

KAUA'I PLANNING COMMISSION  
REGULAR MEETING  
July 09, 2024

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

The following Commissioners were present:

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

Excused or Absent

Mr. Jerry Ornellas

The following staff members were present: Planning Department – Deputy Director Jodi Sayegusa, Staff Planner Kenny Estes, Romio Idica; Planning Secretary Shanlee Jimenez; Office of the County Attorney – Deputy County Attorney Laura Barzilai, Office of Boards and Commissions – Support Clerk Lisa Oyama.

Discussion of the meeting, in effect, ensued:

**CALL TO ORDER**

Chair Donna Apisa: It's 9:00. We'll call the meeting to order. Roll call, please.

**ROLL CALL**

Planning Department Deputy Director Jodi Sayegusa: Commissioner Ako?

Commissioner Gerald Ako: Here.

Ms. Sayegusa: Commissioner Cox?

Commissioner Helen Cox: Here.

Ms. Sayegusa: Commissioner DeGracia?

Commissioner Francis DeGracia: Here.

Ms. Sayegusa: Commissioner Ornellas, I believe, is excused today. Commissioner Otsuka?

Commissioner Lori Otsuka: Here.

Ms. Sayegusa: Commissioner Streufert?

Commissioner Glenda Nogami Streufert: Here.

Ms. Sayegusa: And Chair Apisa?

Chair Apisa: Here.

Ms. Sayegusa: You have a quorum.

### **APPROVAL OF AGENDA**

Chair Apisa: Approval of Agenda. Does anyone have any comments, or do we have a motion to approve?

Ms. Streufert: I move to approve the agenda.

Ms. Cox: Second.

Chair Apisa: No further discussion. All in favor? Aye (unanimous voice vote). Any opposed. Motion carried. 6:0.

### **MINUTES OF THE MEETING(S) OF THE PLANNING COMMISSION**

Chair Apisa: Minutes of the April 9, 2024, meeting, motion to approve if there are no comments.

Ms. Cox: Motion to approve.

Ms. Streufert: Second.

Chair Apisa: All in favor. Aye (unanimous voice vote). Any opposed. Hearing none, the minutes of April 9, 2024, are approved. And now the June 4, 2024, minutes.

Mr. DeGracia: I move to approve the minutes for June 4, 2024.

Ms. Otsuka: Second.

Chair Apisa: All in favor. Aye (unanimous voice vote). Any opposed. Hearing none, the minutes of June 24, 2024, are approved.

### **RECEIPT OF ITEMS FOR THE RECORD**

Ms. Sayegusa: Okay. Item E, Receipt of Items for the Record. On your folks desk you do have two items that were received, public testimonies or other comments received after the 24-hour period for receipt.

Chair Apisa: Do we want to take 10 minutes to read this? We'll have about a 10-minute recess to read the recent information.

The Commission went into recess at 9:02 a.m.  
The Commission reconvened from recess at 9:12 a.m.

Chair Apisa: Meeting back to order.

## **HEARINGS AND PUBLIC COMMENT**

Ms. Sayegusa: We are on Item F., Hearing and Public Comment.

### **Continued Agency Hearing (None)**

### **New Agency Hearing**

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2024-10) allow construction of a new single-family residence within Lot 79-A of the Wainiha Hui Partition in Wainiha, involving a parcel situated on the makai side of Kuhio Highway, approximately 200 feet west of the Kuhio Highway/Alamih Road intersection, further identified as 5-7070 Kuhio Highway, Tax Map Key: (4) 5-8-011:049 containing a total area of 22,736 square feet = **BRUCE HOLDINGS LLC.**

1. Transmittal of Agency Comments to Planning Commission.
2. Transmittal of Supplemental Information to Planning Commission.
3. Director's Report pertaining to this matter.

Chair Apisa: Do we have a planner?

Ms. Sayegusa: This is for the agency hearing.

Chair Apisa: Oh, for the Agency Hearing.

Deputy County Attorney Laura Barzilai: You can call for testimony now.

Chair Apisa: Is there anyone here that would like to testify? Identify yourself for the record. We know who you are. Thank you, Caren.

Ms. Caren Diamond: Good morning.

Chair Apisa: There's a little button on top. Pull it forward. Is that the same as ours?

Ms. Sayegusa: Yeah.

Ms. Diamond: Good morning, Caren Diamond for the record. Thank you for giving me this opportunity to testify this morning. This project happens to be on an incredibly special place when we drive into Wainiha and go around the Kepuhi Point and arrive at the ocean, the highway follows along the ocean, it's one of the most magical, beautiful views that we have

coming into Wainiha. The smell of the salt air comes in and pervades the air. The breeze is always amazing there and it really feels like, oh my gosh, you are, you are at the ocean. It's really why people come to Kaua'i, it's why it's one of the places that you can really feel how beautiful and amazing it is and you are right at the ocean. And that entire stretch there are very few developable lots. There's very few houses. Most of them are older houses and then you get to this particular lot and I was very surprised to see a proposal for a 4,000 square foot house plus where there already is an existing house and I definitely feel like the size of the house needs to be reduced because it's not in keeping with the neighborhood and if you look at the sea level rise maps, the sea level rise is predicted to take up that entire lot and so it's very not intuitive to want to build a 4,000 square foot house when you already have one house on the lot and you are between the ocean and the highway. And so, I really feel like you need to reduce the size of this structure to be in keeping. When they got their shoreline setback determination, it was for an ADU, this is, the project is no longer consistent, the SMA is now for a full-size house that's more than double the size of the house that exists on the property. If you look at coastal zone management laws and rules, one of the first things that you're supposed to do is protect our scenic view plains. This house will take up the scenic view plain, you will no longer see the ocean from the highway and especially in it being a two-story house that has the entire ground floor enclosed. So, that if the house were built up there's a 24-foot base flood elevation and the house would go 15 feet more than that, so it will be a house looming 39 feet up in the air, which is really huge. That's very imposing on the neighborhood. Most of the houses and most of the lots do not have two houses. It's almost open zone. Fronts most of Wainiha and on both sides of this project there's open zoning on most of it, so I really feel like it's appropriate to reduce the size, make the..

Chair Apisa: Three minutes. Could you wrap it up?

Ms. Diamond: Yes, sorry.

Chair Apisa: Thank you.

Ms. Diamond: So, the other issue is really if you're going to put a second house on this lot, I feel like there needs to be conditions for removing the first house when the ocean reaches the house. The shoreline is coming for these those structures that are along the ocean and will eliminating any possibility of retreat for this structure by putting another structure on the entire lot. And so, I'd urge you to please consider a condition that makes them have to retreat that first structure, along with the condition for no armoring of the shoreline there, and my last point, and I'll wrap it up, and encourage you to be the testimony I submitted. My last point is this is a known area of iwi kupuna and the architectural things do not, didn't really go where the footings of this house is proposed to go, and over and over again when septic systems get in and house footings get put in, they dig up iwi, and it's more fitting to do a ground penetrating radar ahead of time and see if there are iwi there then to trust that there may be and when we dig, we will find them and desecrate.

Chair Apisa: Okay. Thank you.

Ms. Diamond: So, I urge you to do studies in advance, so we don't desecrate the iwi there. Thank you.

Chair Apisa: Thank you.

Ms. Sayegusa: Anyone else here to testify on this agenda item?

Ms. Barzilai: So, the intent is to leave the agency hearing open...

Ms. Sayegusa: Yes.

Ms. Barzilai: ...at this time.

Ms. Sayegusa: Yeah, we, the department and we can discuss it at during the action item, but we recommend that the item be kept open. We are still, you know again we'll discuss it during the action item and we do want to work with, have an opportunity to work with the applicant a little bit more and so, and they're making, there's small chances of request for deferral. So, the request at this time is to keep the agency hearing open.

Ms. Barzilai: You need a motion, Chair. (Inaudible).

Chair Apisa: Okay, so if there's no motion, we will consider this item concluded for today. We'll keep it open and then we'll move on to our next one.

Ms. Sayegusa: Item F.2. b.

CLASS IV ZONING PERMIT (Z-IV-2024-6) and VARIANCE PERMIT (V-2024-2) involving a 4-lot subdivision to allow a deviation from the maximum pole length requirement of a flag lot, pursuant to Section 8-4.4(a)(3) of the Kauai County Code (1987), as amended, for a parcel situated along the southern side of Kawaihau Road in Kapa'a, approximately 500 feet west of the Kawaihau Road/Makaleha Place intersection, and further identified as 6501 Kawaihau Road, Tax Map Key: (4) 4-6- 007:058, and containing a total area of 4.669 acres = **MANUEL DeSILVA JR, TRUSTEE.** [Director's report received 5/27 /2024.]

1. Transmittal of Agency Comments to Planning Commission.
2. Director's Report pertaining to this matter.

Ms. Sayegusa: Is there anyone in the audience wishing to testify on this item? Seeing none.

Chair Apisa: Seeing none.

Ms. Sayegusa: So, I guess the remaining matter we recommend any recommendation to close the agency hearing.

Ms. Streufert: I move to close the agency hearing on the Class IV Zoning Permit, Z-IV-2024-6 and Variance Permit V-2024-2.

Ms. Cox: Second.

Chair Apisa: Any discussion? We'll take a roll call on these.

Ms. Sayegusa: Sure.

Chair Apisa: Thank you.

Ms. Sayegusa: Commissioner Ako?

Mr. Ako: Aye.

Ms. Sayegusa: Commissioner Cox?

Ms. Cox: Aye.

Ms. Sayegusa: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Sayegusa: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Sayegusa: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Sayegusa: And Chair Apisa?

Chair Apisa: Aye.

Ms. Sayegusa: Motion carries. 6:0. On to Item C.

CLASS IV ZONING PERMIT (Z-IV-2024-7) and VARIANCE PERMIT (V-2024-3) involving a 10-lot subdivision to allow a deviation from the requirement involving the construction of curbs, gutter, and sidewalks for a subdivision within the Residential zoning district, pursuant to Section 9-2.3(e)(3) of the Kauai County Code (1987), as amended, for a parcel situated along the southern side of Kahilipulu Way within the Kauai Lagoons project area in Lihu'e, further identified as Tax Map Keys: (4) 3-5- 004:100 through 109, and containing a total area of 6.2 acres = **TOWER KAUI LAGOONS SUB 1, LLC**. [Director's report received 5/27/2024.]

1. Transmittal of Agency Comments to Planning Commission.
2. Director's Report pertaining to this matter.1

Ms. Sayegusa: Is there anybody in the audience wishing to testify on this item? There is one. Please state your name for the record and there's 3 minutes.

Ms. Ruby Pap: Aloha mai kākou e Planning Commissioners. My name is Ruby Pap. I'm actually testifying as a community member. I live in Lihu'e, so I'm not representing my employer in any way. I'd like to testify on the Hōkūala variance request, particularly in respect to sidewalks and

access. I do support the Planning Department's recommendation to not deviate from their required sidewalks for the subdivision. I regularly walk with my neighbors and recreate at Hōkūala, which is actually in my mind, one of the only walkable park like areas in Lihu'e, it's a really special place for us. I really appreciated the ownership and the, for providing access, especially when I was rehabbing my back and other things. There's, you know, there's sidewalks and golf cart paths and things everywhere. But recently there was an incident where I was asked by an employee to stay off a golf cart path, which I believe, I know is not an official access way. So, I totally understood, and I went somewhere else, but it was an area that had been sort of unenforced by the ownership, you know, and then people were allowed to walk for a while, even though it wasn't part of the officially required access system. So, now we need to stay on more official access ways as required by previous permits and some of these are improved paved pathways and some are unimproved pathways to the shoreline like along the lagoon or to the shoreline to the lighthouse and for kupunas or others that may be injured or disabled, it's sometimes difficult to exercise on those types of paths safely, so I say all this because I feel that this new subdivision and any future developments, it will bring more people, more cars to the area and should require, you know, improved sidewalks for all people to access and walk and recreate, including residents and folks from the community, so, yeah, I support the recommendation to continue the requirement for sidewalks and hope that they're large and adequate enough for all users. And I note that the Public Works Division had some good comments about the need for continuity within the subdivision for walking as well and just safe, safe access. So, thank you for the opportunity to testify.

Chair Apisa: Alright, thank you.

Ms. Sayegusa: Is there anyone else in the audience wishing to testify on this agenda item? Okay, seeing none.

Ms. Barzilai: Ready to close the hearing, Madam Chair.

Chair Apisa: Do we have a motion to close the hearing on this agency, on this item?

Ms. Cox: I move, we close the agency hearing on Zoning Permit Z-IV-2024-7 and Variance Permit V-2024-3.

Ms. Streufert: Second.

Chair Apisa: We have a motion on the floor. Is...we'll take a roll call again.

Ms. Sayegusa: Oh, do we have a second?

(Multiple people speaking at once)

Ms. Barzilai: Commissioner Streufert.

Ms. Sayegusa: Okay, thank you.

Ms. Barzilai: No discussion?

Chair Apisa: Yeah, there's no discussion.

Ms. Sayegusa: Okay. Commissioner Ako?

Mr. Ako: Aye.

Ms. Sayegusa: Commissioner Cox?

Ms. Cox: Aye.

Ms. Sayegusa: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Sayegusa: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Sayegusa: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Sayegusa: And Chair Apisa?

Chair Apisa: Aye.

Ms. Sayegusa: Motion carries. 6:0. We're on Item F.2.d.

CLASS IV ZONING PERMIT (Z-IV-2024-8) and VARIANCE PERMIT (V-2024-4) involving a 13-lot subdivision to allow a deviation from the requirement involving the construction of curbs, gutter, and sidewalks for a subdivision within the Residential zoning district, pursuant to Section 9-2.3(e)(3) of the Kauai County Code (1987), as amended, for a parcel situated along the northern side of Kahilipulu Way within the Kauai Lagoons project area in Lihu'e, further identified as Tax Map Keys: (4) 3-5- 001:027 (Par.) & 168 (Par.), and containing a total area of 4.6 acres = **TOWER KAUAI LAGOONS GOLF, LLC./TOWER KAUAI LAGOONS LAND, LLC./TOWER KAUAI LAGOONS SUB 7, LLC.** [Director's report received 5/27/2024.]

1. Transmittal of Agency Comments to Planning Commission.
2. Director's Report pertaining to this matter.

Ms. Sayegusa: Is there anyone in the audience wishing to testify on this agenda item?

Chair Apisa: It's very similar to the last one, but it is a separate item.

Ms. Pap: Aloha again, Ruby Pap. Just the same comments, bring those forward for this one as well. Thank you.



Chair Apisa: Thank you.

Ms. Sayegusa: Okay. Anyone else wishing to testify in this agenda item? Seeing none, Chair.

Chair Apisa: We have a motion to close this hearing.

Mr. DeGracia: I move to close Class IV Zoning Permit Z-IV-2024-8 and Variance Permit 5-2024, V-2024-4.

Ms. Otsuka: Second.

Chair Apisa: We have a motion on the floor. Any discussion? I'll take a roll call, please.

Ms. Sayegusa: Okay. Commissioner Ako?

Mr. Ako: Aye.

Ms. Sayegusa: Commissioner Cox?

Ms. Cox: Aye.

Ms. Sayegusa: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Sayegusa: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Sayegusa: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Sayegusa: And Chair Apisa?

Chair Apisa: Aye.

Ms. Sayegusa: Motion carries. 6:0. Item F.3.

**Continued Public Hearing (None)**

**New Public Hearing**

Ms. Sayegusa: F.3, I'm sorry, F. 4., New Public Hearing.

Proposed Amendments to Chapter 4 of the Rules of Practice and Procedure of the County of Kauai Planning Commission, regarding Petition to Intervene, which details the applicability of intervention for Planning Commission actions, the requirements and contents to file a petition to intervene, multiple petitioners and

intervenors, arguments for and against petitions to intervene, and action on petitions for intervention = COUNTY OF KAUAI, PLANNING COMMISSION.

1. Director's Report pertaining to this matter.

Ms. Sayegusa: So, I can do, I guess a real brief overview and then we can seek any comments and testimonies. Okay. So, this is just one of, intended to be one of the first public hearings, really it's just the initiation of this period to, seeking to amend this chapter of your folks Planning Commission Rules of Practice and Procedure. And so really this is just really the beginning of the intent is I think we're going to ask to have this public hearing be kept open and continue to the meeting in September, I believe it would, I believe there'll be a first meeting, the first meeting in September or second depending on when there is an agenda ripe enough to have a meeting and your folks quorum, of course. So, again to have another public hearing in September and then action, no sooner than October. Reason for this is we also have to go and go before the State of Hawai'i Small Business Regulatory Review Board in August and September, it's a process, an additional process or anytime an agency rule is being is amended that commission will have to weigh in and provide any recommendations based on any impacts to small businesses, which this could impact. So, it's really a generous hearing process and amendment process that we we're affording. So, this again this is one of the first and so and just you know, with this, the amendments are proposed to seek further clarification, to help really you folks with additional clarity and how to analyze and review petitions for intervention. You know, it's no secret there's and as you folks well know, there's been an increase in general on litigation, in addition to petitions to intervene and so based on a lot of the things we've been wrestling with, this is the proposed rules is an attempt to seek clarification and allow additional standards to, you know, for excusing, you know, filing, late filings and things like that. So, I think it's really a balance between accommodating and allowing the public the ability to be able to navigate the rules and be able to provide petitions for intervention, but also you folks some clarification how to review it. That's really in the nutshell and again, we'll be discussing this in at least two more meetings in the future. So, with that, I think we can call for if there's any public testimony at this time on this agenda item. Okay, all right. Well, seeing none, I think we can just again the recommendation is to keep the public hearing open, and it will come back on the agenda in September and October.

Ms. Barzilai: Should we take initial questions at this time?

Ms. Sayegusa: Sure, yeah. I mean, yes, we can also, if there's any questions or initial concerns, I can receive that too.

Chair Apisa: Anyone out there have any questions or concerns or just any comments on it?

Ms. Barzilai: Among the Commissioners too, Chair.

Chair Apisa: Commissioners, do you have questions, comments?

Ms. Streufert: I always do. I have a question about, on page 4, oh, I'm sorry, it could also be on page 3, which is an excusable neglect, what exactly, is an excusable neglect within the control of the petition.

Ms. Sayegusa: Right, so, you know based on the rules, I mean and good cause has come up before, before you folks on, you know, excusing a timeline of being missed for filing the petition, and so researching that and of course, through the guidance of Laura, your attorney, we've discovered that good cause is really a standard by the court rules, and so in addition to good cause which it's a good cause, you know we found I guess based on the court rules and then case law related to what the standard means is that's for reasons not in control of the applicant, so that would be, you know, there's a major storm that shuts down a highway that prevents an applicant from reaching the department to file a petition. So, in addition to that, in addition to clarifying good cause reasons beyond the control, we've also included reasons within the control. So, it's there's two ways, right, so, excusable going get neglect, there is nothing, it's a misunderstanding or a misconstruing of the law of the of the timing and so it, although so just ignorance of it, you know, saying like, I just don't know it and I don't know the law like, that's not good enough excusable neglect. You have to, you have to kind of know and you have to care enough to understand what the standard is, but if there's a misconstrual, you know like I thought, you know, four days is include, you know includes a weekend or a holiday, things that are, that are reasonable and excusable in your folks mind that could be something that you say, okay, well fine, you didn't file it within four days, that's okay, you know, and you'll accept it.

Ms. Barzilai: So, there's another example from case law where a person didn't know that he was a party to another case that was decided against him, so when he learned about it, he took action that would be considered excusable neglect. We wanted to sort of not be bound to specific examples because it's a fact determinative. When it comes before the commission, it will be at your discretion to decide if you find good cause or excusable neglect, as opposed to being bound to specific factual scenarios.

Ms. Streufert: But issuance of the law is not excusable.

Ms. Barzilai: Attorneys are held to higher standards than a per se litigant would be.

Ms. Sayegusa: Or if somebody would were to come and say, I don't know, I don't care, can I do it now. Like if there's no, you know, like you just there has to be some caring or some thought or some understanding of it, you know, it's just to be, you know, we have to have some sort of standards to have it excusable. But of course that's up for discussion, if you folks think that's a good idea or if you don't want to take, you want to take that out, that's fine. It's just, it's a proposal at this point.

Ms. Otsuka: For me I think it's just a little too vague yet.

Ms. Sayegusa: Okay.

Ms. Otsuka: I feel like each individual's good cause are interpreted differently. So, for me, I would like, I don't know if more examples are a little bit more specific...

Ms. Sayegusa: Okay.

Chair Apisa: Yeah, maybe some examples would be helpful.

Ms. Otsuka: Yeah, good cause, cause I mean, first I thought of, like if someone has if someone has an untimely passing, somebody else might not think it is a big deal and yet if somebody passes, I think is it an act of God...

Chair Apisa: Yeah, that would be a decision that commissioners would have to make.

Ms. Barzilai: Yes, because it would be factually determined to have (inaudible because other people interrupted).

Ms. Otsuka: But I'm thinking it was more specific, there would be no need for this future discussion. You know, like if it's just more detailed.

Ms. Sayegusa: Okay.

Ms. Otsuka: But I don't know if it's possible, but I feel just to avoid further discussion, like if it's...

Ms. Streufert: More litigation.

Ms. Otsuka: Oh, it's right there, okay. I can't...It's not good cause. Oh, yes, it's good cause.

Ms. Sayegusa: Okay.

Ms. Otsuka: I'm just trying to lessen the discussion and...

Ms. Streufert: I agree with you.

Ms. Otsuka: Oh, thank you.

Ms. Cox: And I actually disagree with you.

Ms. Otsuka: Yeah?

Ms. Cox: I think it'd be a great idea to add some examples for excusable (inaudible), but on the other hand, I do think it's case by case and so I think it does make sense for the commission to look at the particular circumstances that come before us and determine, but some examples, so that we have a sense of what the, what might, the kind of thing that might arise, I think would be extremely helpful (inaudible).

Chair Apisa: A good case example of this that comes to my mind is the TVR laws, which are hard and fast that if you don't meet your deadline, it's out. There's no second chance or opportunity to extend and we've had cases where, you know, Hanalei flooded and they missed it by a few days, and I'm sorry, but the laws, the law. So, there is no excusable reason for that, for the TVR laws. So, I think this is just allowing that something like that or, you know, as was brought up with that a death in the family or some extenuating circumstance, but I can, I would definitely agree that some examples would be helpful.

Ms. Streufert: But that's outside of the control, this is within the control.

Chair Apisa: Control of whom?

Ms. Streufert: Of the...

Ms. Cox: Excusable negligences.

Ms. Otsuka: The petitioner.

Ms. Streufert: Within the control of the petitioner. So that's how that's written. An act of God is not within the control of the (inaudible).

Ms. Sayegusa: But that would, that would fall within the good cause, right. So, good cause are acts of God or things beyond the control. In addition, another if there's things that are extenuating circumstances within the control that if you folks determine it's excusable then, that that's they would be allowed to file a petition late.

Chair Apisa: It does put a lot of responsibility in decision making on the commissioners, yes.

Ms. Streufert: Doesn't this open us up to more litigation, as opposed to decreasing it?

Ms. Otsuka: That's how I see.

Ms. Sayegusa: Well, I think existing rule read as, you know, it just said good cause, yeah.

Ms. Barzilai: So, we're adding an element of excusable (inaudible)...

Ms. Sayegusa: Yeah.

Ms. Barzilai: ...to give you more flexibility and availability to allow for late filings. But one of the things that I was hoping to achieve is to focus more on timeliness and how do we encourage the community to be timely as opposed to focusing upon what happens when folks are late, because we have this seven-day proposal and a four-day proposal, we hope that it simplified the rules so that people can aim to be on time.

Chair Apisa: So, maybe reversing that from a positive of how what, what excusable neglect is maybe reversing it to say that these are not excusable neglect examples like, I forgot, my rabbit ate it, or whatever, you know.

Ms. Barzilai: One of the examples is that an attorney read the rule wrong, that's not excusable neglect.

Chair Apisa: Right, yeah.

Ms. Barzilai: Part of misconstrue is a rule, and they don't have experience it might be excusable neglect. (Inaudible) are kind of slim on examples.

Ms. Sayegusa: I hear you though. I mean, I think that the attempt is to flush out a bit more what previously existed, again it just said good cause, right, and so it was really a lot of wrestling and what does that mean. And so, when we researched it further, you know it did or that term of art

came from, you know, a court rule standard. So, and then, you know, they attempt to add excusable, and so the good cause stand under the court rules really does keep it only to reasons beyond the control. So, acts of God...

Ms. Streufert: So, it is totally different.

Ms. Sayegusa: ...which, yeah, which would take out or, you know the other excuse of you know, I was sick or, you know, or some other things that you know is with kind of within more of the control of an applicant, so it was an attempt to increase the opportunities for you folks to find sufficient reason to say, it's fine, you can, we will accept a late filing, but of course we don't want to create more confusion. So, I think we can research it further and provide more examples if that helps and for further discussion, and if it's too much, we can you, you folks have the option of deciding, let's just say good cause and keep it at that, but that meaning facts beyond the control.

Ms. Streufert: Because there are two different causes or clauses on that under C.1. is good cause, but that's without, outside the control of the petitioner. The second one is excusable neglect that is within. That's the part that I'm having a really hard time trying to (inaudible).

Ms. Sayegusa: To flush out a little bit more.

Ms. Streufert: Yeah.

Ms. Sayegusa: Okay.

Ms. Streufert: And I'm not sure that examples are going to help because examples would just sort of even (inaudible) more, so, before we get it, if the intent is to increase the possibility that there is good cause, then I think that's that you can cover it under another good cause within the control of the petitioner (inaudible).

Ms. Barzilai: The issue is, Chair and Commissioner Streufert, that the case is defined it differently. So, as Jodi mentioned, we're trying to expand the flexibility that the commission has to know it when you see it and be able to evaluate it within your discretion when it occurs.

Ms. Sayegusa: I think at this, I think...

Ms. Barzilai: Each case will be different.

Ms. Sayegusa: Yeah, as written, I think what's clearly not allowable is just carelessness or ignorance of the rules, or deliberate or willfully not knowing the rules.

Ms. Barzilai: And there's a prejudice component is the applicant prejudice by the lateness of the filings. That's another determinative factor.

Ms. Streufert: Well, maybe something like that rather than how we have it right now would be more useful, but...

Ms. Barzilai: We can look at that.

Ms. Sayegusa: Okay.

Ms. Streufert: I have a question, but is that, if you have a TVR, going back to us (inaudible) case, and your realtor forgets the timeline, is that...

Chair Apisa: It doesn't matter. The timeline is the timeline.

Ms. Streufert: I understand that, but does that, is that covered in this?

Ms. Sayegusa: Again, that would be really a factual discussion I think in your folk's discretion, you know whether you feel that realtors should similarly be, you know, knowledgeable enough to know the time timelines to file the application.

Ms. Barzilai: The position of the department on that currently is no. The answer to that is no.

Chair Apisa: When you entrust a professional, being a realtor and attorney, then they are responsible for meeting deadlines.

Ms. Streufert: But will that be excusable neglect in this case?

Chair Apisa: I think the consensus is no.

Ms. Barzilai: If it's trusted to a professional, who is expected to know, the answer would be no.

Ms. Sayegusa: But ultimately, you folks will make that determination.

Ms. Otsuka: Yeah, so it is up to the commission to make that decision.

Ms. Sayegusa: Yes. Yes.

Ms. Barzilai: It's in the law.

Mr. Ako: Madam Chair, if I can add. You know, in my mind, I'm just looking at this as just being basic guidelines in terms of whether you have good cause or not. I think that there's a lot of subjectivity that comes in there and in my mind, we really want to look at a checklist to see whether it falls in the good cause side or it falls on the other side and to look at it at that way because it makes it a lot easier. And yet I think because of the subjectivity of it, and I think we look at it at a case-by-case basis as it comes up, it does put a lot more responsibility I believe on the commission because now they need to insert their, you know, their subjectivities in there and take out the biases that they have. But I think to list a bunch of reasons why I think that list goes on and on and on, I don't think there's an end to it. So, in my mind, I think if I look at this as a guideline for it and I think as was said earlier, yeah, once you see it, you kind of know, you kind of know what it is, yeah, but I think in the end it comes down to a vote and there's still that subjectivity is in there and I guess whoever's got the full votes.

Chair Apisa: The checklist is actually, I think that's a great idea. Give more guidance of it, but this is all good input. Like Jodi said, this is...

Mr. Ako: Well, I think if you put the checklist, yeah, there's going to be a lot of things that is not on the checklist.

Ms. Otsuka: Yeah, it's going to be overwhelming.

(Multiple commissioners speaking at once)

Ms. Barzilai: I think it allows the commission (inaudible). That's the suggestion.

Ms. Sayegusa: Well, perhaps we can, I mean through, like our discussion you know for the sake of discuss at the next hearing and beyond, you know, I, we could, I could flush something out where there's examples, but that won't necessarily be verbiage within the rule because that would kind of make it a little bit too complicated, I think if it's in the rule itself, but you know, for you folks to digest and kind of run through the scenarios, I can do that.

Ms. Otsuka: Yeah, it's just hoping to just shorten the discussions within the commission, so it doesn't get too heavy and too (inaudible).

Chair Apisa: Commissioner Ako, do you have any input you would like to add?

Ms. Streufert: Commissioner DeGracia.

Ms. Cox: DeGracia.

Chair Apisa: Oh, I'm sorry, DeGracia, sorry.

Mr. DeGracia: Well, concerning what we've been talking about, I believe as decision makers, you know it does fall upon our shoulders to make that determination. And like Commissioner Ako mentioned, that list could go on and on and on, so, you know, examples would be good, but you know, over time I guess precedence is probably what you know, future commissioners is going to follow.

Ms. Barzilai: It's also interesting that the courts don't give many examples either because it is within the discretion of the commission.

Ms. Otsuka: Well, good job.

Unknown Commissioner: Working with Laura.

Mr. DeGracia: I did have one question...

Ms. Sayegusa: Yeah, sure.

Mr. DeGracia: ...concerning the filing. So, I'm looking at the change of language from agency hearing to public hearing, but when looking through the rules in agency hearing, I see that there is a time frame in which the notice of agency hearing, but when I go through the public hearing procedures, I don't really see what the timeline is for that.



Ms. Sayegusa: Yeah. So, the intent of changing that verbiage from like, capital, (inaudible) agency, capital H hearing to just the first public hearing, so just to kind of broaden it because there are, I mean it's that agency hearing is sort of a term of art reference in the CZO, and then really your rules that make it clear that that is a hearing attached to the you know Class IV Zoning Permits, Use Permits, etc. But it got confusing because, you know, we wanted to brought it, because there's also other hearings that aren't necessarily publicly noticed, like sub, subdivisions, and so what's the deadline for that, and so we clarified that it's no less than seven days prior to the first public hearing. So, like, a public hearing just being an opportunity for the public to provide testimony. So, the first public hearing for which notice to the public has been published. So, that's seven days. So, those are pursuant to the CZO and SMA rules that says those are SMA Use Permits and Class IV Use, Class IV Permits, Use Permits and Variance applications, so those by the existing laws require publication in the newspaper, right and distributed statewide, and so there will be at least 20 days prior to the hearing of publication in the newspaper, and so for those the deadline for petitions for interventions are seven days prior to the first public hearing that's been publicly noticed by a newspaper for publication, for hearings that aren't required to have a public publication by a newspaper so, those are for example, subdivision application matters, the method the public will be able to know when that's going to come up with a hearing is going to come up is through the, your folks agenda, the Planning Commission agenda and that is at least six days prior to your meeting, right, or the public hearing, and so the deadline for the petition to intervention in that scenario is four days prior to your first public hearing or your, your, your commission meeting and that is just we play with shortening or not (inaudible), but we're balancing our ability to process and file things in addition to propagating it to the applicant and having the applicant then opportunity to prepare for you know, this anticipated petition to intervene and, you know, provide their arguments for or against and things. So, we felt four days was minimal, and so, again, we changed the verbiage from capital agency hearing, A agency hearing to just the first public hearing. To kind of broaden and catch all the possible matters that could be intervened upon.

Mr. DeGracia: Is that 20 days outlined in the current rules? I'm just not sure...

Ms. Sayegusa: It is.

Mr. DeGracia: ...I'm looking under a public hearing procedures.

Ms. Barzilai: It's in the CZO.

Ms. Sayegusa: It's Chapter 8, Article 3. So, I think that's, you know, when you look through the various procedures for like for instance, Class IV or Use Permit or Variance applications, it's a minimum 20 days for publication.

Mr. DeGracia: Thank you.

Chair Apisa: All good input, commissioners. Thank you very much. Anyone else have anything. And remember, this is just being introduced. It will be continued but it's good input.

Ms. Streufert: This may be splitting hairs, but how is carelessness and ignorance of the law not being excusable neglect within the control of the applicant?

Ms. Sayegusa: I think we just wanted to cut it some way right where it's not, you know that the deadlines are meaningful in some way, where so if in a petitioner just really doesn't care to know the rules and they just want to be able to file a petition, you know it was, that would be one reason to not allow for the excusable.

(Multiple people speaking at once)

Ms. Barzilai: (Inaudible) the filing party.

Ms. Streufert: But if you were to come before the commission on something like this, would you ever say, I didn't care? As opposed to...

Ms. Sayegusa: Could.

Ms. Streufert: It doesn't, somehow it doesn't quite make it because...

Ms. Sayegusa: Okay.

Ms. Streufert: ...make a careless or, you know, carelessness or ignorance of the rules is still excusable neglect, I mean it is neglect.

Ms. Barzilai: That would be your vote.

Ms. Sayegusa: It's neglect, but is it excusable in your eyes?

Ms. Otsuka: Yeah.

Ms. Cox: Yeah.

Ms. Streufert: It would be. It's a question of really how you define excusable and neglect, I guess.

Ms. Barzilai: What might be helpful is if I brief the commissioners a little bit further on this and give some examples from the cases, if we haven't provided.

Ms. Sayegusa: Sure.

Ms. Otsuka: That would help.

Ms. Sayegusa: Yeah.

Ms. Barzilai: Okay.

Chair Apisa: At another time, you're referring to.

Ms. Otsuka: Yes, another time.

Ms. Barzilai: At another time before it comes before you again and then we can open it for discussion again.

Chair Apisa: And we all have a little time to digest it and give it more thought.

Mr. Ako: Madam Chair, if I can add one more thing, yeah.

Chair Apisa: Sure.

Mr. Ako: You know, regarding the timelines, I just want to make sure that in my mind I'm clear because a lot of times when I read the 20 days that notice if it's published you get 20 days prior to, you need to submit seven days prior to the public hearing, right? But that is from when the notices sent out. I think we had scenarios where the public hearing itself was deferred and we never really had a public hearing and then there was a question about whether I have another seven days or not, yeah, to file, so, I'm not sure whether I'm the only one that's reading it like that, and I get confused whether it's from the initial date that it was published in the newspaper or it's seven days from the public hearing itself, whenever that takes place, so...

Ms. Sayegusa: Okay.

Ms. Barzilai: I answer that.

Mr. Ako: It was just...I mean, if everybody gets it, we good man, you know.

Chair Apisa: Laura said she can explain.

Ms. Barzilai: I think our goal is seven days before the first time that it comes before the commission, and this would align it with the other counties as well.

Mr. Ako: Yeah.

Ms. Otsuka: I think, I'm not sure there was HPM, the attorney came, and we didn't allow, we denied him intervention, but he filed, in his mind he filed timely according to the agency hearing, but because the agency hearing was deferred. I remember that because it really bothered me.

Ms. Barzilai: That issue went to the courts, Commissioner.

Ms. Otsuka: Yeah.

Ms. Barzilai: And I think that our amendment here is addressing that.

Ms. Otsuka: I think it's important that the agency hearing versus the public hearing.

Ms. Sayegusa: Right. Yeah. And so, I think that's why we put the verbiage, first public hearing.

Ms. Otsuka: Yeah, looks like it (inaudible) big difference.

Ms. Sayegusa: Yeah. So, the seven days would be that first public hearing. If the hearing continues, that deadline, I think the intent is that deadline has passed. It would be the first public hearing.

Ms. Otsuka: Yeah. Good, good language.

Mr. DeGracia: I got one more. So, the proposal amended 141.D., says, the Planning Department will be, shall be automatically admitted as party, but was that in addition? What happened prior, because was my understanding is that when, you know, two parties intervene and if they're assigned a hearings officer, it's normally between the two parties and the hearing officer, but is this adding the Planning Department in as party?

Ms. Sayegusa: Well, in the scenario where there is a third party admitted as an intervener, then you know, the whole matter is then set for contested case, subject to HRS 91, and so the department is automatically a party because, you know, we are issuing a recommendation for your folks' consideration. So, as a party, right, issuing a recommendation in addition to, of course, the applicant being a party and then the third-party intervener being an additional party in the whole contested case proceeding. So, in that scenario, automatically the department is admitted. I think this new section 4-1, 1-4-141a, all departments and agencies of the state and the county shall be admitted as parties upon timely applications for intervention. That was added, it's included in Maui's intervention rules, and we thought it a good idea to include it here, you know, for instance, the Department of Health wish to file a petition to intervene. We're not necessarily going to run them through the standards, you know, actual threats and injury, be fairly traceable to the applicant's action. Just because by nature of them being an agency of the state with an interest, you know, I think we've, this isn't a clause that would allow them to automatically be, to be an intervener party and then the matter be set for a contested case.

Mr. DeGracia: Okay.

Mr. Ako: Madam Chair, I get one more. Like him, I get one more, yeah, I just wanted to bring up for the sense of transparency and awareness that part of the rule changes in here also is the fact of the increase of the fees, the filing fees, yeah, that's in there, and it's a rather substantive increase. So, I just wanted to bring it up for awareness purposes.

Ms. Otsuka: And non-refundable.

Ms. Sayegusa: Yeah. And of course this is up for discussion. If the proposal, the \$25.00 was initiated in 2014 and since then really there's been a dramatic increase to litigation in addition to petitions having to process and hear petitions to intervene, and so the increased fee we thought necessary as you know, something to increase and reflect the, and the overall time and expense and effort spent by staff to process and file, distribute, prepare for you know, the petition to intervene and provide you folks council and things like that. So, it's really an attempt to offset the service and the effort that's provided that the Planning Commission, Planning Department provides to process these petitions and just based on the survey of other jurisdiction municipalities, filing fees for petitions to intervene, we found it within the range of course, Maui County imposes an \$828.00 petition to intervene, fee, filing fee. Hawai'i County imposes a \$200.00 filing fee, and so we're kind of right in the middle, but of course you know, that is up for a discussion.

Chair Apisa: Well, I know we've seen a lot of inflation in the last few years since it was initiated, but 25 is really way too low today, but to be determined. Any further discussion? This has all been great commissioners, very good input. Anything further before I call for a motion to continue. Okay, do we have a motion to continue the public hearing?

Ms. Streufert: I so move.

Ms. Cox: I second.

Chair Apisa: We have a motion on the floor. Any further comments? Roll call, please.

Ms. Sayegusa: Okay. Commissioner Ako?

Mr. Ako: Aye.

Ms. Sayegusa: Commissioner Cox?

Ms. Cox: Aye.

Ms. Sayegusa: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Sayegusa: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Sayegusa: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Sayegusa: And Chair Apisa?

Chair Apisa: Aye.

Ms. Sayegusa: Motion carries. 6:0. Item G. Consent Calendar

## **CONSENT CALENDAR**

### **Status Reports (None)**

Ms. Sayegusa: There are no Status Reports.

### **Director's Report for Project(s) Scheduled for Agency Hearing (None)**

Ms. Sayegusa: No Director's Reports. Let's see. Continue, on the Consent Calendar, that is.

### **Class III Zoning Permits (None)**

Ms. Sayegusa: And then also no Class III Zoning Permits on the Consent Calendar.

## **GENERAL BUSINESS MATTERS (None)**

Ms. Sayegusa: Also, no Item H., I., J.

**COMMUNICATION (None)**

**COMMITTEE REPORTS (None)**

**UNFINISHED BUSINESS (For Action) (None)**

Ms. Sayegusa: So just skipping down to Item L. New Business for Action.

**NEW BUSINESS (For Action)**

Ms. Sayegusa: Special Management...

Chair Apisa: Excuse me, I think I'd like to take like a 8 or 8-minute break, and we'll be right back. Thank you.

The Commission went into recess at 10:00 a.m.  
The Commission reconvened from recess at 10:13 a.m.

Chair Apisa: Call the meeting back to order.

Ms. Sayegusa: We're on Item L., New Business (For Action)

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2024-10) allow construction of a new single-family residence within Lot 79-A of the Wainiha Hui Partition in Wainiha, involving a parcel situated on the makai side of Kuhio Highway, approximately 200 feet west of the Kuhio Highway/Alamih Road intersection, further identified as 5-7070 Kuhio Highway, Tax Map Key: (4) 5-8-011:049 containing a total area of 22,736 square feet = **BRUCE HOLDINGS LLC.**

Chair Apisa: We have the Director's Report?

Ms. Sayegusa: Sure. Did you want to...

Ms. Barzilai: Chair, I might...

Ms. Sayegusa: I might ask for additional public testimony at this point or...

Chair Apisa: Oh yeah...good (inaudible).

Ms. Barzilai: Probably should.

Chair Apisa: Okay, yeah. Thank you.

Ms. Sayegusa: Is there anyone else in the audience for this agenda item wishing to testify? Okay, seeing none. We can turn it over to Romio.

Staff Planner Romio Idica: Hello. Okay, sorry. Aloha, Madam Chair, Planning Commissioners for your consideration, Special Management Area Permit SMA(U) 2024-10).

Mr. Idica 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. Idica: And I would like to open it up for questions from the commissioners for myself or the applicant.

Chair Apisa: So, it is, floor is open for the commissioners.

Ms. Otsuka: Oh, now is the time, okay. I have a question, Romio.

Mr. Idica: Yes.

Ms. Otsuka: According to the County DPW engineering, it says the property is located within flood zone VE, the application incorrectly states the property is in flood zone AE.

Mr. Idica: Okay.

Ms. Otsuka: So, when this kind of thing happens, does the application have to be corrected and come back to the department?

Mr. Idica: That kind of items are usually taken care of at the time of building permit submittal. We understand also within the Director's Report, it does state as VE, coastal high hazard, so at the time of building permit submittal, DPW will ensure that the dwelling does comply to VE coastal high hazards. Yes.

Ms. Otsuka: And I was curious on their project description, why is it not mentioned there's a kitchen?

Mr. Idica: In this property description? Are you talking to, in regards to the Directors report?

Ms. Otsuka: Yes, it says the upper floor contains the main living area with three bedrooms, three bathrooms and a study room, and then when I looked at the floor plan, it's just labeled as main, main room, so I was wondering where the kitchen.

Mr. Idica: There is a kitchen, there is a kitchen. It could be just a little oversight on my part...

Ms. Otsuka: Okay, so (inaudible)...

Mr. Idica: ...in the Director's Report, but...

Ms. Otsuka: ...there is a kitchen.

Mr. Idica: There is a kitchen. Yeah, the main living area, main area would...

Chair Apisa: Include.

Mr. Idica: ...be composed of the living room and the kitchen.

Ms. Otsuka: Okay. Thank you.

Mr. Idica: You're welcome.

Ms. Otsuka: I know, it was called the Great Room.

Mr. Idica: Okay.

Ms. Streufert: I have a question about the, I'm looking over the comments by, that was done and submitted, and I was concerned about the, where the trenches were laid. My understanding based upon the proposal as well as the Planning Department's comments that the footings, the trenches were dug where the footings would be, which means that's where we have ground, ground disturbing activities, but according to the, Ms. Diamonds comments, it does not appear to be the case, is that...which one's accurate?

Mr. Idica: According to the archaeology assessment, yes, it does show that the trenches were done outside of the proposed footings. Now the question in regards to why, I would like to maybe defer to the applicant into kind of maybe explaining or giving a reason to why the trenches were dug outside of the proposed footings.

Chair Apisa: Open to further questions or comments from the commissioners.

Ms. Otsuka: Yes, I have another question. Sorry. Per Ms. Diamond, it's, she states that it's a new owner and I was wondering if the permit or the application or permit comes, goes with the land.

Mr. Idica: Yes, it does.

Ms. Otsuka: Because she states that the property, should the property be granted additional exemptions for more improvements...

Mr. Idica: Oh, my apologies...

Ms. Otsuka: ...or did they reach (inaudible).

Mr. Idica: Commissioner Otsuka. I believe that's a different agenda...

Ms. Cox: It is.

Mr. Idica: ...you're looking at. This is SDD.

Ms. Otsuka: Oh.

Mr. Idica: Yeah. So, that's not pertaining to this project.

Ms. Otsuka: Okay, I apologize.

Mr. Idica: No.

Ms. Otsuka: Oh yeah, Shoreline Setback, in bold.



Ms. Streufert: I have a question that's more general, I guess, not just for this one, but if we allow buildings in an area where it's possibly going to flood because of the erosion that we know is happening and that we can identify what the rate of erosion is going to be, does the county have any liability when it does happen because we have allowed that building to occur?

Ms. Sayegusa: So, I think as reviewed and analyzed, there's several things at play right, there the Shoreline Setback Ordinance analyzes and makes sure that the structure, proposed structure is outside and set back right, and the structure is set back based on the certified shoreline based, which is based on a historical erosion rate. So, as far as the erosion line, that analysis and the approval and proposed location where the house is going to be is out is set back pursuant to the Shoreline Setback Ordinance. Under the other regulations and code regulations that, and SMA those kind of analyze other standards and facets right, so as far as the sea level rise exposure area or with hazards, those hazards surpass the flooding and wave inundation. The recommendation to an, of course SMA considerations those, that's why the recommendation is to, you know, have the structure raised up even beyond any of those standards and to be compliant with flood to make sure that it's the, any habitation is not being done under the base (inaudible) of elevation and everything is up high. So, as far as the, you know, there are various considerations to add analyze. I think as far as we're, we've analyzed and proposed the application of, and everything is compliant, but as far as for SMA, you know there's still priorities like view plains, like you know, other priorities under the SMA that we, that we also have to consider and mitigate for and so, you know I think some of the concerns that Caren Diamond, the testifier brought up seem to be valid and right within the 205 a., considerations, i.e., the Coastal Zone Management Act recommendation. So, I think we're trying to see whether we can work with the applicant to see whether, if there's adjustments to the structure, you know, I think it's kind of skewed at an angle that so when folks pass along the public highway it really does prevent or restrict the view, the views from the public vantage point to the ocean, and so, if there's any way we could work with the applicant to try to make some minor adjustments or if there's any way to have the floor and the structures, i.e., the garage that is currently enclosed, to if there's any other alternatives to allow for further viewing, you know, that view to preserve the view plain, I think we're trying to look at that because that is a standard under, and a priority of the SMA law is to view plains and preserve the rural nature of that area.

Ms. Streufert: But if we know that there is going to be erosion, sea level rise and erosion, if we're planning for it and we still allow someone to build and they become, I'm looking at the north shore of O'ahu, and what's happening there. Does the county retain any liability for that?

Ms. Barzilai: If I can ask Jodi, are we in the constraint district in this matter?

Ms. Sayegusa: It...sorry, I can rely on Romio to...

Mr. Idica: The constraint district...

Ms. Barzilai: This is one way this is being addressed.

Mr. Idica: ...would be flooding and tsunami. That would be the constraint, yes.

Ms. Barzilai: So, the elevation is required, that we...

Mr. Idica: The elevation required is to Department of Public Works standards and also with the North Shore Development Plan.

Ms. Barzilai: But not within our, what we refer to as the constraint district.

Mr. Idica: Yes, our sea level rise constrained district is not applicable to this particular dwelling, because DPW's regulations are more stringent. So, if our sea level rise constraint was to be put in force, the house wouldn't be as high, but since it is in close to VE coastal high hazards, it does push up the building to meet, you know, the North Shore Development Plan standards.

Ms. Sayegusa: So, and as far as the structure this current structure that's proposed is compliant with the Shoreline Setback Ordinance that analysis has already been done. It's more of a, if your question is whether we're allowing for development anywhere within the shoreline, and eventually one day it's going to erode, I mean, that's kind of like a bigger, broader question on you know, are we going to have a more aggressive set back ordinance, you know, where, because right now the, again based on the historical data we've crafted this standard to set back within, I believe it was, correct me if I'm wrong, 40 anticipated timeline of the existence of the structure, right, and so we're trying to, it's a reasonable policy where we are, and one that is kind of more, most, one of the more aggressive of in this state right, to allow for development, certain development to exist because that structure as proposed won't be eroded within the lifetime of the structure, that's the intent of that, of the ordinance at this point, but if your question is, whether we should even more so look at more aggressive measures to just prevent it, that's, I think that's a bigger broader question.

Ms. Streufert: I'm wondering whether there could be a condition about that.

Ms. Barzilai: So...

Ms. Sayegusa: Right.

Ms. Streufert: (Inaudible) the liability based upon whatever the commission decides.

Ms. Sayegusa: Okay.

Ms. Barzilai: There was an application before the commission with regard to moving the structure within a certain time frame.

Ms. Streufert: For Kekaha, I think it was.

Ms. Cox: Yeah.

Ms. Sayegusa: Right. We did...I'm sorry.

Mr. Ako: If I can kind of clarify. I think when we're looking at some of the homes that were built on the shoreline, that was probably before certain codes were implemented and those are falling down and I think there's a lot of questions about liability in those, right. And this one here, we kind of looking at projections, yeah not really sure whether it's going to here or here, but we kind of have an idea that it's projected to be at this point, so if we working on projections and we

implementing that into codes and then something should happen to the facility or to the development, knowing that they're still projections, but knowing that this is what we follow, and something happened, would that bring liability to the county?

Ms. Barzilai: Based upon what we know, we've implemented what we can to address it at this point, I think that's what Jodi explained.

Mr. Ako: Yeah. Right. So, if the water comes up, boom, house falls down, we told you that was your risk to put it up, kind of like that.

Ms. Barzilai: We could implement a condition that it be moved once there's an encroachment of sea water.

Ms. Streufert: Or some kind of...

Mr. Ako: No, I don't think it's going to be moved, right, because it's, we just projecting it's going to be here, so we don't know. But if something does happen and say the sea rise comes up faster than we think it is, you know, County of Kaua'i, you said it was okay to build here, and now it isn't. So, did we actually say that it's okay by allowing this permit?

Ms. Sayegusa: Yeah. And there's, you know, various risks, right, where again, so as far as the constant progressive march of erosion, you know, that's going to happen over a certain time. Again, that's what the Shoreline Setback Ordinance is aimed to address other hazards like wave inundation or big storm events, those are going to happen, right, and so, but we we're not necessarily creating or preventing structures being built for those rarer storms, big storm events, right, and so and even for things like highway (inaudible) that we have to further analyze, you know, the volume and the rate of the waves coming up in, in and reaching a structure you know, for if a structure, if a wave comes and it's just one inch and it kind of just, you know, dissipates, that's why the house is required to be raised up and nobody can live on the bottom floor, you know, but that doesn't necessarily, at this point we're not saying that you can't build or you can't have a structure there because at this point it's not like the wave is, it's you know that's the analysis whether the wave is coming at a velocity and a volume where the whole structure is going to be decimated then obviously that's something we want to make sure that we're not allowing for development in that scenario, but if again, if the wave is just two inches and it kind of dissipates, I think, though the policy call is at this point, we're not going to say you can't build that structure because it's not going to necessarily impact habitation or the structure from being, it's existing there for a certain amount of time, so it's really this balance of what's the risk, what's the data, and I think it's a bigger, broader call. But again, for this particular proposal, this is a second structure, and this is a structure located more mauka in back of an existing structure, that is closer to the shoreline. And so, I think in this, you know, we're kind of really looking at it in for this particular structure. I think again there are good concerns that were brought up by the, the public testimony that we would want a little bit of opportunity to work with the applicant or even having to be able to for the applicant to be respond today. If there's any possibility to work on some of the elements, design elements to lessen any impacts to the view plains or the just if there's any issue there's also the issue that the size of the structure is proposed, so if there's any we would, you know, under the SMA guidelines what we would like to have an opportunity to work with the applicant.

Ms. Streufert: Just a question about, if you have an inundation, is the septic system better than a cesspool or...

Mr. Idica: Nowadays, nowadays, the...well, you could look at it like if a septic tank is underground and it rains, right, the water it doesn't enter the tank unless there's something really faulty with the system. Same thing with an annual wave run up, it'll just come up maybe stay there for like, a day or so, and then it'll probably recede back or evaporate.

Ms. Streufert: Okay.

Mr. Idica: Yeah. So, that's how we kind of like look at the septic systems.

Chair Apisa: Cesspools are banned, you know.

Ms. Streufert: No, I understand that. I was just wondering about how (inaudible) handling that, I don't know anything about it.

Ms. Cox: (Inaudible).

Chair Apisa: They do aerobic septic systems...

Mr. Idica: That one I would probably have to defer to the applicant. It does note on the plans, septic system, but the type, not to sure.

Chair Apisa: Good question. Thank you. Is it maybe time to call the applicant up?

Ms. Otsuka: Can I just...

Chair Apisa: Oh sure.

Ms. Otsuka: There's a letter dated July 1st from SHPD, requesting a archaeological monitoring plan to be submitted and accepted prior to issuing permit. So, doesn't that kind of hold us back?

Mr. Idica: That's what we usually do, Commissioner Otsuka, is we will, at the time of building permit submittal, we will hold that building permit until all the regulations and a concurrence letter is submitted, submitted by SHPD. So, we definitely, we will hold it until we know that SHPD will issue us a letter saying that county permitting process may continue.

Ms. Otsuka: Okay, so, it's not our responsibility. (Inaudible).

Mr. Idica: In a way it is. We kind of are responsible, make sure we have that concurrence letter submitted.

Ms. Otsuka: (Inaudible) department.

Mr. Idica: Yes, yes.

Ms. Otsuka: Not the (inaudible).

Mr. Idica: That is correct.

Ms. Otsuka: Yeah, okay. Thank you.

Chair Apisa: Any other questions or comments before we have the applicant come up? Would the applicant please come up. Identify yourself for the record.

Mr. Jonathan Chun: Good morning, Jonathan Chun on behalf of the applicant, Bruce Holdings, Inc. Want to make sure that you don't confuse me with Ian Jung, who's the one that filed it. We get confused so often. Anyway, also with me is Matt Schaller, who is the architect in this project. I'm going to leave it to Matt to answer some of the questions that have been asked, but I just want to address some of the questions that I'm, for example, the last one on the archaeological monitoring plan, that is correct, the applicant is currently working on that, they're going to be hiring a consultant. The consultant will be doing the archaeological monitoring plan as required by SHPD. Not a dispute on that and the regular process is that once the archaeological monitoring plan is approved because of the SHPD has to approve it, they will send a letter to the department indicating that there is approved archaeological monitoring plan at that point in time, Planning then will release the building permit for, or sign off on the building permit and then we can go there. But yeah, nothing will be done on any of the permits until SHPD approves the archaeological monitoring plan. The flood zone, yes, we are aware it did, the initial application indicated that it could have been written a little better, but it noted that the part of it is in the AE, but the actual development site as noted in the application is in the VE zone and so it was designed to be in the VE zone and to meet the VE, oh VE is the tsunami, it designed to meet the tsunami requirements, which right now is the stricter one, which is the BFE, the Base Flood Elevation, plus one foot. So, we're over the base elevation plus one foot, and designed to meet that requirement, and I believe that the architect can testify as to the work he did to revise it to make sure that it met the BFE plus one. So, I believe a lot of the questions I think were good questions and I'm going to ask the architect to address some of those questions and to answer those concerns raised by the Commission. Mr. Schaller.

Mr. Matt Schaller: Thank you very much.

Chair Apisa: If we start out, Commissioner Strafford had a good question about the waste disposal. So, can you start with that, if you don't mind?

Mr. Schaller: Yes, I'm not responsible for doing the IWS it is a regular IWS Individual Wastewaters Disposal System with the leach fields and a septic tank. The plans for that were being developed by another engineer and it is in the vacant portion of the lot between the existing house and the new house to the west, on the west portion of the lot, it is a large vacant area there, and that's where the septic, leach field and the septic tank will be located.

Chair Apisa: Is it a shared system with the two buildings?

Unknown Person: No.

Chair Apisa: No.

Mr. Schaller: Individuals for each residence. The other residence has theirs in place. This will be a new one that's constructed with the new residence. The other item that came up was the footings that were located outside of the area where many of the trenches were dug, the, my client, the owner, applicant had a conceptual plan, if they came in with originally, and presented it to the archaeological survey people, who did the survey, and the preliminary plan that they had showed the house in a slightly different location than where it originally ended up. Several reasons for that, the first one was, the first assessment for the shoreline setback, came in at 66 feet and that was just a preliminary assessment, and so the house was located based on a 66-foot set back. The final Shoreline Setback determination came in at 88 feet and the house had to be relocated, and it actually had to be shrunk, we had to take out literally four feet out of the middle of the house to make it comply because we had to move it to a narrower part of the lot and relocate it because of those constraints. So, that is why the footings as depicted now are slightly outside of where the trenches were originally dug. But with the archaeological monitoring plan that will be in place, and they'll have an archaeologist on site during the excavations and that should be mitigate those concerns. The second item that came up was the view plain to the ocean. If the commissioners might take a look at the map, you'll noticed that behind this lot is not the ocean but it happens to be part of the Hanalei Colony Resort, so there's really no view plain to the ocean through this particular lot, that view plain is to the backside of one of the Hanalei Colony Resort buildings. The ocean view is actually to the side, which is to the lot next door to this particular lot, and that's actually quite honestly the view plain that (inaudible).

Mr. Chun: If I can reference. If you look at the application, Exhibit C.4. You will see an area view of the property, and I think what Mr. Schaller's referencing is on the right side of the property. Unfortunately, C.4 is not labelled as the subject property, but the right side of the subject property, that side, that boundary goes straight into the Hanalei Colony Resort building, so if you look from Kuhio Highway down the right or the eastern boundary of the subject property, that goes straight, the view plain is straight to the back of a building of Hanalei Colony Resort. It is the western though, I mean, and that's what Mr. Schaller was saying, it's the western boundary of the subject property that has a direct ocean view through that view plain, and so, Mr. Schaller was explaining that that was what he was trying to preserve that plain, so...

Mr. Schaller: Thank you. The other items were when we first had a conceptual plan presented to me and then during the modifications of the home because it's very difficult to put a house 14 feet in the air, and structurally, and so, when we were reducing the size, we actually were allowed to reduce the number of columns, which also reduces the impacting of the site, and we managed to reduce the column count by 12 from the original design. I managed to increase spans and reposition some of the columns in order to reduce the number, which definitely is a good idea and allows for viewer, more open space underneath, but again, we're still 14 feet in the air, so somebody driving by it on the road actually will only see the bottom portion and the front yard and the side yards of the property.

Mr. Chun: So, if I may, I believe what, and going back to the trenches, so it is correct that the trenches right now as we're developing does not exactly follow of the footprints of the current design of the house or the footings. And like I said, Mr., the reason why that was done, it was, that was based, the trenches, were based upon an earlier design. In addition, if you would note, if you do look at the archaeological report that was attached to the application, and I think that was Exhibits F, and page 24 of Exhibit F indicates, and it shows that the place of the trenches. T6 was

a trench, that's not, obvious that's not a footing for the building, but that's where approximately the septic systems will be going and that's what one reason why a trench was put there, not because of the building, but that was where they're anticipated a septic, and so it would be wise to try to see if there is any near the septic system, or the area where the septic system is going to go to figure out whether or not, you know, there are any iwi's buried there. We do, I did review the comments by Ms. Diamond, I do appreciate her views and we did take that into consideration. I did agree with her, and just this morning, I said yeah, yeah, I looked at her, and it says in the original application, the square foot of the house is 4,000, it is not a 4,000 square foot house. The house itself as currently as indicated in the supplemental application or the exhibits submitted by Mr. Jung, the actual house now is 1,000, where is it, I have it written right over here, 1,682, yeah, 1,682, not 4,000. Ms. Diamond was correct that there was a discrepancy and so I wanted to clarify it for the commission that the house is not 4,000 square feet. It is only 1,682 square feet. In comparison, just to give you a comparison, the existing house on the property is 2,299 square feet, which is which is larger than the proposed house, so the proposed house is being asked is, being asked is, being asked for is smaller than the existing house in terms of square footage. The concern raised in terms of, well, it's bigger than what the neighborhood has, and their concerns raised by that. And again, I do appreciate the fact that it is Wainiha, oh Ha'ena, it is, it is not a resort area, per se. So, I did, looking at the county zone records in terms of what are the house sizes in that area based on the county zone record, you know, for example, it is, and the 1,682 is within reason of what is also in there currently existing in the neighborhood. For example, next door and TMK 5-8-011:054, it's a 1,276 square foot house, two bedrooms, 2 bath. Next to that 5-8-011:012, is a 1,942 square foot house, and I believe that was 3 bedrooms and three baths, and next to that on 5-8-011:010, is a 2,106 square foot house, which is a three-bedroom 3 bath house also. So, the 1,600 and, you know odd number is well within the reason in terms of the immediate square footages of the houses in that area. Across the street from the subject property across Kuhio, not street, Kuhio Highway on TMK 5-8-011:026 that house is 1,500 square foot, 3 bedrooms, 2 bath, and right next to that one is 5-8-011:025, that's a two-bedroom, 2 Bath, 1,232 square foot. So, within the immediate area, 1,600, you know, is close, is not the smallest, I would say it's not the smallest house, it's not the largest house either, but it's within the range of what you find in that area. And these are based upon the County of Kauai's real property tax workers themselves. I'm not making it up, that is (inaudible). And if you go further down the road and I would say, and I would agree with Ms. Diamond that further down the roads, not quite that neighborhood, but further down, in that area, pass Hanalei Colony Resort, the houses do get bigger. In fact, there's one 2,000 square foot house pass Hanalei Colony Resort, and there's a few of those houses. So that's what your neighborhood looks like right now, not because of what the client is doing, but that's what exist there now. So, and I, you know, so as Mr. Schaller indicated earlier in his testimony, you know, it was designed to be a bigger house originally, but because of the Shoreline Setback of what it needed to be done, and I think there were concerns with Ms. Diamond did raise in terms of the view plain, at least on the right or western side, that houses was reduced, and I don't know what the first (inaudible) was, but it was reduced to 1,600 and so square feet. So, I mean that was an attempt by the applicant to look at those issues. It was not like it was totally ignored. If the Planning Department wants to discuss with Mr. Schaller some more, I believe Mr. Schaller would be open to discussing that with him. So, those are what's, you know, what is being proposed right now. We don't believe it's really out of the ordinary. We don't think it's extraordinary out of character with the neighborhood, the design itself is within reason, that

plantation style, it's within reason of what this is actually going there. The concerns based on Ms. Diamond is a legitimate concern regarding lockouts. I believe no one wants lockouts. Planning Department does not want to see that and I'm sure they will let us know if they'll see a lockout. There are, from my review of the plans and it can be confirmed by planning, there are no lockouts right now on that, they're all interior entrances or entrances, or what was the entrances, or connections between all the rooms. So, there is no room that cannot be entered in only from the exterior. That would be a lockout, so that doesn't exist right now. There's no vacation rentals allowed on any of these properties, either existing or the proposed, so that would not happen. And if it happens, it would definitely be a violation, the two stairways I can see Ms. Diamonds point, but you know from the practical point, I think it's a safety issue that you have two potential exits. If something happens, either one and then the fires at the bottom of that stairway, you can jump, but that's about it, and I don't think that would be a good idea. So, I think the architect rightfully, and the owner rightfully supported that as we have two separate stairways to allow for a safety issue for exiting the top of that building. And again, that's not a lockout, it does not lead to a lockout. So again, those comments I think were made by Ms. Diamond, I believe they were legitimate comments, I think there were also good reasons for them to have done what they did. So, I just want to bring those facts out to the commission for their consideration. Also, yes, as pointed out by Ms. Diamond, it was correct the first SSD indicated was an ADU, later on, it became aware, the applicant became aware that the lot itself is large enough to support two dwelling units because of the zoning. I believe they probably thought the zoning was something else, then what it was. So, because of the zoning, it allowed for two dwelling units rather than ADU, and so it was changed, the SSD added as an ADU. Now this application the application shows it as a permitted under CZO, second dwelling. So, the question that really, I think that was brought out today is, can the design of the building be brought in, so that it meets the concerns of, I believe the architect has done what he could to meet those concerns about, at least preserving on the western side of the boundary and looking towards the ocean, where you will have the ocean, I think he's looked at that and landscaping can help on that, I believe we could probably do that. I'm not sure and I can't talk for the architect, the owner, but if planning has a concern regarding the bottom floor, maybe they could look at that, but again, if we did that, you probably just stare into the other building anyway, so we could (inaudible), but it's worth taking a look at, but I just want to let the commission know that the planning of this building with the architect, some of those concerns were considered, and we're taking consideration as best they could. So, if the commission or the staff has any questions, I'm sure Mr. Schaller would be open to answering them.

Chair Apisa: Commissioners?

Ms. Cox: I have a question about some of Caren Diamond's concerns that you didn't address. I mean, you sort of did, but...the requiring ground penetrating radar studies, because the original trenches weren't where the footings are going to go and there, there have been iwi discovered nearby, would the applicant be willing to actually do penetrating radar study?

Mr. Chun: I mean...

Ms. Cox: Before rather than waiting, I mean, Caren had the point of if you do have monitoring, it's already happened, right, you've discovered them, so I was just wondering.



Mr. Chun: Yeah, I would, I mean I'm not discounting that concern. I'm not familiar with ground penetrating radar or who does it and, you know, how many machines we have on island, if it is on island, but I think it is worth something as we go forward to discuss and I think that is something that probably we're going to ask our person doing the archaeological monitoring plan maybe would that be something that from the archaeological point of view, would that be worthwhile doing? I have no, personally, I have no idea how it's done, how much it costs, the availability of it, but I think that's a worthwhile question to ask the person doing the AMP, whether that should be put into the AMP. I think that that's a reasonable suggest for that, yeah, that's the archaeological monitoring, and we use all these acronyms, sorry.

Ms. Cox: Yeah, I know what they mean, right.

Mr. Chun: Okay. And that would requires to be approved by the department, SHPD...

Ms. Cox: SHPD.

Mr. Chun: ...before that. So, that would be a legitimate question to ask our person doing the archaeological monitoring plan is, whether it would be wise or recommended to do a radar or ground penetrating something, prior to doing that just to make sure.

Mr. Ako: If I can follow up on that. Do you know that if you do that radar penetrating method, that you would also need to have a monitor on site during the actual construction, do you need to do both? I mean, can you just do one, I mean just the radar penetration? No? No?

Mr. Chun: I will leave that to the SHPD to determine whether or not, but you know, you're asking the not too smart attorney about whether or not iwi would be discovered by ground penetrating radar...

Mr. Ako: Yeah.

Mr. Chun: ...I'm not sure.

Mr. Ako: Well, obviously this Commissioner doesn't know either, so...but okay, thank you.

Mr. Chun: I will not go down that road, Commissioner Ako, but yeah, I mean that is again I would say that is a legitimate question. I leave it to the people to know more about ground penetrating radars and what bones or other, I mean, I don't know any bones, right, I mean there, there are bones or other artifacts that could be found and whether or not how well it could be discovered or uncovered with the ground penetrating radar, I really don't know the answer.

Chair Apisa: I think our Deputy Planning Director may have.

Ms. Sayegusa: Oh no, just to chime in, I think the ground penetrating radar we would, we want, we definitely want to check in with the SHPD and have an opportunity to check in, just anecdotally, with other projects that we've been involved with, some feedback we've received was, you know, some and in some circumstances, it really depends on who or how it's being done and there's some, there's some, the feedback was that there could be some inaccuracies. So, we just want to make sure and check in with SHPD to see if it, you know, in the field if this is a

mechanism or strategy that's, you know, readily used and whether there's even availability of firms or equipment to be able to do such work, but I think it could be an opportunity going forward, I think you know, assuming that it is a viable method to look at that type of mitigation strategy going forward, especially in areas where it's very vulnerable, like, you know, certain areas that we know they're likely to, there's a high likelihood that there are burials, and so, it's something that we definitely, it's a very good point, something that we want to, you know, be in a position to look at implementing the future, but we want to make sure we check with the professionals or the folks who are in the field to know that this is a viable method.

Ms. Streufert: I have another question on the engineering report indicates that there is a driveway, or two driveways intended, but it is not your plan, and that might have an impact upon the land coverage that you have.

Mr. Schaller: The plans indicate a gravel driveways as the existing home has a gravel driveway that is beautifully covered with grass now. The new driveways is planned to be a gravel driveway that will probably be beautifully covered with grass overtime as well, so the intent is a gravel driveway at this time.

Mr. Chun: And I apologize, I was supposed to cover that also. Yes, it is going to be, it is currently a gravel driveway. There are no plans right now to have it paved and I would represent that in the, if that ever changes, I will represent that that would be need, the applicant would need to come back for a separate SMA (inaudible) middle minor for that, right, I mean...

Mr. Idica: Yes, (inaudible).

Mr. Chun: ...because it would not be covered under this.

Mr. Idica: That is correct.

Mr. Chun: ...at all.

Mr. Idica: It will probably be under reviewed as a separate structure. If it's over 200 square feet.

Mr. Chun: I don't know how big is it.

Mr. Schaller: It might be less than 200 square feet because it's (inaudible) very close. It's a very small driveway, but at this point it is indicated to be gravel, and any future changes would have to be in the future changes.

Ms. Cox: I have a question. I think it's more for the department rather than the applicant and it's again looking at Caren Diamond's concerns. The existing house, which it is probably going to be done in by sea level rise, all indications are, and so she is, was suggesting adding a condition that that house be removed when the shoreline reaches the structure. My understanding is that's because the new house will be further back on the lot, so there's no ability to kind of retreat. What is the, I mean, that's seems like a different situation, it's a different piece other than the permit for the house, so I was just wondering about how (inaudible).

Mr. Idica: Yes, that is correct. As a matter of fact, Jodi and I were discussing this and maybe Jodi can kind of...

Ms. Sayegusa: Sure. Yeah, no, I think, we want to make sure that each of the conditions that we impose, you know, pass muster that, you know, rough proportionality and there's that essential nexus. And so, I think one of the concerns is because this is an application for that, the additional second dwelling, you know, that the current dwelling already exists, right. or that current structure exists, but this is an application for that second dwelling more mauka. They're, you know, having trouble or just, you know, I'm a little concerned on whether there is that nexus between the second dwelling and imposing a condition on another structure that already exists on the property. Although yes, it's it would be, it's good, it'll be a concern and there's many examples of this and across the island, right, where there's already permitted existing structures and waves are coming up and now you're facing erosion, and at that point, we have to work with OCCL, and the land owner, and of course to address how to, how to tackle it, and it's, yeah.

Ms. Cox: (Inaudible).

Ms. Sayegusa: Right.

Ms. Cox: Thank you.

Mr. DeGracia: I have a question for the department, I guess procedurally, I believe we left this item, agenda item open for New Agency Hearing, are we taking action, and what are we doing moving forward...

Ms. Sayegusa: You know, I...

Mr. DeGracia: ...from this point?

Ms. Sayegusa: I think based on the conversation and I think you know and the testimony, we, at this point we still would like an opportunity to maybe work with the applicant and the architect to see if there's any possibilities to, you know, mitigate some of the concerns as far as the views, I understand perhaps the, there is already the response was there on the western area there could be a view plain preserved because that's the straight shot to the, to the coastline, but if there's any opportunity to just even look at the garage and see if there's any opportunity to open it up and further allow for preservation of their new plain. So, I think at this point we probably would still recommend deferral at this point. And then, and then we can also look at, we already did a lot of the analysis on the other requested conditions of Caren Diamond, but we could also allow for additional opportunity for us to fine tune and kind of work with the applicant to see some of the, whether the other conditions could be workable, I mean some of, we kind of analyzed already that, you know, we don't necessarily want to be in a position recommending or imposing conditions on other existing structures, but there's other conditions that are very valid as, you know, for instance, prohibiting seawalls and things like that, that's already prohibited under the law. So, I think at this point, we're still going to ask for a deferral.

Mr. DeGracia: Should we ask the applicant if they're willing to defer this item?

Ms. Barzilai: If I may, we need express consent to wait the 60-day action deadline under the ordinance.

Mr. Chun: The 60-day only stops upon, upon closing of the public hearing. I don't think you're closing the public hearing.

Ms. Barzilai: That's true.

Mr. Chun: Yeah.

Ms. Barzilai: We still have open agency hearing.

Mr. Chun: So, yeah so, Yeah, it doesn't, you know, as long as you keep it open, your clock doesn't start.

Ms. Barzilai: That's right.

Ms. Sayegusa: Right, and this is an SMA permit, so there's no CZO action...

Mr. Chun: Yeah.

Ms. Sayegusa: ...requirements as well. So, but...

Ms. Barzilai: We have a deadline of July 19, otherwise, if we were to close the hearing.

Mr. Chun: If you (inaudible).

Ms. Sayegusa: Right.

Mr. Chun: We're not going close.

Ms. Sayegusa: Right. Yeah. And I mean, the intent is not to prolong it forever, of course, but I mean, I think it's reasonable to just have one deferral and try, to an opportunity to work with applicant at this point.

Mr. DeGracia: What would that action be today?

(Multiple people speaking at once)

Ms. Barzilai: Motion to defer.

Mr. DeGracia: Or are we not taking action, we're just discussing?

Chair Apisa: What I'm hearing is that our deadline to respond is July 19?

(Multiple people speaking at once)

Ms. Sayegusa: No, no, no. There wouldn't be.

Ms. Barzilai: No, because the hearing is open, Chair.

Chair Apisa: Oh, oh, okay. The hearing is open, okay, okay. My mistake.

Ms. Sayegusa: Right. So, just a request to defer this, the consideration of this SMA permit until the next commission meeting.

Chair Apisa: Which is probably on July 23rd would be our next commission hearing.

Ms. Sayegusa: Yeah, I, you know, I got to, I got to make sure and confirm with whether the there's items on the agenda. I think we're trying to; we're trying to manage and juggle things that are kind of ripening. So, but we're not sure if there's still going to be in the second meeting in July. I don't think there might be. So, it could be, so that's why I think the deferral would just be to the next meeting so, which could be in August instead. Yeah.

Mr. Idica: May I?

Ms. Sayegusa: Go ahead.

Mr. Idica: The public testimony. Is it closed?

Ms. Sayegusa: No.

Mr. Idica: Okay. So, wouldn't it be a continuance instead or a deferral?

Ms. Sayegusa: Well, the public hearing was continued or left open, but this action item should be deferred.

Mr. Idica: Thank you.

Ms. Barzilai: I think Romio was asking about how to frame the motion. Motion to be continued.

(Multiple people speaking at once)

Ms. Sayegusa: I would say defer because this is the action item.

Ms. Barzilai: Yeah, and we're gonna actually put it on a date certain, let's say the August Agenda.

Mr. Idica: Okay, thank you.

Ms. Sayegusa: Okay.

Mr. Idica: Thank you for your clarification.

Ms. Sayegusa: Well...okay, that's fine. I mean, if the, so again, the next meeting could be the second meeting in July. I don't, I, at this point I do not think there's going to be a second meeting in July, but don't hold me to it because I think Ka'aina really is managing some of, some things that are that are coming up. So, you know, I would just say the next meeting.

Ms. Cox: Yeah.

Chair Apisa: So, any other questions or discussion? Or else we could entertain a motion to defer to the commission's next meeting.

Ms. Cox: I move that we have moved this Agenda Item, Special Management Area Use Permit SMA(U)-2024-10 to the next, motion to defer to the next agenda, the next commission meeting.

Ms. Streufert: Second.

Chair Apisa: We have a motion on the floor. Any further discussion? Roll call, please.

Ms. Sayegusa: Sure. Commissioner Ako?

Mr. Ako: Aye.

Ms. Sayegusa: Commissioner Cox?

Ms. Cox: Aye.

Ms. Sayegusa: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Sayegusa: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Sayegusa: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Sayegusa: And Chair Apisa?

Chair Apisa: Aye.

Ms. Sayegusa: Motion carries. 6:0.

Chair Apisa: Motion is deferred.

Ms. Sayegusa: Okay.

Mr. Chun: Thank you, Madam Chair and members of the commission. See you at the next meeting.

Ms. Otsuka: Thank you.

Ms. Cox: Thank you.

Ms. Sayegusa: Okay. Item L. New Business 2.

CLASS IV ZONING PERMIT (Z-IV-2024-6) and VARIANCE PERMIT (V-2024-2) involving a 4-lot subdivision to allow a deviation from the maximum pole length requirement of a flag lot, pursuant to Section 8-4.4(a)(3) of the Kauai County Code (1987), as amended, for a parcel situated along the southern side of Kawaihau Road in Kapa'a, approximately 500 feet west of the Kawaihau Road/Makaleha Place intersection, and further identified as 6501 Kawaihau Road, Tax Map Key: (4) 4-6- 007:058, and containing a total area of 4.669 acres = **MANUEL DeSILVA JR, TRUSTEE.** [Director's report received 5/27 /2024.]

Ms. Sayegusa: I think we can...oh, did you want...is there anyone in the audience wishing to testify on this item? Seeing none, I think we can turn it over to Kenny.

Staff Planner Kenny Estes: Good morning, Madam Chair, and members of the Planning Commission. I will summarize the report for the record.

Mr. Estes 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).

Chair Apisa: Thank you. The applicant?

Ms. Sayegusa: Sure, or any questions.

Ms. Otsuka: Questions.

Chair Apisa: Any questions of the department before we call up the applicant?

Ms. Streufert: I have a question under...

Ms. Otsuka: Kenny, under agency comments. Did you already receive the reviewing agency's County Public Works Engineering and Department of Water comments?

Mr. Estes: No, I did not receive comments from the Engineering Division and water at this time. However, those two agencies would have an opportunity to comment if this variance is approved and when the subdivision application is routed to their reviewing agencies.

Ms. Streufert: What is the purpose of a maximum pole length?

Ms. Cox: Good question.

Ms. Sayegusa: You know, we're kind of trying to analyze that or trying to try to get the back story of it. I think at the time, it's just, this is a, the maximum was set anticipating that most of these are within the residential zone and we didn't, I think at the time there wasn't an anticipation that there be a very lengthly flag lot. I just, we couldn't necessarily figure out why that was initially set as the standard. I think there could be some reason on fire, you know, fire source, access to fire source, but you know, this is, this again, this is just the an application to vary or the

variance. At the time of subdivision, we'll have to go and get assurance or clearance from the Fire Department to see if there's the ability to fire source or water source to mitigate any fires or anything like that and what other, if not then what's the other requirements to be able to mitigate any fire impacts.

Ms. Otsuka: Because yeah, would be nice if it gets clarified and the footage changes the standards, so, the applicants don't have to keep coming to the commission for approval.

Ms. Sayegusa: Right. Yeah, I think it just, it's not something that typically comes up. I think the more so the standard is it would catch most of the proposals. It's just by nature of how this was laid out and subdivided, it resulted in this very long flag lot.

Chair Apisa: Any other questions for the department?

Ms. Otsuka: I have. I have a question regarding the Condition No. 6, is there any particular reason why the word revised was omitted? That's something we should be made aware of the? The commission should be made aware of. Condition No. 6, the Planning Commission reserves the right to revise and or delete conditions. The word revise is omitted. Is there a reason it was omitted?

Mr. Estes: There's no reason. We can add that in if you choose, if you would like.

Ms. Otsuka: It's actually for the next three.

Mr. Estes: Okay.

Ms. Otsuka: Yeah. Thank you.

Chair Apisa: No other comments. I'd like to call the applicant up please.

Mr. Chun: Good morning, Madam Chair and members of the commission. Jonathan Chun, on behalf of the applicant, along with Macky DeSilva, who is the owner, represents owner the property and also Bill Eddy, who's the engineer that prepared the plans on this matter. We are in receipt of the report, we have no additions or corrections for comments. I believe the report is accurate. We have no objections to No. 6, Condition 6 is a standard condition that the Planning Department normally adds on and, you know, it is something that us, you know, practitioners, we anticipate, and we are aware of that normal condition. That is a very good question that was asked why the pole length and I, that was a question that I asked a long, long time ago and I unfortunately I am one of the older people that worked in this before, the one that would answer that would be Max Graham or Mike Belles, they're older than I am, they might know that that was done back in the 70s, but when I was working with the county, I did ask that question too, like why, and one of the answers I got from the older person than myself was that it was done initially as part of the rec, well, initially the CZO was taken from a mainland company and a mainland consultant and so it was in there, but a lot of the comments on that type of (inaudible) was based upon public safety, fire was one of them, ambulance was another one and there were concerns about the distance the Fire Department had to travel between the public road and the actual house (inaudible), and that's why if you, not if you recall because I'm not going to ask you to think back that long, but there was at one time in the ordinances very specific provision



regarding that the house itself had to be a certain distance from a public road, and it was in addition to this, the pole length thing, but there was all intended to kind of all fit together, but gradually and as correctly stated by the Deputy Planning Director, it really was designed for urban situations and it really didn't work well for agricultural lots because it was taken from, the model was taken from an urban area, but in general that's how it, the county has changed the ordinance over a period of time, the one regarding the distance of the residence from the public road was changed from, taken out of the CZO. This is probably the last thing that probably could be looked at, but to be totally honest it's not a priority because it goes through variances, I mean people do it, it doesn't happen a lot, it does happen, but the variance process does fit well with this type of application of the flag lot restrictions to ag lots. It does fit well with that. So, that's one reason why there's no pressing need to change the CZO on that. I mean you could, but you know, as the staff will tell you, it will takes a long time and effort to change the ordinance so, why, why put more work into it, whether we can do it this way, but from my recollection, being not the oldest person here, that was the reason why the flagpole width and distance restrictions, replaced in the subdivision ordinance originally in 72, I believe. Which I was in high school back then.

Ms. Streufert: Well, if you're Asian, age probably equates to wisdom. So, the older you are, the more wise (inaudible).

Mr. Chun: My grandmother said, wisdom is based upon how wide your belt size is, and I'm working on that one right now. Thank you, Commissioner Streufert. We can answer any other, any other questions, if the commission has, we'll be happy to address them.

Chair Apisa: Any other questions or comments?

Ms. Streufert: So, the Fire Department's concerns about access and water supply will be addressed during the subdivision or during, before, they'll come out before they actually build or anything like that. Is that correct?

Mr. Estes: Yes, correct. So, if this variance is approved, the applicant would submit a subdivision application and that subdivision application will be routed to the Fire Department and other reviewing agencies for review, and they would have a chance to comment, and any infrastructure improvements would be relating to water would be worked out during the subdivision process.

Ms. Barzilai: Any other discussion or are you ready for a motion?

Chair Apisa: Yeah, I'm not hearing any other discussion.

Ms. Barzilai: We got a recommendation from the department.

Chair Apisa: Recommendation. Anything further?

Ms. Sayegusa: No.

Chair Apisa: Okay, recommendation from the department.

Mr. Estes: So, based on the foregoing evaluation and conclusion, it is hereby recommended that Class IV Zoning Permit Z-IV-2024-6, and Variance Permit 2024-2 be approved as amended, subject to the following conditions noted in the Director's Report with a revision to Condition No. 6, and I can read it for the record, the revision.

Chair Apisa: Yes.

Mr. Estes: Okay. The Planning Commission reserves the right to revise, add, or delete conditions of approval in order to address or mitigate unforeseen impacts this project may create or revoke the permits through the proper procedures should conditions of approval be violated or adverse impacts be created that cannot be properly addressed.

Ms. Streufert: I move to approve Class IV Zoning Permit Z-IV-2024-6 and Variance Permit V-2024-2, as amended.

Ms. Otsuka: Second.

Chair Apisa: We have a motion on the floor. Is there any further discussion? Roll call vote, please.

Ms. Sayegusa: Sure. Commissioner Ako?

Mr. Ako: Aye.

Ms. Sayegusa: Commissioner Cox?

Ms. Cox: Aye.

Ms. Sayegusa: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Sayegusa: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Sayegusa: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Sayegusa: And Chair Apisa?

Chair Apisa: Aye.

Ms. Sayegusa: Motion carries. 6:0.

Mr. Chun: Thank you, Madam Chair and members of the commission.

Ms. Otsuka: Thank you.

Mr. Chun: Have a good day.

Ms. Sayegusa: Thank you. Okay. Item L.3. and 4., if I may I think for the purposes of the next two items, this is the Variance Permits on the curbs, gutters and sidewalks, I think it might be clearer or easier to call them both up together if that's okay with you. Oh, sorry. Oh okay.

Chair Apisa: We'll take a 5-minute recess.

The Commission went into recess at 11:21 a.m.  
The Commission reconvened from recess at 11:32 a.m.

Chair Apisa: Thank you very much. Meeting is called back to order.

Ms. Sayegusa: Okay, and I was saying for the sake of efficiency, I think I'm gonna, if I may call Item L.3. and 4. up together and I'll read them now.

CLASS IV ZONING PERMIT (Z-IV-2024-7) and VARIANCE PERMIT (V-2024-3) involving a 10-lot subdivision to allow a deviation from the requirement involving the construction of curbs, gutter, and sidewalks for a subdivision within the Residential zoning district, pursuant to Section 9-2.3(e)(3) of the Kauai County Code (1987), as amended, for a parcel situated along the southern side of Kahilipulu Way within the Kauai Lagoons project area in Lihu'e, further identified as Tax Map Keys: (4) 3-5-004:100 through 109, and containing a total area of 6.2 acres = **TOWER KAUAI LAGOONS SUB 1, LLC.** [Director's report received 5/27 /2024.]

CLASS IV ZONING PERMIT (Z-IV-2024-8) and VARIANCE PERMIT (V-2024-4) involving a 13-lot subdivision to allow a deviation from the requirement involving the construction of curbs, gutter, and sidewalks for a subdivision within the Residential zoning district, pursuant to Section 9-2.3(e)(3) of the Kauai County Code (1987), as amended, for a parcel situated along the northern side of Kahilipulu Way within the Kauai Lagoons project area in Lihu'e, further identified as Tax Map Keys: (4) 3-5-001:027 (Par.) & 168 (Par.), and containing a total area of 4.6 acres = **TOWER KAUAI LAGOONS GOLF, LLC./TOWER KAUAI LAGOONS LAND, LLC./TOWER KAUAI LAGOONS SUB 7, LLC.** [Director's report received 5/27 /2024.]

Ms. Sayegusa: Is there anybody in the audience, I know I think aside from the applicant, I do not see another public testimony at this point. So, I think it's safe to provide, turn it over to Kenny.

Mr. Estes: I'll summarize the report for the record. area.

Mr. Estes 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).

Chair Apisa: Thank you. I know, just going back because we started this and not everyone was here, so, if there is anyone, some people have come back now after we have reconvened. If there's any further public testimony on this, does anyone else want to testify just to open it up? I know some of you already have. Okay. Thank you. I just wanted to be certain. Thank you. Questions of the planner.

Ms. Cox: I don't have a question, but I, like the testifier earlier, Ruby Pap also walk along that area regularly and have been walking in the road or on the grass, but I can see the problem is the bike path that, the unimproved bike path is far enough away that if you're going to go left when you get to the end of that and go toward the farm, it's not at all convenient to be on that one that's behind the other the subdivision. So, and plus if, not if, when the subdivisions are completed there is going to be more traffic, so I'm very supportive of the department's recommendation to put a sidewalk. I think it's, I think it's going to be needed.

Chair Apisa: Thank you.

Ms. Streufert: As I understand it, the department is recommending the sidewalk in front of a, of 1 but, not in front of 1A. Can you explain why?

Mr. Estes: Yes. So, the way the layout of the land is for Subdivision 1, it extends essentially from Ho'Olaulea Way where there is an existing sidewalk all the way, the subdivision frontage goes all the way around and passes Ninini Point Street. and continues pretty much the length of Kāhilipulu Way, whereas the frontage of Subdivision 1A, starts from Pohaiula Place, as noted on the map, and it only, it doesn't extend all the way to Ninini Point Street, there's the resident, the subdivision on either side of Subdivision 1A, there's property that's zoned open, and that's, part of it is a golf course and a green space, so the subdivision ordinance requires the applicant to construct sidewalks along the subdivision frontage, so if that was the case, then the sidewalk would only be from Pohaiula Place along the subdivision frontage and end at the subdivision frontage and not go on entire length of Kāhilipulu Way.

Ms. Streufert: Would we, would we require them some other kind of walkway that would continue this all the way through or is this, you're just going to leave it like...

Mr. Estes: We, yeah, we could in discussions with the applicant that could be a possibility, to require sidewalk along Subdivision 1, one the side of Subdivision 1, which would extend from Ho'Olaulea Way to Ninini Point Street, however, I think if a sidewalk, a sidewalk on the side of Subdivision 1, since the subdivision frontage already expands the length of Kāhilipulu Way it would be kind of more appropriate to have a sidewalk on that side as through the requirement of the of the subdivision. They would have to construct a sidewalk along that full length of the roadway.

Ms. Sayegusa: I think, so just the one at the 1A and the subject of the permit and the variance and the subdivision application for Subdivision 1A, only, doesn't expand from Ho'Olaulea Way all the way to Ninini Point Street, and so there is concern. As far as satisfying the suggestion or the comments that were given by the Engineering Division, their aim was really to make sure that there is connection between all the points and so it makes sense for us to look at more so the

sidewalk on along one, Subdivision 1, that subdivision and the subject of the subdivision itself expands from Ho'Olaulea Way all the way down to Ninini Point, so I think based on that, that would create a cohesive connection between Ho'Olaulea Way all the way through Ninini Point, which is a, I'm sorry, I didn't....Sorry. Which is a, the multi-use path and so there's that. I think there is something that we did come out, that did come up and we hope to catch it through the subdivision process, was to ensure that, 1A also had a connection to that one sidewalk, so hopefully you know, through, as we go through further the subdivision process, although we're recommending that in lieu fee for Subdivision 1A hopefully we can get, seek further guidance through engineering and then also work with the applicant to ensure that there is also a connection for 1A down to that sidewalk that we're going to require along Subdivision 1.

Chair Apisa: Any other questions of the director or we could have the applicant come up.

Mr. Gary Siracusa: Good morning, Madam Chair and Commissioners. For the record, Gary Siracusa, Director of Construction at Hōkūala. Happy to answer any questions you may have.

Ms. Streufert: Do you have any objections to what was just discussed here, with the 1 and 1A?

Chair Apisa: Regarding the sidewalk.

Ms. Streufert: The sidewalk, and also at some point 1A would also be required to have a sidewalk that would connect.

Ms. Cox: No, it's not.

Ms. Sayegusa: A connection between to have, from that one subdivision down to the other sidewalk.

Mr. Siracusa: If I'm understanding that part of it would be, where Pohaiula Place is, you're saying connect that into, up to Ho'Olaulea Way, correct? On the west side.

Ms. Sayegusa: I think if there's a means to further to visit how the resident, eventual future residents of 1A will be able to also link up to, yeah, Ho'Olaulea Way and then access the, you know, go through the street and then go through the other side of along Subdivision 1 to that sidewalk that's going to be required, or if there's a way to have a crosswalk at some point between 1A and Kāhilipulu that would connect to that sidewalk.

Mr. Siracusa: Thinking about the logistics, I would agree that at the east end of 1 and 1A, well, first of all, let's take the frontage along Subdivision 1, that will have a continuous sidewalk all the way from Ho'Olaulea fronting Subdivision 1, and then intersecting up with Ninini Point Street, that's understood by us. As to the connection, and for 1A to Subdivision 1, to get to that sidewalk we have an existing crosswalk at Ho'Olaulea, we can put in another crosswalk there and we could also improve, put a crosswalk in at the far east end as well, and Ninini Point Street. Once that path system with the county as well comes in, the frontage, sidewalk frontage at Subdivision 1 is going to be the more sensible connecting point for all the pedestrian and bike traffic that will access county and our rather robust pass system through the resort.

Chair Apisa: I would just like to confirm the width of the sidewalk. I mean, it's going to be a nice new modern, wide two passenger passing sidewalk.

Mr. Siracusa: Two passengers?

Chair Apisa: Well, I mean not two passenger, but two people can walk side by side or two people going in opposite directions, you don't have to step aside, I mean, it's going to be adequate with.

Mr. Siracusa: Yeah, it would match up our other subdivision walkways right now that I believe are four feet, Kenny?

Mr. Estes: I think right now, the design standards from the Engineering Division, it's a minimum of five feet, five-foot width (inaudible).

Chair Apisa: I think that...

Mr. Siracusa: I have no objection to five for this frontage along Subdivision 1. If that's the recommendation from DPW.

Chair Apisa: Thank you for clarifying.

Mr. Siracusa: Thank you.

Mr. Estes: It will be a minimum of five feet, but that would be worked out during the subdivision process when the construction plans are, when the applicant comes in for construction plan approvals.

Chair Apisa: Thank you.

Mr. Ako: Madam Chair. Perception is it's a real big deal when you're driving and, you know, for safety and for just the way things look, yeah. Do you know if drivers drive faster with swales or with sidewalks? Because I know you've got the roadway, and some other places, and you get your bike way, and you get the buffer zone and, you know what was once this two way highway, now it's really wide open and cars feel like they can go really fast, very safely, they can feel like, so, I'm trying to wonder whether if there's a difference between swales and sidewalks and the connection with the speed that people drive cars.

Mr. Siracusa: In our resort, my personal opinion, it doesn't make a difference, we've got folks that are just in a hurry whether there's a curb and gutter or non-improved road edge, and it's our loss prevention folks are on the road, sorry for the pun, continually, as well part of their rounds slowing people down, and find them both on again, roads without curb and gutter, as well as in our resort area where it's a fully improved curb and gutter as well. Like some other of the resort developments, we have even gone to the extent of speed limit signs that are posted at 14 miles an hour, hoping well, maybe that kind of registers with them. It's a little bit different or there is a slower speed limit through the resort, but you folks that are in a hurry just to...it's human nature. They're just going to ignore it. Fortunately, most folks are cognizant, and the resort that they're not the only folks on the road.

Mr. Ako: I'm just curious to if you are willing to pay the fee, yeah, in lieu of making the sidewalks, what's the theory beside, between not building the sidewalks, I guess.

Mr. Siracusa: Personally, yes, as far, on behalf of the resort as well, we find that hardening of the surface on both sides to be redundant and everything in that general area is Subdivision 4, which is the intersecting subdivision there, and the golf course are all soft edge and have got maintained the, rural field, and that that's in concert with that subdivision ordinance and the goals of subdivision ordinance, and in addition to public safety is protect the topography and the landscaping as you will. So, that's what we're looking at and also being lead sensitive in terms of more hardened surfaces and just in general out there trying to preserve what we have in terms of grass and landscaped areas, and again having one in our estimation would serve the purpose versus one each side.

Mr. Ako: Thank you.

Ms. Cox: I want to thank you for explaining the 14 mile an hour. I've been wondering about that when I see it there. And also, I guess I just want to compliment the resort in general, for making it so accessible to the public and so welcoming and such great paths. So, seems like this sidewalk, your willingness to put that sidewalk in would really just continue the legacy you already have.

Mr. Siracusa: We would appreciate your comments, Commissioner, and are in agreement as well that the frontage on the Subdivision 1 side will, again enhance safety.

Chair Apisa: Thank you. Any other questions or comments? Are we ready for the department's recommendation?

Ms. Streufert: 1A is and R2 region and it has, and your, and it's over a golf course area and then there's another R2 area a little to the, I guess it's to east, is that correct? If I'm looking at this.

Mr. Siracusa: This Subdivision 1A and Subdivision 1 are actually R4, but we're subdividing them as 1/3 acre lots, not quarter acre. Is it the subdivision that's above?

Ms. Streufert: Yes, there's an R2 area here.

Mr. Siracusa: Oh, I think that's what I was referring to as Subdivision 4, which is 24 half acre lots.

Ms. Streufert: Do you anticipate at some point in time that you will actually be developing that area?

Mr. Siracusa: That's fully developed now.

Ms. Streufert: It is developed.

Mr. Siracusa: It's in the 85% sold, approximately.

Ms. Streufert: And that's not going to have any connection to A1, or 1A?

Mr. Siracusa: Correct. As far as any type of a sidewalk improvement there is the roadway that goes into Subdivision 4. Subdivision 4 terminates as a cul-de-sac. And you're correct, Commissioner, that is R2, that subdivision.

Mr. Estes: Commissioner Streufert, if I could clarify, that the curbs, gutters and sidewalks requirement is for residential properties of R4 or greater. So, in reviewing the subdivision, it's Residential R2, so we couldn't require the curbs, gutters and sidewalks requirement.

Ms. Otsuka: Can you help me understand? I think it's time for lunch. I'm getting fuzzy. The applicant is requesting, wait, the applicant wants to deviate request to waive requirement of sidewalks, so originally it was supposed to be two sidewalks, yeah, so, and you're asking for no sidewalks or you're asking for one, or we're asking for one.

Ms. Cox: We're asking for one.

Mr. Estes: If I'd like to clarify so, in both the variance applications the applicants was, is requesting in the application to have a waiver for sidewalks for both subdivisions. However, in reviewing the applications and speaking with the applicant, the Planning Department is recommending, and the Engineering Division is recommending one sidewalk.

Ms. Otsuka: One fronting. Okay.

Mr. Estes: One fronting, yeah.

Ms. Otsuka: Because when we make a motion because, so the department is recommending and it is being approved and preliminary recommendation #1 does state, the applicant shall construct the sidewalk along the subdivision frontage, but if, when, when we approve, if, when we approve this, do we need to verify that they agree?

Ms. Cox: They already did.

Ms. Otsuka: That's my point.

Mr. Estes: Yeah, so for Hōkūala for Subdivision 1, we would keep the condition as is, recommendation.

Ms. Otsuka: Okay.

Mr. Estes: But the recommendation would only be for approval of curbs and gutters and would not be for the waiver of the sidewalk requirement. Because we're having them, we're recommending that sidewalks are constructed along the Subdivision 1's frontage. For Subdivision 1A, our approval would be to recommend, to approve the variance permits as is, but we would amended Condition 1, which I have written up for you that I would read onto the record.

Ms. Otsuka: Okay.



Mr. Estes: That would require instead of constructing sidewalks, it would require the applicant to pay an in-lieu fee.

Ms. Otsuka: I'm sorry, the applicant...

Mr. Estes: Would be required to pay an in-lieu fee. For the required sidewalk construction.

Ms. Sayegusa: So, instead of...

Ms. Otsuka: Instead of...

Ms. Sayegusa: ...instead of constructing the sidewalk, they would, the request would be to pay the fee that would be equivalent to the cost of constructing it.

Ms. Otsuka: I'm just trying to understand how the motion is going to be.

Ms. Sayegusa: Yeah, I think, well...

Ms. Cox: Probably two.

Ms. Sayegusa: ...yeah, we'll probably separate the actions and we wanted to kind of bring it up and have the presentation together, but I think as far as the recommendation and action, we'll have Kenny review, read each separately, the recommendation.

Ms. Otsuka: Okay. Thank you.

Ms. Cox: So, Jodi, I have a question because you were mentioning that the connection, you know having the connection from 1A to 1, the sidewalk on one, can we add that as a condition?

Ms. Sayegusa: We could, I think, or I think the, what we were discussing is perhaps through the subdivision because this is, this is an application to vary from the standard requirements, but when we go back and work with the applicant through the subdivision, hopefully we can seek further comment from engineering on you know, and or work with the applicant to ensure that 1A would have some sort of connection to you know, whether it's to Pohaiula and then eventually down to Ho'Olaulea, or if there's a sidewalk that could connect from 1A to the sidewalk on the other side of the along Subdivision 1. So, I think, I think we could do that through the subdivision process.

Ms. Cox: Okay. Thanks.

Ms. Sayegusa: Yeah.

Chair Apisa: I would like to clarify that as we're talking about sidewalk, we're talking about one side of the street and not both sides.

Mr. Estes: Correct.

Ms. Cox: Correct.

Chair Apisa: Thank you for clarifying that. Further comments?

Ms. Streufert: Would there, as Commissioner Otsuka had requested earlier for the other one, for Condition No. 7, could the Planning Commission reserves the right to revise, add or delete...

Ms. Sayegusa: Sure.

Ms. Streufert: ...so, adding the term, we're getting the word revise.

Mr. Estes: Okay, I can amend that in there.

Ms. Streufert: Thank you.

Ms. Sayegusa: So, I guess with that perhaps we could hear the recommendation for Z-IV-2024-7 and Variance V-2024-3 first.

Chair Apisa: Yeah. We will take action on one, on that one first, and then the other one after action is taken.

Mr. Estes: Correct. So, this is for Hōkūala Resort Subdivision 1. Based on the foregoing evaluation and conclusion, it is hereby recommended the Class IV Zoning Permit. Z-IV-2024-7 and Variance Permit V-2024-3 be approved as amended subject to the following conditions noted in the Director's Report, and the revision to Condition No. 7, which states the Planning Commission reserves the right to revise, add or delete conditions of approval in order to address or mitigate unforeseen impacts this project may create, or revoke the permits through the proper procedures, should conditions of approval be violated or adverse impacts to be created that cannot be properly addressed.

Chair Apisa: Any discussion on the department's recommendation, and maybe clarification from the applicant that they are in agreement with the conditions.

Mr. Siracusa: We are in complete agreement with the condition. Thank you.

Chair Apisa: Call for the vote, or I mean a motion.

Ms. Cox: I would like to make a motion, that we approve as recommended Class IV Zoning Permit Z-IV-2024-8, Variance Permit V-2024...

Ms. Sayegusa: 7.

Ms. Barzilai: Commissioner Cox, we're on the one prior to that.

Ms. Cox: Oh sorry. I have the wrong...

Chair Apisa: Item number 3.

Ms. Barzilai: No problem.

Ms. Cox: Where is it...okay. Z, IV, Z-IV-2024-7, sorry, and Variance Permit V-2024-3, be approved according to the conditions as amended.

Ms. Otsuka: Second.

Chair Apisa: We have a motion on the floor. Any further discussion on it? Hearing none, a roll call, please.

Ms. Sayegusa: Okay. Commissioner Ako?

Mr. Ako: Aye.

Ms. Sayegusa: Commissioner Cox?

Ms. Cox: Aye.

Ms. Sayegusa: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Sayegusa: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Sayegusa: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Sayegusa: And Chair Apisa?

Chair Apisa: Aye.

Ms. Sayegusa: Motion carries. 6:0.

Chair Apisa: Congratulations. Now moving on to Item No. 4 here on the agenda. For Zoning Permit Z-IV-2024-8 and Variance Permit V-2024-4.

Ms. Sayegusa: Can Kenny give the recommendation?

Chair Apisa: Yes, please.

Ms. Sayegusa: Sure.

Mr. Estes: I'll read the recommendation. So, this is for Hōkūala Resort Subdivision 1A. Based on the foregoing evaluation and conclusion, it is hereby recommended that Class IV Zoning Permit Z-IV-2024-8 and Variance Permit V-2024-4 be approved as amended, subject to the following conditions, noted in the Director's Report with an amendment to Condition No. 1, that reads, the applicant may use drainage swales in-lieu of raised curbs and gutters, provided that the proposed design conforms to the standards of County Department of Public Works Engineering

Division and is submitted to the Department of Public Works Engineering Division for their review and approval. Additionally, pursuant to Section 9-2.3(e) (3)(c) and Section 9-2.3(e) (3)(c), of the Subdivision ordinance, Kaua'i County code 1987 as amended prior to Final Subdivision Map Approval of Subdivision Application No. S-2024-8, the applicant shall pay a fee in-lieu of the required sidewalk construction equal to or greater than 100% of the cost of constructing the sidewalk as determined by the County Engineering. And also, an amendment to Condition No. 7 of the Director's Report, which (inaudible), the Planning Commission reserves the right to revise, add or delete conditions of approval in order to address or mitigate unforeseen impacts this project may create or revoke the permits through the proper procedures should conditions of approval be violated or adverse impacts be created that cannot be properly addressed.

Chair Apisa: Do we have any further discussion, or I will entertain a motion.

Ms. Streufert: I move to accept the departments recommendation to approve Class IV Zoning Permit Z-IV-2024-8 and Variance Permit V-2024-4 as noted and revised.

Ms. Cox: Second.

Chair Apisa: We have a motion on the floor. Any further discussion? Hearing none, roll call, please.

Ms. Sayegusa: Commissioner Ako?

Mr. Ako: Aye.

Ms. Sayegusa: Commissioner Cox?

Ms. Cox: Aye.

Ms. Sayegusa: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Sayegusa: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Sayegusa: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Sayegusa: And Chair Apisa?

Chair Apisa: Aye.

Ms. Sayegusa: Motion carries. 6:0.

Mr. Siracusa: Thank you, Madam Chair, commissioners, Jodi, and Kenny as well. Enjoy your lunch.

Ms. Otsuka: Thank you for your time.

Ms. Cox: Thank you for your patience.

Ms. Otsuka: Thank you.

### **EXECUTIVE SESSION (None)**

Ms. Sayegusa: Okay, with that. No need for Item M.

### **ANNOUNCEMENTS**

Ms. Sayegusa: N. Announcements. Again, I think we do, I have to double check whether there will be a meeting, the next meeting in July 23rd. We will give you folks notice if so, if not, we'll see you folks in August.

### **ADJOURNMENT**

Ms. Sayegusa: Okay, and we're on Item O., Adjournment.

Chair Apisa: Motion to adjourn?

Ms. Otsuka: Motion to adjourn.

Ms. Cox: Second.

Chair Apisa: All in favor. Aye (unanimous voice vote). The meeting is adjourned. 6:0.

Chair Apisa adjourned the meeting at 12:06 p.m.

Respectfully submitted by:

    *Lisa Oyama*    

Lisa Oyama,  
Commission Support Clerk

Approved as circulated (August 13, 2024, meeting).

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