cox: Okay, but we are still - we are still going to hear from the applicant if the applicant has something to say, correct? Okay, so and first of all, any objections from the Commissioners about this approach or concerns?

Ms. Nogami Streufert: I...

Chair Cox: Yes?

Ms. Nogami Streufert: Helen, I do have a concern. If we defer this, does it -does the, if they have the (inaudible) have the capability of operating until we hear the deferral, until the May 11 meeting?

Chair Cox: (Inaudible) question (inaudible)?

Mr. Hull: (Inaudible) could you repeat that question again, Commissioner?

Ms. Nogami Streufert: If we defer this until the May 11 meeting, does the Jujitsu or the health club, have the capability or the legal right to continue operating until that meeting?

Mr. Hull: So that is a good question. We did put the notice out in, landowner applicant on notice, you know, a year or two ago. That when were made aware through various application processes, that, they were operating the jujitsu at the site, that they needed a use permit for it. The Regulatory Division and the Enforcement Divisions are two separate divisions, and particularly the Enforcement Division has very limited resources. We have, as many of you know, a vacation rental crew that proactively is out there searching for illegal vacation rentals and proactively issues cease and desist notices of zoning violation notices. That is not the case for our zoning enforcement side that checks on everything else, in fact, aside from vacation rentals, we have one zoning inspector for the entire island.

So he functions on a complaint-base notice basis. We have not received a single complaint against this operation, and with those parameters of we function off a complaint based for the zoning violations he - his site has not - the - the zoning compliance notice. And then we intend to do that in so far as - as long as no complaints are received. Should a particular member of the public want to issue a formal complaint to us, then, you know, our investigation could officially spin off from the enforcement side, which has its own litigated and due process rate processes. But again, we have not officially investigated from the enforcement sides, and it's you know, it's not in our interest to go out there and start enforcement actions against things that are not generating, you know, negative impacts on the community. But if a complaint comes in, technically Commissioner Streufert, we would have to investigate and issue that zoning compliance notice which would instruct the applicant to cease and desist.

Ms. Nogami Streufert: Okay, thank you.

Chair Cox: Are there any other questions or concerns before we move to the applicant? We will come back after the applicant to make a formal motion about the deferral, so - okay, moving to the applicant.

Johnathan Chun: Hi, good morning, Vice Chair Cox and members of the Commission. Johnathan Chun on behalf of the applicant. I would just like to, you know, reiterate that this application is two parts - one is for the allowance of the Longman Jujitsu operation to continue. And also, for a small juice bar in a small portion of building that is being used for medical clinic.

I mean, I know that there was some testimony earlier this morning that they were objecting to the fact, that they didn't want to have any further expansion in the commercial use of this property, in particular, that comment was not made against Longman Jujitsu - Jujitsu, operation, but he against the juice bar. I just wanted to note for the Commission and for the Department's edification, and for the public that, has always been commercial, for one thing, it is pointed out. Also, the prior permit in nearly for the medical center encompassed that area also. So we are not asking for an expansion of the commercial use, it already is allowed for commercial use under the medical clinic permit.

Unfortunately, the medical clinic decided not to use that portion of the building that we were looking for to for the commercial kitchen, and that's why it (inaudible) the prior permit were required not to come back and say it's okay, because it's another use other than that, we need to go back and ask for permission for that use, and that's what we're doing. But there's no expansion of commercial use because it's always been commercial use as pointed out in the prior permit of the medical clinic, covered that as a commercial use. On the issue of the arrival (inaudible) the notices, I am sitting here and it is just kind of interesting, technical legal arguments, but I want to just point out that this is not an unusual situation - I mean, as the Director will point out, or we will discuss with you guys later on. This is not unusual situation what the Commission did - what the Department did, is what it's always been doing for the past years, and has never been a problem until now, it was never brought up.

In fact, I want to bring up that there was a case from the City and County of Honolulu that almost rather mirrors what is happening here. It was the case of (inaudible) of operating in the County of Honolulu and that case, the applicant argued that the notices were not correct because the Liquor Commission now sent out the public notice hearing, and they said it had to be an agency hearing notice. And in that case, the Supreme Court reversed that case and said, "No, you know, hey, the hearing notices were fine, it was supposed to be a public hearing because under the Liquor laws in that particular case, that's what it's supposed to be done. You're supposed to have a public hearing," and just because it did not say...converted later on to an agency hearing, they did not make that public notice, wrong. Hearing these same things, is a waste in your rules, in fact, it (inaudible) your ordinance specifically states for applications like ours, you have to have a public hearing, and that's what the Commission did, they sent out a public hearing notice. Just because it can converts later on or could convert to an agency hearing, does not make the first notice required of - in your ordinance be wrong. So I would just be aware that, that is not an unusual situation, it has happened in other counties, it happens in Honolulu, it happens in other agencies and there has been guidance from the courts on what kind of notice should be required in the given time.

Now, I found it interesting also that one of the members of the public that did testify against this very clearly said that she was not against Bruno's operations at all. In fact, that she supports Bruno's operations. Yet, I hear from another representative, from that person saying, well, they might want to look about illegal operations of Bruno's, whether or not he can legally operate. I

find it interesting that now we're expanding or if there is going to be an ex- there is going to be an intervention filed by that person, are we expanding the hearing or the issues on that from just whether or not the hearing Bruno's operation can continue versus whether or not you should be fine for prior use of that property.

And again, I ask the Commission if there is going to be an intervention or a petition to look at one of the criteria is that it does not expand the issues decided by the courts. So lastly, as far as my client's position regarding the recommendation of the Department defer. We basically will defer to whatever the Department wants. We do not take the position that we know more than what the County attorneys the Department or the Planning Department knows. We will defer to their judgment and their wisdom in whatever they decide to do in this matter, (inaudible). All we can say is I leave from the applicant's point of view, the merits of this proposal stand for itself and we do not have to have technical issues that can confuse the merits of this issue. We stand on the merits, we stand on what we have presented, and we stand on the history of this property. We believe at the end of the day, the merits of this proposals will speak for itself, and we just encourage the Commission to keep your eyes - eyes and on the merits. We will follow whatever the Department and the County attorneys have to say regarding the process to get these merits in (inaudible) before the Commission. That is all I have for (inaudible), thank you for (inaudible) Ms. Chair and Mr. Chairman and Mr. Director.

Chair Cox: Thank you, Johnathan.

Mr. Morimoto: May I respond to Mr.... this is Peter Morimoto.

Ms. Barzilai: I would interject; this is County attorney's office, that this would not be an appropriate venue through legal arguments on this matter. What I am advising the Commissioners do is to take this under consideration, after we've had time to digest this filing that was submitted last night, March 8. When the public notice came out on February 5, there was not sufficient time for the Commissioners to digest this or for me to brief them on this matter. So I at this time I would advise that legal arguments are not appropriate.

Mr. Morimoto: Well, it is not a legal argument, it is the fact that we do not want Bruno investigated. Bruno is a victim in this thing as much as the Commission is, anyway, that is all I have to say. My client's intent is not to shut Bruno's down and I want to make that perfectly clear.

Ms. Barzilai: Well, I think Director Hull stated that, that would have to result from a complaint that was filed in the neighborhood and none has been filed thus far.

Chair Cox: Thank you.

Mr. Bruno Ewald: If I may speak at any time, I - um, this is Bruno, I am listening in.

Chair Cox: Is it appropriate to hear from Bruno? I think it is, it's part of the application.

Mr. Hull: Yeah, I would say its part of the application.

Chair Cox: Go ahead.

Mr. Bruno Ewald: Okay, hello everyone. Thank you for doing this, so I have been in operation in this location for 10 years now, and prior to Ms. Apisa owning the property. So, I believe her intention is to be in protocol with the County and the State, that's the reason why the application for the academy needs to be legal. And, as far as the athletic club you know, (inaudible) athletic club, the athletic clubs, they open all day and have customers in and out all day. It will be a big difference in what we do. Tuesdays and Thursdays, we have one class a day which is 9:00am to 11:00am and the whole day this class the place is empty, there's no traffic - there's no dropping off, there's no - there's no problem. And Monday, Wednesday, Friday, we have three classes only, they start at 3:30pm and end by 7:30pm. So people get dropped off - most kids coming with their bikes and the majority of the kids that attend the class kids from the neighborhood got - not only benefit, but they have become part of the Kilauea, you know, just making Kilauea a better community together with the teaching that I do here.

And for 10 years I have never gotten any complaints from neighbors or anyone else, instead I've - I've gotten opposite, I've got a lot of compliments and people have been grateful and thankful that when we here there's drug dealers, and drug deals happening in the parking lot, no more empty bags and syringes in the parking lot, no more homeless sleeping in the parking lot because we watch the because I watch the place. I get phone calls to come over at night because someone will be here and they are suspicious I come and chase 'them off. I keep people driving slow in the streets nearby - in fact, I am the free security for the streets in the neighborhood and I do that because that is what I am called to do. I just urge the committee, the Planning Department, and I urge also any witnesses and neighborhood people, like, Shelly and (inaudible) Spencer, who are very dear to me, I've known them almost 30 years. They understand what I do and I find a little bit of (inaudible) mislead to what we are doing, like we are doing something new or we are affecting the neighborhood in any negative way.

I just wanted to clarify what we do. Our schedules and how it's... I do not see anybody being opposed to it. I hope - I hope that nobody will complain after this or there's not going to be any discouragement from Peter Morimoto or anybody else calling people to complain for their benefit when I have a 100 little kids that will or I will have to tell them that I'm not going to have a place to teach. And lastly, but not least, the new shopping center I mentioned by Peter Morimoto on Facebook posts there's been, uh, a large discussion him and people in the community that are actually in favor in what I do, um, suggesting that Jujitsu would move to that shopping center which is 95% empty. Not only due to COVID, because it was empty prior to COVID, it's because it's \$10 a square foot for rental, it's focused and targeted towards rich wealthy people that are moving here that will be able to afford rent and charge that type of money that only rich people can afford. My focus and my goals My focus and my goal is to reach the average the local people in the community that cannot afford to pay the rich prices and I am subject to or will be subject to rent that nobody can afford. Like Foodland I tried to rent a place over there by (inaudible) to keep fixing my place here - I have other friends who have tried everybody (inaudible) because the rent is too expensive. I am saying, like, a lot of them, I bet - I

can get testimonies from all of those people. and instead the community to actually approved something that were not for the local people - it's isn't for the local people. Nobody that has a normal job will be able to afford a store in that shopping center and it is sad, and it's sad that anybody would be opposed to Jujitsu. I am very happy that Shelly and Uncle Jim - I am not opposed to it. I am happy to hear people like Gary Pacheco, (inaudible), Felicia and the people in the community that are in favor of it. I want to thank you guys for listening to me and everybody else. I hope you understand my point and I hope you understand that I am here, and I think I should remain here to protect the local community and keep the future. To restore the future of the people here, they will have housing, like, by education, by being able to get good jobs, become good people like the majority of my students for the last 30 years have been able to achieve. In becoming, you know good citizens and being able to be successful in their lives through my teaching. So thank you very much for listening to me, thank you, and goodbye.

Chair Cox: Thank you

Mr. Ewald: Thank you.

Chair Cox: Thank you very much. Okay, so now I believe we are back to deciding what we want to do. The Department is recommending that we defer until May 11, but we have the option of course, of not deferring. Do we have a motion?

Mr. Ho: I move that we follow the Planning Department recommendation to defer to May 11.

Chair Cox: Okay, do we have a second?

Ms. Nogami Streufert: I second.

Mr. Chiba: I second.

Chair Cox: Okay, is there any further discussion? Okay.

Ms. Nogami Streufert: I think what is important...

Chair Cox: Yep, yes...

Ms. Nogami Streufert: Just I think what is important in this is that by deferring it does not mean that the health club has to close during that time period, so that to me is very important. So knowing that that is not going to be a problem, it is not going to be a problem for the community then I can support a deferral.

Chair Cox: Thank you Glenda.

Ms. Nogami Streufert: Yeah.

Chair Cox: Any other discussion be we take a vote. Okay, can we have a roll call vote then, Kaaina?

Mr. Hull: Yes Madam Chair. Roll call, Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ho?

Mr. Ho: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye.

Mr. Hull: Motion passes 5:0, Madam Chair.

With that, it has been a bit of a morning, I request could we possibly take a 10 minutes recess, Madam Chair, so it's 11:23, returning at let's say 11:35?

Chair Cox: I was going to suggest the same thing so yes, absolutely, uh, let us take a 10-minute recess.

Mr. Hull: Thank you, all. And then so for the Commissioners in particular, as well as those who are called in to testify or you're part of or want - or listening on other Agenda Items, you don't need to hang up your phone or log out, you can just mute your phones or tele video systems, and we'll be returning at 11:35, thank you.

The Commission recessed this portion of the meeting at 11:23 a.m.

The Commission reconvened this portion of the meeting at 11:35 a.m.

Chair Cox: Call the meeting back to order after the recess.

Yes, I would like to call the meeting back into order and we will do a roll call to see if everyone's back.

Mr. Hull: Yes Madam Chair. Roll call, Commissioner Chiba?

Mr. Chiba: Here.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Here.

Mr. Hull: Commissioner Ho?

Mr. Ho: Here.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Here.

Mr. Hull: Chair Cox?

Chair Cox: I am here.

Mr. Hull: You have a quorum, five present Madam Chair, and everybody that was attending previously is present now.

Chair Cox: Thank you. So I believe we are on Item F.4, New Public Hearing.

Continued Public Hearing

New Public Hearing

Proposed Amendments to the "Interpretive Administration Zoning Rules and Regulations (2014) of the Kauai Planning Commission, "Relating to Chapter 8, 9, and 10 of the Kauai County Code (1987), Relating to Development Standards for Guest Houses = County of Kauai, Planning Department.

Mr. Hull: Okay, we are on - on F. 4. a. New Public Hearing for Proposed Amendments excuse me, to the "Interpretive Administrative Zoning Rules and Regulations of the Kauai Planning Commission," Relating to Chapters 8, 9 and 10 of the Kauai County Code, Relating to Development Standards for Guest Houses = the County of Kauai, Planning Department is the applicant. Just some background before we, oh you know what, before this, it is probably appropriate to call for public testimony, so is there anybody that has called in to this meeting that would like to testify on the public hearing for the guest house definition rules being proposed, if so, please state your name. Again, has anyone called in that would like to testify on the guest house rule Public Hearing for the guest house rule is being proposed, please if so, please state your name? Hearing none, Madam Chair. I will just launch into some of the background on this proposed amendment to our administrative rules. So the ability for a residential unit to have a guest house has been around for some time and a guest house for decades under definition, "Is proceeded to be used for habitation purposes or guests purposes non-commercial on a residential unit, that is 500 square feet and without a kitchen unit that would make it a full-time habitable structure."

Last year the County Council ultimately made an amendment and it was signed by the Mayor to allow for kitchens in guesthouses. So they could be fully habitable. One issue that has always been somewhat percolating, but has definitely risen to the top is how do you interpret the 500

square feet? There has been previous interpretations to say anything under roof is 500 square feet and we constitute the guesthouse. But since the guest house definition was established after that you had additional entitlements being proposed on residence units, including but not limited to, additional rental units in the residential zoning districts, and farm worker housing units in the agriculture district. All of which specifically state that anything that is enclosed in roof shall come to their maximum square footage, so they are use of 800 square feet and the farm worker housing 1200 square feet, so anything that's not enclosed. So that would discount unenclosed lanais or carports. Um, and so there have been some disconnect and some confusion as to whether the guests houses should be interpreted in the same manner or not. And that's just because there is no specific language specificity sorry, there are no specifications in the ordinance and there's no administrative rules. So to lend clarity to the interpreting and processing of guests houses and the guesthouse applications, we have drafted these draft rules for you folks to review. I will turn it over to Britni Ludington-Braun, whose one of our main techs that handles these issues on a daily basis. She has spun up this report so I will turn it over to Britni, if you want to read the report and - and draft rules into the record?

Staff Planner Britni Ludington-Braun: Madam Chair and Commissioners, today I am here to present to you the definitions of a guesthouse pertaining to the comprehensive zoning ordinance under the authority of Article 14, Section 14.03.8 of the Kauai County Charter. The Planning Commission of the County of Kauai adopts the following administrative rules pertaining to the responsibility of the Department to implement and enforce Chapter 8, Section 8-1.5 of the Kauai County Code (1987) as amended concerning the definition of guesthouse. Per Section 8-1.5, the Kauai County Code (1987) as amended defines guest's house to mean, "A building with a floor area of no more than 500 square feet may contain a kitchen and is used for dwelling purposes by guests, tenants, or owners.

A guest house shall not be used for transient vacation rental also known as TVR or wholesale operation within or outside of the visitor destination area, also known as the VDA." Our findings show a need to clarify the implementation of the definition of guesthouse. There is a need to clarify whether or not the structure may be attached to a single family residence, detached from a single family residence within a multifamily residence, or accompanied by an accessory structure, such as a garage. I respectfully present developmental standards in which the Department sees fit to determine the means of a guesthouse. The maximum floor area of a guesthouse is 500 square feet. The total floor area of a guesthouse shall be the sum of the horizontal areas of each floor of a building measured from the interior faces of exterior walls. The total floor area shall include enclosed and attached accessory structures, such as garages or storage areas.

Unenclosed attached accessory structures such as breezeways lanais or porches shall be excluded. The guest's house may be detached from a single-family residence or multifamily residence. The guesthouse may be attached to a single-family dwelling unit or multifamily dwelling units. When the guesthouse is attached to a single family dwelling unit or multifamily dwelling units, the enclosed and unenclosed floor area of the dwellings, the dwelling units shall not be counted in the calculation of the maximum 500 square feet of floor area for the respective guesthouse. When attached to another dwelling unit, the guesthouse shall have its own separate exterior access. When proposed with a kitchen in a state - state line, use agriculture, the guest's house applicant - application shall require an executed farm dwelling agreement. Thank you.

Chair Cox: Thank you. Do we have any questions from the Commissioners?

Mr. Ho: I have one question for Brittany. Brittany, what is a farm dwelling agreement?

Ms. Ludington-Braun: A farm dwelling agreement is an application that gets sent to the Planning Department from the applicants that allows the applicant to build a farm dwelling on their agriculture open zoned properties. The application goes from the Planning Department and does an internal, route through the attorney's office and then comes back down to get signed by our Director and notarized. The applicant then must bring the application to the Bureau of Conveyance on Oahu and get it documented and then submit a - the recorded document to the Planning Department prior to approval.

Mr. Hull: So for clarification Commissioner Ho, the farm dealing agreement is something that we are required to have all dwelling units being proposed in the agricultural districts signed to ensure that they are adhering to the farm standards that farmed dwelling are permissible permitted under Hawaii Section 205. It's a very minimal standard as we all know, because it could be just a couple of papaya trees to qualify for a farm, but it's up as a process that they have to go through formally in order to get their farm building approved. And so the draft proposal was saying if you come in for a guest house prior - with a kitchen prior to the farm dwelling agreement, for prior - excuse me, prior to the resident farm dwelling itself being proposed, then you still sign off on this agreement.

Chair Cox: Does that answer your question, right?

Mr. Ho: Yes.

Chair Cox: Okay, thanks.

Mr. Ho: Yes.

Chair Cox: Glenda?

Ms. Nogami Streufert: Britni yeah, could you describe what the difference would be between a guesthouse versus an ADU or an ARU?

Ms. Ludington-Braun: Sure, so a guesthouse is outright given two lots, and it is max 500 square feet as stated. Um, and additional dwelling unit is given to lots that outright only qualify for one dwelling unit and need - would've needed to come in prior to the Sunshine date in 2017 if they wanted to acquire an additional dwelling unit on ag and open lots. An ARU is given to only lots that are zoned residential and has a max floor area of 800 square feet.

Mr. Hull: Yeah, I did, to further add you know, not all the guests houses can have kitchens, right. There is definitely some issues - some attempt by the policymakers, including the Department because we were involved in the discussion and Planning Commission to allow for habitation to occur in these units. Some of that is to address the housing prices to a certain

degree - a lot of it was just to address the fact that this isn't an enforcement issue that if somebody has a guest house, more than likely they've already illegally altered it with a kitchen unit in it and the ship has kind of sailed on that. But it can be used for habitat, habitation purposes. If you count on a gradation level Commissioner Streufert, you look at 80 uses, there is no square footage requirement, you can build it as large as you want, and you can CPR it off and sell it to another buyer. An ARU has a maximum square footage of 800 square feet, you will have a kitchen in there, and you cannot CPR an ARU off and sell it off to another buyer. A guesthouse is maximum square feet of 500 square feet - you may or may not have a kitchen in it and like ARUs, you cannot CPR them off and sell it another buyer.

Ms. Nogami Streufert: Okay - all right, thanks.

Mr. Hull: We have a little pamphlet that we are hoping to get together for the public that kind of goes over those specific entitlements; we anticipate having that pamphlet ready in about a week or so.

Ms. Nogami Streufert: Oh, okay.

Mr. Ho: (Inaudible) is this - have a combination of these houses, you could - you could have an ADU and a guesthouse?

Ms. Ludington-Braun: No, you are...you cannot have an ADU and a guesthouse, lots are either, or. If you build out a guesthouse, you lose that additional dwelling unit, right. However, lots that have multiple dwelling units on it can qualify for a guesthouse. But as I said, um, lots of outright only qualify for one dwelling unit, that's when they get the additional dwelling unit application can be applied for.

Mr. Ho: Okay.

Mr. Hull: And the accommodation Commissioner Ho, though would be like, Brittany is getting into, the guesthouse or ADU, it has an either or scenario. But for ARU's, it is not an either or scenario. You may have a dwelling unit, a guesthouse and one ARU; you qualify for one ARU for each dwelling unit you qualify for. So if your property say qualifies for three dwelling units there are not many out, but say it does, and then you would also qualify for three additional rental units and the guesthouse, so you cannot accommodate (inaudible).

Chair Cox: Are there any other questions? Are we ready to - thank you, Britni that was, and Kaaina and - that was confusing, so thank you for clarifying, um...

Ms. Ludington-Braun: Thank you.

Mr. Hull: Oh Madam - Madam Chair, I'll just state that adopting administrative rules it is a bit lengthier process, than reviewing, say, Use Permit applications, it's a quasi-legislative process that ultimately Britni and I have to take to the Small Business Regulatory Review Board prior to you folks taking action on this and get it scheduled for the hearing, which is happening today. But we'd ask for a deferral to April, because we anticipate getting additional comments in April

but then we're still in the process of trying to get it before the Regulatory Review Board. So this item, as much as we want action relatively quick on it to resolve the issues happening on the front counter, the procedural process of having to take it to the State, folks, at the Small Regulatory Review Board is going to necessitate this somewhat remaining on the Agenda for the next three or four months.

Chair Cox: So do we take any action today - I mean, do have a motion about deferring it to April or do we not do anything?

Mr. Hull: Yeah, the Department would request that whenever you guys are done with deliberations - if you have more deliberations and discussions but whenever you're done to defer this to the April - excuse me, while - the April 13th Planning Commission.

Chair Cox: Okay - all right, is there further discussion? Okay, are we ready to make a motion then?

Ms. Nogami Streufert: I will move to defer this to the April Planning Commission meeting.

Chair Cox: Is there a second?

Mr. Ho: Yep.

Chair Cox: Okay, it has been moved and seconded, any further discussion? Uh, so I guess we should do a roll call vote since I cannot see anyone, so they cannot even put their thumbs up.

Mr. Hull: Roll call Madam Chair, with the motion to defer, Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox - oh, excuse me, sorry, Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ho?

Mr. Ho: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Aye.

Mr. Hull: Chair Cox

Chair Cox: Aye.

Mr. Hull: Motion passes 5:0, Madam Chair.

Chair Cox: Great.

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

CONSENT CALENDAR

Mr. Hull: We have no Consent Calendar

Status Reports

Mr. Hull: We have no Status Reports or Director's Reports for projects scheduled for Agency Hearing.

Director's Report(s) for Project(s) Scheduled for Agency Hearing.

EXECUTIVE SESSION

Pursuant to Hawaii Revised Statutes Sections 92-4 and 92-5(a)(4), the purpose of this executive session I to consult with County's legal counsel on questions, issues, status, and procedural matters. This consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Commission and the County as they relate to the matter of Petition for a Declaratory Order Regarding Noncompliance with the Comprehensive Zoning Ordinance and Variance Application Permit V-72-11, HBR Enterprises, LLC.

Mr. Hull: This is playing around to Item H. Executive Session, so Madame Chair; I will turn it over to you to read the language.

Chair Cox: Yes, thank you. So this is Item H. 1. Pursuant to Hawaii Revised Statute Sections 92-4 and 92-5(a) (4), the purpose of this executive session is to consult with County's legal counsel on questions, issues, status, and procedural matters. This consultation involves consideration of the powers duties with just immunities and, or liabilities of the Commission and the County as they relate to the matter of Petition for a Declaratory Order regarding Noncompliance with the Comprehensive Zoning orient - Ordinance and Variance Application Permit V-72-11 = HBR Enterprises, LLC. I will defer a vote on entry into Executive Session until we reach the substantive General Business Matter.

GENERAL BUSINESS MATTERS

Hearing officer's Report and Recommendation of Contested Case re Appeal of Planning Director's Decision Regarding Denial of 2019 Renewal Application Packet for Non-Conforming Use Certificate TVNCU#5023, Haloko Kai, located at 5111 Hoona Road, Koloa, Kauai, Hawaii, TMK: 2-6-006:4, and containing 6,035 sq. ft., Rosa Giem, Petitioner, Contest Case File CC-2019-18.

Chair Cox: Yes, thank you. So this is Item H. 1. Pursuant to Hawaii Revised Statute Sections 92-4 and 92-5(a) (4), the purpose of this executive session is to consult with County's legal counsel on questions, issues, status, and procedural matters. This consultation involves consideration of the powers duties with just immunities and, or liabilities of the Commission and the County as they relate to the matter of Petition for a Declaratory order regarding noncompliance with the Comprehensive Zoning orient - Ordinance and variance application permit V-72-11 = HBR Enterprises, LLC. Um, I - uh, I will defer a vote on entry into Executive Session until we reach the substantive general business matter. We can now proceed to, uh on matter I. 1. Which the, um, Contested Hearing about Reappeal of Planning and Director's Decision Regarding Denial of 2019 Renewal Application Packet for Nonconforming Use Certificate TVNCU- #5023.

Ms. Barzilai: Excuse me, Madam Chair; we have Deputy County Attorney Chris Donahoe on the line to answer any questions you may have about this contested case.

Chair Cox: Oh great, thank you. Chris, go ahead.

Deputy County Attorney Chris Donahoe: Good morning Chair, good morning Commissioners, Deputy County Attorney, Chris Donahoe for the respondent, the Planning Department in this matter. We are seeking that the Commission adopt the Hearing Officer's Report and Recommendation that was received January 27, 2021, which would affirm the decision of the Planning Director to deny the petitioner's renewal application. Based on this is situation where the petitioner's property owner which is located outside of the visitor destination area and but in accordance with the requirements of the CZO in 2009, the County granted a nonconforming use by issuing, #5023 to the petitioner and the annual renewal date was July 31st of every year for the petitioners NCUC. And from 2009 through 2019, the petitioner hired a property management agency to take care of the management take care of the—

Man: (Inaudible)...

Ms. Nogami Streufert: Huh? Oh no, I have something, something came in, sorry.

Chair Cox: Go ahead, Chris.

Mr. Donahoe: Oh sorry, okay, so hired the property management company who was who would manage the property as well as send in the renewal application every year by July 31st. So, that continued until July through July 18. So on July 18, 2018, the Planning Department timely received the renewal application for the NCUC #5023, to continue to run it as a TVR. In that - so then the Planning Department sent out a letter, which specifically stated, "It's renewed until July 31st, 2019. Should you renewal be one day late, than you'll be served with a notice of cease and desist notice and notice of forfeiture, and it will not be accepted after that date of July, 31st, 2019." So, July 31, 2019 comes and goes, there is a - the application, the renewal application is not received. It is not received until August 6, 2019, and so the Planning Department sent out a notice of cease and desist and then a notice of forfeiture, as well as sent back the application as denied. Then the petitioner filed for a contested case to challenge it. And at that contested case,

one of the arguments was that the petitioner hired the Pacific Elite, which was the agency responsible for property.

However, the hearing officer's recommendation is it is the County's position that it is up to the owner to renew the certificate, and it's not up to the agent.

And so the owner's ultimately on the hook and pursuant to a KCC-8-17.21.0, which was the County counsel's attempt to address TVR proliferation issues and problems regarding Ordinance 8-64, substantial deference should be accorded to that action. And since it was six days late, the Planning Department had no, had no choice other than to enforce that and issue the notice of forfeiture. It provides that the H-17-10.0, H provide the release lessee who has attained the NCUC shall apply. It is the owner it does not say anything about an exception to some agency property management group or otherwise to renew annually on the date of issue, which is in this case, was July 31. Also the interpreter rule K-8-19-1 Rule B, says, "It's the certificate holder's responsibility to submit applications to renew the NCUC by the expiration date." And so since - since she failed to timely submit the application by January - July 31st, 2019, and submitted it six days late, the Planning Department had no discretion and couldn't accept the renewal application.

And so once that happened under Section 1 - uh, H-17.10, the failure to meet that condition resulted in the automatic denial of the application for renewal for that nonconforming use certificate. And under section C of K par, of the interpretive rule failure to submit that application results in the automatic denial as well, the application, and it specifically states, and this was adopted November 23rd, 2017, "No applications were - can be submitted, uh, shall not accept any applications by the Planning Department after the expiration date." So once that's not accepted then #5023 - NCUC #5023 has basically lapsed, and so therefore this rendered the nonconforming use as an unlawful use because the subject property at that point lacked a nonconforming use certificate pursuant to KCC H-17.10 H. And that code section or that that County enforcement section is not in conflict with the overall ability under HRS 46 4, for enforcement powers by the Counties because they're liberally construed in favor of the County exercising them.

And so, the regulations like 8-17.10 and K par 8 19.1 are not they're not regulations that limit or repeal any pro-powers or property rights. What HRS 46-4 prevents counties from doing is simply, um, setting forth some Ordinance or some law or some statute that will repeal or limit your property rights. In this case, the County did not prohibit the nonconforming use for the tran- for - for Ms. Kim's transient vacation rental after the VDA, it regulated it. So it was the petitioner's own neglect and failing to timely submit it, that caused the forfeiture, not the result of any government action ordinance or statute. And so the forfeiture of the, uh, TVR #5023 is valid and not in violation of any statute or County Ordinance and that's, and that was affirmed in the hearing officer's report and recommendation. And so that's why the - it's the Planning Department's position that it's requesting that the Planning Commission adopt the Hearing Officer's report and recommendation, that the contest - that the contested, and affirmed the decision to deny petitioner's renewal application because the petitioner has not met her burden of proof.

Chair Cox: Thank you, Chris. Any questions for Chris? Okay, do we have a motion - we have been asked - recommended to affirm the decision of the Planning Director to deny the petitioner's renewal application, which was the Hearing Officer's Report recommendations.

Ms. Barzilai: Excuse me, Madam Chair.

Chair Cox: Yeah?

Ms. Barzilai: I have a question, just to confirm that the petitioner is not on the line.

Chair Cox: Oh okay, is the petitioner on the line?

Ms. Barzilai: It looks like not.

Chair Cox: Okay.

Mr. Donahoe: And I'm the Deputy County Attorney Chris Donahoe again, and just for the record the petitioner appeared at the contested case hearing pro se, so, they're - at that time there were no re- there was no representative representing her at the contested case hearing either.

Ms. Barzilai: So Madam Chair, at this time you can entertain a motion to either reverse, modify or adopt the Hearing Officer's Report and recommendations of contested case, the appropriate action.

Chair Cox: Okay, thank you. Do we have, uh, a motion to adopt, reverse or modify the hearing officer's recommendation?

Mr. Ho: I moved to accept the Hearing Officer's Recommendation and report to deny the petitioner's request for renewal application TVNCU #5203, Rosa Giem.

Ms. Nogami Streufert: I second.

Mr. Donahoe: I am - I am sorry Commission, it's Deputy County Attorney, Chris Donahoe again. I believe the TVNCU is #5023.

Chair Cox: Yeah, it was - it is.

Mr. Ho: I am sorry.

Chair Cox: Yeah.

Mr. Ho: Let me state that again, motion to accept Hearing Officer's Recommendation and Report to deny petitioner's request for renewal application TVNCU #5023.

Ms. Nogami Streufert: I second.

Chair Cox: Any further discussion. Okay, may we have a roll call vote, Kaaiana?

Mr. Hull: Roll call Madam Chair, motion to accept – oh motion to accept Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ho?

Mr. Ho: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye.

Mr. Hull: Motion passes 5:0, Madam Chair.

Notice of Appeal and Demand for Contested Case Hearing from Notice of Violation & Order to Pay Fines for 4-1194 Kuhio Hwy #1, Kapaa, Kauai, Hawaii, TMK: (4) 4-5-006:005, Michael and Paula Hulme.

Clerk of the Commission's Recommendation to Refer and Appeal of the Planning Director's Decision Related to the Planning Director's Notice of Violation & Order to Pay Fines for the unpermitted transient vacation rental use outside of the Visitor Destination Area, Michael and Paula Hulme, 4-1194 Kuhio Highway #1, Kapaa Hawaii, Tax Map Key (4) 4-5-006:005, received on February 22,2021 via email, for referral to Board and Commissions as Contested Case File No. CC-2021-2.

Chair Cox: So thank you. So now, we move to General Business Matters, number 2, matter 2—

Ms. Barzilai: Madam Chair, excuse me, is—

Chair Cox: Yes?

Ms. Barzilai: Is it okay to excuse Deputy County Attorney Donahoe at this time?

Chair Cox: Oh, yes please - thank you - thank you, Chris, you are excused.

Mr. Donahoe: Thank you Commissioners, have a good day.

Ms. Barzilai: Aloha.

Chair Cox: Thank you. Okay, so Matter 2, I do not know if you read this or I read this, Kaaina, does it matter?

Mr. Hull: Being that it is an appeal action. It may be appropriate that you read this and I officially step down from my clerk position.

Chair Cox: Okay, Notice of Appeal and Demand for Contested Case Hearing from Notice of Violation and Order to Pay Fines for 4-1194 Kuhio Highway #1, Kapaa, Hawaii, TMK (4) 4 5-006:005 = Michael and Paula Hume. And the Clerk of the Commission's Recommendation to Refer an Appeal to the Planning Director's Decision Related to the Planning Director's Notice of Violation an Order to Pay Fines for the unpermitted transient vacation rental use outside of the Visitor Destination area, Michael and Paula Hume and we already said the address. This is Tax Map Key (4) 4-5-006:005, received on February 22, 2021 via email for referral to the Board and Commissions as Contested Case File number CC-2021-2.

Mr. Hull: Yeah, so Madam Chair, Kaaina Hull on behalf of the Planning Department. So we issued a violation notice and they are appealing it. We are recommending that the Commission, ultimately refer this to a Hearings Officer.

Chair Cox: Do we have any discussion from the Commissioners? Hearing none. Would somebody like to make a motion?

Mr. Hull: Madam Chair, just...

Chair Cox: Yeah.

Mr. Hull: It may be appropriate to ask if there is a representative for the applicant if they have called in that they may speak.

Chair Cox: Okay, sorry. So I apologize to those that of you in the public, this is the first time that I'm Chairing this and it was a last minute decision because the Chair could not make it. So I apologize. Is there anybody who would like to speak on of the petitioner? Okay, hearing. I will go back to my request, is anyone ready to make a motion or have questions or concerns, any of the Commissioners? We have been asked to send this to a Hearing Officer.

Mr. Ho: Motion to remand to a Hearing Officer, Michal and Paula Hulme for Contested Case Hearing File number CC-2021-2.

Ms. Nogami Streufert: I second.

Mr. DeGracia: Second.

Chair Cox: Thank you, it's been moved and seconded, is there any further discussion? Okay, can we have a roll call vote?

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

Mr. Chiba: Aye.

Mr. Hull: Commissioner DeGracia?

DeGracia: Aye.

Mr. Hull: Commissioner Ho?

Mr. Ho: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye.

Mr. Hull: Motion passes 5:0, Madam Chair.

Petition for Declaratory Order regarding Noncompliance with the Comprehensive Zoning Ordinance and Variance Application V-72-11, Memorandum in Support, Verification of Petition, Declaration of Mauna Kea Trask, Exhibits “1-20,” Certificate of Service (10/22/20) from Mauna Kea Trask, Cades Schutte LLP, Attorneys for Petitioner *HBR Enterprises, LLC*. (Deferred 12/08/20.)

Association of Apartment Owners Of Hanalei Bay Resort’s Memorandum in Opposition to HBR Enterprises, LLC’s Petition for a Declaratory Order Regarding Noncompliance with the Comprehensive Zoning Ordinance and Variance Application Permit V-7-11; Exhibits 1-6: Certificate of Service (12/7/20) from Ian K. Jung, Michael C. Carroll, and Sharon Paris, Attorneys for Interested Party Hanalei Bay Resort. (Deferred 12/18/20.)

Petitioner’s Reply to Association of apartment Owners of Hanalei Bay Resort’s Memorandum in Opposition to HBR Enterprises LLC’s Petition for a Declaratory Order Regarding Noncompliance with the Comprehensive Zoning Ordinances and Variance Application Permit V-72-11; Declarations of Mauna Kea Trask; Exhibits “21-72”; Certificate of Service (01/22/21) from Mauna Kea Trask, Cades Schutte, LLP, Attorney for Petitioner Dennis R. Sciotto and Carol Ann Sciotto as Trustees of the Dennis R. Sciotto and Carl Ann Sciotto Community Property Trust, Edward E. Colson, III and Karen Jeanne Colson as Trustees of the Colson Family Trust owners of Unit 16A and HBR Enterprises, LLC.

Association of Apartment Owners Of Hanalei Bay Resort’s Surreply to HBR Enterprises LLC’s Petition for a Declaratory Order Regarding Noncompliance with the Comprehensive Zoning Ordinance and Variance Application Permit V-72-11; Exhibit 7; Certificate of Service (02/05/21) from Ian K. Jung, Michael C. Carroll, and Sharon Paris,

Attorneys for Interested party Association of Apartment Owners of Hanalei Bay Resort.

Chair Cox: Thank you. So we are now on Item I. General Matters - Business Matters number 3. Matter 3. Hanalei's Bay Resort.

Ms. Barzilai: Madam Chair, as there is no current conflict of interest, it is appropriate for Director Hull to clerk this item and he can do so.

Chair Cox: Thank you.

Mr. Hull: Thank you, Laura and Madam Chair. So moving back into Item I. 3. Petition for Declaratory Order regarding Noncompliance with Comprehensive Zoning Ordinance and Variance Application V-72-11, Memorandum in Support Verification of Petition, Declaration of Mauna Kea Trask, Exhibits, "1-20," Certificate of Service dated 10/22/20, from Mauna Kea Trask, Cades Schutte LLP, Attorneys for Petitioner, HBR Enterprises, LLC. Additional documents that have been provided, uh, three, Association of Apartment Owners of Hanalei Bay Resort's Memorandum in Opposition to HBR Enterprises, LLC's. Petition for Declaratory Order Regarding Noncompliance with the Comprehensive Zoning Ordinance and Variance Application Permit V-7-11, Exhibits 1-6; Certificate of Service, dated 12/7/20, from Ian K. Jung, Michael C. Carroll, and Sharon Paris, Attorneys for Interested Party - Interested Party, Hanalei Bay Resort.

You also have Petitioner's Reply - I'm sorry, Item 3. b. Petitioners Reply to Association of apartment Owners of Hanalei Bay Resort's Memorandum in Opposition to HBR Enterprises LLC's Petition for a Declaratory Order Regarding Noncompliance with the Comprehensive Zoning Ordinance and Variance Application Permit V-72-11; Declaration of Mauna Kea Trask; Exhibits, "21-72"; Certificate of Service dated 01/22/21 from Mauna Kea Trask, Cades Schutte, LLP, Attorneys for Petitioner Dennis R. Sciotto and Carol Ann Sciotto as Trustees of the Dennis R. Sciotto and Carol Ann Sciotto Community Property Trust, Edward E. Colson, III and Karen Jeanne Colson as Trustees of the Colson Family Trust owners of Unit 16A and HBR Enterprises, LLC. And Item I. 3.c. Association of Apartment Owners of Hanalei Bay Resort's reply to HBR Enterprises LLC's Petition for a Declaratory Order Regarding Noncompliance with the Comprehensive Zoning Ordinance and Variance Application Permit V-72-11; Exhibit 7; Certificate of Service dated 02 /05 /21 from Ian K. Jung, Michael C. Carroll, and Sharon Paris, Attorneys for Interested Party Association of Apartment Owners of Hanalei Bay Resort.

Chair Cox: If any Commissioner wishes to enter into an executive session on this matter, I would like to receive a motion at this time.

Ms. Nogami Streufert: I move that we go into executive session on the matter of the, let's see, , involving the consideration of the powers, duties, privileges, immunities, and or liabilities of the Commission of a County as they relate to the matter of Petition for Declaratory Order regarding Noncompliance with the Comprehensive Zoning Ordinance and Variance Application for Application V-72-11.

Chair Cox: Thank you.

Mr. Ho: I second.

Chair Cox: Is there a second?

Mr. Ho: I second that (inaudible).

Chair Cox: Okay, thank you Roy. We need to have a roll call, Kaaina, I guess?

Mr. Hull: Roll Call, Madam Chair, on the motion to go into Executive Session pursuant to this Agenda Item, Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ho?

Mr. Ho: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye. So the purpose of this Executive—

Mr. Hull: Motion passes 5:0, Madame Chair.

EXECUTIVE SESSION

Pursuant to Hawaii Revised Statutes Sections 92-4 and 92-5(a)(4), the purpose of this executive session I to consult with County's legal counsel on questions, issues, status, and procedural matters. This consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Commission and the County as they relate to the matter of Petition for a Declaratory Order Regarding Noncompliance with the Comprehensive Zoning Ordinance and Variance Application Permit V-72-11, HBR Enterprises, LLC.

Chair Cox: Session is to discuss the General Business Matter 3, and it has now passed and approved. So we'll leave this and go to the Executive Session, but I'm wondering given the hour, or do we want to also take a lunch break before we come back? And if so, we outta tell everybody, what is the Commissioners' pleasure? Sorry, this is new to me so if you have an idea of what we should do, let me know, it's 12:14 pm now. We're going to be in Executive Session we could come back here and then not take a lunch break at this point and continue?

Mr. Ho: Madam Chair, this Roy.

Chair Cox: Yes?

Mr. Ho: I think we are near the end here; could we just move to Executive Session and continue our Business?

Chair Cox: It's okay with me - okay, so that's what we're going to do, we'll go into Executive Session. Laura, how long would you suggest we say we are going to be an Executive Session just so we can let the public know?

Ms. Barzilai: I would say we can advise the public that we should return in about 30 minutes.

Chair Cox: Okay, so we will be back in about 30 minutes and we will see all the Commissioners in the Executive Session, thank you.

The Commission moved into Executive Session at 12:13 pm.
The Commission returned to Open Session at 12:58 pm.

Chair Cox: Call the meeting back to order after Executive Session.
Okay, so everyone is here with us?

Mr. Hull: Yep. Roll call, Commissioner Chiba?

Mr. Chiba: Here.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Here

Mr. Hull: Commissioner Ho?

Mr. Ho: Here.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Here.

Mr. Hull: Chair Cox?

Chair Cox: Here, thank you, Kaaina.

Mr. Hull: Welcome, you have a quorum 5 present, Madam Chair.

Chair Cox: So the Commission has received and reviewed all the filings and exhibited - exhibits, sorry, submitted by HBR Enterprises and the AOAL. And would now like to open the

floor for three-minute public statements from anyone who would like to speak on this matter, including the attorneys for the purposes of a final statement. At this time, the Commission is satisfied with all legal arguments that were previously made on the record on December 8, 2020, and will not take additional arguments, nor rebuttal from the petition - petitioner or the party in opposition. However, the commission will accept the three minutes public statement. Is there anyone who would like to make a public statement?

Mr. Michael Carroll: Good afternoon, this is Mike Carroll; I am on behalf of the Association of Apartment Owners of the Hanalei Bay Resort. I would like to make a public statement.

Chair Cox: You have three minutes, thank you very much.

Mr. Mike Carroll: Sure. Members of the Commission, this, is now the sixth time the petitioners have brought this claim. Each time they made the same arguments in lost, there is no question that lockouts were part of the original approval 50 years ago, and the units were approved with the design and have been used continuously for 50 years. There is also no question that the petitioners same arguments have failed countless times before. There are six independent grounds that I have raised in our papers and if the Commission agrees with any one of those grounds, the Commission should deny it. One, the statute and the rules do not permit them to bring this petition. Two, the petitioner lacks standing. Three, the petitioner's barred by issue of preclusion based on the five times they previously as asserted this claim. Five, excuse me, four, the petitioner has failed to provide proper notice to the 134 owners that would be affected. Five, the petitioner has failed to establish that lockouts are not the preexisting legal use. And six, the petition is barred by equitable estoppel and vested rights. Now, I have raised all this in my briefs. I am not going to rehash that here. I do want to just point out that what petition is seeking to accomplish here is to override the decision of the Planning Director, override multiple prior decisions rejecting the petitioner's arguments, and override 50 years of use on this property, all without any input from any of the owners. For the reasons that we have put forth in our papers, we hope that the Commission will entertain a motion to deny this petition, thank you.

Chair Cox: Thank you. Do we have any other statements?

Mr. Mauna Kea Trask: Yeah, can you hear me?

Chair Cox: Yes.

Mr. Mauna Kea Trask: Okay, thank you Chair, you know, Mauna Kea Trask, on behalf of the petitioners. First off, we would object to this procedure today. This is not how petitions for Declaratory Orders are supposed to be received and processed. What happens is a petition is filed and then it is reviewed by form for the Directors, it can be rejected at that time. It was not. It's been provided to the Commission. The Commission can review it and issue a decision within 45 days, which they have not, and that has not been done. Then you can setup for hearing which we requested it to be done - we requested a hearing so that we could fully look at the record, we could ask Mr. Hull questions and we could have the hear- you know, a full contested case on this matter. And at that time, interventions would be entertained and ruled upon. What

this Commission is allowed to do as the AOAL solely to enter this proceeding prematurely, without an intervention to the derivation of everybody else.

So we note for the record that there were 16 public testimonies that weren't received as part of this Agenda Item, that they were emailed to the Department on March 5th, 2021. There - the other testimony that was received show this is a matter of significant importance to the principal community. You know, we were getting, we are not being allowed to make our case in this in this proceeding, and this is not how this is supposed to proceed. What the Commission has done is granted almost, like, a half-hearing; they will allow one person to come in without any Agency Notice and plead their case and give us only three minutes to respond our entire cases in response. We'd asked this Commission do exactly what it did in the Previous Agenda item, this is 1.b. and set a Public Hearing for this - I mean, set a hearing for this matter, allow everyone else to come in. We would have provided notice at the appropriate time, had a hearing been issued, we want to provide notice. This use and...so going into the substance of it, this use has not been allowed for 50 years, it's been explicitly prohibited, you cannot rent out the lockout portions. You can rent out the apartment portions, but not the lockout.

This issue has not been resolved in the past. Then it's arbitration ordered and left the County out, they did not rule on the Zoning because County wasn't involved. Same thing with the subsequent arbitration pursuant to the Federal court. The 1980, timeshare issue had nothing to do with this, that's timeshare. And the issue of sub-occupancy - the whole thing with the issue of sub occupancy under the building code regards to the building itself, it's a building official determination, it's not a zoning determination. If you look at the IVC, and this is section which the County has adopted, "Issuance of certificate of occupancy shall not be construed as an approval of a violation of the provisions of this code or of other concordances of the jurisdiction," so it's a separate matter. But what we would like this to be, and what this Commission has a responsibility to do is have a full hearing, allow witnesses to testify. Let Mr. Hall explain how this is different from every single Planning Director before going back to 1976. I mean, even Mr. Mike Dahilig, has a declaration in here saying he agrees with the (inaudible) who said, "You can rent out the entire apartment unit as a hotel unit, not the individual lockouts that would exceed the density."

Mr. Hull: I am sorry 3 minutes, Chair.

Mr. Trask: Okay, again, we strenuously object to the procedure in this manner, this is not how it's supposed to be, this will be appealed. And like Mr. Hull said previously, it would be a shame after a year of litigation, okay, to have this overturned and come back just to set hearing and have a hearing.

Chair Cox: Thank you, thanks for - thank you. Is there anyone else who would like to make a statement related to this?

Mr. Trask: Your Honor, I believe my client would also like to make a statement.

Chair Cox: Okay.

Jimmet Mehta: Good afternoon, honorable Commission members. My name is Jimmet Mehta. I am the restaurant operator at Hanalei Bay resort. I stand to gain from these lockouts if they were to have been operated, but I am against them for various reasons. The community has not had a chance to about them as well. They are against the principal association, bylaws and declarations. They create a greater density for which there is not enough parking at that resort; this is how it all began. And as a restaurant operator, I've been asked, "Well, why don't you, you know, you - you should be loving the fact that we have lockouts here?" No, there is not enough parking and it is not fair to this community. It is not fair to the people that buy on that street to have an additional 146 units added as hotel rooms. I will stand to make money off them; I do not want it this way. I am not going to sellout for that community. Please allow the proper procedures and let us take this in a very open manner to show the evidence. We have testimony again from (inaudible) wall from, Brian (inaudible) every unit, these are all former Planning Directors and even our current Planning Director issued a notice of violation against these lockouts. Why the change is all we are asking let us put it out in the open and then argue the merits from that that is it.

Chair Cox: Thank you very much. Any further statements? Okay, hearing none. The Commission is now ready to act on this matter; I would like to entertain a motion. Is there any Commissioner who would like to make a motion regarding this matter?

Ms. Nogami Streufert: I will do that, there appear to be two issues and I move to deny the Petition for a declaratory order regarding noncompliance with the Comprehensive Zoning Ordinance and variance application permit V-72-11, on procedural grounds.

Chair Cox: Is there a second?

Mr. DeGracia: Second.

Mr. Trask: I am sorry, what are those procedural grounds?

Chair Cox: After the vote, we will give a written order of the Commission. It will be issued in a few days for distribution to the petitioner and the opposing party if this vote passes but we have not even passed it yet. So we have a motion is there any further discussion? If not, I would call for a roll call vote. Kaaina, can you do a roll call vote?

Mr. Hull: My apologies - roll call vote, Madam Chair, Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ho?

Mr. Ho: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye.

Mr. Hull: Motion passes 5:0, Madame Chair.

Chair Cox: And as I mentioned before there will be a written order of the Commission that will be issued within in several days and which will be distributed to the petitioner and the opposing party. So the Agenda Item is now closed and we can proceed to the next item.

Mr. Trask: Yeah, one quick question, Chair? Please.

Chair Cox: Yes?

Mr. Trask: Was Mr. Hull in the Executive Session?

Chair Cox: Yes, he was.

Mr. Hull: No, I...

Chair Cox: No, no...

Ms. Barzilai: Mr. Hull was not present. Laura Barzilai County Attorney's Office. Director Hull was not present in the Executive Session.

Chair Cox: Oh, sorry, I thought you meant Ho - I thought you said Roy Ho, I am sorry.

Mr. Trask: (Inaudible) Hull.

Chair Cox: Oh, no, he absolutely was not.

Ms. Barzilai: (Inaudible)...

Mr. Trask: And Madam...

Chair Cox: No, it was just the Commissioners and our attorney.

Mr. Trask: Thank you, and again Chair, we object to motion on the floor, we're again state that the justification for the grounds for which it was asked, and again, we object to the procedure today, as violates of the rules of the Planning Commission, specifically Chapter 6, 4 and 10, and 9, thank you.

Chair Cox: Thank you for your statement.

COMMUNICATIONS (For Action)

Mr. Hull: Next on the Agenda, moving right along, we have no Communications for Actions for Agenda Item J.

COMMITTEE REPORTS

Subdivision

Mr. Hull: We will move onto Agenda Item K. Committee Reports, we have K. 1. Subdivision Action matters listed in the Subdivision Committee Agenda - I will turn it over to Commissioner DeGracia for the Subdivision report.

Mr. DeGracia: Today Subdivision Committee all of us in attendance - all the Commissioners, and we had one item and it was in approval for a tentative division extension requests, Application No. S-2005-41 for Visionary LLC and that concludes my report.

Chair Cox: Thank you.

Mr. Hull: We need a motion to adopt to the Subdivision Committee Report.

Chair Cox: Sorry, may I have a motion to accept the Subdivision Report?

Mr. Ho: I move to accept the Subdivision Report.

Ms. Nogami Streufert: Second.

Chair Cox: Are there any discussion? Okay, can we have a roll call vote then?

Mr. Hull: Roll call, Madam Chair, motion to adopt the Subdivision Committee Report, uh, Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ho?

Mr. Ho: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye.

Mr. Hull: Motion passes 5:0, Madam Chair.

UNFINISHED BUSINESS (For Action)

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

NEW BUSINESS

Mr. Hull: We have no New Business as we handled the New Business; we took the action on New Business.

For Action- See Agenda F for Project Descriptions

ANNOUNCEMENTS

Topics for Future Meetings

The following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter on April 13, 2021. The Planning Commission anticipates meeting via teleconference but will announce its intended meeting method via agenda electronically posted at least six days prior to the meeting date.

Mr. Hull: Madam Chair. Next, we have up Announcements for Topics for Future Meetings. We will be looking at still the guesthouse proposal, as well as the Kilauea proposal that we folks still have to review it today. We have a couple other use permits oh sorry, SMA permits for single-family dwellings on the horizon, but relatively light agenda thereafter. If there is any agenda items that Commissioners would want, we can certainly entertain and discuss that with the Chair.

Chair Cox: Anybody have any items they want added? Okay, if not?

Ms. Nogami Streufert: Oh wait, on the Announcements, it says that the next, (inaudible) that the regularly scheduled Planning Commission meeting will be in April. Did we not say that the Kilauea Old Mill was going to be in March? Wait a minute. This is March, sorry.

Chair Cox: Oh, it is in May, I wane - it was something we deliver, we actually something was going to May 11.

Mr. Hull: Yeah. So the Department has requested and the Commission acted upon the May 11 date for the Kilauea Old Mill and the reason for that push it because we need a bit more than 30 days to do the publication notice in the Garden island newspaper pursuant to our own ordinance rules for public notification and then subsequent property and notification. So within that timeline, it would have to go to the May 11th meeting.

Chair Cox: Okay. Anything else?

Mr. Hull: Well the Department does not have anything else, I would just like to, you know, we are still in the television system, I want to thank all the Commissioners for their patience. I wish that we were not saying goodbye to one of our Commissioners in this environment but today is Commissioner Ho's last day. So I'd just like to thank Commissioner Ho for all his service and time that he spent with the Planning Commission as Chair, Subdivision Committee Chair and representing the Labor Seat well- extremely well, I think. You know, there was some testimony today, I think you know, someone had this notion of the Planning Commission acting too quickly on certain issues. I think it's anything but, like, there's so much work goes in from the Departments level - from a Commissioner's level, from Agency Reviewing Levels and public testimony, and so much work that goes into it, and I think Commissioner Ho embodied it. And how much he went off and dedicated his own time, having conversations with the Department and others to really get background and understanding of what was before him. His research and analytic viewpoint I think was a real strong point and will be sorely missed but thank you - thank you so much for all your service Roy.

Chair Cox: Yes, thank you Roy. Thank you, Roy; we are going to miss you.

Mr. Ho: (Inaudible)...

Ms. Nogami Streufert: Yeah, I can I just (inaudible) it's great to have him as a colleague...

Chair Cox: Yeah.

Ms. Nogami Streufert: And just, always prepared and always pleasant to work with, that is a combination that is sometimes hard to come up with, so thank you very much, Roy, and we'll be seeing you around.

Mr. Chiba: And thank you very much, I learned a lot from you.

Mr. DeGracia: Thanks Roy.

Mr. Ho: Yeah, guys, it's been a pleasure to work with all of you...all the Commissioners before you, the Planning Department, I've met a lot of nice people there. So, I wish you all the very best in your personal and your professional lives, thank you.

ADJOURNMENT

Mr. Ho: Motion to adjourn.

Chair Cox: Great Roy, thank you too, is there a second.

Ms. Nogami Streufert: Second.

Chair Cox: All those in favor, say - well, I guess you can say aye, because you'd go on mute - just say aye.

Ms. Nogami Streufert: Aye.

Mr. Chiba: Aye.

Mr. DeGracia: Aye.

Mr. Ho: Aye.

Chair Cox: Okay, Motion passes 5:0. Thank you.

Mr. Ho: Okay, thank you all.

Chair Cox: And thanks for your patience.

Ms. Barzilai: Thank you.

Mr. Ho: Good - good job, Helen.

Chair Cox: Okay, aye.

Mr. Hull: All right.

Chair Cox adjourned the meeting at 1:17 p.m.

Respectfully submitted by:

Arleen Kuwamura

Arleen Kuwamura,
Commission Support Clerk

(X) Approved as circulated 10/26/2021 Meeting.

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