

KAUA‘I PLANNING COMMISSION  
REGULAR MEETING  
**January 12, 2021**

The regular meeting of the Planning Commission of the County of Kaua‘i was called to order by Chair Glenda Nogami Streufert at 9:09 a.m., - Microsoft Teams Audio +1 469-848-0234, Conference ID: 680 192 715# The following Commissioners were present:

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

Absent and Excused:

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

Discussion of the meeting, in effect, ensued:

**CALL TO ORDER**

Chair Glenda Nogami Streufert: Called the meeting to order at 9:09 a.m.

**ROLL CALL**

Chair Glenda Nogami Streufert: Let us convene the Planning Commission Meeting. It’s a call to order. Can we have a roll call please Mr. Hull?

Planning Director Kaaina Hull: Roll call Madam Chair. Commissioner Apisa?

Ms. Apisa: Here.

Mr. Hull: Commissioner Chiba?

Mr. Chiba: Here.

Mr. Hull: Commissioner Cox?

Ms. Cox: Here.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Here.

Mr. Hull: Commissioner Ho?

Mr. Ho: Here.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Here. Here.

Mr. Hull: Chair Streufert?

Chair Nogami Streufert: Here.

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

Chair Nogami Streufert: Great. Thank you.

Mr. Hull: Before we go on to the next agenda item, if I could take a real quick point to introduce two new faces that are appearing before the Commission. First, we have, Laura bars- Barzilai. Laura I hope I'm pronouncing' that right.

Ms. Barzilai: It is Barzilai. Yes. You got it Kaaina.

Mr. Hull: Okay. Laura is our new assigned Deputy County Attorney. For several years I think the Commissioner was used to having an attorney constantly and uniformly by its side and with Ian Jung then Jodi Sayegusa and for a little bit of time Nick Courson. But the County Attorney's Office for the past year has kind of been doing or having some staffing issues, and so you guys have had some temporary assignments over the past year. Now Laura is with the County Attorney's Office and she is your official assigned County Attorney so it is great that we are able to have and you folks will be able to now, have legal counsel consistently with Laura. We have spent some time with her on the side already and she seems ready to roll up her sleeves and get into the thick of it with you, the thick of it with you all, so I wanted to welcome Laura and I will let Laura have a have few words she may have for the Commission.

Ms. Barzilai: Mahalo for that introduction Kaaina and Aloha again everybody. I just wanted to say again that if you have any questions or need to speak with me you can reach me by e-mail

through the system or call me at the County Attorney's Office and I'd be glad to assist in any way possible.

Ms. Apisa: Welcome.

Chair Nogami Streufert: Welcome to the Commission. Thank you very much.

Ms. Barzilai: Thank you.

Mr. Hull: And secondly, I am doing this twice because I missed introduction in the Subdivision Committee Meeting but for the full Commission and I know the full Commission is here, the second person I would like to introduce is Kenneth Estes. Kenny is our new Regulatory Planner. He will be running the Subdivision Program as well as handling other Planning Commission permits and review like zoning amendments. Kenny is actually a former planner with the Planning Department. He worked with us for about four or five years, Kenny if I'm not mistaken or three or four years? As our Subdivision Planner and has went out to work in the private sector and is now returned to us and we are grateful to have him back. He has a wealth of information and knowledge and we got a lot of history with the Department so, Kenny's, our new added teammate. Kenny you have any words for the Commission?

Mr. Estes: All right. Just wanted to say good morning Commissioners and nice to meet you all. I'm excited to be back with the planning family and I will try to pick up where I kind of left off.

Ms. Nogami Streufert: Thank you Kenny and welcome to the Commission.

Mr. Estes: Thank you.

Mr. Hull: Next on the agenda, Madam Chair is selection of the Chairperson and Vice Chairperson as well as the appointment of the Subdivision Committee Chairperson - Vice Chairperson.

Chair Nogami Streufert: Well before we do that, I wanted to thank everybody. It's been a great tumultuous year, had lots of changes with different ways of making, of doing our meetings and it's worked out pretty well. I really appreciate the support of everyone but now it's time for a new set of people to meet our Commission and I am open for nominations to the position of the Chair of the Planning Commission.

Ms. Otsuka: Yes, Madam Chair. I would like to nominate Commission Donna Apisa for the position of Planning Commission Chair.

Chair Nogami Streufert: Thank you. We have one nomination for the Planning Commission Chair. Are there any other nominations? If not, may I have a motion to close the nominations?

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

Ms. Cox: I second the motion.

Chair Nogami Streufert: It's been moved and seconded to, uh, close the nominations for the Planning Commission Chair. There are no, if there is no discussion than we will go onto a vote. All those in favor of Donna Apisa for the Commission Chair - County Commission Chair say, "Aye." Aye. (Unanimous voice vote) Any opposed? (None) Motion carried 7:0.

Congratulations Commission Apisa. You are now the Planning Commission Chair. I am sorry I do not have a gavel to send you but I can send you a Diet Coke can to hit on the table. So thank you very much and good luck.

Chair Apisa: Thank you. You did a great job getting us through COVID. Thank you. Thank you and all our, all our changes. It was a, it was a very year of changes so you did a great job with it. Thank you.

Ms. Nogami Streufert: Thank you.

Mr. Ho: Congrats, Madam Chair.

Chair Apisa: Do I now ask for the Subcommittee or Vice President? Does it matter which order? I guess we ask for first nominations are in order for the position of Vice Chair. Nominations are in order. Do we have a nomination for Planning Commission, Vice Chair?

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

Chair Apisa: And nominations do not need to be seconded. Are there any other nominations?

Ms. Nogami Streufert: I move to close the nominations for the Vice Chair for the Planning Commission.

Chair Apisa: Second? Do we have a second.

Mr. DeGracia: Second.

Chair Apisa: Second. We have a motion on the floor; do we have Helen Cox to be the Vice Chair? Do we have all in? Do we did anyone want a secret vote? Okay. Hearing, hearing none, we will take a roll call on this Kaaina.

Ms. Otsuka: Unmute Kaaina. Unmute.

Mr. Hull: My apologies. That was me.

Mr. Ho: No worries.

Mr. Hull: Sorry. Roll call Madam Chair. All in favor of Commissioner Cox for the position of Vice Chairs, roll call - Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Do I vote?

Mr. Hull: Yes, actually.

Ms. Barzilai: Yes. She may vote.

Ms. Cox: Okay. I believe I am not allowed to have stay in so I guess I vote in favor.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ho?

Mr. Ho: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Nogami Streufert?

Ms. Nogami Streufert: Aye.

Mr. Hull: Chair Apisa?

Chair Apisa: Aye.

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

Chair Apisa: Congratulations, Vice Chair Cox.

Mr. Ho: Congratulations.

Ms. Cox: Thank you.

Ms. Nogami Streufert: Congratulations both of you. That is great.

Chair Apisa: I would now like to appoint Commissioners to our Subdivision Committee. I would like to appoint Commissioner DeGracia and Commissioner Chiba to the Subdivision Committee and Commissioner DeGracia will serve as the Chair. Do we have a Motion to Approve?

Ms. Nogami Streufert: I move to approve.

Chair Apisa: Second?

Ms. Otsuka: I second.

Chair Apisa: All in favor? Aye. (Unanimous voice vote).

Ms. Streufert: Aye.

Ms. Cox: Aye.

Mr. Chiba: Aye.

Mr. DeGracia: Aye.

Chair Apisa: Motion passed 7:0.

Mr. Ho: Madam Chair? Madam Chair?

Chair Apisa: Yes?

Mr. Ho: I would encourage that the mission, the Subdivision Committee seek a third member that is only in case of a tie in the matters of a tie vote that, the tiebreaker be the third person. Yeah. Just, just keep that in mind to seek a third member. Thank you.

Chair Apisa: Well Commissioner Ho thank you for bringing that up. It is very in the foremost of our mind and we are hopeful to get a third person. I know this year we yeah. Right. We are - we are hopeful to get a third person, and we want to thank Commissioner Ho. You have been Chair of the Subdivision Committee for a few years now and you have done an outstanding job. We have not any issues. Everything went very smoothly so thank you very much for your tenure on the Subdivision Committee and the Commission too.

Mr. Ho: Okay. Kind words. Thank you.

Chair Apisa: No. Well, well deserved. Thank you. Thank you.

Ms. Nogami Streufert: Thank you, Roy, but are you not still on it Roy?

Mr. Ho: Yes, yes. I do have a few months to go. Yes.

Ms. Nogami Streufert: Great.

Mr. Ho: I do. I am sure. On the – oh—

Chair Apisa: I guess I take over the meeting from here. Thank you, Glenda for turning over the gavel.

### **APPROVAL OF AGENDA**

Chair Apisa: We have approval of the agenda on our, next our agenda approval?

Mr. Hull: Chair wait. The Department has no recommended changes to the agenda.

Chair Apisa: Do we have a motion to approve the agenda?

Ms. Nogami Streufert: I am willing to approve the agenda as submitted.

Chair Apisa: I second that motion. All in favor? Aye. (Unanimous voice vote).

Ms. Cox: Aye.

Ms. Otsuka: Aye.

Mr. Chiba: Aye.

Mr. Ho: Aye.

Chair Apisa: Okay. Any opposed? (None). Motion carried 7:0.

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

Chair Apisa: Minutes of the Planning Commission previous meeting?

Mr. Hull: There are no minutes from the previous meeting to be adopted under this agenda  
Madam Chair.

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

Chair Apisa: Okay. Any receipt of items for the record?

Mr. Hull: There is no items for Receipt of Records at this time.

### **HEARINGS AND PUBLIC COMMENT**

Chair Apisa: Hearings and public comment.

Mr. Hull: Yeah. Madam Chair so as we still are functioning our teleworking standards and rules and procedures, testimony is to be received 24 hour - written testimony is to be received 24 hours in advance for posting. You folks are in receipt of a first addition to the Planning Commission Agenda dated, I'm sorry - first addition to the Planning Commission Agenda which has testimony from Maka'ala Ka'aumoana dated January 7, 2021, and testimony from Carl Imperato dated January 8, 2021, as well as testimony received January 11, 2021, from Karen Diamond.

We have no additional testimony received for this agenda. For members of the public that have called in if you would like to speak on any of the agenda items at this time now would be the time to speak. This is just for members of the public, not necessarily applicants. Again if you're a member of the public that would like to speak I'm going to call out the phone numbers that have called into this meeting, that are not Planning Commissioners or county staff. So area code 808-245-3681 would you like to testify on any agenda item at this time. Hearing none. Area code 250-423-6741 would you like to testify in any agenda item at this time.

Man: No.

Mr. Hull: Thank you. Lastly, area code 808-822-4495 would you like to testify on any agenda item at this time.

Mr. Les Drent: Yes. We would.

Mr. Hull: Okay. Go ahead and - and state your name, uh, for the record and you have three minutes for a testimony.

Mr. Drent read his testimony for the record (on file with the Planning Department).

Mr. Drent: Hi. This is Les Drent, Tai Erum, and Trevyn Pless with LBD Coffee. This is our testimony. I have a page and a half here so go ahead through it. This is in regards to ZA Zoning, Amendment 2021-1. It's a bill for an ordinance to amend Chapter 8 to Kauai County Code 1987, as amended relating to uses of agricultural cultural zoning district - in particular agricultural retail stand. Um, well, we have been farming on Kauai for quite some time a couple decades now. And all I can say to this is that it takes a crisis right? Yeah, after 18 years of being denied that the County of Kauai government appears that local overlords are finally going to allow farmers the right to retail their value out of Hawaiian grown products from their farms. We find, you know, we find all this incredible especially since we were first approved for value added retail on our farm in 2003 before being denied that right in the very same year. Near the completion of our coffee farm and our cultural processing room, which was Building Permit 03-596 that included every other county, state and federal permit, as well as a certified kitchen and value added retail spaces at 400 square feet.

We were told that it was an oversight or an error by the Planning Department's Plan Review, which simply missed that retail aspect which was clearly called out on several pages of our approved building plans and land use permit. So, you know let's don't make any mistake here. You know, the issue of agricultural retail on farmland operated by real farmers has been circulating for two decades now and, you know, without any resolution or consideration, uh, of help to it's farmers. In 2012, you know, we applied and when the state legislature created Rule 57 in the Hawaii Revised Statute 632, which explicitly allows farmers the right to sell their value added products from within an enclosed structure on their farm. That law also stated the counties have the right to further define law in their county zoning ordinances. Well, every other county in Hawaii either followed this State law or further defined it, Kauai County and much to the detriment of its farmers, remained completely silent on the matter.

Kauai County has never listed retail stands in its able of land use either permitted or non-permitted or activities that required a use or a special use permit. In 2017, and so completely fed up with the Kauai County's position on the matter of agricultural retail, LBD Coffee filed a Declaratory Judgement Civil Case No. 17-1-0119, in the Fifth Circuit. Judge Watanabe, in the Fall of 2018, requested in chambers to Kauai County Attorneys, that they bring the matter before Planning Commission. This was never done, and a motion to reinstate the Declaratory Judgement was filed on April (inaudible) 2019, and after the County's inaction to bring the matter before the Planning Commission. Rather than waiting any longer for the Declaratory Judgement, LBD (inaudible) has filed for a Use permit in agricultural retail in a hearing in front of the Planning Commission and subjected to ten (10) unwritten and unlawful Conditions. In addition to these Conditions, we were hit with an eleventh (11<sup>th</sup>) Condition near the end of that Hearing. This condition would prevent LBD from selling any agricultural products and reform and does not either grow and/or manufacture that product on the permitted farm. This Condition was nonsensical as we have numerous farms that we either own or lease for crop production. I got two more paragraphs. At that point, we chose to simple wait for the court's ruling on the

matter, rather than subject ourselves to anymore public scrutiny by non-farming neighbors who oppose our activity and a Planning Department who has been dead set against allowing us to sell our Hawaii grown value added products. No other county in Hawaii has exercised such blatant disregard for State law nor has any other county Hawaii stripped its agricultural producers of their rights to sell their goods like Kauai has. In regards to the Kauai County Planning Department, their decisions to land use and permitting has reeked of nepotism, cronyism, and favoritism—

Mr. Hull: Mr. Drent, your three minutes is up.

Mr. Drent: ...for as long as I can remember. I have seen illegal use of our lands by persons in businesses that have zero association to farming and this has occurred under a county government that has willingly turned a blind eye to these activities. If this COVID-19 crisis, which is expected to end this summer brings any meaningful change allowing farmers to retail their value added products then so be it. But the damage that this county has done to us and many others over the last two decades will not be forgotten nor dismissed by your knee jerk reaction to agricultural retail under the guise of getting food to the people. That is all I got to say.

Mr. Hull: (Inaudible), Madame Chair.

Chair Apisa: All right. Thank you very much for our testimony. You are heard, thank you.

Mr. Drent: Thank you.

Mr. Hull: There are no other people who have called in in our Planning Commission Meeting, but just to double check is there anybody on the call that has not testified that would like to testify any agenda item at this time? Okay. There are none.

#### Continued Public Hearing

#### New Public Hearing

Mr. Hull: There is no New Agency Hearings

#### Continued Public Hearing

Zoning Amendment ZA-2020-1: A bill for an ordinance amending Chapter 8, Kauai County Code 1987, as amended, relating to Comprehensive Zoning Ordinance (CZO). The proposal amends Section 8-1.5 and 8-2.4 of the CZO to Definitions and Tables of Users, respectively = Kauai, County Council. [Director's Report received, hearing continued 12/8/20.]

Mr. Hull: Moving on to the Continued Public Hearings G.3., ZA 2021-1 A bill from the ordinance amending Chapter 8, Kauai County Code 1987 as amended relating to the Conference of Zoning Ordinance. The proposal amends Section 8.1.5 and 8. 2.4 of the CZO, definitions and tables of users respectively, the Applicant is the Kauai County Council. This Zoning Amendment

was up before the Planning Commission back in December. The Department is supportive of the proposal. There were a couple catches ultimately that necessitated some edits to be made. Ultimately the draft bill proposes a few different things one, proposes new definitions for agriculture retail stand and outright permitting them on agricultural land as certain size and also proposes a new definition for botanical gardens, farmer's markets, food processing and packaging of agricultural products, restaurant and food services, and zoological gardens. Ultimately, the Department has brought this bill back to the Commission with a few edits. One, clarifying specific that restaurant and food services on agricultural lands need to have a connection either with the properties farming activities or as for the properties of associated farm to apply for the use permit. As well as there, was clarification needed to specify that the botanical and zoological gardens listed and the subsequent definition for that specifically addressed the fact that these are commercial operations. Then lastly, there was some concern brought up by the Commission about the zoological garden definition and the use of cages so there is now just only a reference to large enclosures for animals in the zoological gardens definition. These are relatively small, but necessary clean up that, the Department made and ultimately we are recommending an approval. You folks have the draft bill in front of you, so we are available for any questions or concerns.

Chair Apisa: So, is there, does any of the Commissioners have any questions or comments?

Ms. Nogami Streufert: Yeah. I do. Donna this is Glenda. Thank you, Kaaina and your staff for reviewing some of the concerns that we had last time and for making these changes in the amendments to this for this ruling so thank you very much.

Mr. Ho: Madam Chair? Madam Chair please, could I have some clarification Kaaina, if certain portions of the list that's submitted to us and we find objection to it, the list can proceed through the process with the objections taken out and at later time can it be reconsidered and then passed and put back into your list?

Mr. Hull: So ultimately, a zoning amendment is a policy change that requires County final review and action. So if a Commissioner had had an objection to some of the draft bill and would like to make a request or a motion to remove certain sections of it, that can be proposed right now to see if the Commission feels appropriate. And if in the affirmative the Commission say there's four votes in the affirmative to amend the draft bill then that draft bill ultimately if adopted, will go up to the Council with the changes. If the Commission itself were to again, alter those changes subsequent to the draft bill going back to Council will necessitate the introduction of a new draft will be all.

Mr. Ho: A whole draft not just the amendment that was stricken?

Mr. Hull: Yes. It would have to be a completely new draft bill. Just because after you folks are done reviewing it, like a said it goes up to Council and they take action. So if any stricken language wanted to be put back in, it can be done it just necessitates the initiation of the (inaudible) bill.

Mr. Ho: Thank you.

Mr. Hull: Thanks, Commissioner.

Ms. Cox: Given what you just said, Kaaina, this is Helen. I am wondering about the retail sales. Because the restaurant and food services make it clear that, the produce or what's being sold has to be related to the farm, but the restaurant and food service, sorry, the retail sales doesn't have that same Conditions. So I am just wondering, in my worst fear, we have a million T-shirts and mugs you know, a whole bunch of things that have nothing to do with agriculture being sold.

Mr. Hull: I think the point is well taken. I know that came across in one of the testimonies that was submitted. For the retail sales, one, there is still the requirement of a use permit as well as any retail sales that are not associated with a farm operation or an agricultural activity. It still has to go through a special permit process and discretionary review by the Planning Commission, and in reviewing say, "nonfarm related retail sales" the Commission still has to make the Determination that it won't negatively impact say, "agricultural activities" on the property currently and in the future. As well as it does not run counter to the agriculture policies established under the Hawai'i Revised Statutes. The reason we left it in is, because there are things like the Department has entertained in the past or the Commissioners has entertained in the past. Say like, a feed lot or an animal feed store or things that may be associated with agricultural activities but not per say connected to a specific farm may still be desirable to (inaudible) on agricultural lands and that's why it was kind of left in there, as a possibility with a use permit. So that is again, it goes for discretionary by you folks to see if it still runs in alignment with the policies or agricultural lands.

Ms. Cox: So just for clarification then, I think understand. So the restaurants and food services that has to have the percentage of or it has to be associated even if they're coming for a use permit?

Mr. Hull: Correct.

Ms. Cox: But for retail, they could bring some other idea and we would look at it at that point?

Mr. Hull: Correct.

Ms. Cox: Okay. Thank you.

Mr. Ho: Madam Chair, I think, I don't know I maybe connected with this but I think it's a, oh would I put it, it's a matter of enforcement. Does the, is this passing this bill would that enforcement is this passing this bill that enforcement now fall back on the Planning Department who have to look to go out and actually check that these items are, you know, what the Conditions were met? I find that pretty hard.

Mr. Hull: Sorry Commissioner Ho, just to clarify, are you talking about nonagricultural retail sales that get a use permit or are you talking about restaurant sales that are not connected with a farm?

Mr. Ho: Restaurant - the restaurants - the restaurants are how, you know, you become, like, I don't know - what - you - you would become what - food police? I don't - I wouldn't want that for the Department.

Mr. Hull: No. Yeah. It's an interesting concept. I think in a desire to try to, I think as the last speaker attested to there are farmers that have operations that could either feed into a value added strategy and marketing for Ag retail stand. As well as possibly for a restaurant aspect. I think you folks received some testimony recommending or encouraging the Commission adopt the very specific percentage or threshold, of agriculture all agricultural products used in say the food services. And that's where we believe in the overall picture of that in the large scale policy of that, to ensure that it's predominantly from the farm itself. But from what I think you're getting at Commissioner Ho, is making that determination of vegetables and product at a specific threshold of say 80% or 50% or what have you. That is not unenforceable or very hard to get at. And that's why I think just saying that it is the food products that are sold at the retail or restaurant, sorry the restaurants and food services, is predominantly from the property or it's just associated farm. Is getting at the heart of can we make a determination? Should the Planning Commission give a use permits to one of these restaurant? If we go out there and inspect if there is complaints and sometimes complaints are being had. When we go out there and inspect and while we are looking, is there the intention of livestock or produce produced from the farm? Is it still being predominantly being used or are they using say, "a leaf of lettuce" and everything else is brought in from the mainland or wherever? You know, it is a certain (inaudible) check, but at least getting at the intention of it should there seem to be apparent abuse. We would then bring it back to the Planning Commission for it's determination as to whether the restaurant food service operation meets the spirit of the intention of this to provide for a sales venue for again, agriculture products that are predominantly brought or established from the property or the associated farm. So, does that make sense? I know it was a little muddy.

Mr. Ho: It leaves, it leaves a, where is, decision making to the us Commissioners. I think you put into kind of a gray area. I just, I think it's, the way, my personal opinion. Just the way that Kauai County is needs what it can get, I pretty much would left this Skate. Yeah. That is it. That is it for me.

Mr. Hull: And thank you Commissioner and, I mean, I definitely agree with you. It is a bit of a gray area. I think to what some of the previous testifiers spoke to as far as trying to free up and I know there was a lot of frustration from him and his farm with the way that the county has handled farmers in the past. I think some of this is recognizing that there should be some attributes of being able to bring value added goods and sell them on the property. It does put the County and the Commission into a grey area in particular. I think we will be able to prevent outright abuse if they come say for a use permit and they open up an equivalent of an Olive Garden that is entirely sourced from the mainland right. Like, that, we can easily and literally go after. But some of that gray areas, I think you're right on the money Commissioner Ho, in saying, it's not going to be easy from an implementation standpoint, if there are, you know,

minor or smaller abuses made. However, from the Department's position it's at least an attempt to provide that venue for farmers and their operations, which they haven't had before.

Ms. Cox: You know, again I agree It's a gray area, but I also believe that it's the right way to go. I've been associated with the KCC Farmer's Market of course since it's been sectioned and you know, we also said it had to be local and in fact what happened was and if there were complaints that, you know, someone was going to Costco and bringing boxes of papayas from there to sell. We did in fact, you know, speak to the farmer and say they couldn't do that and so, you know, I'm sure little abuses will get passed. But I also think that this the right way to go and I do believe that actually the people on Kauai care enough that if they see large abuses we will hear about it.

Chair Apisa: Mm-hm.

Ms. Nogami Streufert: Right.

Deputy County Attorney Laura Barzilai: Commissioners if I may weigh in with what Kaaina has commented on, the special permit process. I am comfortable with the language as drafted and I do believe that the public good outweighs the enforcement concerns of this bill and I agree with Commission Cox that if there are violations we will hear about them. There will be reports that can be addressed.

Chair Apisa: Anyone else have any comment, or input, or questions?

Mr. Ho: Just one for Kaaina in the Planning on the Department side. Food standards - how does that affect your density on the property and use of it?

Mr. Hull: It will not affect it at all. As far as density in terms of residential dwellings, Agriculture probably is more qualified for and a lot of amount farm dwellings given the respective size of the lot with a cap at five (5) well units. But having a farm stand or an Ag retail stand won't affect the dens, the dwelling density capacity and overall intensification of the land agricultural lots are generally relatively large as far as the lot coverage issue because this is at least for the ministerial purposes this capped out at 1,000 square feet. It really should be nominal in the lot coverage issue of an agricultural lot.

Mr. Ho: One final question Kaaina. It concerns farm workers housing. Could that, could that be a Condition that a guy says, "I need the worker that mans the food retail station, he needs a place to stay," and that would be justification for farm workers housing?

Mr. Hull: The agricultural lot says as I just said earlier qualified for farm dwellings and farm Dwellings the original intention of them are to house either the owner of the property and the farmers working the property. Now granted with the way the Hawaii State Lobby defines farm and the fact that these farm dwellings are ministerial and have to be approved over the counter, we have seen a lot of abuse of farm dwellings and general estates using that somewhat loophole of a loose definition of farms because their farm dwellings built and living in them. So in response to that the County Council several years ago did adopt a farm worker housing

ordinance that allows for additional density beyond the residential density allowed on a particular agricultural lot. But they have to cap out on those farm dwellings before they apply for the farm worker housing and the farm worker housing necessitates demonstrating that the farm or associated property generated \$35,000 in gross sales on agricultural products. So this won't affect their change for public housing. Sorry. I am going to ask a few (inaudible). Please mute your microphones folks that have called in otherwise we are going to have to meet you folks from our end, thank you.

So back to the question. The question of will the agricultural stand affect farm worker housing. It will not change qualifications. Sorry guys. You need to mute your microphones or I will mute it on my end. Okay. So the question of farm worker housing and whether that will affect or whether or not the agricultural retail stand will affect farm worker housing, it won't. But I can say that there have been some complaints over the past about farmers that would like to live on their property before generating the sales, and the farm worker housing ordinance doesn't allow that. So now with the retail sales being permissible on the land it might avail itself to be able to have that farm generate the necessary gross sales for farm worker housing at a quicker rate possibly, but it won't at this point it won't deter or further expedite a farm worker housing application.

Mr. Ho: Thank you.

Chair Apisa: Are there any further comments? Kaaina just to clarify, what I heard you say as a that you were just talk in' about farm worker housing and not the farm dwelling itself right now correct?

Mr. Hull: Correct.

Chair Apisa: Okay. Wanted to clarify. Thank you. Hearing no further comment, are we ready for, there is no presenter here so are we ready for a promotion?

Ms. Nogami Streufert: I move to accept or approve the Zoning Amendment ZA-2021-1.

Ms. Otsuka: I second.

Chair Apisa: We have a Motion on the floor any, no further discussion we are all in favor?

Ms. Nogami Streufert: Aye.

Mr. Chiba: Aye.

Mr. DeGracia: Aye.

Chair Apisa: I did not hear everybody's aye. Do we have any opposed? I think people might be on mute. Should we do a roll call Kaaina? I did not hear a lot of aye's.

Mr. Hull: We can do a roll call Madam Chair.

Chair Apisa: Thank you.

Mr. Hull: On the Motion to Approve ZA-2021-1, Commissioner Chiba?

Mr. Chiba: Is he calling me? This is Mel Chiba. I vote aye.

Mr. Hull: Thanks. Thank you Commissioner. Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ho?

Mr. Ho: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Aye.

Mr. Hull: Chair Apisa?

Chair Apisa: Aye.

Mr. Hull: Motion passed 7:0. Madam Chair.

Chair Apisa: Thank you very much.

New Public Hearing

Mr. Hull: We have no New Public Hearing, Madame Chair.

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

### **CONSENT CALENDAR**

Mr. Hull: We have no Consent Calendar items.

Status Reports

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

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

### **EXECUTIVE SESSION**

Pursuant to Hawaii Revised Statutes Sections 92-5(a)(2 and 4), the purpose of this executive session is to discuss matters pertaining to the annual evaluation of the Planning Director. This session pertains to the evaluation of the Planning Director's work performance where consideration of matters affecting privacy will be involved. Further, to consult with legal counsel regarding powers, duties, privileges, and/or liabilities of the Planning Commission as it relates to the evaluation of the Planning Director.

Mr. Hull: Now moving on to the Executive Session. I will turn it over, sorry. I did not give Laura a heads up on this but I will turn it over to Laura for the Executive Session. We generally have the County Attorney read the Executive Session language to go into Executive Session.

Ms. Barzilai: Pursuant to Hawaii Revised Statute Section 92-5 (a)(2 and 4), the purpose of this Executive Session is to discuss matters pertaining to the annual evaluation of the Planning Director. This session pertains to the evaluation of the Planning Director's work performance where consideration of matters affecting privacy will be involved. Further to consult with legal counsel regarding powers, duties, privileges and/or liabilities of the Planning Commission as it relates to the evaluation of the Planning Director.

Chair Apisa: Thank you. Then do we have a Motion to adjourn to executive session.

Ms. Nogami Streufert: I move that we adjourn to the Executive Session and then when that is completed to return to do we want to return back to the, I guess we just—

Chair Apisa: Yes.

Ms. Nogami Streufert: And we will return to the general session?

Chair Apisa: Yes.

Ms. Barzilai: Yes.

Ms. Cox: I second that Motion.

Chair Apisa: Okay. All in favor? Aye. (Unanimous voice vote).

Ms. Cox: Aye.

Ms. Otsuka: Aye.

Ms. Nogami Streufert: Aye.

Chair Apisa: Any opposed? (None). Motion passed 7:0. We will adjourn to Executive Session and then return it to our general session. So, Kaaina do we disconnect and then reconnect or just connect through Executive and then come back to this, re-log in to this one?

Mr. Hull: Yes.

The Commission moved into Executive Session at 9:54 a.m.

The Commission returned to Open Session at 11:26 a.m.

Chair Apisa: Call the meeting back to order after Executive Session.

Ms. Apisa: Okay. Let me get back to that agenda. Okay. Well, I think we are just about to the end of our agenda. There is, Kaaina I assume no General Business Matters or Communication?

### **GENERAL BUSINESS MATTERS**

Mr. Hull: There is no General Business Matters.

### **COMMUNICATIONS (For Action)**

Mr. Hull: Mr. Hull: There is no Communications for Action.

### **COMMITTEE REPORTS**

#### Subdivision

Mr. Hull: Yeah. Correct Chair. There is just the Committee Report left, and I believe Commission DeGracia is now, appointed the Subdivision Chair. If he is ready to give the report or if—?

Mr. DeGracia: Yes, that will be fine. So, we had one meeting. All the members on the Subdivision was present today. Under New Business, it was approved the tentative to Subdivision Extension Request for Application Salvatore F. and Jo-Ann Dileonardo, Trust was approved.

Chair Apisa: May I have a motion to approve the Subdivision Committee Report?

Ms. Nogami Streufert: I move to approve this Subdivision Commission Report.

Mr. Ho: Second.

Chair Apisa: All in favor? Aye. (Unanimous voice vote).

Ms. Nogami Streufert: Aye.

Mr. Ho: Aye.

Mr. Chiba: Aye.

Ms. Otsuka: Aye.

Chair Apisa: Any opposed? (None). The Motion carried 7:0.

**UNFINISHED BUSINESS ( For Action)**

Chair Apisa: No Unfinished Business? Is that correct Kaaina?

**NEW BUSINESS**

Chair Apisa: No New Business?

Mr. Hull: No New Business Madame Chair.

For Action- See Agenda F for Project Descriptions

**ANNOUNCEMENTS**

Topics for Future Meetings

The following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter on February 09, 2021. The Planning Commission anticipates meeting via teleconference but will announce its intended meeting method via agenda electronically posted at least six days prior to the meeting date.

Chair Apisa: Are there any announcements?

Mr. Hull: Announcements or topics for future meetings from the Department scheduling standpoint. We have a handful of relatively smaller use permit applications or amendments. We have Kauai Habitat for Humanity is coming in in the next month or two for a residential project in Kapa'a. We have an amendment to a green waste facility over on Moloaa. We've got a small commercial operation amendment for an existing permit over in Kilauea and Eleele Church expansion proposal. As well as over the next three to four months we will, the Department will probably be embarking on a fair amount of administrative interpretive rules. I think over the past two years that was a Commission has partake, has participated in and initiated some, to a certain degree. We have a lot of policy changes over the last two years, a very robust amount of policy changes. And so many of those policy changes were adopted with the County Council and signs the law in the past two years, and from an implementation standpoint there needs to be for some of these changes additional administrative rules implemented. So we'll be introducing some administrative rules concerning guesthouses and dwellings, kitchens, as well as enforcement within the near future here. Also, just to put on your radar, if it already is not. We also have the

Hanalei Bay Resort Director determinate our Planning Commission Review and determinations to whether or not a public hearing is necessary and so that one is scheduled for March. And as many of you not but probably all remember that well can and will probably be a fairly lengthy and complex process. Other than that, that is kind of, what we have. If Commissioners would like to bring up other topics or issues to place on the agenda, we can definitely review that as well with the Chair.

Chair Apisa: Kaaina just if I could ask the question about the HBR, the Hanalei Bay Resort, because the attorney did ask that I recuse myself because my company has some listings in there. Then would our Vice Chair Cox would take over that portion of the meeting or do I still Chair it?

Mr. Hull: That would be correct. Vice Chair Cox would Chair that particular agenda item when it comes up in March.

Chair Apisa: Right. I just more or less wanted to give you a little heads up on that Kaaina.

Ms. Cox: Thank you. I have been given the heads up, but I want to make sure that Laura also has a heads up, because Laura I am going to need to talk to you, prior to the meeting just so I make sure I connected appropriately on that agenda item.

Ms. Barzilai: No problem. Looking forward to it.

## **ADJOURNMENT**

Chair Apisa: Okay. Motion to, uh, adjourn?

Ms. Nogami Streufert: I move to adjourn.

Ms. Cox: I second.

Mr. Ho: Second.

Chair Apisa: All right. All in favor? Aye. (Unanimous voice vote).

Ms. Nogami Streufert: Aye.

Mr. Chiba: Aye.

Ms. Cox: Aye.

Mr. Ho: Aye.

Mr. DeGracia: Aye.

Chair Apisa: Meeting adjourned. Motion Carried 7:0. Laura thank you very much. Welcome aboard and you have been great. Thank you.

Ms. Cox: Yeah.

Ms. Barzilai: Thank you so much.

Chair Apisa: Yeah. Thank you everybody.

Mr. Hull: Thank you all also.

Chair Apisa adjourned the meeting at 11:31 a.m.

Respectfully submitted by:

Arleen L. Kuwamura  
Arleen Kuwamura  
Commission Support Clerk

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

(X) Approved as amended. See minutes of September 28, 2021 meeting.