

WINDWARD PLANNING COMMISSION  
COUNTY OF HAWAI'I

HEARING TRANSCRIPT  
DECEMBER 4, 2009

A regularly advertised hearing on the application of MALA MOHALA (SPP 09-000088) was called to order at 9:40 a.m. in the County of Hawaii, Aupuni Center Conference Room, 101 Pauahi Street, Hilo, Hawai'i, with Chairman Rell Woodward presiding.

**PRESENT:** Rell Woodward  
Takashi Domingo  
Andrew Iwashita  
Zendo Kern  
Wallace Ishibashi

Brandon Gonzalez, Deputy Corporation Counsel  
BJ Leithead Todd, Planning Director  
Warren Lee, Director of Public Works  
Norman Hayashi, Planning Program Manager  
Phyllis Fujimoto, Staff Planner  
Jeff Darrow, Staff Planner  
Maija Cottle, Staff Planner

And 15 people from the public in attendance.

**APPLICANT:** MALA MOHALA (SPP 09-000088)  
Special Permit to allow the establishment of an overnight retreat camp for youths on 7.8 acres of land situated within the State Land Use Agricultural District. The property is located along the north side of Kaala Iki Road, approximately 1.2 miles mauka of Highway 11 and Honuapo Park, Honuapo, Ka'u, Hawaii, TMK: 9-5-15:15.

**WOODWARD:** I will proceed to Item No. 2 which is also a continued item from last meeting. Applicant is Mala Mohala, Special Permit to allow the establishment of an overnight retreat camp for youths on, well, actually 6.4 acres, we now know, of land situated within the State Land Use Agricultural District in Honuapo, Ka'u, Hawaii. Jeff.

**DARROW:** Thank you, Mr. Chairman. Good morning, Members of the Planning Commission. This is a continued hearing from our November 6, 2009 Windward Planning Commission hearing. At our last hearing the Planning Commission requested that the applicant provide three items of interest. These were identified as information regarding licensing from either the Department of Health, the Department of Human Services, or the Department of Education. No. 2 was to provide information regarding permitting processes and from the Department of Public Works as well as the Planning Department in being able to bring all structures on the property to become legal and, lastly, to provide an easier to read site plan.

We have received correspondence dated December 3<sup>rd</sup> from the applicant in which they addressed each of these three areas. What we've done is we've placed the submitted site plan on the overhead for your review. So this is a copy of the revised site plan that makes it a little easier to read. Additionally, if you read the information, they go into detail about the different questions that were requested of the Planning Commission. We also received several other correspondence, mostly from this morning. One is from Council Representative Guy Enriques, who represents District 6, this is dated December 4<sup>th</sup>. We received an e-mail this morning from Commissioner, previous Commissioner Jeff McCall, this is dated December 3<sup>rd</sup>, and it is an email. And, lastly, we've received a packet from Jeff Silva, I'm sorry I did not put his name on there. I'll come by after and place his name on there; and this has several articles submitted. With that, are there any questions?

WOODWARD: Are there any questions for staff at this point? All right, seeing none, if we could get the applicant and their representative have a seat. And we'll get your statements. All right, if I could swear you all in. If you'll raise your right hand. Do you all swear or affirm to tell the truth today before the Windward Planning Commission?

TESTIFIERS: I do.

WOODWARD: Okay, very good. And even though I didn't just use my microphone I would like to have you use your microphone. And whoever would like to go first, just give us your name and address and take off.

CHU: Good morning. My name is Newton Chu. I'm an attorney. And my address is 120 Pauahi Street, Suite 312, Hilo, Hawaii. This is a, to my left is Jennifer Zelko also of our law firm. Let's introduce everybody and then we can -.

ZELKO: All right.

M. MCKINNEY: I'm Mike McKinney. My address is 419 Huali Place here in Hilo.

S. MCKINNEY: I'm Suzanne McKinney, same address. 419 Huali.

WOODWARD: Okay, very good. Mr. Chu?

CHU: Okay. I want to thank the Council (sic) for giving us this opportunity to come back to you. I understand this is a continued matter. We went through a lot at the last hearing. There was a lot of information shared. There was a lot of discussion on issues on things that our applicant has done or maybe needs to do. And I understand that the Commission narrowed it down to three issues that we're to address today. And I know we're a continued matter. It's not a contested case, so in the interest of time I'm not going to summarize what happened the last time and I'm going to just address the three issues. Okay?

All right, I think first of all although the applicant heard loud and clear concerns about the, what the Commission had, and we worked really diligently over the last month to address those. I

think we're pleased to advise the Commission that they have taken down any, one of the structures, and the four other structures are scheduled to come down. So any concern that building was made without a permit, we're going to try to go back to square one. And I hope that that satisfies a lot of the concerns of the Commission.

The other question that came up is, number one, and this is, I'm referring to the letter dated November 6<sup>th</sup>, the applicant shall provide information to the Commission regarding the required licensing from the Department of Health, Department of Human Services, and of the Department of Education for the current operation at the Shirakawa Hotel, the proposed operation there. And we've addressed that and we've submitted that in writing. I don't believe you need me to read our reasons. But Jennifer, if you want to summarize it for us?

ZELKO: Sure. So we dealt with the three agencies that were mention in the letter from the Planning Commission. And No. 1 we do need from the Department of Human Services a child care center/facility license which we are diligently applying for right now. We're applying for both the Shirakawa Hotel and for the proposed camp site at the same time. And so we did put that in the letter.

The Department of Health does not regulate this type of camp. They regulate specific types of facilities, special treatment facilities, I mean, in youth. We don't fit under any of those things. And so we have been in discussion. We also talked to Department of Health, the Sanitation Branch, having to do with the kitchen. We do not need a certified kitchen because the kids help grow and cook the food; and we don't serve it to the outside public. And so that's where they make the distinction. So at that point we did deal with Department of Health, both of the branches, to deal with those two issues.

And then thirdly was the Department of Education. Because most of the kids that are attending the camp are from the mainland the Department of Health, the rules are applicable only to children residing in the State of Hawaii. And that's when you get the compulsory attendance, rules, and such.

And so those were the three agencies. And like I said we do need the license, for both the Shirakawa and the proposed camp site, as far as the Department of Human Services; and we're working on that right now.

WOODWARD: Okay, very good. Do we have any questions for either of the attorneys? Commissioner Domingo.

DOMINGO: Yes. What about the unpermitted structures? Did you mention anything about that?

ZELKO: Yes. After the previous Commission hearing our clients said they really reflected on your concerns and the community's concerns. They also spoke with Guy Enriquez, Council Member Guy Enriquez, and understood the concerns and decided to take all of the unpermitted structures down, to start again. And they felt that that was the appropriate thing to do. The only thing that will remain is the greenhouse with the children's plants and flowers, and

things that are under there. And I did talk with the Department of Public Works in order to permit an unpermitted structure like the green house. It is the same, you have the same procedure except it would be double, whatever the normal permit will cost.

CHU: And the reason for leaving the green house is that if we take that down the plants will die; and we just felt that, well, -.

WOODWARD: Okay, very good. Any further questions? Okay, we're -. Yes, Commissioner Iwashita.

IWASHITA: I have a question about the DOE requirement. And I guess it, since the, my understanding from the last testimony is that the children who are present are here for like over a month or two maybe?

ZENDO: It depends.

IWASHITA: Depending. And I guess in my mind that means they're living here temporarily. So, you know, I, can you clarify that? Because I guess I don't have a, I don't know what the definition of a resident child is. Right? So -. And then if, what I heard this morning was most of the children are from out of state. If some of the children are from in state then it seems to me the rule applies. So can you clarify those two points?

ZELKO: Well, this is in regards to the attendance, because that was one of the questions - shouldn't these kids be in school. Maybe Mike you can explain, I mean, how many kids do you have from the State of Hawaii right now?

M. MCKINNEY: Over the years we've only had a couple. And I know that other programs that operate like this, I'm not sure exactly what's the laws, I'm sure every state is different -. But these are kids in crisis and typically aren't attending school to begin with. So part of this process is designed to get them back into care. I'm sure somewhere somehow that's -.

ZELKDO: Well -.

M. MCKINNEY: Within the Department of Education, or I'm not sure where to find those answers but -.

ZELKO: Let, let, yes. Let me interject. You know, recently in our community here a very good friend of mine who said that I could use her name today, Megan, Brenda Alcott who was the president of the Board of Directors of the YWCA had her daughter run away here in town. And it was very scary, it was in the newspaper, it was reported. They did finally find her; and one of the recommendations, she obviously couldn't stay in school, that wasn't going to work. So she was sent to the mainland and they said they wanted to take her completely out of the situation she was in and put her somewhere else where she's not familiar with the surroundings. And she's not in school now. She's in a rehab. And these are crisis situations. So these aren't your normal students who have someone just pulling them out of school. These

are situations where they need the help. And so it's a little different than just your normal student.

CHU: The other thing is, Mr. Iwashita, there are a lot of families that come to Hawaii on vacation for over 30 days at a time and they're nonresidents. And then the children that attend the school are nonresidents, and they're not subject to the DOE laws.

WOODWARD: All right, thank you. Mr. McKinney, were you going to give testimony or -?

M. MCKINNEY: No.

WOODWARD: No. Okay, any further questions?

IWASHITA: Yes.

WOODWARD: Commissioner Iwashita.

IWASHITA: I have a follow-up. It's still my impression from the testimony that there are Hawaii children attending your facility. Is that correct?

M. MCKINNEY: We do not have any Hawaii children attending our facility at this time.

IWASHITA: Okay. So that was -?

M. MCKINNEY: I believe I said in the past we've had a couple of Hawaii students, in the past.

IWASHITA: Okay. So, well, this is problematic for me in this sense – you've had it in the past, I'm not sure if you're going to have them in the future. If we're going to consider this at all, it seems to me that if there is going to be a Hawaii child in your facility that you need to have some provision to comply with Hawaii law. And right now it's my impression you don't understand what the law requires.

CHU: If you want to put a -. Are you suggesting we put a condition that we don't admit Hawaii students?

IWASHITA: No, I didn't want to do that. I'm just saying that if, you know, we can't plan for all the, some kind -. You know, if what you're doing is, and I'm not making a judgment now, but if what you're doing is good for the kids, and apparently a lot of people think so cause you have lots of children attending in your facility and it might work for some kid in Kohala to go all the way to Kau cause that's -, may as well be on the mainland, worked for Kamehameha. Worked for Kamehameha, right? I mean, you know, you follow me – that there ought to be that opportunity but, you know, I'm concerned that based on what you've said you don't have an understanding of what Hawaii law would require in order for that to be legal.

M. MCKINNEY: Well, I think part of the problem is to facilitate a normal amount of classroom time would basically make the program irrelevant.

IWASHITA: See, that, excuse me for interrupting. But, you know, I understand what counsel talked about in terms of special programs and all those kind of things. Right? We have those. And there are alternative schools and all kinds of programs that the Department runs, right, that doesn't conform to -. I don't know what the normal school environment is. Right? There's a recognition of it. Some of those programs don't work for even, for some what I'll call special needs children, right, a child who has some, somebody like me who never really fit in the normal school environment. So I'm just, my concern is that I have this vague idea of how a child -. You know, for a special needs child in Hawaii they have IEPs and, you know, if they're certified, and, you know, they get all of this stuff. And they have plans and the school approves them not coming to school. Right? So I guess I would like some kind of a notion that, that you and the other people running this facility would have some idea of that, what to do if there's a Hawaii, somebody comes and say we have this Hawaii kid, and you know what to do in order, you know, to comply with Hawaii law. So can you say something to assure me of that?

WOODWARD: Commissioner Iwashita, one thing I might bring up, and our Corporation Counsel Mr. Gonzalez brought this to my attention, and that is Condition No. 8, applicant shall comply with all applicable County, State and Federal laws, rules and regulations and requirements. Now admittedly that's a broad sweeping statement. But -.

IWASHITA: I, I know that that's there. That's in all of our conditions. It's just that, you know, there is evidence in the record that this applicant has had a problem complying with some basic kind of laws that we have; and then when it comes to laws that are talked about, you know, the education of the children, I'm particularly concerned because the proposition is that this program is good for the kids. I just want to make sure that there are some assurances that those are going to be met.

ZELKO: I do want to point out that it isn't a school obviously. It's a camp. And so that's -.

IWASHITA: I'm not, okay -.

ZELKO: Yeah, I, I agree.

IWASHITA: I am not, I guess I'm not being clear. I understand it's not a school. Right? I understand how, we all understand Hawaii law requires Hawaii children to be in school unless they meet one of the exceptions. I want to have some kind of representation made that there's some knowledge about how to meet one of those exceptions for your child.

ZELKO: Absolutely. And I think the way that the applicant would have to take care of that if there was a Hawaii student coming to the school, that they have the proper recommendation, because usually they're coming from outside medical professionals that the kid cannot be in a school. So we would make sure they went through the proper channels. And they're going to be required, I mean, they truly are going to be required to follow the rules or

they don't get to keep their special permit. And I think, so whatever needs to be done -. I mean when we were speaking to, you know, the answer in here, we were just talking Department of Education because truly most of the kids that are coming, in fact all right now, are from the mainland; and it's recommended that you do take, and that's why I mentioned it earlier it is recommended you take a child in a situation of crisis and you completely remove them. So I know it's an issue. We don't generally have Hawaii kids here, but most therapists and medical professionals recommend that you don't. They know the island better, they can have a friend -. You know, it's a totally different situation. And so that's why this kind of works with the mainland kids coming here. And that's what I was speaking to. But, yes, if it was a Hawaii student and we thought at all that the DOE rules were applicable to the situation, they would have to follow the rules and do whatever is needed to do.

WOODWARD: Commissioner Domingo.

DOMINGO: You know, I'm listening to Commissioner Iwashita with regards to public school. You know, I'm thinking there will hardly be anyone within this island, or whatever, who would be willing to pay \$450 a day, \$13,000 a month to -. I don't know to what extent that child may be, I don't know what word you can use, controllable or whatever, you know, you can cope, can be coped with. If anything else probably the parents could consider sending them to another private school as your friend did, send them to the mainland for some kind of therapy or action, yeah.

ZELKO: They sent her to a similar program, a wilderness program, I believe in Oregon.

DOMINGO: Yes, so -. Or another more mild approach would send them to HPA or Parker School, those private schools where they have special programs to take care of them. You know, but the bottom line, the bottom line is the numbers. And I'm looking at this and it's, it's a lucrative venture for the applicants. And there are concerns here that aside from, aside from the children here from the Big Island or from the State but, you know, there are issues here that we must closely look at. And if you guys, if you folks can comply with all the requirements that we can push towards you, then, you know, I cannot see any reason why we cannot approve it. And, of course, we have the Councilman from the district here probably will more than likely come up to say something also. You know, what I feel is when you go into a community and if the community cannot accept you it's going to be real hard, all the way it's going to be real hard. I've seen through that, I've been through that. And you have to have acceptance in the community, you have to get good relationships with people in the community if you want their support. Okay?

WOODWARD: All right, thank you. We do have two people signed up from the, public testifiers. We have any further questions for the applicant before we get -?

ISHIBASHI: Yeah, I have one, Mr. Chair.

WOODWARD: Okay, Commissioner Ishibashi.

ISHIBASHI: Thank you, Mr. Chair. And thank you guys for coming forward. Yeah, I believe it's needed, it's a necessity. The program you guys are operating is a necessity for not only Hawaii but for the whole United States. We should have more programs like this. The problem I get is you cannot differentiate between mainland children and Hawaii children. Everybody get problems. You guys cannot just target one. So if you guys are going to operate one quality facility, let's try and get the proper facility in place for cooking -. Cause the kids we love them just as much as our Hawaii kids. But we've got to provide the best facilities we can. So hopefully by breaking down your unpermitted buildings and building the proper buildings the facility is going to, you know, it's your focus going towards that goal. Yeah, money is one issue because that's expensive what you guys are charging. But I think just that program in itself is a benefit to the family. Cause once you get kids that go off track it's kind of hard to put them back on unless, yeah, you remove them from their comfort zone. So it's important that we do that. But I think we've got to look and really focus on providing the best facility possible for the kids, that's the key. I just wanted to make that comment. So I forget the number -. How much students or children you can hold at the facility and what is the current-?

M. MCKINNEHY: We, I think the most we've had is 20; and right now I believe we have 14 or 15 students.

ISHIBASHI: Thank you.

WOODWARD: All right. Any further questions? Okay, thank you very much. You can all be seated. We have two people from the public to testify. Jeff Silva who I believe testified last time and Councilman Guy Enriques. If you'll come up and have a seat. All right, good morning, Gentlemen. If I could swear you in. If you'll raise your right hand. Do you swear or affirm to tell truth today before the Windward Planning Commission?

TESTIFIERS: I do.

WOODWARD: Very good. Okay, Mr. Silva, you signed up first so if you'll give us your name and address and then begin your testimony.

SILVA: My name is Jeff Silva. I live in Woodvalley, Kau. My address is Box 201, Pahala. I'm here to recommend against the approval of their plan, as I did at the last hearing. Since the last hearing I had some time to do some research on this type of organization. Actually one of the things that the Commission did ask for is they asked for a definition of what they actually were, which apparently even they don't know what they are. But in my research, actually it was pretty easy, on their own website they call themselves a wilderness therapy program. And they also mention experiential education and adolescent therapy. In fact, two of the main portions of their website are the academics section and the therapeutic section. In just essentially googling those items, a quick search even on dial up comes up with a number of organizations that regulate this type of company. Most of them have recognized that these facilities do have inherent problems. In fact, there's quite a few documented cases of runaways, injuries, various other things. I'm not saying that, you know, these applicants are doing something bad in that regard. But there are regulate -, self-regulating organizations within the educational, experiential educational community and the adolescent therapy community.

One of these associations is the Association of Experiential Education. And actually Ms. Zelko pointed out that a friend sent one of their children to an outfit in Oregon doing a similar program. And I, probably that program is run by Katherine Freer who is actually quite a proponent of regulations of this industry. In fact, she does quite a bit of self-regulations; and I've included a copy of the front page of her website in my packet that I submitted. In that same website she lists a number of organizations that do, not really regulate but they guide these types of programs to essentially be safe, be properly licensed, be properly regulated. It's a must. You're dealing with minors. And, to be honest, the proof from their past which is how generally things are judged, it doesn't show a very shining example of how they operate and I don't see how they can operate very well in the future without some pretty strict requirements from the Commission.

So, anyway, there's also information, printout from the Bureau of Land Management, cause a lot of these types of programs are run on Federal lands. Well, the Bureau of Land Management has recognized that there's an issue with safety and any states that do not have licensing requirements are not allowed to operate this type of operation on Federal land. The Outdoor Behaviour Health Research, Healthcare Research Coop also states that these types of operations need to gain permits for operating on any private, public or, private or public land in order to operate on their land because of potential risks. Now that would be a self-regulating thing because, I mean, they're in a van, they could drive just about anywhere. But, anyway, the licensing thing I think is more in your deal, you know, to make sure that they're properly regulated.

More what I really think is the fact that this is not only an unusual use of agriculture land, it's an unreasonable use. They're going to impact the area, it's in no way similar as they claim to the surrounding land. They're talking about putting a bunch of people on the property which they already did. They've proven that they're essentially unwilling to follow the recommendations of the Commission as well as basic law. And, as a business person myself, I know I have to follow the rules, at least appear to follow the rules. And they don't, they haven't even made that appearance, which I find pretty disconcerting.

One of the main things, I'll try to make it short, I just, there are a lot of issues that I have with this organization and with their operation. So I'll just try to go down the list as quickly as I can. The thing I mentioned at the last Commission meeting was that their water needs to be a certified drinking water system. Well, in researching this, they need to register with the Department of Health, Safe Drinking Water Branch, as a nontransient/noncommunity water system. They have to have certified water. If there's more than 25 people drinking that water regularly, they have to. They also, yes, they've applied for a permit for the Shirakawa Hotel but they've operated for five years without one. They've operated for five years up on the Ag land without one.

The other, one of the other things I wanted to mention at the last meeting, it came up that the County Building Department actually allows two structures on an Ag zoned property. That's correct. They allow one residence and they allow one farm dwelling. A farm dwelling, however, is, actually has to meet certain requirements. In other words you have to have employees which are housed in a farm unit. Well, employees of an agricultural operation are

generating income from agriculture, not from residents. In other words, you have to show a bonafide agricultural production in order to house bonafide agricultural employees.

The other thing I might draw your attention to is the article from the September '99 Honolulu Star Bulletin where essentially right in the article it states no more youths can go to this facility, I'm sorry it's not in quotes, but essentially in the middle of the article it states no more youths can be sent to this facility till licenses are obtained. This is regarding a facility that was in Laie. And so this is not a new thing for Hawaii. Hawaii has seen this before, in '99. So if it was already a problem in '99 it was here way before that. Okay? By now these types of operations should have some awareness of how they can proceed.

The other curious thing that Mr. McKinney mentioned in his previous testimony from the last meeting was that he's from Utah. Well, Utah it turns out is actually the root of this type of program. And I'm not stating that these programs are necessarily bad. But Utah has recognized that these programs need to be tightly regulated. Kids get injured here. Well, Utah has really strengthen their regulation. And so what's happened? All these ex-Utah people have gone to Samoa, Costa Rica, Hawaii, other rural locations where the regulations are not as strict to operate this type of system without any oversight. Okay? So even if it is a good program, they need oversight. And even the industry people within this industry are saying we need oversight in some way, shape or form by being members of associations, by actual government regulation, definitely by health code, absolutely that goes without saying.

The last thing I wanted to state is, once again I brought up the money at the last one, was as a business if they are doing -. Well, they say in the past they've had 20 students. But I've calculated from what they project of 24 students, well, if they have full occupancy that's \$3.9 million a year. They've been operating for five years already. They said they've had, by his own testimony he says he's had 20 students at one time. That's a substantial amount of money to not have to follow any building code, any health code, and in addition to impacting the neighbors.

I feel that this thing, it should be in a different area. It shouldn't be in an Ag zone. And I'm just going to finish up with my last couple of my, in my last testimony, "Mr. McKinney, Mr. Kaiser, Preacher Creek LLC, Pacific Quest, and now Mala Mohala have acted with impunity, disregarding the rules the rest of us have to follow. When the Planning Department acted to protect their neighbors the applicants withdrew their application and subsequently filed the application now before the Commission. The applicants have already negatively impacted their neighbors by building their facility and operating it without oversight for five years. Granting the application today would reward them for their poor behavior, unusual when they claim to teach minors values. The applicant's lack of attention to all of these issues brings question to their ability to operate such a facility. Their qualifications should be carefully scrutinized as their acts on the ground bring question to the credibility of their statements and their true intent." And then my last paragraph essentially talks about the Kau CDP which I understand is in progress. And, honestly, I think the CDP is a good thing but I think the end result will be that they'll decide this area is not fit for this type of operation. That's my belief. Thank you for your time and thank you for volunteering for this.

WOODWARD: All right. Thank you, Mr. Silva. Commissioner Domingo, you had a question?

DOMINGO: Thank you. Mr. Silva, with regards to oversight, would not the acquisition of permits present itself to be a means of oversight for the operation?

SILVA: Well, it hasn't had, it hasn't as to yet.

DOMINGO: Well, that's what I mean. Because they would be required to obtain permits to conduct such a business. So in the form of acquisition in those permits, would it not provide some form of oversight as to what they need to do and what they cannot do?

SILVA: You're right. But you don't, my understanding is you do not have a right to proceed with a business prior to getting those licenses; and they've done that for the last five years.

DOMINGO: I know what you mean and I know that I'm bothered by that also. But I think it was Corp. Counsel who stated that to deny an application cannot be denied upon the reasons of what they had done wrong in the past. You know, it would be like a punitive action to them. So, you know, this is where I'm being very careful to make sure that the concerns or the issues which were done previously would be corrected, would be given assurance that those issues would be addressed; and that should a permit be given that they will be starting on a supposedly clean slate based on its value and based on the quality of service that they can provide for the kids, you know. And, you know, I just need to mention that.

WOODWARD: Okay. Was there a question there?

DOMINGO: No, no.

WOODWARD: Was that a comment?

DOMINGO: Just a statement of fact.

WOODWARD: Okay, we'll just try, if we could please keep to the questions here. Any further questions for Mr. Silva? Commissioner Domingo, you had another question?

DOMINGO: Well, you know, just to clarify my questions, I just want to make it clear and the record to indicate what we were discussing previously and the concern with regards to how I'm looking at this specific application.

SILVA: Can I respond to that?

WOODWARD: Yes.

SILVA: I feel for your position. I can understand that it's difficult to sit on the Commission. But I think past performance is a judge of how strict it needs to be. I think you

need to make sure the requirements are there. They do in my opinion fall under Department of Education because there is a chance that they can accept Hawaii resident children. And, you know, the regulation that I recommended I think is more than fair, that they have accreditation from organizations that show that they are for real, that they are meeting industry standards. I mean an industry that grew that self-regulates the industry will say, you know, these people are doing what it takes. For instance I'm an ASE Certified Master Tech. ASE is not a government organization but ASE says I have certain skills and abilities. It's totally nongovernmental but I can show somebody this is my license, and I put a lot of work into it. This is the type of regulation that I think they should seek. Thank you.

WOODWARD: All right, thank you. Commissioner Iwashita.

IWASHITA: Thank you, Mr. Chair. One of the concerns that are residual with me is this whole thing about Waiabata Cave. And I guess since you were aware of the long history of this and the requirement for the survey, we now have a March 14, 2008 study that, you know, the representation is that it's highly unlikely that there are any subsurface archaeological features, I guess, under this property. But I guess my concern is that the entrance to Waiabata Cave is on the adjoining property not far from this property. Is that correct?

SILVA: It's on the makai, near the makai boundary -.

IWASHITA: Of this property?

SILVA: And the lava tube projects uphill. I don't know how close to the boundary, you know, the actual lava tube goes. I've never been in there.

IWASHITA: Okay, but the general direction is heading mauka toward this property?

SILVA: No. It's down towards the ocean from this property from the lower parcel.

IWASHITA: Right, the entrance, the entrance to the cave?

SILVA: The entrance is, yes.

IWASHITA: But you're not sure which direction the cave goes from there?

SILVA: It goes uphill towards their property but I don't know whether it projects underneath the property in question.

IWASHITA: Okay, thank you.

WOODWARD: All right. No further questions, okay. Councilman Enriquez, your turn. If you'll give us your name and address and take off.

ENRIQUES: Guy Enriquez, Councilman, Representative District 6, way out in Kau. It's not that far, Mr. Iwashita.

IWASHITA: My wife is from Naalehu.

ENRIQUES: But it is a beautiful place out there. I want to thank all of you for allowing me to speak today. It's refreshing to be on the other side of the table and seeing you guys over there. But what I'm not comfortable with is you guys get to question me back. I'll get used to that one. Okay. I've passed out my testimony to you. I've been asked to weigh in on this situation from several constituents who had concerns. And as I kind of dug into this I realized there was need for concern. And so I made the effort that you people couldn't do. And I think it's important that I share with you the information that I did come up.

It's on two fronts. One is things that actually you deal with and the second front more in what I deal with. But I think the ends should meet some place between your concerns and my concerns. Just to let you know I did have two meetings with the applicant, and they were very positive meetings. I'd like to go to the concerns or the research that I did come up with, one item at a time, because I think they are important. I would like to give you my conclusion, as well as a recommendation. So that's where I'm heading.

First in regards to issues that I think pertain to you:

The buildings erected without permits and in the wrong area. That was one of the first things that struck me as pretty bold.

Secondly, no licensing available at this time. And it could be because of the uniqueness of this project as we've discussed with the applicant, and to the uncertainty of the programs being offered might be a reason for why we don't have the appropriate licensing. However, this is the first time I've met Mr. Silva or talked to him today. I do agree with him in terms of oversight. I think in this type of business you need it, especially when you deal with kids. I have a masters in education. I've taught for 12 years and I, especially in the business of special ed where I've worked for six years on Mt. Hood working with kids, not of this particular type but in similar business lines. But in regards to this particular situation having oversight I think is very important, especially having oversight or licensing before you give the permit. What if they don't get it and you've extended this? That is the question that brings to bear -.

So those, No. 2 the fact that building was done pretty boldly without recommendations and the licensing pertaining to you.

More in regards to my concern deals with integration with the community, community health and safety. These are some of the things I found from talking to the neighbors and people that I try to, in and around that area. Now I live as the mynah bird flies maybe three miles away. But, you know, to get around to that area, probably takes me five or six. But I tried to circle around the area finding people that I would know who would have more information than I could dig up.

But here are some of the things of concern: Complaints that the vans were speeding on those back roads. If you've ever travelled those roads, there are areas where you can go fairly fast. There's an intersection where there are couple homes that are built. But one of the neighbors

said he almost pulled out and got hit by a van. I found out there was an accident where the van actually crashed and flipped off its wheels. And I asked the applicant about that and he said no one was hurt, not a drop was spilled. But the reasoning for the action was to avoid potholes. And in visiting that site, you'd have to be going fairly fast to avoid a pot hole and flip off your tires.

Health and safety issues for kids in the program and the community are major concerns to me, whether they are Hawaii kids or not Hawaii kids. Kids are kids, whether they are from here or not. And issues that deal with water, sewer, fire or roads are of concern to me. And I don't know that we've addressed it. I haven't had the time to look into these areas to know whether they're addressed satisfactorily. I know a neighbor's renter's line was tapped in without permission.

After speaking with the applicants there are very little local hires, which are important to me if we're an outside business coming in, as in any business that I look at coming into this county, the island of Hawaii. One of the things I will push for whether it's in Kau or not is that we look at local hires first.

All student participation as far as I know are from out of State, and that bothers me a little bit. In fact, I'm questioning why we're not having our own kids in there. We have the same kids with problems; and there was a reason given, and to some satisfaction. But I will say, I would tend to disagree that the kids have to go out of State to experience what they might have to offer.

There was very minimal participation in the number of years that they've existed in the community. In fact, in my observation it has been more of a stay away. That bothers me.

Property very uninviting. I went to go and see the property. And it's just kind of a dirt road with guinea grass kind of growing over with a big "no trespassing" sign on there. And I did address it with the applicant; and they did suggest their reasons for being the way it is, and it had some merit. But, still, any business, like I said, that we invite, especially if we're going to give them a special permit, I want to make sure that they're going to interface with our community and be inviting, rather than being more of a stand-alone type of business.

One community member did witness a student out in the rain and asked if they needed help. And the student refused and stated they were not allowed to accept help. And I expressed this to the applicant again, and they do have a program of passage or something like that which I don't really understand myself.

But, anyway, in conclusion:

Willfully building without permits and tapping into neighbor's waterline without permission reflects to me a very unwelcome attitude.

Secondly, prematurely giving the permit to this organization before the licensing is approved I think could cause some problems down the line. If they're not approved and we've given them permission to go ahead, I'm not sure what the consequence is going to be.

This is an out-of-state organization which has done little to connect with this community. As a Council Representative I want to invite businesses that participate and involve themselves with the local community.

And, therefore, if you go to my second page, this is what I will recommend. And I will say this before I go to my recommendations. As a new Councilperson I don't know exactly what your rules are or most of the rules that the Departments have in regards to situations like this. The recommendations I am providing you are made on, to me, what makes sense. So, you know, if I put in there that has nothing to do like Mr. Gonzalez might have point out to us, to Mr. Taka Domingo, forgive me on that. I'm just going on what I think makes sense. So my recommendation after the research is, basically:

Number one, deny the approval of the request for special permit.

Secondly, I would suggest, and let me say this, everything that I'm putting in, I'm announcing this recommendation, I have spoken with the applicant himself. Okay, so he understands and I think, well, I'll finish with that statement. I suggest, secondly, the applicant reapply for a special permit after one year after satisfying the concerns listed below:

Number one, addressing all building requirements outline by the Planning Department.

Number two, having all licensing required to operate this particular type of business prior to application. And as I hear Mr. Silva, there might be other areas that they might need licensing on; and I'm tending to believe that when you work with kids.

Secondly, I would ask the applicant to work the District 6 Council Representative - hopefully that will be myself but elections are coming up so I can't say for sure that's why I said District 6 Council Rep – providing written testimony to the Planning Commission, satisfying the following concerns:

Health and Safety Issues with water, sewer fire, road and safety issues.

A big one for me is the community integration. I request that they:

Make sincere attempts to include students from local schools and/or area with similar problems and offer, because it is \$450 maybe offer a scholarship program to our local kids. He welcomed the idea, Mr. McKinney welcomed the idea and is anxious to take a step in meeting the principals and people who might be able to integrate on that area.

I asked him to participate in community service projects. And he welcomed that also and have already made attempts to, we've already outline couple of different projects in which they will be participating. And I hope that will continue to a greater depth; and I feel confident that it will.

We also asked him to hire local workers when possible and when they're qualified. He said he will make a commitment towards that.

And I would like to see them create a program and a campus out there that embodies the spirit and the beauty and the aloha of Hawaii. And it's not what I see there right now; and he is committed to also doing that.

I also asked them to, as part of the recommendations down there, to work with established or intended direction and guidelines of the Kau CDP, as mentioned by Mr. Silva, and make every attempt to work with Mr. Whitmore or myself with the CDP as it's going through.

Provide written business overview, for example:

Type of business.

Number of employees and this kind of thing. I think it's important for us to know what their operation is like. And Mr. Iwashita was talking about, I believe it was you that said something about IEPs; and that's what I dealt with. And we're working with the kids, if you're dealing with education or any kind of programs there should be some outlined thing on how you're going to take the kid from Point A to Point B. I'm interested in how they do it in their business. I haven't had the time to understand how that works. But, anyway, I put a brief description of student programs and plans to participate with the community.

And the last thing I put out there, should the applicant receive approval after one year from this date, this Special Permit is to have a sunset date of 5 years, whereby reapplication will be required as requested by a Planning Director in previous.... I think that's a good, a good rule that Ms. Todd initiated. It doesn't allow this special permit to run with the land. And it does offer some protection in the case that you do approve this application and, what you call, oversight is not, or licensings are not approved.

But, bottom line, at this point I cannot support the applicant; but I think in a year this particular project I see is a very good one. It has a lot of potential not just for the kids coming from the mainland but I think for a community itself. I think they have a work force that could be very generous to this community. I think they have skills that they could offer our kids ourselves. And I think if the right start and the right attitude was taken I still believe that in one year I could be very well standing behind him and asking you to approve this particular, what you call, application.

So though I do not stand with him now, I think in a year I could be easily. Because I think it is a good program, not just for the mainland kids but for ours. This is a unique one and could be beneficial both in the business sense for Kau as well as from a community sense. And I just think we haven't explored that situation. Thank you.

WOODWARD: Thank you, Councilman Enriques. Do we have questions for the Councilman? Commissioner Iwashita.

IWASHITA: Thank you, Mr. Chairman. Just to clarify cause the standards we need to apply, one of the initial standard is whether or not this is, what's being proposed is a reasonable use, not only unusual - obviously it's unusual, right, use of Ag land - but whether it's reasonable.

And I guess my impression of your testimony, I just want to confirm, is that you believe it's not reasonable, it's not a reasonable use of the land until and unless they get the kind of -, well, you said licensing but I guess in the literature and what's in our record you talk about accreditation because it's private accreditations from one of these JACO or KOA or CAR, one of these types of organizations. Is that my correct understanding?

ENRIQUES: In regards to correct use of the land, their business is not related to the land primarily. I believe they are a student treatment type of program. Secondly, however, they are using the area for farming mainly as one of the major ways of treatment. So in that sense it's somewhat related to the land; and that's why I think they are asking for a special permit, because it doesn't really concur with their, their primary business does not concur with what is stated there now. So that's my point there. I don't know if I've answer your questions but -.

IWASHITA: Yeah, I was just clarifying. You said you wanted licensing to be done before any application is granted.

ENRIQUES: Well, my, yes.

IWASHITA: Is that correct?

ENRIQUES: My point is, for example, the licensing they are applying right now, not the one for DOE because they said they don't need one, but the one they're applying right now. Should you go out and approve this particular application right now what if their license is not approved, I mean, and they can't operate?

IWASHITA: I understand. Thank you.

ENRIQUES: That's my concern.

IWASHITA: Thank you.

WOODWARD: All right. Councilman Enriquez, let me ask you one question. I understand that you have listed a number of things you'd like to have them satisfy as far as licensure, regulations, etc. I assume the one year is basically a guideline, not a set, not set in stone. It's just gives you a reasonable time to allow those things to occur?

ENRIQUES: Two reasons. One, I think if your application is denied you have to wait one year to bring it back. So I went based on that. And I think in one year they should be able to take, you know, get into the community, do these things. I'm looking at the things I'm asking them to do from a Council Person. Or any business, if it was an agricultural business, I'd be asking the same questions I'm asking these guys. Not to pick on them, but I would ask the same questions of any business. Whether it's planting coconut trees or growing kids, I'm going to ask them the same question whether it's in Kau, Hamakua or Kona. I think any business coming into a community needs to be a part of the community. So I don't know if I answered your question

there, sir. But it's just the one year, after talking to BJ they have to wait one year if this situation was denied.

Now I did explain to the applicant that my presence here is just a recommendation. You will have the final say. And both the applicant and I have made an agreement that regardless of what you do here today, whether you approve it or disapprove it, we are going to work on these things. He has made that commitment, to me at least.

WOODWARD: Very good, thank you. Any further questions? Commissioner Domingo.

DOMINGO: I would like to hear from the applicant themselves as to how they feel about the issues as outlined by the Councilman.

WOODWARD: All right, let's see if we have any more questions for Councilman Enriques. And then, if not, we'll have the applicant come up and address your specific concern.

ENRIQUES: Just a reminder that everything that I talked about we had discussed in my office; and we met twice on this. So it's not that he might, I just finished it this morning in putting it together so I didn't give him a copy. But there's nothing on here we didn't discuss.

WOODWARD: Very good, thank you.

DOMINGO: So, Mr. Chairman. So, Councilman, in essence there is agreement between you and the parties concerned with regards to your issues here as outlined; and they accept that?

ENRIQUES: At our meeting yesterday, yes, I think he made a verbal commitment. Am I correct?

CHU: There's a one-year delay.

ENRIQUES: I'm not talking about the one-year delay. I am talking about the issues regarding the community. The one-year delay I think if, for example, if, I guess there are a couple of options. And, again, this is where my lack of knowledge comes in. You either can approve, disapprove, or postpone.

CHU: You're talking about a licensing and building, well -.

ENRIQUES: No, I'm not talking about that portion. I'm talking about the community aspect of what I want to see there. In terms of the licensing and the building things, that's your kuleana there. I don't think any of us really have a real say in the community issues. I think that's what we wish to happen, you know; and that's why I'm here, is I wish this to happen. And if it doesn't happen I hope you deny them. And this is what I'm saying, I will stand here with them if he applies -. If he is willing to work with this community and make their business portion -, I'm willing to stand next to him and say, hey, this is a great thing. But if it's not I'll be here saying like he hasn't been -. And that's why I'm saying no right now. But I think, I really

believe this is a good program. This is a program that deals with kids. And we have the same kind of kids. And if my kids go to the mainland for this and that's the only way to cure them, then I hope they're welcomed up there. But I don't believe that's their only choice. I think they can, they have services they can offer our kids today; and with this, like you said, the lucrative business. And maybe it's unfair to say this, but maybe even a scholarship program for one or two kids, we don't have to have it molded in. But at least consider it is where I was going.

DOMINGO: Now, if I may, I interpret this that there is a common ground between both parties and its approval, okay?

ENRIQUES: As far as I'm concerned?

DOMINGO: Yeah, because you mentioned that you met with them and you went through all these points. So there's a common ground that we're standing on right now in which I think we can make a decision. Now Councilman, you're familiar with the conditions in our rezoning application and land use issues that they have to meet certain conditions before the rezoning or land use is obtained, you know, should these conditions not be met then, you know, the action taken will be null and void. So rather than having a denial of the application would an approval of the application, of the special permit, it be approved based on the conditions set forth by the Planning Director and your agreement with the applicants - should these conditions be met, then the permit is approved?

ENRIQUES: I would look at this two ways. And I think I understand what you're saying, you could approve this with these conditions being met. I guess in light of what has transpired up to this point is why I elected to go the other way. I'd like to see good faith done first at this point because I don't think good faith was applied in the initial process. I think if the initial process was done correctly we would have no, we would not be in the problems where we have today. So this is why when, I elected to go the one year to make, one, make sure all the applications are done and more importantly to see that the good faith side of the community issues - which we really don't have any strong ties to except, hey, I wish you would do this - gets done, and then we go with it.

DOMINGO: I was looking at the former, having, approve the application based on the conditions being met. And I think when we're doing this in essence we're also legislating a good faith effort, good faith action by those, by the applicants. Because if, if they really are sincere in having this and want to deal with this in good faith, they need to comply with all the points that you mentioned. Now having not met these conditions then, you know, they won't be able to conduct any kind of activities on their property with regards to the application submitted. That's, you know -. What I'm doing is, what I think is not coming back another year and having to go through this whole charade of hearings and everything. What we can do is from here is let the Planning Department follow-up through meetings, or having reports submitted by the applicant with regards to accomplishing the conditions as mentioned here.

ENRIQUES: I think I addressed it over here and hopefully tried to make your work easier since I'm the one out there working with these guys and seeing -, I'm hoping to visit their campus and connect them with the groups, introduce them to the principal. But I put in here

written testimony from myself that they've met this. I would be sort of like the witness that, you know, on their behalf, that they've met these things. If you feel you need to do that I'm, hey, I'm all good, you know. The main thing is that, what I thought is I'm out there, I'm making the connections, I'm watching this thing, it is in my backyard, I'm only couple of miles away. I would love to work with these people. Because I think, like I said before, this has a great potential for some really good things to happen. It's just, I don't think it just was approached in the right manner.

WOODWARD: All right, thank you. Let me just interject one thing, and I've spoken with our Corporation Counsel. Once we get through with the questions for the witnesses and then give the applicant a chance to respond, we're going to need to go into executive session briefly. Because there are a number of legal issues about implications of our vote and what our options are that we need to discuss in executive session. So rather than bring up all the permutations and combinations at this point, I would suggest that we leave that, cause we're going to go into executive session once we get through with this testimony.

Are there any further questions for Councilman Enriquez? Okay, seeing none, thank you, gentlemen. You may be seated. And we'll give the applicant a chance to respond since Commissioner Doming specifically requested information about your interaction with Councilman Enriquez and what your feelings were.

ZELKO: Yes, okay.

WOODWARD: Okay, so you have had a chance to read -?

CHU: I haven't read it, I haven't received, that's a -.

WOODWARD: Okay, would you like a few minutes?

CHU: Well, yeah, you know, it is not a contested case. It's funny, it seems like it is a contested case, but it's not. And one of the problems we have, I have with that is that we're unable to really respond or prepare. It's you come here and you take your, you know, the stones are thrown and here we are. In a contested case it's a little different. There's time to prepare and vice versa. But as -. We thank the public for their testimony. Everybody is entitled to their opinion. Some people will never be happy and we, you know, there's nothing we can do. But we hope, the applicant hopes to create a successful program that will benefit not only our community but help enhance the ability of children to get back into the society. So that's really the goal, if we look at the goal.

These, some of these items, I don't know there is, some of the items that were addressed in the public testimony involve possible legislative issues, not really something for this Commission to undertake. So I would just caution you on that. There's, there are jurisdictional issues. And in this last, the suggestions of the counsel, I guess I really have to read through this.

WOODWARD: Okay, Mr. McKinney, did you want to say anything?

M. MCKINNEY: Well, I was going to respond to my meeting with Councilman Enriques and some of the agreements we kind of came to. And I, with regards to the community case, we're absolutely in agreement; and that will happen regardless of any outcome. Integrating with the community, trying to continue to employ local people, I'm all in favor of that.

WOODWARD: Okay.

M. MCKINNEY; I had one other comment, just about some of the licensing and some of the private organizations. And we are a member of a couple of organizations – The Association of Experiential Education, we are members; we're also members of NATWIC, which is the National Association of Therapeutic Wilderness Camps. We're in the process of working with a number of therapeutic licensing, private licensing organizations; and, again, mostly because of the confusion of the States. And one of the things, we're in the process with the Joint Commission on Health Care Accreditation, JACO. And really the place that we're stuck in that is meeting some sort of license of some, some sort of license to be accredited by them. So we are aware of those organizations. We work with many of those organizations. We go to many conferences and we have a lot of professional support in the industry. And thank you.

WOODWARD: All right. Thank you. Yes.

ZELKO: Yes. I did want to make a comment too, and that has to do with licensing from the Department of Human Services. They will be regulating the camp. I believe the certificate of approval shall be issued for a period of one year or two years. There are criteria you have to meet. They come out and inspect the property. The fire marshal comes out. Everyone in the camp has to have, be TB cleared, CPR, I mean the license requires all of that. So it does encompass a lot of issues. You have to have a natural disaster plan. All of those things have to be addressed before they will issue that certificate. And part of the problem with going there without a special permit for the use, they're going to have a difficult time getting the license, not for the Shirakawa Hotel but for the proposed camp site without the special permit. Because are you in, do you have the correct zoning, and you have to be. And so that's part of the reason we really wanted the special permit in order to show the Department of Human Services this is what we have here, here's our plot plan, and then they will come in and inspect. But that's one of the first things, is can you do it under the zoning. And that's it.

WOODWARD: All right. Thank you very much. I guess there are no further questions.

HAYASHI: Mr. Chair?

WOODWARD: Yes, Mr. Hayashi.

HAYASHI: We need to apologize. The letter that was submitted by Councilman Enriques did not have page 2.

WOODWARD: Mine did.

HAYASHI: Yeah, some of you do, some of you don't. So that was part of the, I guess, the zeroxing process. So we're making copies for you now.

WOODWARD: Okay, very good. As I mentioned before and I guess there -. You may be seated. Thank you very much for responding.

CHU: Thank you.

DOMINGO: Recess?

WOODWARD: Okay, you would like to have a recess?

DOMINGO: Short recess.

WOODWARD: All right. Well, let's do this, let's go into executive session and then you can -.

GONZALEZ: You can recess while they're clearing the room.

WOODWARD: Right. Okay. So we need a motion to go into executive session.

DOMINGO: Mr. Chairman, I move that we go into executive session based on the client-attorney privilege.

IWASHITA: Second.

WOODWARD: Okay, it has been moved and seconded. All in favor?

COMMISSIONERS: Aye.

WOODWARD: Any opposed? All right. Thank you. If you folks will exit for a few minutes. As soon as we're through we'll have you back in.

EXECUTIVE  
SESSION

The Commission recessed at 10:55 a.m. and reconvened at 10:59 a.m. The Commission then went into executive session. The Commission came out of executive session at 11:23 a.m. by a motion made by Commissioner Iwashita, seconded by Commissioner Kern, and unanimously carried by a voice vote of all Commissioners in attendance.

WOODWARD: We've out of executive session, back into regular session. Somebody care to make a motion? Yes, Commissioner Iwashita?

IWASHITA: I would ask the Chair to allow the applicant to answer a couple more questions?

WOODWARD: That's fine with me. You've been sworn in already so we're good to go there. Okay, Commissioner Iwashita.

IWASHITA: The residual concern that I presently have is that of the licensing. And I understand there's this chicken and egg kind of argument that's being made about getting the license and how it relates to this application. In my mind though I guess it seems like you're already operating out of Shirakawa Hotel and it seems to me you ought to be able to get that part licensed. And so can you address that?

ZELKO: We are applying for the Shirakawa also, but each site is different -.

IWASHITA: I understand that. So, so that's, okay. So my question then is as far as, cause I basically share the Councilman's view that, you know, the license really should be issued and you ought to be able to show that you have the ability to get the license, in this case for Shirakawa; and once you do that, then come back and show us that you've done that, and then we can -. Cause then to me it's just a matter of being really administrative to add on this property to either that license or, you know, make a separate application for this property. Right? So that's basically my thought presently, is that I really don't want to have to approve this on the come basically, right, that maybe you'll get that license. So I'd like you to address that.

CHU: But if the applicant meets the nine criteria that you guys review these applications on, with conditions, they would be able to receive the license for this property that we're asking you for.

IWASHITA: But my concern really is that, you know, up till today this program is operating without a proper State license. Okay, that really, by, in and of itself raises huge credibility issues for me. So I am not inclined, I'll tell you right now, to allow an application to be approved on the come, again, you know, on the promise that we will be doing this, we are applying and that it should be approved. And then we'd have to come back somehow to revoke or, you know, basically an already granted application. I'd much rather it be done in a manner where it's shown clearly that a license to operate has been granted, and then we can go from there. So that's basically my question to the applicant - is whether there'd be an agreement to basically put this off for either a substantial period of time, or a time to be, you know, an indeterminate time to be basically set up from when the license is granted by the State and then come back, and then we consider it at that time. So that's where I'm heading right now, on that one point. I have another point but that's one point.

CHU: The, I'm just having a hard time understanding that when you come before the Commission with an application for a permit and you comply with all the requirements that are set forth in the regulations, you put forth your case, and there's good and bad but you meet the requirements, and you address all the concerns on several occasions of the Planning Department and you get a recommendation from the Planning Department, I'm trying to understand what you're saying what you want to do.

IWASHITA: Okay. All right, let me make it real clear. I don't think you've met all the requirements. The applicant has the burden to place before the Commission a record that supports what you claim you're supporting. Right? And I understand your argument that you believe that all the requirements have been met. Sitting where I'm sitting, I don't think so. In particular, as to whether the reasonable element, right, for us to proceed with granting this, it's not reasonable to me for us to proceed and grant this application where we have an unlicensed use being proposed right now. That's what it is. It's an unlicensed use. So that's a matter of record. Clearly it's unlicensed. Right? There's an activity going on that does not have, even in its current location, does not have the proper State licensing. Okay? So that's a problem. You have not. As far as I'm concerned, that's sufficient for this Commission to deny this application. I don't want to go there right now. I'm saying go fix it, and give you enough time to do that. Go fix it, come back, show us that you have the ability to fix it, and then we'll go on from there. Right? So that's what I'm asking.

CHU: I see. Well, like for example even the business before us they don't have a building there yet but they don't have a business license yet.

IWASHITA: I don't know what you're talking about, Mr. Chu.

CHU: There is a business office use, it's going to be a medical office. I didn't hear the Commission say you need to go get your business license first, and then come back and apply for a special use permit to have, to build an office building there. All we're asking for is the permission to use the property for this purpose, and we will go and get the license that we need. That's what we're asking. And I -.

IWASHITA: That's apples and oranges, but -. That was a zoning change and this is a special permit.

CHU: Well, but if another applicant came before you for a special use permit but they needed the special use permit first, would you tell that applicant that they have to get a permit which they cannot get without this to get that first? That's why I'm saying, I'm wondering where this is coming from.

GONZALEZ: Okay.

WOODWARD: Mr. Gonzalez.

GONZALEZ: Thank you, Mr. Chair. I guess what the, what Commissioner Iwashita is trying to say is you made the argument that you need a special use permit prior to getting, to get the licensing for the business. The thing is, and you've made representations to that, you're going to be complying, if you get the special use permit you're going to follow through, get the licensing, get the certification. But the thing is your client's prior conduct before they were your client demonstrates otherwise. And so there's a credibility issue for the Commissioners on whether they can just accept representations or if they want more. And I think what's being said is they're trying to give you an opportunity to show them you're going to follow-through with what you say. So you have an existing operation in the hotel that you can get the license for.

And if you can get that and show this Commission that you're going to follow-through on what you say you're going to do, then come back and continue the application for the special use permit on the Ag land. And I think right now the farm, the plants are allowed on the Ag land without a permit.

IWASHITA: You can keep doing that. Farming is allowed. It's not a zoning violation or anything. You know, anybody can farm there, it doesn't matter who it is. So that's what I'm saying, is basically go get your license to legalize your operation at Shirakawa Hotel, you can continue doing your legal farming on this property, you just can't put anybody on it. Right? So -.

GONZALEZ: Does that make sense?

CHU: Yeah, okay.

ZELKO: Yes.

GONZALEZ: Or else, cause the other alternative before the Commission is they vote to deny the application and you've got to wait a year to come back.

WOODWARD: I think that's exactly your choices. And it's going to be your choice, either you agree to continue this until the license is in place and bring it back to us or the likelihood is it will be denied.

CHU: Okay. Yeah, we'll just probably need to confer because we would -.

WOODWARD: Would you like five minutes

CHU: Yes.

WOODWARD: Okay, let's take break, five minutes.

IWASHITA: Well, wait -.

WOODWARD: Five minutes.

IWASHITA: Mr. Chair, just a minute.

GONZALEZ: He wanted a second point.

WOODWARD: Oh, Commissioner Iwashita.

IWASHITA: Thank you, Mr. Chair. The other concern I had was because of the minimal regulation, and my understanding of the license you're getting is basically the, you know, my baby sitter had to get the same license. Right? It's the same kind of license. And the way those are oversought, overseen is once a year or so a social worker shows up and makes sure

the toilets work and everything is clean, and those things. It's very minimal. For what you do, in my mind, you know, if we're going to allow this activity to go forward -. And I agree again with Councilman Enriques that this provides a valuable service to the children that you work with, on the other hand it needs to have this oversight that he talked about. And I guess in the materials that I'm looking at there are these independent nonprofits that accredit various aspects of the program that you run. And so what I would like to see is if you would agree that you get these accreditations for the, each aspect of the program you have, and that be part of the condition of your operating this facility.

M. MCKINNEY: Like I say we do have a couple, we're a member of couple organizations and we're waiting really for JACO, which is I think one of the biggest most prominent health care therapeutic oversight organizations. And so as soon as we have this license we would be able to complete our application with them and they will be coming out and inspecting, and, etc.

IWASHITA: Okay. So my question, so as I understand it you'll get the Department of Health, Human Services, Child Care license for Shirakawa facility, you need that to complete your JACO accreditation application. And then what I'm asking you is this, what I would like to see is, is that the JACO accreditation of each aspect of your program be part of the condition of allowing you to operate. Is that, I want to know if that's acceptable.

M. MCKINNEY: I, I'm okay with that, except I'm a little concerned with the chicken and the egg. I'm not sure what JACO is going to exactly what require. I believe it's a State license and I believe this child care satisfy that. But I can't say for that for sure. But I do, I mean I'm open, I want this regulation, I want to be regulated by someone somehow.

IWASHITA: That's good. So that would be part of what I would ask you to come back with, is show the State licensing and the accreditation, and then we'll go forward -. That's what I'm looking at. And if you're agreeable to that, then set up a timeframe to do that.

WOODWARD: Okay. Madam Director.

LEITHEAD TODD: Yeah, the only concern I have here is, you know, whether in the past we have ever gotten into this level of detail on any special use permits that we have granted where we get into the licensing aspects or accreditation as -. You know, we've given special use permit for schools. I don't remember having any requirements for accreditation from various associations. Typically we look at whether the use is something that's an unusual and reasonable use of the land. We look at the surrounding community, we look at the nature of the use, and see whether under the criteria, you know, they meet those requirements. And you have to basically kind of treat them similarly to the way you've treated other applicants. And so I'm just saying that, you know, I'm a little concerned about getting into that kind of issue. I have no problem with saying that they have to comply with all State/County laws. And so the fact that they have to go to Department of Human Services and get some licensing, that's complying with the State law. I have no problem with that.

But getting into the whole issue of accreditation from some national organization that I know nothing about and don't know what their qualifications are to give accreditation to anybody are,

it's just going down a road that I'm not sure we want to go. Because if we do it here then you have to start looking at every other application and every other type of use and see that you treat them the same way. And I don't recall us doing this kind of requirement on anything that we've had in the past for educational facilities. I think we've had, not this particular nature of a camp but we've done other stuff I think where we've had types of retreat camps and stuff, and we've never gotten into these kinds of questions. So I'm a little concerned about going that road.

IWASHITA: Mr., can I -?

WOODWARD: I would agree. I'll address your concerns in just a second, Mr. Iwashita. The concern I have is similar to what the Director just mentioned, and that is we get onto kind of a slippery slope here. I think what we're trying to do honestly is to allow the applicant a continuance as opposed to an outright denial, which I think is really, are really their two choices. But I think we need to keep it as the Director is saying within the realm of State and County laws. And so I would ask that, if it's all right with Commissioner Iwashita, that we give the applicant and their attorney some time to discuss things, and then we get back, and then we decide where we go from there. Did you have anything further, Commissioner Iwashita?

IWASHITA: Yes. I see this, you know, our standard is unusual and reasonable, right? So that's basic standard we need to measure our decision on this application. And the Director is correct, we've approved charter schools in Ag areas and so forth. To me it's apples and oranges, again. Okay, because charter schools are highly regulated by the Department of Education, although some people might argue otherwise. But there are very, you know, specific state laws and so forth that apply. To me this is, the unusual part of this is very unusual because not only is it an activity that treats, you know, a very small segment of our children who need this special help, but there's no State, there's really no State, County or any kind of regulatory agency or process involved. Right? If we approve this without a condition like what I'm thinking about, then essentially, you know, and it's not to say you're going to do bad things, but there's no oversight. There's no way, you know, for the County or the State or anybody, other than a social worker showing up once a year or two, you know, to check whether or not the toilets flush, to look at this thing. So that's why I think it's reasonable and, yes, it's different. But to me it's necessary in order to make this a reasonable application. So that's the distinction I see, Mr. Chair. Thank you for your indulgence.

CHU: Yeah, I understand now your issues. And it is an unusual situation because we're dealing with unusual kids. So with your comments and questions, we would just need some time to confer to respond.

WOODWARD: Okay. Commissioner Domingo, you had a comment before they -?

DOMINGO: Yeah, just my thoughts and my feelings. The Planning Director cautioned us and made it seem like this is a very exceptional position we will be taking if we would support Commissioner Iwashita's suggestion. I agree that this is an exceptional issue, case. Because, you know, as an individual again I look at the Planning Department, I look at the planning and land use laws very seriously, also together with our Public Works requirements with regards to streets, flooding and all that. And, you know, it's very important that we take this into very

serious consideration. But what we're doing here, because I think for my part I see that the planning, the planning and land use laws, and a part of the Public Works laws, you know, the applicant has made a mockery of all this process.

So I think with Mr. Iwashita's recommendation it shows he's concerned that the requirements are met, to give us assurance that those requirements will be met. And if it is met then we can go ahead step by step and address the things that we need to, so that the end result would be a permit granted to them to do whatever they're asking for. I don't think that it's, it might be exceptional, it might have been the only one step we're taking. But, you know, not always, not always do we find anyone who take regulations and planning issues lightly. And I find in this case because of what has happened that we need to be given some assurance, some assurance that, you know, certain requirements are met before we can go to the next step. You know, I'd just like to make my position clear if this ever comes to a motion and a vote, that my position will be clear as to why I'm doing it.

WOODWARD: All right, thank you. Commissioner Ishibashi.

ISHIBASHI: Thank you, Mr. Chair. We're going to have to reinvent the wheel. There's no doubt the services you provide is important. We're going to have to reinvent the wheel. But we do have to provide the best facility and services to the children. That's what I'm concerned about. And I don't believe we're doing it right now. We have to provide them the best. If that's your goal then I can support that goal. Go in and get the best facility and services for the kids. So that's why we're taking this position, come back with something and let's do it. Let's do it right for Kau and for the children. Let's do it.

WOODWARD: All right. Just one clarification, and Mr. Gonzalez has kind of weighed in on this too; and, basically, that we should not be in a position of regulating accreditation. That's not our jurisdiction. So we can actually require that State and County laws be enforced. But this other nongovernmental body, we have no control. Over that, just for that information. So if you folks want to deliberate we'll give you ten minutes, if that's satisfactory. Five?

CHU: Five.

WOODWARD: Five minutes, okay. Okay, so we'll take five and get back together then and we'll take it from there.

RECESSED The Chair called a short recess at 11:45 a.m.

RECONVENED The meeting reconvened at 11:50 a.m.

WOODWARD: Okay, we're back in session. What was your, what conclusions have you reached?

ZELKO: Hi. Okay, so after our discussing it, listening to your concerns, the applicant would like to defer this for six months, come back in six months. In that time period we will apply for the license with the Department of Human Services for the Shirakawa Hotel. I

think we can do it within that time and have them come out and do their inspection, because I'm sure there's a time period. It may be sooner than that but I think we'd like to put it out six months. And, again, the applicant can completely understand why the Commissioners are concerned. We hope by them taking down the building, it is showing some good faith by agreeing to work with the community. I mean, they truly intend to do this; and we hope in six months we will be able to show you all of that. So -.

WOODWARD: Excellent. That's kind of what I was hoping you would say.  
Commissioner Iwashita.

IWASHITA: Move to defer and continue this matter for six months.

WOODWARD: Second?

ISHIBASHI: Second.

WOODWARD: All right. Do we have any discussion? Well, that was easier than I expected. Okay, Jeff, let's take a vote.

DARROW: Thank you, Mr. Chairman. The motion before us is to continue this application for a period of six months. With that I'll take the roll. Commissioner Iwashita?

IWASHITA: Yes.

DARROW: Commissioner Ishibashi?

ISHIBASHI: Aye.

DARROW: Commissioner Domingo?

DOMINGO: Aye.

DARROW: Commissioner Kern?

KERN: Aye.

DARROW: And Mr. Chairman?

WOODWARD: Aye.

DARROW: The motion passes five to zero.

WOODWARD: All right. I think that, honestly, was the best choice. And I think you've got a valuable ally in Mr. Enriques, and I would encourage you to use him to your advantage. And we look forward to seeing you back in six months and hopefully we can make you go. Cause we do want this to go, but we want it to go responsibly. Okay?

CHU: Thank you very much.

WOODWARD: All right.

The discussion ended at 11:52 a.m.

Respectfully submitted,

Sharon M. Nomura, Secretary