

KAUAI PLANNING COMMISSION  
REGULAR MEETING  
January 26, 2010

The regular meeting of the Planning Commission of the County of Kauai was called to order by Chair, Caven, at 9:04 a.m. at the Lihue Civic Center, Moikeha Building, in meeting room 2A-2B. The following Commissioners were present:

Mr. James Nishida  
Mr. Herman Texeira  
Ms. Paula Morikami  
Ms. Camilla Matsumoto  
Mr. Cave Raco  
Mr. Jan Kimura  
Mr. Hartwell Blake

Discussion of the meeting, in effect, ensued:

Swearing in of Returning Commissioner, Ms. Camilla Matsumoto.

**APPROVAL OF THE AGENDA**

Chair: Can I get an approval of the agenda?

Mr. Texeira: So moved.

Ms. Morikami: Second.

Chair: All those in favor say aye, opposed, motion carries.

**On motion made by Herman Texeira and seconded by Paula Morikami, to approve the agenda, motion carried unanimously by voice vote.**

**GENERAL BUSINESS MATTERS**

Request (11/25/09) from Greg Kamm Planning & Management to amend Conditions No. 1 (relating to infrastructure improvements) and No. 2 (relating to the requirement of an all-weather access surface), and provision of a status report for Use Permit U-87-41, Special Permit SP-87-13 and Class IV Zoning Permit Z-IV-87-51, Tax Map Key 2-7-01:3, Koloa, Kauai = **Kahili Adventist School.**

- a. Staff Report pertaining to this agenda item.

Staff Planner Mike Laureta: At the meeting held of May 27, 1987 the Planning Commission approved the above referenced permits to allow master planning for school and church related uses on the entire Kahili Mountain Park site which is exhibit 1. These permits covered the entire 195 acre State Land Use, Agriculture District site, which necessitated Land Use Commission review and approval. As a result of concerns raised by the State Land Use Commission, 4 additional conditions of approval were added which are exhibits 2 and 3. For the Commission's information the original Master Plan for the site is in your packet and it 11 x 14, this is what it referred to. All the improvements proposed are at the top.

This map is the existing site, Kaumuali'i Highway going west, the tree tunnel is just about here, the entry to Kaumuali'i Highway is here. The existing school campus is located in blue, the pink is the existing cabinets which are like hard tents, no plumbing, no cooking facilities. The existing cabins are in yellow and are also including faculty housing. There are additional improvements that were approved by the Planning Commission back in the 80's which haven't really been constructed, that is why staff provided what was approved and what is existing. Does the Commission want me to read the whole thing or I can summarize it?

Chair: You can go ahead and summarize if there is no objection.

Staff: Basically the request before you is to refine two conditions of approval. The first one is regarding interior roadway and waterline improvements. The second request is related to a roadway improvement from Kaumuali'i Highway all the way in. This request was sent to all the government agencies and they all came back with no objections to the request. DOT Highways did submit a letter and requested that the conditions be refined. The justifications are provided in the staff report and we have no objection to the request based on the agency comments and recommendations basically from Water, Fire, and DOT Highways. If there are any questions I will go now.

Mr. Nishida: You know the Land Use Commission petition, it was done in that Findings of Fact and Conclusions of Law kind of presentation, why was that?

Staff: That is the standard format.

Mr. Nishida: So everything the Land Use Commission does comes out in this form?

Staff: Land Use Commission, yes.

Mr. Nishida: And then the development it's self, will the changes they are proposing today allow for future development or are they built out?

Staff: No. As reflected in the 1987 Master Plan which is the 11 x 14, there are additional improvements, cabin related improvements and school related improvements that could be constructed. But as the applicant submits their plans, they will go through Fire, Water, and DOT Highways, whatever they require will be necessary to be provided.

Mr. Nishida: And will condition 12 apply to those further improvements, which is the one about the design review?

Staff: 12 will still apply.

Mr. Texeira: Mike, could you address the provision for the penetration base. In your original recommendation one of the conditions was to include that and now it's not...I just wanted to address that.

Staff: Thinking back in the 80's, because this was one of the first urban type uses to go into Ag. lands and the churches followed quickly there after, the thinking was that County standard improvements such as roadways should accompany an urban type use in the Agriculture District. Since that time, to this day and time, there has been a lot of discussion relating to retaining the agriculture, rural ambiance and to maybe move away from urban related improvements which would cause other issues. The penetration base was at that time okay, it was widely used especially by the sugar cane companies. Staff's visualization was for a County standard asphalt/concrete driveway from Kaumuali'i all the way through but over time the Commission went through a lot of requests to retain the ambiance of the area and move away from requiring that level of improvement. So to this day and time the rolled, the base course the way it is now hasn't been an issue. They have realized that they have to maintain it to be safe but that base core is over an existing cane haul road which helps tremendously.

So requiring a capital outlay to do such an improvement of a driveway for that distance versus the impacts to the environment with the penetration base, it was considered acceptable. There haven't been any issues other than the environment has moved recognition of impacts to the environment over the penetration basins have become standard, penetration base isn't used now just because we know now that drainage off of that surface and the runoff into waterways and drainage ways, there is more of an impact to the environment with that.

Mr. Blake: There is more what?

Staff: The impact to the environment with the penetration base, the oil based penetration.

Mr. Blake: So 16 feet is then width.

Staff: 16 feet is what exists.

Mr. Blake: And the penetration base treatment is the (inaudible).

Staff: The penetration base is the oil base. What they are doing now is rocking and rolling.

Ms. Matsumoto: What is the condition of the road? Are there potholes? Is it smooth? Is it very bumpy?

Staff: Passenger cars can do it easily. It is pretty nice. The temptation to do other things on that kind of surface exists but they maintain it pretty well.

Chair: Right now there is a house that utilizes that road too, yes, from the main street. Isn't there a house there on the main drag?

Staff: On this subject property?

Chair: A little before the property.

Staff: There are no improvements from the tree tunnel. Basically the primary entrance to Kahili is at its driveway location here. There are no other residential improvements either along the highway or driveways coming up.

Chair: There is a house, right there where you are pointing.

Staff: Here, coming up.

Chair: Yes.

Staff: I am not sure if you call it a house. Let's ask the applicant.

Chair: Or a barn.

Staff: Storage facility.

Ms. Morikami: I was just wondering on the different departmental request, Public Works and Engineering, I don't see a report from them. Do they have a problem?

Staff: No. They don't comment on interior driveways.

Ms. Morikami: I know that it was marked here and also DOT, SDT, but that is not relevant?

Staff: No, Highways would be the ones.

Mr. Jung: Just for the record it is a private driveway.

Chair: Before I call up the applicant is there any more questions for the planner, if the applicant could come up, Gregg?

Mr. Gregg Kamm: Thank you Mr. Chair, thank you Commissioners, for the record my name is Gregg Kamm representing the applicant, Conference of Seventh Day Adventist. First I wanted to thank Mike for all his work on this staff report. It has taken a little while to get responses from various agencies and so forth but Mike has been very helpful and put together what I think is a very good staff report. I wanted to clarify one other matter which is, or a couple of matters which is that this is also a status report for the Commission. It has been a long time since we have been here before you or since this applicant has been here before you and it seemed appropriate to not only clarify and refine the two conditions that needed it but also provide a status report showing compliance with the remaining conditions. That is what is

contained in the application its self which I believe you each have a copy of and each condition is reviewed and the status of compliance is shown.

To answer a question which came up before, yes, there is at least one house off the private driveway going into the school. It is not on the subject property but it is used by the subject property. They actually contribute to the driveway maintenance. That is one of their businesses besides farming. I would be happy to answer any questions the Commission has on this.

Chair: Are there any questions for the applicant?

Mr. Kimura: I am familiar with that road going up there on the intersection of Kaunualii Highway, have there been any accidents there within the last year or year and a half?

Mr. Kamm: There have not. Unfortunately on the 20<sup>th</sup> of this month, reported in the paper, was an accident and it was reported as being near the entrance to Kahili Mountain Park. I went and got the press release, it actually was at Oma'o Bridge and it was somebody drifting over the center line at 10:00 at night so it was not there. There have been no accidents in the vicinity of this driveway, intersection. DOT was very cautious, they were supportive but they wanted us to do an intersection analysis which we did perform for them and which they accepted. And their request is that every 5 years we go back and take a look to see if there have been any substantial changes. But it has been, knock on wood, a very safe situation.

Chair: Any more questions for Gregg, thanks Gregg.

Mr. Kamm: Thank you very much.

Chair: Is there anybody in the public that would like to testify on this agenda item, seeing none...

Ms. Morikami: Mr. Chair, move to receive the request dated 11/25/09 from Gregg Kamm and also receive the staff report and approve the staff report based on the conditions imposed.

Ms. Matsumoto: Second.

Chair: All those in favor say aye, no, motion carries.

**On motion made by Paula Morikami and seconded by Camilla Matsumoto, to receive request from Gregg Kamm and receive and approve staff report, motion carried unanimously by voice vote.**

Mr. Costa: Just to clarify, Paula you already made a motion to receive the first item.

Ms. Morikami: I moved to receive the communication from Gregg Kamm and the staff report and approve the conditions set forth in the staff report. Do you want to do it separately?

Mr. Jung: Just for clarification it would be better if you make a motion to receive and then identify a separate motion to approve the conditions as recommended.

Ms. Morikami: Mr. Chair, move to receive request dated 11/25/09 from Gregg Kamm.

Ms. Matsumoto: Second.

Chair: All those in favor say aye, no, motion carries.

**On motion made by Paula Morikami and seconded by Camilla Matsumoto, to receive request from Gregg Kamm, motion carried unanimously by voice vote.**

## COMMUNICATION

Request (1/15/10) from Hartwell K. Blake to the Planning Commission transmitting letter dated December 21, 2009 from Carlos R. Buhk regarding the status of conditions set forth by the Fifth Circuit Court Order, Civil No. 07-1-191, relating to the development of a condominium project consisting of eight (8) single-family residents on CPR units 1 to 8 and 72 multi-family units on CPR unit 9 for Use Permit U-2000-20 and Class IV Zoning Permit Z-IV-2007-24, Tax Map Key 2-8-09:1, Kōloa, Kauaʻi = *Kōloa Creekside Estates LLC*.

Chair: B.1. Before there is a motion I would have to recuse myself as the Chair on this and the Co-Chair would take that motion.

Vice Chair Texeira: Commissioners, what would you like to do in this matter?

Ms. Morikami: Mr. Chair, move to receive this communication from Hartwell Blake date 1/15/10.

Ms. Matsumoto: Second.

Vice Chair: Any questions, all those in favor say aye.

**On motion made by Paula Morikami and seconded by Camilla Matsumoto, to receive communication from Hartwell Blake, motion carried unanimously by voice vote.**

Vice Chair: Any other motions at this time? At this time I would like to open it up for public comment. All those wishing to speak on this item, could you please raise your hand, I want to know how many people. Do you want to come forward?

Mr. Ted Blake: Good morning Mr. Chair and Commissioners. My name is Ted Blake, I am a resident of Kōloa and I am one of the parties and residents and members of the Community Association concerned with this letter that Mr. Buhk has sent to the Planning Commission. I believe the letter was dated sometime in December. My concern is that the rules were set by the developer by sticking to time tables, he took the County to court because of the time tables and now he is playing with the rules and not sticking to the time tables. So what he held the County to I would expect the County to hold them to the same rules that they won their suit on. And the conditions imposed by the judge have to be looked at carefully because there are numerous conditions that have not been met at the dates and times they were supposed to and adhered to.

Vice Chair: Any questions for Mr. Blake?

Mr. Blake: When this comes up on the 9<sup>th</sup> you will have another discussion, I mean open to public testimony won't you?

Vice Chair: I'm not too sure.

Mr. Jung: This is just a communication so if there is a request to the department to look into it and that motion is seconded and the department looks into it, then if it gets on the agenda a second time then there will...

Mr. Blake: So there is no, it is not sure that it will be entered on to the agenda on February 9<sup>th</sup>?

Mr. Jung: That would be up to the Commission.

Mr. Blake: What process are we going through right now?

Mr. Jung: This is just a communication from Commissioner Blake.

Mr. Blake: To put Mr. Buhk's letter on to the...

Mr. Jung: He made a request.

Mr. Blake: So after the vote we will know whether or not it gets on the agenda, correct?

Mr. Jung: That is how it would work, yes.

Mr. Blake: And if it gets on the agenda there is another opportunity for public testimony?

Mr. Jung: If it gets on the agenda. Every agenda item is open for public.

Mr. Blake: Thank you Mr. Jung, I appreciate that.

Vice Chair: Anybody else wishing to speak on this matter?

Mr. Louie Abrahams: Commissioners, Louie Abrahams, President of the Kōloa Community Association. Our board took a look at this letter and also had some comments about it and we think there are some issues that the Commission needs to help us get through. As you are well aware the Kōloa area is historic design district treated, STC and we are not clear exactly how we would go about evaluating those properties in the STC whether they be individual single family dwelling units or multi-family dwelling units. And I think part of that is some of the concern that we have seen. As you know you entertained an application for Mr. Buhk's house as being in the STC after it was actually constructed because there was an attempt to take a look at the ordinance and apply it and we thought that was a good idea. We have also seen in the STC area some other dwellings come up that we would normally expect some sort of public hearing on.

What we are trying to do is come to some sort of understanding as to just exactly what is this historic district and how does that ordinance apply. In reading the ordinance, the report, it is a little vague and we would like to basically come to some sort of understanding as we go through evaluating any more projects or homes to whether or not we are going to be looking at those. We understand there is this one another lawsuit that is under court order and there are a lot of questions as to whether or not how the CZO applies, whatever, and I don't know if it's handled on the County Attorney's side or at the Planning Department side. But we think that these are good issues that we can come to some clarity on and then be able to apply in the future, thank you.

Mr. Jonathan Chun: Good morning Mr. Chair, Jonathan Chun on behalf of the applicant. I was not going to comment but I need to correct some of the statements that were made earlier in regards to the statements made by Mr. Blake. The developer did not set the time table, it was agreed upon by both the County and the developer. The developer has met all the time tables except one which is the delayed report and that was delayed by about a month and a half. We want to also point out that he pointed out that the County has met all the time tables but the County has not. I just want to make it clear on the record, the County has consistently violated all the time tables that the court set forth in its order and my client has consciously made a decision not to bring these matters to the court because of the County's violations but to work with the County and traditionally has been consistently doing that. So I think my client takes very seriously its obligations and we have been very open to working with the County.

What concerns me with the Community Association and Mr. Buhk and others want to get involved, I want to remind the Commission that in the order it specifically stated there is a liaison person to handle these issues. We have appointed a liaison person and I want to make it clear that our liaison has never been contacted by the County, has never been contacted by the Community Association or any member of the community about any concerns they have and not they are bringing it in front of the Commission. Talk about violating the terms of the order, that is exactly what they are doing, they are trying to involve the Commission when the order basically says work it out with the liaison. And so again I am going to make it clear, we are open, we have appointed our liaison. Nobody has ever contacted us about any of their concerns.

As far as Mr. Abrahams comments, that is clear. We are glad that the Commission did impose a requirement of a Use Permit on Mr. Buhk after the fact, after he constructed the house and after he finished it but the process that we are following with the single family house that was built on Kōloa Creekside, it was based on the court's order submitted to the County for review. The County looked at it and passed the review and we have done that so I don't know

what other process they want us to follow because it is in the order its self and we have done that and we have complied. That is all I have to say.

Vice Chair: Does anyone have any questions?

Mr. Blake: Mr. Chun, have you received a copy of the Buhk letter?

Mr. Chun: I saw somewhat of a copy. I think there were a couple pages that didn't come through but I did see a copy of the first and last page, I believe.

Mr. Blake: So have you attempted to get a copy?

Mr. Chun: My understanding in talking with the staff was that they were going to send a communication to us in terms of..because we did file the report. The report was filed with the Commission on January 4<sup>th</sup> with the department. My discussion with the staff is that they were going to take a look at that and if there were any additional comments that they want on the report or questions that they were going to communicate those questions or comments back to us. So I thought it might be more appropriate to wait for the department in terms of their questions and concerns as opposed to reading another letter from somebody else regarding the same matter.

Mr. Blake: So has the community liaison attempted on his own initiative or her own initiative to discern what these concerns are and try to work it out with the Community Association?

Mr. Chun: Based upon the court order we submitted a communication...

Mr. Blake: Just yes, or no.

Mr. Chun: We have contacted the community association with the name of the liaison. We have not received any communication from them since.

Mr. Nishida: Chair, can I interrupt. I have a question on the agenda item. The agenda item is a letter requesting that the department, well basically it is responding to Carlos Buhk's issues so I was kind of wondering, we know now that there are issues. Jonathan presented...there are two sides to these issues as far as the Carlos Buhk letter so to me it seems like the agenda item is related to this communication from Hartwell asking the department to look into, the Commission to direct the department to look into this. I don't know the exact wording but basically what can result from this is a motion to have the department look into it and then come up with recommendations or status report or something. So I was thinking that maybe this discussion, we are not at that point yet and it should be more related to the letter from Hartwell.

Vice Chair: I concur.

Mr. Blake: I asked in the letter that the department prepare a brief report addressing the specific court ordered conditions to be met by Creekside as set forth by Mr. Buhk and I would like to move that that be done.

Mr. Nishida: Second.

Vice Chair: Any questions?

Ms. Morikami: Can you repeat again the motion?

Mr. Blake: I move that the department prepare a brief report addressing the specific court ordered conditions to be met by Kōloa Creekside as set forth by Mr. Buhk in his letter.

Vice Chair: It has been moved and seconded, do you have any further questions?

Ms. Morikami: I have one more question for the Director, based on this motion, what is the time frame we are looking at as far as getting the report if we vote to get a report from them?

Mr. Costa: I believe we would be prepared to report back at the next Commission meeting. What is the date?

Ms. Morikami: February 9<sup>th</sup>.

Ms. Matsumoto: I have another question. Would that process involve the liaison, communication with the liaison or when would that happen?

Mr. Jung: If I could interject here. I think what is happening is there is a motion on the floor for the department to look into whether or not there has been compliance with certain conditions in a court ordered approval of a permit. If the request is for the department to review and do somewhat of a status report to give you general information about where the conditions are then that is a valid request. But if you are getting to the point of looking at whether or not conditions have been met then there are separate protocols that can be followed under our rules. But if the request is by the Commission to go look into and do a status report then that is proper.

Mr. Blake: I have a question based on what you just said. If the Commission does a status report, if you look at Mr. Buhk's letter he states the condition and he says complied, and then there is a blank check off for complied or did not comply. Does the status report respond to the comply or not comply question?

Mr. Jung: I think that would be up to the Director to make that call in looking at what the status report says submitted by the applicant and compared to how the department feels these conditions have been met. I think a better forum, if the motion is approved, is to address that at a later meeting rather than getting into detail now because it is just that direct request.

Mr. Costa: If the Commission asks in the motion it would be our intent to do a summary of the court order as well as whether actions have been done to comply with that order or not. And then copies of that would be supplied to the applicant as well as the liaison if appropriate.

Mr. Nishida: I have a question, the role of the Commission and the department when the subject was part of a court order, so in saying that the department will come up with a report, are we violating any part of the court order. Well the question is whether we still cover, whether the Commission still covers these issues even though the court has ordered these conditions to be met.

Mr. Jung: I can address that. What we will do is if the request is noted and passed by the Commission we will work hand in hand with the department in addressing those concerns.

Vice Chair: Any other questions?

Mr. Blake: So as I understand what the Director said, the department will look at the whole of the court order in addition to what Mr. Buhk raised or the issues that Mr. Buhk raised on his own address the status of that court order *visa vi* the developer. We are not just looking at Mr. Buhk's issues are we?

Mr. Costa: Actually we have received a status report so we would analyze the status report and its compliance with the conditions as reiterated by Mr. Buhk's letter.

Ms. Morikami: I have a question. In following up what Commissioner Nishida asked, I am not clear on what the role is of the Planning Department, the County Attorney's office, and the Planning Commission. What role do we play based on this communication, the Planning Commission? I am not familiar with the court order. I am not familiar with the original approvals so I would like to know what role the Planning Commission has in this matter. In reviewing it I don't know if just the Planning Department, the County Attorney's office...I am not clear on what we do as the Commission.

Mr. Jung: That is a valid question because we would have to, because this request takes into consideration what was issued, what the court ordered the Planning Commission to do, we would have to do some research. Our office would have to do some research into what necessary steps there are if there is say a noncompliance. But we will address that if it is requested upon us and I am sure the department will address that no matter what.



Ms. Morikami: Thank you.

Vice Chair: Anybody else?

Mr. Blake: So Mr. Nishida you are asking about whether, if I understand you correctly, you are asking whether the court is now the Planning Commission and department or whether those duties still remain with us, those duties and responsibilities. Was that your question?

Mr. Nishida: Kind of the whole range, what is the role of the Commission given that there is a court order and what lies with the court and what lies with the Commission and what lies with the court.

Mr. Costa: I think to clarify that question we will work closely with the County Attorney to lay that out as well.

Vice Chair: Any other questions, if not all those in favor say aye, opposed, motion carried.

**On motion made by Hartwell Blake and seconded by James Nishida, for Planning Department to review and provide status report, motion carried unanimously by voice vote.**

Commission recessed at 9:45 a.m.

Meeting was called back to order at 10:00 a.m.

#### **SUBDIVISION**

Mr. Nishida: Subdivision Committee report No. 12, committee members present, Jimmy Nishida, Camilla Matsumoto and Jan Kimura. General business, none, communication, none, unfinished business, none, final subdivision action for S-2009-10, State of Hawai'i, County Department of Water, TMK 1-2-002: por. of parcel 001, approved, 3-0. S-2009-18, Alexander & Baldwin, Inc./McBryde Sugar Company, Ltd., TMK 2-5-1:002, 008, 011, approved 3-0, S-2010-3, K.D. Kapule, LLC, TMK 3-5-001:165, approved 3-0. Move to approve Subdivision Committee report.

Ms. Matsumoto: Second.

Chair: All those in favor say aye, hold on...

Ms. Morikami: Mr. Chair, just for the record I will be abstaining from voting on item D.1.b. I have a pending claim with Kukui'ula Village which is directly within.

Chair: Thank you Paula, take them up separately.

Mr. Nishida: Motion to approve item D.1.a and D.1.c.

Mr. Blake: Second.

Chair: All those in favor say aye, motion carries.

**On motion made by James Nishida and seconded by Hartwell Blake, to approve D.1.a and D.1.c, motion carried unanimously by voice vote.**

Mr. Nishida: Move to approve D.1.b.

Mr. Blake: Second.

Chair: All those in favor say aye, motion carries.

**On motion made by James Nishida and seconded by Hartwell Blake, to approve D.1.b, motion carried unanimously by voice vote.**

## **UNFINISHED BUSINESS**

Memorandum (9/2/09) from Director Ian K. Costa to James Nishida, Chair, Kauai Planning Commission, recommending the Commission consent to the issuance of Non-Conforming Use Certificates pertaining to Transient Vacation Rentals (see Agenda Attachment "A"). [Action deferred 9/8/09].

- a. Staff Reports pertaining to the recommendation to consent to issuance of Non-Conforming Use Certificates for Transient Vacation Rentals listed in Attachment A.

Mr. Costa: Chair, I guess if I could make a summary. This has to do with the TVR ordinance which was approved by the County Council in March, 08, that ordinance set forth an application deadline to not only register transient accommodations which included multi-family projects by October, 08. Upon that registration or application deadline we did receive a total of 3,497 applications for registration and a subsequent deadline of March, 09, was set in the ordinance for single-family transient accommodations who had been in prior existence to obtain approval from the Planning Department by March 30, 2009. Of the 3,497 registration applications there were a total of 543 that applied for a nonconforming use certificate for the single-family transient vacation rentals. To date, a total of, of that 543, a total of 198 have been denied. The batch before you as part of this memo are some of those applications for the nonconforming use certificates that did not get approved by the department by March 30<sup>th</sup> for one reason or another and there are numerous reasons, either permits had to be verified or further work needed to be done that prevented us from approving by March 30<sup>th</sup>. At that point we did not have the authority to approve and that is what is before you today.

Mr. Texeira: The 32 are part of the 198?

Mr. Aiu: No.

Mr. Texeira: It's separate.

Mr. Costa: Yes.

Mr. Aiu: We didn't count those. These technically can't be counted as approved so the numbers given are to date.

Mr. Costa: The 198 I reported denied are approved prior to today, I mean denied prior to today.

Mr. Aiu: Chair, the Director did summarize very well what is in the staff report so if you would like I can just move on to the conclusion and recommendation of the final amended staff report which should have been in your addendum. It is titled "Amended Staff Report" and has a list of 20 TVR's for approval. Each TVR does contain, each TVR for approval is included in the larger packet with the smaller staff report (on file).

Chair: Questions?

Mr. Texeira: What about the other 12?

Mr. Aiu: The other 12 were either found to still have violations and so should not be approved or there were a number or two that due to mistakes with the log and paperwork had already been subsequently approved. Those that were already approved, the reports are included in this packet.

Mr. Jung: If I could just clarify Mr. Texeira, there was the original September memo, September, 2009 memo, and then the new memo references the ones requesting consent to approval and that list is 20. And just for the record these are all TVR's that were previously operating prior to March 7, 2008. They are not new TVR's.

Mr. Texeira: Of the 20 are you recommending approval of all 20, right?

Mr. Jung: Yes.

Mr. Texeira: I thought I saw one that was recommended for denial.

Mr. Aiu: There was one that was recommended for denial and was included in a staff report in here, mistakenly, but it is not included in this list. That is Peter White and it has been removed from the list so it is not amongst the 20 that is recommended now.

Mr. Nishida: The last one on the list, the Santelli, is it still on that list?

Mr. Aiu: Yes I believe it is.

Mr. Nishida: That one there, the zoning is Ag./Ag. I thought we weren't doing that?

Mr. Aiu: You can approve a TVR on Ag. if it was built prior to 1976 and the Santelli property was built prior to 76. I believe it was built around 63 or so.

Mr. Nishida: I noticed the approval letters don't have dates on them and the confirmation, there's no information on the confirmation receipts.

Mr. Aiu: On the confirmation receipts...

Mr. Nishida: Some of these applications were deemed approved.

Mr. Aiu: Yes.

Mr. Nishida: That means those letters were sent out already.

Mr. Aiu: Yes.

Mr. Nishida: But they don't have any dates on them. That is just how it was done?

Mr. Aiu: Because those were filled in later and Xeroxed over to the files without that.

Ms. Matsumoto: Some of these have...I am looking at one, Sara Grossman's, the issue was a lock-out issue, possible lock-out issue. So then after inspection everything was okay, does that mean she fixed it?

Mr. Aiu: No. The violation in those cases were like ostensible on-site violations when we went out and looked at it, it had the conditions that presented it's self as looking like a lock-out. However when we did subsequent research we found that the building was indeed built as permitted and subsequent research into their web operation revealed that it wasn't being operated as a multi rental unit.

Mr. Costa: To provide further clarification on that, the CZO does not prohibit placement of locks on doors and that does not necessarily constitute a second unit.

Ms. Matsumoto: That was just an example but my main question is say somebody has a violation and you ask them to fix it, they fix it, and then it is approved. After that is there any kind of way to make sure that they don't return to do what they did before?

Mr. Aiu: The only way to really do that is subsequent inspections at renewal. Obviously we cannot be out there daily or really even weekly with this number of inspections so we just have to keep watching the websites and watch on the renewal inspections.

Ms. Matsumoto: So is it every year?

Mr. Aiu: Renewal is annual.

Mr. Costa: An inspection would be done on the renewal as well as in response to any complaint receipts.

Chair: Are there any more questions?

Mr. Blake: You probably answered this already and I missed it but we initially had 32 to consider, that has been pared down to 20?

Mr. Aiu: Yes.

Mr. Blake: And the 12 that are not on the updated or the most recent list have been disapproved?

Mr. Aiu: Not all of them. Some of them were actually already approved so really didn't need any Commission action.

Mr. Blake: Are there any of the 12 that are going to disapproved?

Mr. Aiu: There are some that are still standing in denial, yes, 3 of them actually.

Mr. Jung: Remember, per the ordinance, if they are not approved by March 30, 2009 they are denied.

Mr. Aiu: So that is why they are off the list. No Commission action is necessary to deny those, they already are denied so they just stand as such.

Mr. Blake: If someone is legally operating a TVR in 2010, that operator has to reapply every year?

Mr. Aiu: Yes, per the ordinance, yes they have to reapply by July 31<sup>st</sup> every year.

Chair: Did you say illegally or legally?

Mr. Blake: Legally.

Mr. Aiu: That is what I heard too because I wouldn't have the same answer for illegally.

Mr. Blake: Are we under time constraints to get the inspections completed by a certain date?

Mr. Aiu: Renewal, the ordinance only specifies that they have to apply for renewal by July 31<sup>st</sup>. It does not specify a date that renewal has to be issued or completed by. None the less, that doesn't mean we can sit on it indefinitely of course but it does not necessarily either put us under any time constraints like the March 30<sup>th</sup> approval deadline did.

Chair: Any more questions? I will call up if there is anybody in the public who would like to testify on this agenda item you can come up now. Being that this is one agenda item the 3 minutes will apply to the entire agenda item and not each individual so if there is anybody in the public who would like to testify you can come up.

Mr. Dennis Smith: My name is Dennis Smith. We picked this up off the internet. We didn't even realize that this was happening today so we picked it up off the internet and came in. Actually we applied No. 14 on the entire island, we have been operating completely legal, we have nothing on our property that is nonconforming but when the list came out we had a denial so that is why we are here today, No. 31.

Chair: And on the new list he is No. 22.

Mr. Aiu: He is No. 19 on then new list.

Mr. Smith: I am No. 19 on which list is that?

Mr. Aiu: The amended list.

Mr. Smith: So we are approved then?

Mr. Aiu: Well you are approved if the Commission takes action to approve.

Chair: We will see if you are approved today.

Mr. Smith: We have been trying. We never received any type of a letter from the County at all we just saw a denial on the internet and we were told we could even reapply or couldn't pay our fee for this last year but we did. I have the receipt for it here. We have never been late on any of our taxes to the State. We have nothing noncompliant on our property, never have. We actually did an address change too because we had a problem coming off of Kūhiō Highway, we had to go across 3 or 4 properties and they gave us an address change on Alanui Road last year. I forgot the exact date but it's all been through...we don't even have a shed on our property, the property is clean. When Bambi came out to look at the property he came and said you have one kitchen, there was just no problem with it at all.

Chair: Thank you Dennis. Is there anybody else in the public who would like to speak on this agenda item, seeing none I will entertain a motion.

Ms. Morikami: Mr. Chair, move to receive the staff report and also the amended staff report that we received today, exhibit A.

Chair: As amended?

Ms. Morikami: Second.

Ms. Matsumoto: Second.

Chair: All those in favor say aye, no, motion carries.

**On motion made by Paula Morikami and seconded by Camilla Matsumoto, to receive staff report and amended staff report, motion carried unanimously by voice vote.**

Ms. Morikami: Mr. Chair, move that this Commission consent to the issuance of nonconforming use certificates pertaining to transient vacation rentals.

Mr. Jung: Just to clarify, that is on the revised list indicating 20?

Ms. Morikami: Yes, the one we received, revised exhibit A, D.1.A.a.

Mr. Nishida: Second.

Chair: All those in favor say aye, no, motion carries.

**On motion made by Paula Morikami and seconded by James Nishida, for Commission to consent to issuance of nonconforming use certificates pertaining to transient vacation rentals, revised list of 20, motion carried unanimously by voice vote.**

Commission recessed for lunch at 10:18 a.m.

Meeting was called back to order at 1:30 p.m.

Executive Session: Pursuant to Hawai'i Revised Statutes Sections 92-4 and 92-5(a)(4), the purpose of this executive session is to consult with the County's legal counsel on questions, issues, status and procedural matters. This consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Commission and the County as they relate to these agenda items.

There was no executive session held.

## CONTINUED PUBLIC HEARING

There were no continued public hearings.

## NEW PUBLIC HEARING

Zoning Amendment ZA-2010-6 to amend the zoning from Open District (O) to Residential District (R-4) for a property located in Waimea Valley, Kaua'i, approx. 350 ft. east of Maile Road and Waimea Valley Road intersection, further identified as Tax Map Key 1-6-5:18, and containing an area of approx. 45,280 sq. ft. = C. Ahko, Inc.

- a. Staff Report pertaining to this agenda item.

Staff Planner Bryan Mamacalay: Thank Chairperson Raco. I would like to have the Commission bring its attention to the tack board and staff would like to identify the location of the subject property. This is a 400 scale zoning map of the Waimea Urban Core, the ocean is here, my pointer is on Kaumuali'i Highway heading west towards Kekaha. This is Waimea River, the river mouth and at the intersection of Waimea Valley Road we have Big Save and the Waimea Fire and Police Substation. The subject property is identified by this red pin which is just north of the intersection next to Ching Park, the small park in Waimea Valley.

Staff Planner Bryan Mamacalay read staff report (on file).

Staff: As far as the agency comments, staff has received all of the agency comments except for Parks and Recreation Division. In talking with the Parks and Recreation Division I believe they would have no objections to the proposed amendment because as I found in a previous staff report back in 2006, and I would like to thank Walton Hong for bringing this to me attention, I did say for the record at that time that the Parks and Recreation Division has focused it's resources on the development and maintenance of the larger regional and active parks in the planning area such as Waimea Canyon Park, Lucy Right Park and the Kekaha Beach Park. So believe they are in the same mode, I don't think they have any plans to expand this park and this concludes staff's findings.

Chair: Thanks Bryan, are there any questions for the Planner before I call up the applicant to make his presentation?

Mr. Teixeira: Bryan, what is on the property right now?

Staff: There is a single family residence and most recently I found aerial photos there may be a storage shed on the property as well.

Mr. Teixeira: How do you access the property?

Staff: It's from Waimea Valley Road.

Mr. Teixeira: Is there a driveway?

Staff: I believe there is a driveway or there may not be a driveway according to the aerial photos.

Mr. Costa: Bryan, do you know when the residence was built?

Staff: I cannot pinpoint an exact date. I think the applicant can best answer that.

Mr. Teixeira: Waimea Valley Road is a standard road, not substandard?

Staff: According to the Public Works Department it is a collector roadway classification and apparently the right-of-way width and pavement width are narrow for that classification but it is a collector street.

Mr. Teixeira: So how would that roadway comply with the subdivision?

Staff: Generally when a developer comes in to subdivide the property further, lands would have to be dedicated or perhaps a setback area but that would be determined at the time they come in for subdivision. And we could set the standards at this point in time as well.

Mr. Texeira: Has Public Works indicated any plans to widen that road? Have you received any plans or discussed anything with Public Works concerning that road?

Staff: Normally they would indicate that in their comments but they haven't made those kinds of comments in their report to the Commission.

Ms. Matsumoto: There is a photograph; this must be the house you are talking about.

Staff: Yes, that would be the house as you pointed out and the storage shed I believe is shown on exhibit (f). It is tent like structures. Exhibit (e) also shows the storage tent. I will call it a tent rather than a shed.

Mr. Texeira: Bryan, the surrounding properties, can you tell me something about them in terms of conforming to his request?

Staff: If you look at the zoning map where it identifies the subject property, it is similar to the zoning map here on the tack board, as you can see to the north and to the east lands are zoned R-4. So the property is perfectly surrounded by residential zoned properties with the exception of Ching Park to the south. So generally it is a bedroom community of Waimea Town.

Chair: Any more questions? Then we will go ahead and call the applicant up to give his presentation.

Mr. Walton Hong: Thank you Mr. Chairman and members of the Commission, for the record my name is Walton Hong representing the applicant C. Ahko, Inc. et. al. With me in the background are two individuals, Dr. Howard Ahko who is one of the sons of Ching Chung Ming Ahko, the patriarch I guess and the other is Ralph Keon who is the husband of Janet Keon who is another daughter of Ching Chung Ming Ahko. So there are two other relatives owning the property.

When we came in 2006 I am not sure which of the Commissioners were already here and which are new so if I may just spend a few minutes going over the background of this property. This property is a family property that has been in the Ching Ahko family for generations. The present ownership consists of four people, C. Ahko, Inc. which is a corporation of which the principals, officers, and directors are all children, spouses and one grandson of the Ahko patriarch. The other one half is owned, one sixth by Howard Ahko, son, one sixth by Janet Keon, daughter, and one sixth by Anna Li Trust. Anna was the third child of Ching Chung Ming Ahko. So it has been a family owned property for literally generations.

The family as you should know is originally from Kaua'i and they used to run the Ahko general merchandise store in Waimea until I think the mid 80's or thereabouts. The children grew up on Kaua'i, helped in the store and when they reached college age went away for schooling or for job opportunities so frankly none of them live on Kaua'i although they have owned the property for as I said decades and decades. I was told by Janet in a letter that they used to plant rice on the property back in the 1930's until they found they couldn't compete with the California rice growers and they just gave it up and the property has been vacant since then.

The petitioners are not large landowners. What they are seeking is to rezone the property from its current open zoning to residential R-4. If you look at the zoning map it is like a donut with the center of the donut being the County Park and this property, the only two parcels in the area being zoned Open. And we suspect the reason it was zoned Open was in case the County needed to expand the County Park it would be less expensive to condemn Open zoned land than it would be to condemn Residential land. However as Mr. Mamclay has indicated it is true that the County has indicated in writing to us that they have no plans to expand the park, the park is not a park of high intensity use, so we feel that...all we are asking is that we be treated like anybody else, be fairly treated. If everybody else's is R-4 then we should be entitled to the same privileges if you will for an R-4 zoning.

As I said we came before you in 2006 and we are coming before you again and of course the question is what has changes since then. First of all, when we first came to you in 2006 we asked for an R-6 zoning. Our rationale was we had essentially six members and its kind of hard to develop a property with four units and divide it amongst six family members. So we asked for R-6, hoping each one would get one unit. However we recognize now the reality that R-6 is not going to be possible and we came in and said okay, let's make it R-4 like everybody else and they will work out how they divide up the usage of the property among the family members. At the time that we came in there was a question, was there a requirement for affordable housing or not? That was up in the air, there was no County housing policy at that time. Now there is a County housing policy that makes it very clear, given the size of the lot and the possible density, there is no housing requirement. That was something that was hanging over our heads and was real uncertain that cause us some concern.

Thirdly, at the time we came in 2006 there was a question, was there available sewer capacity. In 2006 there was talk about sometime in the future they were going to expand the Waimea Sewage Treatment System. It is now fact; the contract has been let out for the expansion for the Waimea Sewage Treatment Plant. The contract was for 24 months and we would expect within 24 months there will be sufficient capacity to service this property. Fourth, the time we came in for the property was just left vacant, Kiawe bushes, scrub bushes, and actually in a very un-kept state. Since then we have cleared the property, we have built one residence on the property and a tenant is using the property at will to graze as you can see from the photographs that were attached to the petition until the property can be developed.

Lastly, at the last go around we did not have the support of the community. I gave Bryan and I think he gave all of you copies, we have 16 letters, the last two came in this morning, 16 letters from people within the 300 feet of the property. And I know it is 300 feet because when we sent out the notice of public hearing we enclosed that letter that you have in front of you and said if you do not object to it we would appreciate you indicating so and we got 16 letters back and I think this shows that the community surrounding the property has no objections to the rezoning. Some of the issues that were raised in the prior rezoning request and I am going to (inaudible) because I think it bears mention, that the owner is a big developer who lives off island and who will reap profits from the development of this property. As I indicated the owners are not big developers they are family members that have owned the property since I don't know how long, perhaps 70 years, 80 years. As I said the three children grew up in Waimea, worked the fields in Waimea, helped run the store, even helped farm this property until they gave it up due to the competition from rice so that is not a fact any longer. Yes, they no longer live on Kaua'i, that is true but the fact that they no longer live on Kaua'i should not be a reason or should not penalize them from having the same treatment or same zoning as everybody else around them.

Another issue that was raised in the first go around was the General Plan provides that the property be kept in Open Space for future generations. That was the issue. We beg to differ with this because the property is no General Plan Open, the General Plan designation for this property is Residential Community and this recognizes development as Bryan indicated. This is a bedroom community for Waimea, we should be able to develop homes on this property. The purpose of the Open zoning is to keep lands available for future generations, Open Space, where there are certain esthetic or preservation qualities. If you look at it logically and reasonably there is no reason to keep it in Open any longer. All we want to do is do whatever the surrounding community has been able to do with their properties which is develop residences on the property. Given these circumstances and the nature of the surrounding neighborhood we submit that logic and reason would dictate that the rezoning of this property from Open to Residential R-4 is proper, is logical and should be granted.

When we went before the Council on the first go around I remember one of the Council members asking us a very (inaudible) question, you see the issue with this petition is fairness, what is fair. And I think it still applies here, what is fair. Why should the Ahko family be treated any differently from anybody else? They are Kaua'i born. Yes, they don't live on Kaua'i but they have owned the property, they are not land speculators. Why shouldn't they not enjoy the same privileges and opportunities as other landowners in the area and that is all we are asking. Give us a chance to enjoy the property like everybody else does. With that, I don't have anything else to say other than to respectfully ask that you recommend approval of the rezoning to the Council, we still have to go to the Council on this. And with that I will be glad to answer



or respond to any issues or questions which you may have or if I cannot then as I said I have Dr. Ahko or Mr. Keon available also to respond to any questions, thank you.

Chair: Thank you Mr. Hong, are there any questions?

Mr. Texeira: The landowners, you mentioned that the sewage be completed in 24 months, so does that mean that the landowner should this subdivision be approved, consider not building until 24 months are up?

Mr. Hong: Realistically it is going to take about that long, it is going to take I would say at least possibly through this summer to get through this zoning process and then if they come in for subdivision immediately then they will have to go through the subdivision process. They are not going to get clearance from the Department of Public Works for wastewater treatment until such time as it is available so we don't have a problem with that.

Chair: Any more questions? He would have to go in front of Subdivision if he gets his approval from Council on the zoning amendment.

Mr. Costa: That is correct and probably could not be issued final subdivision until the subject sewer improvements are done.

Chair: Are there anymore questions for Mr. Hong before I call for any public testimony? Thank you. Is there anybody in the public who would like to testify on this agenda item, please come forward, seeing none...

Ms. Morikami: Mr. Chair, move to receive the three communications, one is from the applicant, the other one is to receive the staff report and the communication received today.

Ms. Matsumoto: Second.

Chair: All those in favor say aye, no, motion carries.

**On motion made by Paula Morikami and seconded by Camilla Matsumoto, to receive communications, motion carried unanimously by voice vote.**

Ms. Morikami: Mr. Chair, move close this public hearing.

Mr. Kimura: Second.

Chair: All those in favor say aye, no, motion carries.

**On motion made by Paula Morikami and seconded by Jan Kimura, to close public hearing, motion carried unanimously by voice vote.**

Request to Amend Condition No. 19, sub d), e) and h) of Zoning Ordinance PM-2004-370, and Condition No. 3 and No. 4 of Zoning Ordinance No. PM-2005-374 relating to the Kukui'ula Workforce Housing project which is adjacent to and east of Po'ipū Road on former McBryde Sugar Company plantation lands, located on Tax Map Key 2-6-4: por. 19, and containing an area of 9.4 acres, more or less = Kukui'ula Development Company (Hawai'i), LLC.

a. Staff Report pertaining to this agenda item.

Staff Planner Mike Laureta read staff report (on file).

Chair: Are there any questions for the planner?

Ms. Matsumoto: The third existing condition, No. 19(h), and what they want, the idea being able to sell properties, are they going to sell them at the housing rate?

Staff: I think any specific conditions relating to this request should be directed to the applicant and/or Housing because these conditions were negotiated at the County Council level,

it was never brought to the Planning Commission. So these housing conditions in the ordinance were negotiated at the Council level between the applicant, Housing and Council so any of the specific questions, I will defer them to the applicants and/or Housing Agency.

Chair: So we can ask Housing or the applicant, are there anymore questions, seeing none I will call the applicant up.

Mr. Tom Shigemoto: Good afternoon Chair and members of the Planning Commission, for the record my name is Tom Shigemoto. I am representing A&B and Kukui'ula Development Company, Hawaii. To really understand what our application is all about you folks should have four different documents in front of you, the three ordinances and there is a Housing agreement. I know a lot of you don't have the background on this project because it has been ongoing for so many years so what I want to do is give you a real brief history on our housing condition relative to Kukui'ula.

In the late 80's and early 90's, back then the County's Housing requirement was 10% of what we were proposing to build. In 93/94 time period A&B met this obligation of 176 units so at that time we were proposing 1,760 units. We met the 176 unit requirement in the form of 116 house and lots and vacant lots at Eleele Nani and also we dedicated land at Paa Nau Village, plus we gave the County free sewer hookups which total 176 units. So we met our housing obligation. When we did that there was not one market housing unit built for 9 years. Our first housing project was developed in 1999 and I think we sold out in 2001 but for 9 years we had built the affordable housing, we sold all of them and we had complied with that. We have letters to that affect from the Housing Agency on file.

In 2004 when the joint venture, well the joint venture was formed in 2002 but in 2004 when we applied for our down zoning we were required to provide more affordable housing to the tune of 75 units which we agree to. And remember, of the 75 units, 45 were supposed to be for employees of Kukui'ula and 34 members of the general public that were employed on Kauai in three different price ranges, 80 to 110, 110 to 140 and 140 to 180. When we applied for the zoning this was imposed on us, we agreed to it, we have an agreement in place but now we are here to ask for your consideration in amending some of the terms of these 75 units. We are not asking to get out of building the 75 units or providing 75 units, we are asking for three things as Mike pointed out. One was to reduce the 90 year buy back condition that was imposed on us. This 90 year buy back plus the ability to sell the units on the open market once we exhaust going through all of the different income levels, trying to sell the units or market the units. If we cannot sell those then let us sell that on the open market. That is no different than what the County Housing Agency does today.

And the third was to give the County the first option to purchase the units versus the first option being placed on the developers, on us. So those are the three things we are asking for to be amended in this application. Again we are not trying to get out of building affordable homes, we are just trying to see if we can amend the conditions. And what happened to since 2004 was in 2007 the County Council adopted the County Housing policy. In that Housing policy there is a 20 and 30 year buy back provision, 20 and 10, correction, and it does allow resales to the open market once you exhaust the sales. So what we are basically asking is to allow us to conform to the County Housing, the current County Housing policy instead of having to meet the current conditions of our approval. The Housing Ordinance as I said was adopted in 2007 and was effective June, 2008. I don't have anything else to add except you heard Walton Hong about fairness, all we are asking is to be treated like everybody else, thank you.

Chair: Are there any questions for the applicant?

Ms. Matsumoto: I had asked that question about the retention of selling at a housing rate, is that what the plan is, affordable housing rate?

Mr. Shigemoto: That is the intent. That is what is contained in our current ordinance and again we intend to sell or offer for sale the units over a specified time. If you look in the County Housing ordinance 860 you will see a marketing period restriction and what that does is allow you to sell the units and hold the sales for a certain period of time and when you exhaust that time period and there are still units available then you can sell it at the next higher income level.

After you exhaust that you go to the third and then after you exhaust that then you can sell the units to the open market. That is in the ordinance. That is what we are asking to be able to do.

Chair: Any more questions?

Mr. Teixeira: Tom, you know that 20 year for all units sold, beginning from what time frame?

Mr. Shigemoto: The 20 year time frame, from the time that the units are built I believe. When the units are initially put out to sale there is a 20 year time period.

Mr. Teixeira: So what is your anticipated date of that?

Mr. Shigemoto: To start the project we have a deadline of July, 2013 to start.

Mr. Teixeira: Based on the economy right now do you anticipate asking for an extension at some point?

Mr. Shigemoto: Hopefully not. Hopefully the market improves; the economy improves where we can actually start building. As you know Mr. Teixeira in this depressed market right now there is nobody looking for affordable homes or if they can whether they can qualify or get loans. These are difficult times so it all depends on how soon the economy improves.

Mr. Blake: If you have an inventory of houses and they are not sold to the people that you are offering them to initially then they can be offered to the next level and so you are talking about the next income level?

Mr. Shigemoto: Yes, the next income level. So you start with group in the 80 to 110% of the median and then you go from the 110 to the 140 and then the 140 the 180 and if there are units still available after that then you can sell it to the open market.

Mr. Blake: Does the price of the home stay the same as you are offering it to people that are better able to afford it?

Mr. Shigemoto: I believe the price of the units go up.

Mr. Blake: The price will go up as you offer it to...

Mr. Shigemoto: The higher income groups, yes. These are all controlled by the County's selling price too, their affordable sales price, it is tied to that.

Ms. Matsumoto: So each property will be taken by an individual basis so for example if this one gets sold at level one but this one can't be it goes up to level two, it will just be mixed.

Mr. Shigemoto: Yes.

Mr. Blake: So if you have side by side properties and you offer one to the, just for the sake of discussion, 100 thousand dollar property to the first level and then you cannot sell the second one. So you are going to now offer the second one to the second income level, that same property which had been formerly offered at 100 thousand could now be offered at 140 thousand?

Mr. Shigemoto: That is how it works, yes.

Chair: So the price would rise.

Mr. Shigemoto: The price would rise. As I said, the prices are dictated by the County's housing formula, not formula but they have a table that you cannot exceed the sales price.

Mr. Nishida: I think housing should come out and explain that.

Chair: I don't see County Housing.

Mr. Nishida: Mike, I thought you said somebody from County Housing was here?

Staff: They were asked to attend because we knew there was going to be questions.

Mr. Nishida: Maybe I can clarify some of those questions. The 80% is of median income. The median income is determined by...maybe you can explain how all the prices get arrived at.

Mr. Shigemoto: I can explain how the prices get arrived at. The County and I am guessing that this is a State established median income and it rises every year and so based on that median income the lower priced units can or would be sold to those qualifying making between 80 and 110% of that median. So they are earn a certain amount, right, and for lets say a 3 bedroom/2 bath home, the prices are all set by this agency or the State or Federal government or maybe HUD, it is established. So as developers or sellers, we cannot exceed the price that is listed in this standard. So again when you are selling a unit, the same 3 bedroom/2 bath home, selling the unit 80 to 110% income folks you have to sell it at a certain price. Now when you jump to the 110 to 140 the price of that same unit is a little bit higher, you can sell it for that higher price.

Mr. Nishida: I am going to speculate a little bit because when I was working with KEO there were these tables that you looked at. Maybe we should have them come so they can explain it but I am pretty sure what it is, is that the median price is set by the Federal government I think and then there is a certain percentage of your income that you qualify for housing. So the prices that are set up are based on that income level and how much you can afford at that income level to pay for your housing.

Mr. Jung: Commissioners, if I could just interject real quick, the nuances of ordinance 860 which is the Housing policy now implemented, it gets a little complicated and the terms are fairly complex when it gets to how you categorize certain numbers so it would be more beneficial if we ask someone from the Housing Agency here. But remember this is not really a zoning issue. What happens is when there is a zoning amendment request or a subdivision request and there are conditions and the conditions of the Housing policy are met between the applicant and the Housing Agency. So it's not really connect to a zoning application other than the conditions so all they have to do is meet with an agreement the terms of the Housing policy. So understanding the nuances of the Housing policy, it would beneficial for your general information but in terms of zoning issues, it's not really appropriate to look at.

Mr. Teixeira: So how does this impact us?

Mr. Jung: It impacts us because you have to make a recommendation to Council based on the zoning amendments because this term is...one of these conditions are conditions of the zoning amendment that passed in 2004 and 2005.

Mr. Nishida: Just to clarify, whatever we recommend today goes to County Council to be looked at again?

Mr. Jung: What happens is when it comes to zoning amendments you do serve in an advisory capacity but if you disapprove the request then it is done unless the applicant wants to sort of appeal that within 15 days to get it up to Council. So ultimately the Council has the final call.

Mr. Teixeira: So the questions we are asking right now are irrelevant?

Mr. Jung: They are relevant to the point of you can dictate more of a somewhat of a policy call and what housing standard you want but remember this was done pre-Housing Ordinance, pre-860. So what I think they attempting to do is align it to the provisions of 860 but it would be more beneficial to have the Housing Agency here who set the deal up which Kukui'ula signed off on the agreement as to why these conditions were imposed.

Mr. Teixeira: So being that Housing is not here...

Ms. Matsumoto: Are they coming?

Chair: What we could do is maybe take public testimony and then take a 5 minute recess and find out if Housing will come over but we cannot force them to come. I think the planner said that he invited...

Staff: They were asked yesterday and they didn't exhibit any willingness to want to come but to Commissioner Teixeira's questions, the housing conditions as they came up are treated more like agency comments. The specifics have to be worked out with the Housing Agency the same as Engineering, Water Department, Fire Department, Public Works. The level of interest that you are seeking lies with the agency, they are the ones who enforce, it's their jurisdiction especially because these conditions were established in negotiations at the Council level without any input from the Planning Commission or the department. The kind of questions you are asking, it might be good to know but the specifics is left up to the Housing Agency in more negotiations that are going to occur if this bill goes up. So however this goes up, it will go up and it's going to back to where it started, the negotiations between the applicant, Housing and the County Council.

Mr. Jung: Commissioners, we are at the public hearing stage, this is set for public hearing so there will be a second opportunity once the recommendations come down from the department to reassess and look at the issues presented.

Mr. Teixeira: So the worst case scenario is that nothing will change.

Staff: The worst case scenario in the way staff has visualized it is it goes with no comment or it can go with comment or recommendations but Housing Agency's comments will be attached because this was a Council negotiated item. Specifically because of that reason if the Commission is going to get involved in it, you are trying to sink your teeth in it, like Commissioner Nishida said and Ian, this is a really technical thing. It is going to be very hard for you to sink your teeth in to and if it is not your jurisdiction in theory, if you want to spend that energy it would be helpful if someone could guide you through it. But for you, the Commission, to try and make recommendations in areas that they never did is going to be kind of confusing.

Mr. Nishida: Mike, just to clarify, the proposed conditions are addressing the buy back provision and the changes to how the different income levels get approached and when they go to market and how long they move to the next one.

Staff: And the time frame, everything that was negotiated with the Council, with the applicant, and with input from housing.

Mr. Nishida: The levels that they are dealing with all stays in place?

Staff: That is with Housing. That is strictly Housing's jurisdiction.

Mr. Blake: So no matter what we recommend or do not recommend, all the action takes place up at the Council level.

Chair: Yes.

Staff: In theory yes but because the Planning Commission is advisory, if you feel like you must input something it is still going to go up there for negotiations and that is where it started. But any input you provide is not going to be, or could impact the standards that exist now which no one really completely understands except for Housing, the applicant and Council.

Mr. Jung: Commissioners, you policy deliberations do hold water when they go up to Council so no matter what you deliberate or discuss, whatever is discussed here goes and gets transmitted. So Council, if they read the minutes they will understand the debate that went on here and they do take that into consideration.

Ms. Matsumoto: I am reading this here, we are talking about the prices going up from low to high, what if you reach the highest mark and then nothing sells. Do you go back down?

Staff: That is Housing's policy so even if I knew the answer, I don't. The applicant will have to resolve it with the Housing Department so all those steps, all the numbers, all the values, all have to be worked out with Housing. And they did have an agreement between the applicant and the Housing Department.

Mr. Nishida: Mike, according to the proposed amendment, so once they pass all those different levels of income it goes to market?

Staff: Right.

Mr. Nishida: And then it is up to the...they just sell them at whatever they can get, they make the decision on how much the units are going to be and it is open to everybody. They don't go back down to the...

Staff: That is between the applicant and Housing. That is like the Commission coming in and trying to tell someone from Engineering you have to build your house 15 feet when the flood ordinance says 10. That is someone else's jurisdiction. The specifics are best known by them.

Mr. Teixeira: How do we have an educated debate without meaningful input from Housing?

Mr. Costa: I did check with the Housing Agency and nobody is available today anyway to come and testify but I was given some information in terms of housing ranges but for what specifically?

Mr. Teixeira: I am not too sure what to ask.

Staff: Mr. Teixeira, the Housing Agency did submit comments, kind of detailed, towards one of the requests.

Chair: Are the comments in the application?

Staff: The comments are in with the staff report.

Chair: Is there anything you want to add?

Mr. Shigemoto: I can tell Mr. Teixeira what the Housing Agency basically said. They agree that 90 years is too long but they are recommending 25 years and they oppose the other two requests that we are making.

Staff: But Tom is it true that Housing's recommendation of 25 years still exceeds what the Housing ordinance limitations are, 10 and 20?

Mr. Shigemoto: Yes it does and that is something that again we feel...we question where the 25 years came from. We do have a housing ordinance now, ordinance 860, which specifies a 10 and 20 year buy back period and all we are asking for again is to be allowed to comply with the new housing policy ordinance.

Chair: With that said I will excuse you and take public testimony if there is anybody in the public who would like to testify on this agenda item which I do not see anyone.

Ms. Morikami: Mr. Chair, move to receive the request to amend condition No. 19, sub d), e), f) and h), zoning ordinance Pm-2004-370 and conditions No. 3 an 4, zoning ordinance PM-2005-374 from the applicant, Kukui'ula, workforce housing, dated November 23,2009. Also move to receive the staff report.

Ms. Matsumoto: Second.

Mr. Teixeira: So the question is Mr. Chair, this is just to receive, right?

Chair: Yes.

Mr. Jung: The Commission can also entertain a motion to close the public hearing.

Mr. Costa: Or to continue it if you so choose.

Chair: Lets vote on the receive first and then if there is any discussion after that, all in favor say aye, no, motion carries.

**On motion made by Paula Morikami and seconded by Camilla Matsumoto, to receive request to amend and staff report, motion carried unanimously by voice vote.**

Ms. Morikami: Mr. Chair, move to close the public hearing.

Mr. Teixeira: Second.

Chair: Is there any discussion with that, all those in favor say aye, no, motion carries.

**On motion made by Paula Morikami and seconded by Herman Teixeira, to close public hearing, motion carried unanimously by voice vote.**

## NEW BUSINESS

### **For Acceptance into Record – Director’s Reports for Projects Scheduled for Public Hearing for 2/9/10 Public Hearing.**

Amendment to Use Permit U-2001-13 and Class IV Zoning Permit Z-IV-2001-17 to permit the replacement of a 40 ft. high monopole with a 70 ft. high stealth monopine (a monopole designed to look like a pine tree) and associated equipment at an existing telecommunication facility in Moloa'a, Kaua'i, situated approx. 1,400 ft. north of the southern intersection of Koolau Road and Kūhi'ō Highway, adjacent to the Moloa'a water tank on Puu Auau, further identified as Tax Map Key 4-9-009:009, and affecting a 1,350 sq. ft. portion of a 311.598 acre parcel = ***Crown Castle International.***

**On motion made by James Nishida and seconded by Jan Kimura, to accept Director’s Report into record, motion carried unanimously voice vote.**

Use Permit U-2010-7 and Class IV Zoning Z-IV-2010-8 to allow the conversion of an existing building previously used for restaurant and food service into a medical care facility on property situated in Kilauea, along the east side of Oka Street immediately at its intersection with the dead-end section of Aalona Street, further identified as Tax Map Key 5-2-14:49, and containing a total area of 20,389 sq. ft. = ***Kaua'i Community Health Alliance.***

**On motion made by James Nishida and seconded by Jan Kimura, to accept Director’s Report into record, motion carried unanimously by voice vote.**

### **For Acceptance and Finalization – Director’s Report for Shoreline Determination.**

There were no Director’s Reports for Shoreline determination.

Memorandum (1/20/10) from Director Ian K. Costa to Caven Raco, Chair, Kaua'i Planning Commission, recommending the Commission consent to the issuance on Non-Conforming Use Certificates pertaining to Transient Vacation Rentals (see Agenda Attachment “B”).

- a. Staff Reports pertaining to the recommendation to consent to issuance of Non-Conforming Use Certificates for Transient Vacation Rentals listed in Attachment B.

Deputy Director Imai Aiu read staff report (on file).

Ms. Morikami: Mr. Chair, move to receive the staff report.

Ms. Matsumoto: Second.

Chair: All those in favor say aye, no, motion carried.

**On motion made by Paula Morikami and seconded by Camilla Matsumoto, to receive staff report, motion carried unanimously by voice vote.**

Chair: Is there anybody in the public that would like to testify on this agenda item, seeing none.

Ms. Morikami: Mr. Chair, move that this Commission consent to issuance in accordance with the subjects to all applicable provisions of section 8-17.10 and the Kauai County Code, No. 1, Gill and Kramer, and No. 2, lot 217, Wainiha Hui Lands.

Ms. Matsumoto: Second.

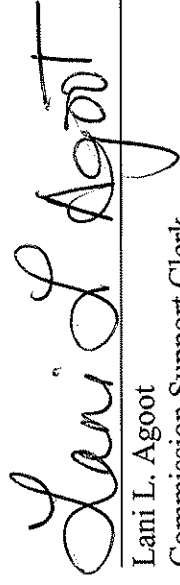
Chair: All those in favor say aye, no, motion carries.

**On motion made by Paula Morikami and Camilla Matsumoto, to consent to issuance of Non-Conforming Use Certificates, motion carried unanimously by voice vote.**

#### **ADJOURNMENT**

The Commission adjourned the meeting at 2:29 p.m.

Respectfully Submitted.

A handwritten signature in cursive script that reads "Lani L. Agoot". The signature is written in black ink and is positioned above a horizontal line.

Lani L. Agoot  
Commission Support Clerk