

KAUA‘I PLANNING COMMISSION  
REGULAR MEETING  
**January 11, 2022**

The regular meeting of the Planning Commission of the County of Kaua‘i was called to order by Chair Apisa at 9:00 a.m., - Webcast Link: <https://www.kauai.gov/Webcast-Meetings>

The following Commissioners were present:

Ms. Donna Apisa  
Ms. Helen Cox  
Mr. Gerald Ako  
Mr. Melvin Chiba  
Mr. Francis DeGracia  
Ms. Glenda Nogami-Streufert  
Ms. Lori Otsuka

Excused or Absent

The following staff members were present: Planning Department – Director Kaaina Hull, Deputy Director Jodi Higuchi Sayegusa, Myles Hironaka, Dale Cua, Romio Idica, and Planning Commission Secretary Shanlee Jimenez; Office of the County Attorney – Deputy County Attorney Laura Barzilai, Chris Donahoe, Office of Boards and Commissions – Administrator-Ellen Ching, Administrative Specialist Anela Segreti, and Support Clerk Arleen Kuwamura.

Discussion of the meeting, in effect, ensued:

**CALL TO ORDER**

Chair Apisa: Called the meeting to order at 9:00a.m.

**ROLL CALL**

Planning Director Kaaina Hull: Madam Chair, its 9:00, we have all Commissioners present, so at your discretion whenever you want to start the meeting.

Chair Apisa: Great. I call the meeting to order, and we could do a a roll call, please, Kaaina?

Mr. Hull: Roll call, Madame Commissioner Ako?

Mr. Ako: Here and by myself.

Mr. Hull: Commissioner Chiba?

Mr. Chiba: Here and by myself.

Mr. Hull: Commissioner Cox?

Chair Cox: Here and by myself.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Here by myself.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Here and by myself

Mr. Hull: Commissioner Streufert?

Ms. Nogami-Streufert: Here and by myself.

Mr. Hull: Chair Apisa?

Chair Apisa: Here and by myself.

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

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

Chair Apisa: Thank you very much. Our next Agenda Item is Selection of our Chairperson and a Vice Chairperson for 2022. Nominations are now in order for the position of the Planning Commission Chair. The nominations need not be seconded. Are there any nominations?

Ms. Otsuka: Yes. I would like to nominate Commissioner Helen Cox for the position of Planning Commission Chair.

Chair Apisa: Thank you very much. Are there any other nominations? Hearing none. May I have a motion to close the nominations?

Ms. Nogami-Streufert: I move to close the nominations.

Chair Apisa: Is there a second for this?

Ms. Otsuka: Second.

Chair Apisa: All those in favor say, aye? Aye (Unanimous voice vote). Anyone saying, nay? Hearing none. The Motion carried unanimously 7:0. Thank you very much.  
So now we will continue to get the appointment of the Subdivision Committee Chair and Vice Chair. Well, no, I think at this time, I will turn it over to our new Chair and she can appoint her Subdivision Committee. Congratulations Chair Cox and thank you very much.

Chair Cox: Thank you, Donna.

Chair Apisa: Thanks very much.

Chair Cox: Yes, Laura?

Deputy County Attorney Laura Barzilai: Sorry, Deputy County Attorney Laura Barzilai. We actually have to vote on the appointment of Vice Chair Cox's position to Chair, so we will vote her at this time.

Chair Apisa: I (inaudible).

Ms. Barzilai: We will vote now on the nomination.

Ms. Apisa: Yes, I assumed...I was thinking we had done it but thank you. That is why we have legal counsel guiding us. So, I would like to entertain a motion to select Helen Cox as our Chairman. Did I hear a motion?

Ms. Nogami-Streufert: I move to elect Helen Cox as the Chairperson for the Planning Commission.

Ms. Apisa: Thank you very much. Is there a second for that?

Mr. Chiba: I second.

Ms. Apisa: We do have a motion on the floor. All in favor, please say, aye? Aye (Unanimous voice vote). Any opposed? Any abstentions? Hearing none. The Motion carried unanimously 7:0. Congratulations Chair Cox. Thank you.

Chair Cox: Thank you and thank you, Donna for holding the post for a year, that was very, very helpful. I hope I can do as good a job. So, moving on we are now actually going to select the Vice Chair, so nominations are now in order for the position of Planning Commission Vice Chair. And nominations need not be seconded. Are there any nominations?

Ms. Otsuka: Yes. I would like to nominate Commissioner Francis DeGracia for the position of Vice Chair of the Planning Commission.

Chair Cox: Are there any further nominations? If not, may I have a motion to close nominations?

Ms. Otsuka: I move to close the nominations for the position of Planning Commission Vice Chair.

Chair Cox: Okay, is there a second? Donna, did you second it?

Ms. Apisa: Second.

Chair Cox: All those in favor say, aye? Aye (Unanimous voice vote). Any abstentions? Any nays? Okay, the Motion is carried 7:0. So Nominations are now closed so Francis DeGracia has been nominated to fill the position of Planning Commission Vice Chair. Are there any request for

a secret ballot vote? If not, those in favor of Commissioner DeGracia? We need to vote on this so let's do a roll call vote. Kaaina.

Mr. Hull: Roll call, Madame Chair. The vote here is to elect Commissioner DeGracia to the Vice Chair position of the Planning Commission. Roll call, Commissioner Ako?

Mr. Ako: Aye.

Mr. Hull: Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox?

Chair Cox: Aye.

Mr. Hull: Oh, I apologies, I will call you last Chair, Sorry about that.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami-Streufert: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Chair Cox?

Chair. Cox: Aye.

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

Chair Cox: Thank you. Francis, you are dually elected so serve as Planning Commissioner Vice Chair. Congratulations!

Mr. DeGracia: Thank you.

Chair Cox: Thank you for serving with me. So, moving on we are going to, I would like to appoint the Subdivision Committee members. And I would like to appoint Commissioner Ako as the Chair

of Subdivision Committee, Commissioner Chiba as Vice Chair to the Subdivision Committee, and Commissioner DeGracia will serve as the third member of the Subdivision Committee. I would also like to appoint Commissioner as an alternate member in order to achieve a quorum and to take action in case members are absent. May I have a motion to approve?

Ms. Nogami-Streufert: I move to approve your appointments.

Chair Cox: Is there a second?

Ms. Nogami-Streufert: Second.

Chair Cox: Thank you. All those in favor signify by saying, aye? Aye (Unanimous voice vote). Any nays? Any abstentions? Hearing none. Motion Carried 7:0. Thank you, Commission, Subdivision Commission, and thank you for those who finished serving on it.

### **APPROVAL OF AGENDA**

Mr. Hull: Moving on to approval of the agenda. The Department has no recommended changes for the agenda.

Ms. Apisa: I move we approve the agenda as submitted.

Chair Cox: And a second?

Ms. Otsuka: Second.

Chair Cox: I don't think we need a roll call. All those in favor? Aye. (Unanimous voice vote). Are there any opposed? Hearing none. Motion Carried. 7:0.

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

Mr. Hull: Next, Madame Chair, we have Agenda Item E, Minutes for the Meetings August 10, 2021, and Minutes for the Meeting of September 14, 2021.

Chair Cox: I would entertain a motion to approve both of these together, unless you would like to look at them separately?

Ms. Apisa: I move that we approve the Minutes of the August 10, 2021, and September 14, 2021, Planning Commission Meetings.

Ms. Nogami-Streufert: Seconded.

Chair Cox: Thank you. It's been moved and seconded. Any further discussion? If not, I think we can again, do a voice vote. All those in favor? Aye. (Unanimous voice vote). Are there any opposed? Hearing none. Motion Carried. 7:0. Thank you.

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

Mr. Hull: WE have no additional Receipt of Items for the Record.

## **HEARINGS AND PUBLIC COMMENT**

Mr. Hull: Now moving on to Hearings and Public Comments. We did not receive any written testimony however, we do have at least one attendee attending Jodi, did you want to let the attendee in to testify? We have a George Van Buren, Mr. Van Buren would you like to testify? We are going to bring you into the meeting.

Deputy Planning Director Jodi Higuchi Sayegusa: I will do that right now. Just letting you in, you just need to unmute yourself and when you are ready you can begin your testimony, Mr. Van Buren. It doesn't appear to be moving so, I am not sure. Maybe, Kaaina, you want to try on your end? So, you would click on the attend tab, click on more and remote.

Mr. Hull: Yes, it is not, we are having some technical difficulties here. Here we go.

Ms. Higuchi Sayegusa: Here we go. Mr. Van Buren you are faint if you could try to talk and then we can begin your time. So sorry, I think we can barely hear you. Hi. Mr. Van Buren we cannot make out audio at this point, its really muffled. Another option is for you to call in let's see, when you registered you should have received another option, a number that you may dial to call in for the audio. That might be a better option. Hold the line, so if you refer to the email with the link to join the meeting within that invitation there should also be these numbers you may dial to link your audio by phone into the meetings. That might be the best option at this point.

Mr. Hull: Madame Chair, we are also, having some broadcasting issues with our IT folks, so maybe if we could ask for a ten-minute recess? That might give Mr. Van Buren sometime to get through his glitches and call in as well as IT team.

Chair Cox: Okay. Can I have a motion for a ten-minute recess?

Mr. Hull: No motion needed you just have...

Chair Cox: Okay, we don't have too, we just do it? Okay. Let's take a ten-minute recess, yes, thank you, Kaaina.

The Commission recessed this portion of the meeting at 9:13 a.m.

The Commission reconvened this portion of the meeting at 9:36 a.m.

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

Looks like we have got everybody so I would say, lets go ahead and restart and I believe Mr. Van Buren, you are ready to speak?

Mr. George Van Buren: Good morning, Madame Chair.

Mr. Hull: Sorry, Mr. Van Buren, we have three-minutes for testimony and for the record could you state your name for the record. Thank you.

Mr. Van Buren: Okay. This is George Van Buren. Good morning, Madame Chair, Commission members. Sorry for my lack of technical prowess, but I'll be brief. I just wanted to inform the Commission that I've been appointed by the Court as a Commissioner for this property, and it appears to be headed for foreclosure auction. I have spoken with Mike Laureta, and you know, we're getting ready to address the problems. I know that there are, the borrowers have made some indication that they may move to resolve the issues, but I wanted the Commission to know that I am aware of the problem, and I am here and can answer any questions.

Chair Cox: I believe you would have an opportunity when we actually get to that item. Is that correct, Kaaina?

Mr. Hull: No, so he is appointed by the court because the property is going into foreclosure proceedings and for the Commission and the community members viewings edifications this relates to the SPD II Makaiwa Resort Development appeal to our violation notice. So, Mr. Van Buren currently isn't a party to the proceedings so he wouldn't be speaking...

Chair Cox: Oh, I see.

Mr. Hull: ...during the actual agenda item, but given his you know, affiliation I think if any commissioners had any questions, now would be an appropriate time.

Chair Cox: Okay. Do Commissioners have questions for Mr. Van Buren? I guess we have none, Donna?

Ms. Apisa: No, I guess this is, I guess I am curious of the status, you said, "it looks like it's going to foreclosure, but its not there yet?" or maybe an update on the status?

Mr. Van Buren: Okay, it's being marketed now, I've retained (inaudible) to market the property, but I haven't scheduled the auction date, but there will be an auction, and anything can happen, of course, and in the meantime, inevitably I will be scheduling a public auction for some time in March. And then it would be subject to the court's confirmation.

Ms. Apisa: Thank you.

Ms. Nogami-Streufert: So, Kaaina? Can I ask a question? How does this work now, do we weigh in on this? Or do we not do anything on this issue?

Mr. Hull: I need to be careful because this is an appeal to my action.

Chair Cox: Kaaina, do you want me to speak to that?

Mr. Hull: If you want to, Chair.

Chair Cox: I believe what happens is that when we get to that item on the agenda, we would be

giving the applicant of the appeal a chance to speak, and then we would decided how we would want to act on it. Is that correct, Kaaina?

Ms. Nogami-Streufert: Even though this is a foreclosure? Or I guess I am not sure who would be...

Chair Cox: Yes.

Ms. Barzilai: Okay, Madame Chair, Laura Barzilai, Deputy County Attorney. I believe that Mr. Van Buren's information is just for your information purposes only. To clarify the judgment of foreclosure was entered, and as Mr. Van Buren stated, a brochure is marketing the property and the auction date has not yet been set. And that is for your information only and does not immediately impact he matter before you today.

Chair Cox: Thank you. Any further questions for Mr. Van Buren? Okay. Hearing none. Thank you for your testimony.

Mr. Van Buren: Thank you.

Ms. Higuchi Sayegusa: Chair, we have no other attendees in the gallery here. I am not sure if there are anyone else on the call that may have any other agenda item they would wish to testify? Not as a party, but as a public member for anything else on the agenda. Please raise your hand, your virtual hand, if so. Okay, seeing none. I believe that is all for public testimony this morning. Thanks.

Chair Cox: Thank you, Jodi.

#### Continued Public Hearing

#### New Agency Hearing

Mr. Hull: Thanks, Jodi. Moving on there is no Agency Hearings.

Mr. Hull: There is no Continued Public Hearing.

#### New Public Hearing

Mr. Hull: There is no New Public Hearing.

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

### **CONSENT CALENDAR**

#### Status Reports

Mr. Hull: No Consent Calendar items.

Director's Report for Project Scheduled for Agency Hearing



## **Executive Session**

Mr. Hull: There is Executive session listed if the Commission would want to go into Executive session.

## **GENERAL BUSINESS MATTERS.**

Petition to Appeal of the Planning Director's Decision Related to the Planning Director's Second and Final Notice of Violation & Order to Pay Fines for construction of a dust screen/wall without permits on property situated in Waipouli, Kauai, SPD ll Makaiwa Resort Development LLC, Tax Map Key (4) 4-3-002:15, 16 and 20, received on November 30, 2021, for referral to Board and Commissions as Contested Case File NO. CC-2022-2.

Mr. Hull: We will move on to the next item, Item J.1, which because it is an appeal to my actions, I will turn it over to the Chair Cox to read it into the record.

Chair Cox: This is item J, under General Business Matters J.1, Petition to Appeal of the Planning Director's Decision Related to the Planning Director's Second and Final Notice of Violation & Order to Pay Fines for construction of a dust screen/wall without permits on property situated in Waipouli, Kauai, SPD ll Makaiwa Resort Development LLC, Tax Map Key (4) 4-3-002:15, 16 and 20, received on November 30, 2021, for referral to Board and Commissions as Contested Case File NO. CC-2022-2. I don't know if we have anyone from the applicant that would like to speak?

Mr. Hull: Madame Chair, as Clerk of the Commission and Director, we did forward them information onto the appellant, however, it does not appear that they have representation present at this meeting.

Chair Cox: In that case we will move onto the Clerk of Commissions recommendations to refer and appeal the Planning Director's decision related to the Planning Director's Second and Final Notice of violation and order to pay fines for construction for a dust/wall without permits on property situated in Waipouli, Kauai, SPD ll Makaiwa Resort Development LLC, Tax Map Key (4) 4-3-002:15, 16 and 20, received on November 30, 2021, for referral to Board and Commissions as Contested Case File NO. CC-2022-2. And would it be appropriate at this point for our decision Kaaina, to hear from the Clerk? Or do we just go to discussion?

Mr. Hull: I don't have any further to present beyond what was submitted, so we are recommending that the Commission ultimately refer it to the Hearings Officer.

Chair Cox: Okay. Is there any discussion from the Commissioners or are there any questions?

Ms. Nogami-Streifert: Kaaina, has there been any response from the applicant to this?

Mr. Hull: So, the applicant/appellant submitted the formal appeal to the notice of violation, which we essentially put before the Commission and then as we are recommending to refer to a Hearings Officer beyond that formal petition of appeal, we have not receive any other documentation.

Ms. Nogami-Streifert: And you are referring to the transmittal letter from November 30, is that

correct?

Mr. Hull: Did somebody?

Chair Cox: We have both the transmittal letter from Goodsill Anderson Quinn & Stifel and we also have the memorandum from Kaaina.

Mr. Hull: Yes, so sorry, Commissioners Streufert. Correct. The formal appeal was the November 30<sup>th</sup> document from the law firm Goodsill Anderson.

Ms. Nogami-Streufert: Okay. Any further questions?

Chair Cox: Any further questions? Or would anybody like to make a motion? Yes, Donna?

Ms. Apisa: Kaaina, just remind us, just remind us I mean, what's the dollar amount of what's being appealed?

Mr. Jason Ding: Hello? Hello?

Mr. Hull: Jason Ding? Sorry.

Chair Cox: Back to mute.

Mr. Ding: (Inaudible).

Chair Cox: We can't really understand you.

Mr. Ding: Hello? Can anybody hear me?

Chair Cox: Yes, now we can.

Mr. Ding: Should I call in?

Chair Cox: No, we can hear you now. Are you representing the appellant?

Mr. Ding: I am representing SPD II Makaiwa Resort Development LLC.

Chair Cox: Okay, please go ahead.

Mr. Ding: I believe (inaudible) being in touch with the Planning (inaudible) as I understand the work on the side (inaudible) will be completed (inaudible) and then once...

Chair Cox: Just a second Jason, you are some how not coming through clearly. I am wondering if you should call in so we can hear you.

Mr. Ding: I will call in.

Chair Cox: Thank you. While we are waiting for Jason Ding to call in. Let me just remind you that we do have the option of going into an executive session if any of you feel that we needed to after we hear from Jason, and we have already heard from Director Hull. So just keep that in mind that its an option if necessary.

Ms. Barzilai: Chair, Laura Barzilai, Deputy County Attorney. If I may, Mr. Dings arguments probably will be limited to why the Commission should or shouldn't refer this matter to contested case, and not the substance of his appeal. I would just caution in that regard.

Chair Cox: Thank you. That's probably him, right? That phone call. Okay, thank you Mr. Ding. Just before you start, let me remind you that your comments should be limited to arguing why you should or shouldn't refer, why this should not be referred to contested case, rather than the substance.

Mr. Ding: Yes.

Chair Cox: So, go ahead.

Mr. Ding: Yes. So, I believe my attorney Cate Goodwin, from Goodsill Anderson has been in touch with the Planning Director's Office. We have come to some kind of agreement to clean-up work and in order to remove the (inaudible) on both sides, the work actually started today.

Chair Cox: Thank you. Any comments or questions from the Commissioners? Director Hull since you were contacted by this organization do you want to comment on what transpired?

Mr. Hull: Yes, thank you, Chair. I will be brief. I think as Mr. Ding pointed out that they may have commence work today. if they have commenced work, the Department is still recommending that it be referred to a Hearings Officer to handle the proceedings. But if they have commenced work, the Departments primary concern is with compliance. So, if they have commenced work or commenced work shortly while we are going through the contested case process, we definitely would be open to a settlement agreement of reducing fines and just getting the site cleaned up of the violation. So, we hope that the work has commenced. We went out there last night, and we verified that no work has occurred. If that had happened, we would be requesting that you folks defer this item to allow for that work to continue. But because we are unable to verify as of last night, the Department position still is to refer to a hearings officer and again, it doesn't foreclose on the ability for us to go into settlement agreements with the appellant.

Chair Cox: Thank you for that clarification, Kaaina. Any comments or questions from any of the Commissioners for either Jason Ding or for Director Hull?

Mr. Ako: Madame Chair, this is Gerald. So, the issue before us is regarding violations that occurred in the past as opposed to a remedy to fences that are up now? Because I think I am looking at it as if we are looking at the past, there is a violation of agreement already that needs to be addressed as well as I guess how do we fix it the issue moving forward?

Chair Cox: So, my understanding of it is there is a violation then there was a second notice of violation, and nothing happened, and so now the Department is recommending that it go to

contested case because the applicant appealed. Laura, please correct me if I am wrong?

Ms. Barzilai: Chair, that is the correct understanding.

Chair Cox: Thank you. So, at this point what we are deciding is do we believe that it should go to contested case or not, as recommended by the Planning Department.

Ms. Apisa: And again, just for clarity. I mean, the violation is putting up the dust screen without a permit.

Chair Cox: Correct.

Ms. Apisa: And the purpose of the dust screen was to keep out people from residing in there?

Mr. Hull: I can clarify if you want?

Chair Cox: Yes. Please do, Director Hull.

Mr. Hull: Yes, so dust screens are generally a best manager practice part of development and larger scale developments to ensure that dust doesn't escape and negatively impact surrounding properties. Generally, these things are seen as temporary in nature and don't require permits, zoning permits per se, they just come as part of development. But that dust screen has been up for several years now, with no developments are occurring and because it is not in conjunction with any actual development, the Department has made the determination that it is a structure, and it necessitates a permit, and they don't have a permit. Without the permit they are required to remove it. And so that why the violation was such an issue.

Ms. Apisa: I would like to hear more from the applicant about why we got to this point. What are they doing, I heard they were doing something today or by next week? It was a little not clear? I would like to hear from the applicant what that was and what their plan is and why it has not been done to date?

Mr. Ding: Is it my turn to speak? Sorry.

Chair Cox: Yes, Mr. Ding, yes.

Mr. Ding: Yes, so we received a notice, I want to answer your questions in two (2) folds. The first question is regards to to the status of the project, I will update you on there or we address this particular motion or the complaints regarding with the dust fence. We received the dust fence notice, and we answered the notice complied. And my attorney formally filed an appeal after we received the second letter. In between that, I believe we will come to an agreement or understanding or at least a verbal agreement in communication of what works need to be done to resolve the matter. The work was scheduled to start yesterday, because I was in transit to Kauai actually and physically adjacent to the site right now. And the contractor is starting today. They were waiting for me to be showing up sign up on paperwork and that is why they did not start yesterday. So, the contractor should be on site, I will double check once this meeting concludes but work my understanding will be here as scheduled (inaudible) after this meeting, the work will start

today. So that would complete this week, according to the agreement with the local contractors. So that is the status and then my attorney and local representative follow-up when the work is complete with the Planning Commission and Mr. Laureta, I believe who is the contact person, although we were trying to get a hold of Mr. Laureta, this past week, my attorney tried unsuccessfully to get a hold of Mr. Laureta, that being said, it is our intentions to complete the clean-up this week and that would be complete. In terms of the development status, this dust screen was constructed I believe in 20?...

Ms. Barzilai: Excuse me, Madame Chair. I believe we are entering into the sustenance of the matter at this time, and this is not what is before you today. If you would like to comment? Thank you.

Chair Cox: Yes, thank you. Remember that the issue that we are deciding now, is whether or not to send this to contested case.

Mr. Ding: I will just answer your question. would you like me to give you an update on the permits or the plan for the property or should I stop?

Chair Cox: I think at this point you should stop. I think you have given us enough information. Commissioner Apisa, are you okay with that?

Ms. Apisa: I believe that is the proper protocol. Thank you.

Chair Cox: Basically, what we are being asked to decide is given the fact that there was a notice given and a second notice given, and an opportunity to see if it could be settled without this and have work be done to take it down. We are at the point where it has not been so, we are now at the point where the recommendation of the Planning Department is to send it too the contested case. But as Director Hull has pointed out, if work is begun than there is a possibility of a settlement down the road. However, at this point, what we are being asked to do is, do we wish to approve the recommendation of the Planning Director to move it to contested case.

Ms. Apisa: I'm still a little bit confused. I would like clarity like, what is being done? I need to know that in order to make a decision on this. We are saying...

Mr. Ding: And also...

Ms. Apisa: ...being corrected? Does that mean the fence is coming down? Is the lot is being mowed? I am not sure what that means.

Mr. Ding: And also, just for he records, the second notice, if you, I don't know if you have it in front of you? That only start on 90 days period to complete the work. The second notice was technically received I believe at the end of the November, the 90 days, is not even halfway through 90 days.

Chair Cox: Thank you, for that clarification. Donna, let me clarify again, right now, we know from Director Hull, that no work has been commenced as of last night. Now something maybe happening today, but we already have a second violation and the recommendation of Director Hull,

and the Planning Department is to go ahead to a contested case, because nothing has happened.

Mr. Hull: If I could just add for clarification (inaudible) as far as the process. So, once we get an appeal and we recognize the appellant has not fully completed the 90 days, but the appellant's formal appeal is required to be placed on the next Planning Commission Agenda. So, the second their attorney formally appeal our decision and action it needs to be placed on the Planning Commission agenda. And so, once we get especially when we get these enforcement appeals it is general protocol to send, to request you folks to send it over to a hearings officer to go through the whole legal proceedings of the appeals format. If the Commission, and I think to Commissioner Apisa's point and question, is if the Commission doesn't want to send it to a hearing's office, then maybe in scheduling actual formal proceedings with the Planning Commission itself. Which sometimes can get sticky and sometimes can get very lengthy. And given these can be very lengthy, it's just been the practice of the Commission to send these over to a hearings officer, but it is within the Commissions authority to handle to case itself, should the Commission so choose to.

Ms. Apisa: Is it an option to defer this 30-days, to see what really happens?

Mr. Hull: That is also definitely an option.

Ms. Apisa: Now that the appellant is on island, it would be interesting to see what happens in the next 30-days or this week as he says it will happen.

Mr. Hull: That is an option for the Commissioners could make.

Ms. Otsuka: I had a question. When the first notice of violation went out, was it a known fact, who the owner of the property was? Or was it still unclear who was responsible for this job to remove the fence?

Mr. Ding: We are still owner of this property.

Ms. Otsuka: Okay, thank you.

Chair Cox: Any other questions from the Commissioners?

Mr. Ako: Madame Chair, I have a question for Director Hull, I think. You know, the fact that the developer pays to come into compliance, does that erase the violation that has occurred in the past? Or do you still need an agreement somehow to resolve this issue?

Mr. Hull: They say they were cited for the dust fence and not having a permit. Say, they removed the dust fence or came into get a permit for the dust fence. That would absolve the violation itself, but there would be the matter of the fine we levied upon the landowner of ten thousand dollars (inaudible).

Mr. Ako: Well, the violation from today forward, but from today, previous would still stand the violations and fines?

Mr. Hull: The fine would stand, but we are not in the business of generating profit we use the fines

as a measure of compliance, and so if action happened relatively quickly, we would definitely be amenable and open to reducing the fine.

Mr. Ako: Thank you.

Chair Cox: And just for a little more clarification, Director Hull, that action could proceed if it goes to contested case as well as if we defer it, then nothing can happen, right? Until the next meeting? Thank you.

Ms. Nogami-Streufert: But once we start down the road of contested case, we have than committed certain County funds to be utilized for that purpose, is that correct?

Mr. Hull: The hearings officer is hired for the Commission when it refers these items over to a hearings officer. I will be honest, I have hope to have this settled before a hearings officer is even hired. But if (inaudible) happens then indeed it would commit to that hearings officer.

Ms. Nogami-Streufert: So, if they get the work done this week, as Mr. Ding has said, "it will be done." Then even if we refer it to a hearings officer that would be a mute, that it would stop at that point, is that correct?

Ms. Barzilai: Madame Chair, its Laura. It can be dismissed if there is a resolution.

Chair Cox: Thank you. Any other questions from the Commissioners? Are we ready to make a motion? Is someone ready to make a motion?

Ms. Apisa: I would. I would like to make a motion to defer this for 30-days. I guess that is enough said, I mean I could add more to it, but I think that's, I don't think I need to offer my reasoning. But I would like to make a motion to defer this for 30-days and take it up around our meeting in February.

Chair Cox: Is there a second for that motion?

Ms. Otsuka: I second.

Chair Cox: We have a motion and a second to defer this item to the next meeting which would be our February meeting. Is there any further discussion?

Ms. Nogami-Streufert: Could I have a Mr. Hull, please? Is this something that you could, if we were to defer for 30-days, is this something that the Planning Department could accept?

Mr. Hull: We are open to that, I think you know, we would prefer it be referred to a hearings officer, but we are open to a deferral as well.

Mr. Ako: Madame Chair, I would like to comment on this. As much as I think you know, we could defer this matter further down the road, I think that if we have assigned it to Boards and Commissions and let it go to a hearings officer, if there is a resolution to this and the developer does come into compliance (inaudible) at some point to the contested. But if we go to the hearings

process right now, at least the process gets on the way (inaudible). That would be my comment.

Chair Cox: Thank you, Commissioner Ako. Any other comments? I have to say I also agree with Commissioner Ako, that this sending it to a hearings officer will do two things. One, (inaudible) but it will also make clear we do want action right away. Whereas we defer it, you know, they already have had their two notices of violation, and nothing happened. So, for me it's a little more pressure to yes, lets really moved forward on this in which case nobody I think wants to harm the appellants more than we just want compliance, I think is what really...

Mr. Ding: Madame, I have a quick question on that, comment on that.

Chair Cox: Yes.

Mr. Ding: There wasn't a compliance on the first, it wasn't done by intention. Actually, we reached out if you read the first letter it's all very specifically addressed the permit, and which is what I (inaudible) in that letter. And I reached out to Commissioner Planning Commission office to working out resolution on letter and no reply. I follow all the proper procedures until I received the second letter my attorney filed the formal appeal before if any dialog (inaudible). I have also reached out to Mike, Mr. Laureta, several times regarding the matter. He told me to call (inaudible) to schedule appointment. When I receive the first letter, I left several messages at Mr. Laureta's office to schedule in person meeting to discuss the matter I don't know (inaudible). So, no action between the first letter, and the second letter wasn't done by my fault. Ever since I received the first letter, I have been trying to reach a resolution.

Chair Cox: Thank you, Mr. Ding. Again, we don't want to get too much in the weeds of the appeal, because we have the written appeal. Any further comments from the Commission? Any further discussion before we take a vote on the motion on the floor?

Ms. Otsuka: As Director Hull mentioned, he would prefer not going through a hearings officer, so my thoughts is if we defer this to the next meeting it will give us a chance to see how far the...I'm sorry?

Chair Cox: Either your frozen or I'm frozen.

Ms. Otsuka: As Mr. Hull mentioned, he would not prefer us going through a hearings officer, so I feel if we deferred this to the next meeting in February it would give the appellants a chance to, we can see how far they progress in the removal and from there we maybe have a better idea of how to proceed.

Chair Cox: Thank you, Commissioner Otsuka. Can I ask Director Hull for clarification because that was not my understanding? My understanding was that the position of the Department is still that they recommend going to a hearings officer. Could you clarify?

Mr. Hull: Yes, Thanks Chair. Sorry, if there was some (inaudible) when speaking, but the Department's preference is for it to move to a hearings officer already. I can respect Mr. Ding's position and that he has reached out, but a side from the other two (2) notices that were issued several months of email communications were going on and I understand that there are issues with



foreclosure and what-not but beyond the two (2) notices, we have been in communications for several months. So, at this point, its having the formal proceeding is already set in motion we believe will further compel action if you will.

Chair Cox: Thank you for the clarification. So, the position of the Department just to clarify is to, they are still recommending as we were told before the meeting, the recommendation is still to move it to a hearing's officer. Okay? Any further discussions or questions? I guess we are ready to take a roll call vote and Laura, I don't know, maybe you should be taking it, because it's an appeal, is that correct?

Ms. Barzilai: Sure.

Chair Cox: Okay, that you.

Ms. Barzilai: You are welcome. Roll call. Commissioner Ako?

Mr. Ako: I will respectfully vote no.

Ms. Barzilai: Commissioner Chiba?

Mr. Chiba: No.

Ms. Barzilai: Commissioner DeGracia?

Mr. DeGracia: No.

Ms. Barzilai: Commissioner Apisa?

Ms. Apisa: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: No. Can I say no being that I seconded?

Chair Cox: Mm.

Ms. Otsuka: Okay, No.

Ms. Barzilai: Yes, you can vote no. Commissioner Streufert?

Ms. Nogami-Streufert: No, with the hope that the actions get completed this week.

Ms. Barzilai: Chair Cox?

Chair Cox: No.

Ms. Barzilai: The Motion does not pass, Chair. 6 Nays:1 Aye.

Chair Cox: Thank you. Is there a different motion that anyone would like to make?

Ms. Nogami-Streufert: I move to refer this appeal filed as CC-2022-2 to the Boards and Commissions to conduct the required analysis and Contested Case Hearing and to appoint a Contested Case Hearing's Officer.

Chair Cox: Is there are second?

Mr. Ako: I will second that motion.

Chair Cox: Thank you. It's been moved and seconded. Are there any further discussions? If not, I think we are ready for a roll call vote, again.

Ms. Barzilai: Yes, Madame Chair. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Chiba?

Mr. Chiba: Aye.

Ms. Barzilai: Commissioner Apisa?

Ms. Apisa: Aye.

Ms. Barzilai: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Nogami-Streufert: Aye.

Ms. Barzilai: Chair Cox?

Chair Cox: Aye.

Ms. Barzilai: The Motion carries unanimously, Chair. 7:0.

Chair Cox: Thank you.

Request to Amend Special Management Area Use Permit SMA (U)-2005-04, Project Development Use Permit P.D U-2005-7, and Class IV Zoning Permit Z-IV-2005-7, Tax Map Key: (4) 2-1-010-062, CPRs 0001-0075, Port Allen, Kauai= Ahe Group.

Mr. Hull: moving on to the next agenda item, Commissioners, we have Item J. 2, General Business Matters considering a Request to Amend Special Management Area Use Permit SMA (U)-2005-04, Project Development Use Permit P.D U-2005-7, and Class IV Zoning Permit Z-IV-2005-7, Tax Map Key: (4) 2-1-010-062, this is located at Port Allen, Kauai, the applicant is *Ahe Group*. And I will turn it over to Dale for the Report pertaining to this matter.

Chair Cox: Thank you. Alright Dale.

Staff Planner Dale Cua: Good morning, Chair, and members of the Planning Commission. Happy New Year. At this time, I would like to summarize and present the Director's Report to you. What you have before you are a consideration of the applicant's request to amend Condition No. 9 of the Special Management Use Permit, Project Development Use Permit and Class IV Zoning Permit to all completion of the project.

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

Mr. Cua: The Department's evaluation and recommendation is continued in the Director's Report and that concludes my Director's Report.

Chair Cox: Thank you, Dale. And I believe we have the applicant on the call, so would you like to speak?

Ms. Makani Maeva: Yes, thank you. Good morning, Chair and good morning members of the Planning Commission. My name is Makani Maeva, I am the president of Ahe Group. I appreciate your time and consideration of our efforts here today. Ahe Group is an active affordable housing developer throughout Kauai. We have most recently completed a project that you also give your approval of, which is the Pua Loke Apartments by Pua Loke Park there behind the theatre. We completed it in December, sorry, October and we are 100% occupied. So, we offer at Ahe Group rentals for those who meet less than 60 % of the median income, we have an affordability restriction for 61 years, so it is long-term affordable rentals and at very low-income levels. This next effort at Kai Olino, unfortunately, was delayed because we did not receive the very competitive financing that we had hoped to receive in the February 2021 round. So, we applied in February 2021, we were informed in July that we were not a successful applicant. However, since that time, we have used all of our efforts to complete the building permit to finalize the environmental impact and environmental assessment which is necessary for the Section 8 vouchers that we will also be using. So, we believe our application this round in February 2022 will be extremely competitive. We will find out the results of our application in July and we have already entered into a construction contract, so we will be ready to go right away to start to build another very necessary affordable housing project. I am here and able to answer any questions that you might have and appreciate your time today. Thank you.

Chair Cox: Thank you very much. Commissioners, do you have questions for either Dale or the applicant?

Ms. Nogami-Streufert: Yes, I do if could. Ms. Maeva, is that correct? If I've mispronounced your name, I apologize.

Ms. Maeva: That is fine.

Ms. Nogami-Streufert: You said that you were going to be applying for these loans, in February you expect to have the results back in July and hopefully that will be positive. But in the year and a half can you actually complete everything? Or is this a two-year extension? (Inaudible) is just a bridge to another one?

Ms. Maeva: Oh no. I think we have a sufficient amount of time, we have 11-months of construction, so we have our building permits and our construction contract, and we'll have to start right away. I think we will have more than enough time, we have about a 6-month cushion there. Things just sometimes take a little longer, but we are very optimistic that we will be able to achieve this, and we will be back before you in two-years.

Ms. Nogami-Streufert: That was not the intent the intent was just to ensure that you (inaudible) adequate time?

Ms. Maeva: Yes, yes. I think its fine you know; we really are very far along on this project, so we hope that Hawaii Housing Finance Development Corporation sees clear to award our project this year.

Ms. Nogami-Streufert: Great, thank you.

Chair Cox: Any other questions? In that case, Dale could you go ahead with the recommendation.

Mr. Cua: Absolutely. Moving on to the recommendation it is recommended that the Planning Commission approve the extension of time, to allow completion of the multi-family development of the project and that the applicant be subjected to the applicable requirements. Furthermore, Condition No. 9, Special Management Area Use Permit SMA (U) 2005—04, Project Development Use Permit P.D. U-2005-7, and Class IV Zoning Permit Z-IV-2005-7, be amended to read as follows: Condition No. 9. The applicant shall substantially commence construction of the project development within one-year from the date of approval, from the date of full approval therein shall complete construction of the project development by February 22, 2024. Furthermore, applicant is advised that all applicable conditions of approval shall remain in effect.

Chair Cox: Thank you. Any further questions? Or there someone ready to make a motion?

Mr. DeGracia: Commissioner Cox, this is Commissioner DeGracia. Chair Cox, I just have one comment, I would just like to add in. I'd like to applaud Ahe's Groups use of local contractors and workers on the island. I think that is very important for the construction industry. Thank you.

Ms. Maeva: Thank you.

Chair Cox: Yes, I would agree with that. Thank you, Commissioner DeGracia. Any other questions? Donna? Looks like you muted.

Ms. Apisa: Thank you, I whole heartedly agree with that also. A this doesn't pertain to this directly to the vote here, but I am curious of how they sixty-one-year affordability was achieved? I think that's wonderful I mean; I am a very big supporter of affordable housing, and I would love to see it forever affordable. I am just curious of how the sixty-one-years was (inaudible).

Ms. Maeva: So, the sixty-one-years is a standard element of the low-income housing tax credit program. So that is a program that we use to raise equity to build this affordable housing. In exchange for this type of program we agree to long-term affordability.

Ms. Apisa: Thank you.

Chair Cox: Any other questions? Are we ready for a motion?

Ms. Nogami-Streifert: I move to approve the extension of time to allow the completion of the multi-family development of the (inaudible) such that Condition No. 9 of the Special Management Use Area Permit SMA U-2005-04, Project Development Use Permit P.D. U-2005-7, and Class IV Zoning Permit Z-IV-2005-7, be amended to read as follows: (Inaudible) shall commence construction of the development of the project within one-year from date of full approval and they shall complete construction of the project development by February 22, 2024, and that the applicant is advised that all applicable Conditions shall remain in effect.

Chair Cox: Thank you. Do we have a second?

Ms. Otsuka: I second.

Chair Cox: We have a motion and a second. Any further discussion? I believe we are ready for a roll call vote.

Mr. Hull: Roll call for a motion to approve as recommended, Madame Chair. Commissioner Ako?

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami-Streufert: Aye.

Mr. Hull: Chair Cox.

Chair Cox: Aye. I just want to thank you for working on affordable housing, it is so important. Thank you. Motion passes 7:0.

Ms. Maeva: Thank you.

### **COMMUNICATION.**

Mr. Hull: Moving on to the next agenda item, we have no further Communications.

### **COMMITTEE REPORTS.**

#### **Subdivision**

Mr. Hull: We will go into agenda Item L, Subdivision Committee Report, I'll turn it over to Vice Chair DeGracia who formally Chaired the last Subdivision Commission Committee meeting, so Vice Chair DeGracia.

Mr. DeGracia: Thank you, for the Subdivision Committee Meeting there were three Commissioners in attendance. There was Commissioner Ako, Commissioner Chiba, and myself. There were two items on the agenda. I guess Tentative Subdivision application No. S- 2022-6 Kukui'ula Development Co., LLC, it was approved. Also, Tentative Subdivision application No. S-2022-7 for Tink Tank, LLC was also approved. That concludes my report.

Chair Cox: Thank you, Commissioner DeGracia. Can we have a motion to accept the Report?

Ms. Apisa: I move to accept the Subdivision Report as presented.

Chair Cox: Is there a second?

Ms. Otsuka: I second.

Chair Cox: It's been moved and seconded. I think we can just do a voice vote, so all those in favor? Aye. (Unanimous voice vote). Any opposed? Any abstentions? Hearing none. We have accepted the report. Motion carried 7:0. Thank you. Kaaina?

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

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

## ANNOUNCEMENTS

### Topics for Future Meetings

The following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter on February 8, 2022. 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: That kind of raps it up for the agenda, Chair. We will move on to Agenda Item O Announcements, topics for future meetings, the coming up in the upcoming February meeting, we have couple use permits. One, for some airport sign work being done at Hanapepe as well as a helicopter application. We do have let's say, for the next series of meetings, and we still plan on having meeting just once a month at this point. But starting in March the Commission will be receiving several zoning amendments or bills that will be kind of towards Council. The first set of bills will primarily be clean-up bills. Things like warehouses in the commercial district that are somewhat redundant in the table and road widening agreements that aren't really necessary for ADU development, so a while there is clean-up in the beginning for the first months of March and April and then coming in May, June, and July we will actually be having some substantive bills coming before the Commission. Some related to vacation rental operations, some related to the definitions of the CZO, definitions as listed in the CZO and then moving on to some sea level rise regulations as well. With that I will also mention, Shanlee folks as well as Jodi, will be in touch with you individually, to do the Ka Pa akai training that we are precurring a contractor to do. She will be doing a staff training and she will also be doing a commission level training, but Jodi and Shanlee will get together with you folks to kind of schedule that. And with that, is there any questions on future topics or individual Commissioner's want us to look at additional items, please just reach out and let us know.

Chair Cox: Okay, thank you. It sounds like we are going to be busy.

Ms. Apisa: A question? Kaaina, just to confirm that I can delete January 25<sup>th</sup> from the calendar?

Mr. Hull: Yes, I can say that for the January and February we can say there will be only two meetings, excuse me, one meeting per month. So, the next scheduled meeting will be February 8<sup>th</sup> at 9:00 a.m. and shortly thereafter and that one is anticipated to be a teleconference meeting as well.

Chair Cox: Thank you. Okay, so I think we are at the point where we could adjourn, is that correct? Yes. So, would somebody like to move that we adjourn?

## ADJOURNMENT

Chair Cox: Thank you. Okay, so I think we are at the point where we could adjourn, is that correct? Yes. So, would somebody like to move that we adjourn?

Ms. Apisa: I would just like to say, good job, Chair Cox and I move to adjourn.

Chair Cox: Thank you. Is there a second?

Ms. Nogami-Streufert: Second.

Chair Cox: I don't think we need to do a roll call here. All those in favor? Aye. (Unanimous voice vote). Any opposed? It looks like we can adjourn. Motion Carried. 7:0. Thank you all.

Chair Apisa: adjourned the meeting at 10:21 a.m.

Respectfully submitted by:

*Arleen L. Kuwamura*

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Arleen Kuwamura,  
Commission Support Clerk

Approved as circulated 07/26/2022 Meeting.

Approved as amended. See minutes of \_\_\_\_\_ meeting.



