

ENVIRONMENTAL MANAGEMENT COMMISSION

COUNTY OF HAWAII

MEETING MINUTES – VOLUME II

View recording: <https://youtu.be/e2mrFhkHkzE>

NOTE: For agenda items I through V, and VII through XI, see Volume I.

**VI. CONTINUED PROCEEDINGS REGARDING KAI ALA PARTNERS LLC'S
APPEAL OF THE DIRECTOR'S DECISION**

Kai Ala Partners LLC's appeal of the Director's decision to bill two wastewater accounts for TMK (3) 7-5-019:018 was upheld. The decision was found to be in violation of the code and clearly erroneous. Appellant submitted a draft Findings of Fact, Conclusions of Law, and Order to be considered by the Commission, and Appellee was provided an opportunity to file objections.¹ In compliance with HRS § 91-12 and EMC Rule 7-12, the Commission is to adopt a final written Findings of Fact, Conclusions of Law, and Order. (1:56:34)

ADAMS: But I think now is the time to move to the continued proceedings regarding Kai Ala Partners, LLC's appeal of the Director's decision. We are at the stage now where we need to prepare a written Findings of Fact, Conclusions of Law, and Order that would be published to memorialize our decision from our last meeting for the hearing. And then the next step is up to DEM if they want to appeal our decision. Do we have everybody here? Is Cody – there she is.

FRENZ: Good morning.

ADAMS: Hi. I've been advised to go ahead and give a really short two-minute type comment from each of the parties, if you would like, on the proposed findings, et cetera, that we could make. They are in the file that's been put for this record. And the only people who can vote on the written decision are the ones who were present for the hearing. So in this case, John Olson can go feed his parking meter if he wants to. He is recused from the meeting, and I think all the other commissioners are eligible to vote on that position paper. So I saw, there you are. Ritchie, if Appellant would like to make a brief comment about your proposed findings, go ahead now. That's Ritchie Henderson

HENDERSON: Chairman Adams, I've seen three Findings of Facts, Conclusions of Law and Orders, and I'm kind of a little, not understanding a lot of them, and I don't know what we have to do and what the process is for coming to a complete agreement on it. So if you would enlighten me on what we have to do right now, I'd appreciate it.

¹ VI: Contested case hearing files <http://records.hawaiicounty.gov/weblink/Browse.aspx?dbid=1&startid=115975>

ADAMS: Okay, fair enough. I would ask Sinclair Salas-Ferguson, who is the EMC Counsel, to maybe review what we're doing here right now.

SALAS-FERGUSON: So the Commission has made its decision at the last meeting. So the meeting today is to adopt formally the Findings of Facts, the Conclusions of Law and Order. So, Ritchie, you were provided the opportunity to submit proposed Findings of Facts, Conclusions of Law, and Order. So was the Appellee, which say all parties have. The Commission has also submitted Findings of Facts, Conclusions of Law and Order. So the Commission will, today what I see happening is somebody will make a motion to adopt one of the submissions. There'll be a second. There'll be discussion to either amend certain portions of the submission or not or accept it as is, and then there'll be a vote. If there is- somebody wants to change the order, they can amend the motion. So, Ritchie, right now, Chair has given you an opportunity to make any final comments on how you would like the Findings of Facts, Conclusions of Law, and Order to appear and be adopted by the board. So by my account, I can start a clock for two minutes if you want, Georjean.

HENDERSON: Okay, I understand. So I'm just basically commenting on the overall process. That's correct?

ADAMS: Yeah. We're not redoing the decision. We're just trying to figure out how do we want to write it up.

SALAS-FERGUSON: More specifically, Ritchie, specific to the Findings of Facts, Conclusions of Law, if you have an issue with any of those things, now is your time. And so I'm going to go ahead and start two minutes right now, so you can go ahead.

HENDERSON: Okay. I think that the Commission needs to understand that there's two appeals, and under which appeal are we using? I think that's question number one that's got to get squared away in all of these, and the second- so it's either going to be the one on October 12 or the one of October 19. So that's got to get resolved. I think that we have to make clear that the property has a residence and has a separate annex building that has the water heater that supplied hot water to the building. It was not a residence in itself, and I see that it's been cited as a residence in itself. I'd say that there's an error in both appeals we sent in were accompanied by the payment required for that. And so I think that needs to be cleared up. And I say that when we come down to the conclusion-

SALAS-FERGUSON: Thirty seconds.

HENDERSON: -It does not mention the amount of the charge or what it's changing it from (and) to. So I think that needs to be cleared up in the decision and order. Thanks.

ADAMS: I would like, if it's okay with you, Sinclair, to address that issue of the money. As we were advised, as I recall at the last hearing, the EMC, the Environmental Management Commission, is not in the business of deciding any refund. We are simply saying whether or not

that building is in violation or the decision that the Director made about charging that building, whether that was right or wrong. And we decided that he shouldn't have charged you. The money, Sinclair, I'm not sure where he goes to deal with that.

SALAS-FERGUSON: Is there a question, Georjean?

ADAMS: The question is for the issue of the money that he was requesting for past payment, you had advised us that that's not really our jurisdiction, if you will, but I don't know whose it is.

SALAS-FERGUSON: Yeah, I think I told you guys this in executive session, but I'm not sure. Maybe I said it in open session, too. But as we all know, the Commission can hear appeals from decisions when the appeal is filed within 30 days of that decision from the Director. So the issue that the body had jurisdiction to decide was whether or not the Director's decision to charge that structure as an unoccupied unit was good or not. And the Commission found that the Commission disagreed with the Director. So that was the issue on appeal. And that's the issue that will be decided in the Findings of Facts, Conclusions of Law and Order. And so the Department can deal with that however they want going forward. Does that make sense? Anyone have any questions on that?

ADAMS: Were there comments from the DEM attorneys on that?

KEKAI: Yeah, real quick, I think. And Ritchie, you can let me know if- Mr. Henderson, sorry- this is what you're saying. Basically, you wanted to say the specific number the bill will have. Like, instead of just saying from two units to one unit, were you asking basically to put what the actual bill will be going forward? Is that what you're asking?

HENDERSON: Yeah. So, I mean, the decision and Order is kind of vague. I don't know what it's really saying there.

KEKAI: So just a clarification of what that's going to be, is what you're recommending to the Commission. Yeah. Okay.

HENDERSON: Yeah, is it going to be one service or is it changed from two billing services to one billing service. It's not making sense-

SALAS-FERGUSON: Ritchie, let me just tell you. So from the Facts and Findings and Conclusions that I saw it's saying that the decision that the Commission made at the last hearing was that decision was an error to charge for two. So translated, the Department will be charging for one going forward. Does that answer your question?

HENDERSON: Yeah. Okay-

SALAS-FERGUSON: And they will tell you what the price is for one unit. And I mean, you can look at your bill-

HENDERSON: I'm just talking about the units and making that clear there. And then Sinclair, when is that going to be effective?

SALAS-FERGUSON: So, Ritchie, you can follow up with DEM, and we'd like to just move this along. You can call DEM after this and ask them whenever-

HENDERSON: It doesn't have to be in what we're doing right now is what you're saying?

SALAS-FERGUSON: No, but actually, that is a point that I can advise the Commission if they want to do an executive session. But that is a good point. I think it would be effective at the time of your appeal. So that decision. So going back to when you filed the appeal would be effective from then.

HENDERSON: Those are some of the questions my dad had. He couldn't be here today, but I just wanted to make sure that I got them brought up. Thanks Sinclair. I appreciate it.

SALAS-FERGUSON: No problem.

ADAMS: So now for the Appellee, whether Cody or Malia.

KEKAI: Yeah, I'll start. Cody, you can jump in if you have anything, I'll try to be quick. Just to kind of address a couple more of Mr. Henderson's things in our proposed Findings of Fact, which I recommend the Commission adopt, because I think one of the things that the Circuit Court looks at is they're looking for the Commission to show their work and how they got to where they got. So that's what I tried to lay out for you guys. It's just the basic facts that are needed for the court to understand if this is to be appealed, how you guys got to where you got. And then Mr. Henderson mentioned about the residential structures. I included residential structures because it's not a commercial structure. So it's not saying that it's not labeling this detached unit as another residence, or I would have said second single-family dwelling or 'Ohana unit as the definition. So I just want to clarify that, too, that it's basically a residential structure. It's not a commercial structure, correct. And so other than that, I think that I tried to lay them out as simply as possible and capture what the Commission held. There's a couple of typos at the end. I just wanted to point out for ours, if you guys do choose to adopt it, the very last paragraph has a "was is," and it should just be a "is reversed." And I also would change, there's a couple references to Appellee's decision in the Conclusions of Law, which to just make it less confusing for you and the court, I would say Director's decision instead just to make it really clear instead of Appellee/Appellant. So those are the only two suggestions I would have for amendments if you guys were going to adopt the ones that we're presenting. And, Cody, if you have anything else to add, please feel free.

FRENZ: I do. Good morning, everybody. Deputy Corporation Counsel Cody Frenz on behalf of Director Mansour, who is also present. This will be appealed. So your Findings of Fact,

Conclusions of Law, Decision and Order are very relevant, and I want to make sure that whatever you adopt-

SALAS-FERGUSON: Sorry, could I interrupt. Georjean, that's two minutes. If you want to give her more time, it's up to you.

ADAMS: You can have more minutes. Two more minutes.

FRENZ: Thank you, Chair. I'll be brief. I want to just caution you to adopt only what the board actually found. I would note that Appellant's proposed findings include some additional information and commentary, things that are maybe a part of the arguments, but not that this board actually found. So I caution you as to adopting those, because that would be error on appeal. So just following like Malia and I did in drafting the facts and the conclusions for you, whether we agree or not, right? Those are the findings that this board made. So to track exactly what you found and how you got there to your conclusions is all that's been laid out by the Director's proposed findings. So I would ask that you adopt those solely so that we can track what was found by this board, since that's what's relevant. And that's all I have for you. Thank you, Georjean.

ADAMS: Thank you. Okay. Sinclair, had I asked you a question before we got here, and I don't know if we need to go to executive session or if you want to describe what you think that we need to put in this findings, documents. Specifically, a laundry list of all the facts.

SALAS-FERGUSON: So you guys made the decision. I think this would be a good time. If the board wants to have legal questions pertaining to the board's powers, duties, privileges, immunities, and liabilities concerning this appeal, now would be a good time to go and answer these questions. If anyone wants to make that motion, if you want to do that.

ADAMS: In executive session.

SALAS-FERGUSON: Yeah.

ADAMS: Would anybody or will you let me make that motion?

SALAS-FERGUSON: Yeah, I mean, that's fine, but I'll just state the motion, and then somebody can say it.

ADAMS: Elyse nodding.

SALAS-FERGUSON: So Elyse, if you want to make a motion to consult with the board's attorney on questions pertaining to the board's powers, duties, privileges, immunities, and liabilities under HRS section 92-5(4), the topic being the adoption of the Findings of Facts, Conclusions of Law and Order pertaining to the appeal submitted by Kai Ala Partners, LLC.

MOTION, SECOND, AND VOTE Commissioner Robinson made a motion, to which Vice Chair Gaffney seconded, to convene in executive session to consult with the board's attorney on questions pertaining to the board's powers, duties, privileges, immunities, and liabilities under HRS section 92-5(4), the topic being the adoption of the Findings of Facts, Conclusions of Law and Order pertaining to the appeal submitted by Kai Ala Partners, LLC. Ayes 6 (Adams, Cardwell, Fulton, Gaffney, McIntosh, Robinson); Excused 2 (Burns, Olson). Motion carried.

(The Board entered an executive session)

ADAMS: Okay. We are back in open session discussing the EMC's write up of the Findings of Facts, Conclusions of Law and Order. Is there a motion to approve any of the three drafts that we have in our record?

MOTION AND SECOND. Commissioner Robinson made a motion, to which Vice Chair Gaffney seconded, to adopt the Findings of Fact and Conclusions of Law as drafted by the Environmental Management Commission.

DISCUSSION

ADAMS: Do you want me to put the document back up as a share?

FULTON: Yes, please.

ADAMS: Okay, let me see. I could do that again. Right. *(Chair Adams shares EMC's proposed draft on Zoom.)* Okay. This is a document that was written as a draft by Sinclair Salas-Ferguson for us to consider. So we're discussing the words that are written here.

FULTON: And Georjean, seriously, for the life of me, I don't see that in my email.

ADAMS: You need to go to the Hawai'i County file, whatever the heck it's called.

CARDWELL: Peter Sur included it in the agenda. There was a link in the agenda that he sent to us.²

FULTON: Okay, in our agenda. Okay, I'll just go ahead and say that I think a material fact for me was that the auxiliary building was never used, it was never inhabited, and nor was it ever intended to be a residential structure. I think that is material to the decision.

ADAMS: And I disagree. So there. Elyse, I saw you nodding your head.

ROBINSON: I think that's worth adding into the document.

ADAMS: The basis for that is testimony provided by the Hendersons, or Ritchie Henderson.

² See link in footnote on Page 1 of these minutes.

ROBINSON: Yes. As part of the- Sorry. I was trying to move your screen, and I realized it wasn't mine, so I can't move it. I think that fact can follow (FOF) bullet point 3, or come before it. As a result, it's not an unoccupied unit.

ADAMS: Item 3, Findings of Facts, says Appellant Henderson maintained that the structure Appellee determined to be unoccupied was not an unoccupied unit. So do we want to explain what we mean by unoccupied unit?

ROBINSON: I think, actually, that's where we can add Dee's comments.

CARDWELL: You could say something like-

ADAMS: It could be, but you want-

CARDWELL: Right. Or something like, was not an unoccupied unit. Meaning that the unit was not ever used as a residence. Something like that. Because I do think that's an important fact. Nobody ever lived in that unit. Most likely, nobody ever will live in that unit. It's just a detached annexed building.

FRENZ: I'm sorry, but you guys never made that finding at the last hearing. So I object to adding Findings of Fact that were not a part of your conversation or dialogue. That would be inappropriate.

CARDWELL: I definitely remember bringing it up. I mean, I'd have to look at the minutes, but I do remember saying something like that in the meeting.

FULTON: Yeah, it was discussed quite a lot as to whether or not it was or was not a residential unit. I don't think we need to explain to a judge that a definition is subordinate to the law itself. It doesn't stand alone. And so we were looking at the code and we were trying to determine whether it was, in fact, a residential unit and an unoccupied residential unit. And that was key. That's the crux of the whole thing. We determined by- it was our opinion that it was not a residential unit, and that was supported by the fact that it had never been constructed with the intention to be a residential unit or was it ever used as a residential unit.

SALAS-FERGUSON: So Sinclair here, maybe you want to put something appellant maintained that the unit was not a residential unit. Would that satisfy everybody?

FULTON: Appellant maintained it, and the Commission agreed.

SALAS-FERGUSON: That wasn't in the motion, though.

ADAMS: Yeah, we have got to stick with what the motion-

FULTON: All we voted on was whether or not there were three criteria or four criteria, right? And we agreed that the ruling was inappropriate for those two reasons. Now we're asking for a Finding of Fact-

SALAS-FERGUSON: Now, Dee, Dee, let me just tell you, we all reviewed what happened at- The motion that was made at the last meeting controls the Commission's decision. The motion was based off the fact that the unit does not receive a water bill. And so that's what we're stuck with. If you want to add something that the Appellant maintained that the unit was not a residential unit, that's fine, legally.

FRENZ: Thank you, Sinclair.

ROBINSON: That's fine with me.

GAFFNEY: Can I say something?

ADAMS: Sure. Rick Gaffney.

GAFFNEY: Yeah. I'd like to point out that the information with regard to what the unit was used for was also provided to us by the County Inspector, who provided us with photographs of the interior of this unit. And the photographs clearly indicated that it wasn't a residential unit to me anyway. So I think it's more than just the Appellant that maintained it. I think that the County Inspector also suggested that it wasn't a residential or technically unoccupied unit.

FRENZ: So let me just clarify that. My apologies if I confuse things. What Sinclair has tried to articulate my objection is that none of that's relevant given the motion that this board made at the last hearing, which is what kind of you're stuck to, right? We're within the four corners of the motion that you guys made, and then seconded and approved. That's what you're stuck with. It was very limited, and that's what we will be appealing, which is why how you articulate that is so important. You can't add things in now that weren't a part of your motion. So I object, respectfully, Mr. Commissioner Gaffney, because that's outside of the motion that was made and approved.

FULTON: I'm confused by something. I'm confused by the fact that we are having to hash out the language of this with the County Counsel. Why were we not allowed to review this and make alterations-

SALAS-FERGUSON: Dee, that's what, Dee-

FULTON: No, but you're presenting it as it's already approved by us.

SALAS-FERGUSON: No one is- You guys-

FULTON: I don't agree with how this was drafted at all.

SALAS-FERGUSON: Dee, I don't know how many times I got to tell you this, but right now is your time to make your objection. So, you guys made a decision at the last hearing, right? Your decision was that it doesn't receive a water bill, so it's clearly erroneous and violation of the law. Your decision was not that "It's not a residential unit, therefore, it's not an unoccupied unit." The motion was it doesn't receive a water bill. So these findings of facts and conclusions of law reflect the decision that was made at the last hearing. You don't get to come and now make different reasons for making a decision. Your decision was it doesn't receive a water bill. That's why it's clearly erroneous in violation of law. So that's what this order is going to communicate to the parties and to the court if it gets appealed. So that's why I'm advising that we stick to that decision that was made on April 27 and not try to go and make all kinds of new findings of facts that don't underpin the decision. The decision is not underpinned by facts, whether or not it was residential or not. So we don't want to confuse everybody. We want to stick to what was decided and be very clear and concise about that. And this is my advice. You guys can do whatever you want to do, but to find the middle ground, if you guys want to put that in there, that the Appellant maintained that the unit was not a residential unit, that's fine. But we cannot say that that is the reason the Commission made the decision and made on April 27, because that's not accurate.

FULTON: Okay. On item number 3, I think that "Appellant maintained" can be struck from that statement. You can just start the statement with "The structure Appellant determined to be an unoccupied ... was not an occupied unit."

FRENZ: I object. That's not what was found by this board.

FULTON: I don't understand the point of saying "Appellant maintained."

FRENZ: Because you didn't make that finding, Commissioner Fulton. The Commission didn't. So it's almost like we're giving you that carrot, right? You didn't make the finding last time, but you guys want it there. I object to it being there. But if you want to say "Appellant maintained," that's like saying Mr. Henderson maintained it, you didn't find it. So I- If you want to put that in, that's fine.

FULTON: I disagree. This is supposed to be a Finding of Facts, correct?

FRENZ: But you didn't make that-

FULTON: So when you say "Appellant maintained," well, when somebody maintains something, it could be true or it could be false.

FRENZ: That's correct.

FULTON: So it's not relevant to fact.

FRENZ: I agree.

FULTON: It is supposed to be a statement of facts or am I-

FRENZ: I agree.

FULTON: Therefore, "Appellant maintains" cast doubt all over again-

FRENZ: It does-

FULTON: And I'd like to have that language struck.

FRENZ: It wouldn't otherwise be appropriate for that. This Commission made that finding, though, Ms. Fulton. I apologize. It is what it is.

ROBINSON: How about moving that "or residential" to the end of the sentence. "Was not an unoccupied unit or residential unit."

FRENZ: Again, that wasn't found. I apologize.

FULTON: I'd like to make the motion that-

ADAMS: Dee, you can revise the motion, although I think we have at least one more correction that I'm aware of.

SALAS-FERGUSON: Why don't you guys do all the corrections and then at the end do a motion for that? Because there's a date issue, right. It's not April 20. It's 27th. There's a few modifications.

FULTON: I think we should take each item individually, Sinclair, with all due respect.

ROBINSON: I think this document-

ADAMS: We're not going to have a whole pile of motions back and forth, correcting every individual thing.

FULTON: Why don't you start out and see if there's a pile of motions or not, Ms. Chair, Georjean.

ADAMS: Okay, well, we've got at least one more change that I will note and others. It was the 27th and not the 20th when that meeting was held. Melissa, you have your hand up.

CARDWELL: I would like to take a suggestion that Malia had and change Appellee to Director, because I do think it's a little bit confusing. Appellee, Appellant. It's a lot to keep track of. So I think that was a really good suggestion.

ADAMS: It probably should be spelled out and all that, but I just want to capture it. Lee Macintosh, do you have a comment? Unmute.

McIntosh: Sorry. Can we actually have what the actual motion was that we made and voted on so that we know what our facts have to focus on? I think that would help tremendously.

ADAMS: Okay. I was trying. I have no idea what you guys are going to see, so bear with me. What we need are the minutes. It's only 44 pages for me to try and find it. Do you remember what page it was on?

ROBINSON: I like to say that I believe this document is very simple, concise. We don't represent either parties. We've reviewed things at length. And as simply put, this document states exactly what we came to a conclusion on in the last meeting. So as mentioned, we don't need an entire list of every detail that we've already reviewed, which can be reviewed if this gets appealed again. So I'd like to reiterate my motion that this document is the one that we want to adopt, we should adopt.

ADAMS: And this is the motion that was voted on to reverse the Director's decision that the structure at issue is an unoccupied unit on the grounds that the decision was rendered in violation of code and clearly erroneous. So it's a pretty pithy motion. I don't think we revised it. No, we did not. So we basically are just saying it's not an unoccupied unit for purposes of this appeal, whether some of you individuals considered whether or not it could be occupied, it never has been occupied, it's residential. The issue, I think that's just sweet and short, like Elyse said, was, didn't get a water bill. And the definition of occupied unit, which is in the conclusions of law, this piece here (COL No. 1) says it needs and currently receives a water bill, and that is not the case, and therefore, the majority voted.

SALAS-FERGUSON: If you look at Conclusion of Law 4, that summarizes what the decision was.

ADAMS: Can you see? I don't know what I'm doing now.

SALAS-FERGUSON: You can. It's right there.

ADAMS: Okay. I lost my Zoom screen. Sorry. You're seeing me whack back and forth. I'm sorry. So this-

FULTON: I'm afraid I have to leave for another meeting, so I just want to leave you, the Commission with these parting words. If you could scroll back to that third item again, please, Georjean. Yeah. I really take issue with the language here, and it's really disappointing. My understanding is that the Findings of Facts are a preamble for the judge to see what the facts

were that influenced our decision as a Commission. There's no role for "Appellant maintained." That's irrelevant. That's not a fact. And I would love to see. And I'm going to make the motion now, if I may, that we strike "Appellant maintained" from this statement. Even the statement doesn't make sense grammatically. It even doesn't make sense. So you need to strike "Appellate maintained" and just start with "The structure" or "Commission determined that the structure the DEM Director determined to be unoccupied," blah, blah, blah. Strike out "Appellant maintained," and insert in there "The Commission determined that." That would be a fact. So that's my motion.

ADAMS: So you're also motioning to revise the earlier motion-

FULTON: Georjean, I think your job is to ask for a second. I think as the Chair, your role is to ask for a second.

FRENZ: Isn't there already a motion on the table?

ADAMS: Yes, there is. And that's why we need to vote on the motion on the table.

SALAS-FERGUSON: I think Dee's confusion is that-

ADAMS: And if we're done with-

FULTON: Could you repeat the motion on the table?

FRENZ: And Ms. Cardwell has been waiting patiently.

FULTON: I need to leave here in just a few minutes.

ADAMS: I've lost my view of the who's attending. Excuse me.

CARDWELL: I'd like to make a couple of comments, if that's okay.

ADAMS: Sure.

CARDWELL: I don't agree with Dee on this, mainly because we are, as Cody and Sinclair have said multiple times that we are working with what we decided in our last meeting. So whether or not we now agree or disagree with what we decided is irrelevant. We have to work with what we decided in our last meeting. And so that's why this Finding of Fact has to be in alignment with what we decided. We can't now decide these new things. So even if we're disappointed with that, which I am-

FULTON: No, I'm disappointed to see such poor performance.

SALAS-FERGUSON: Dee, I think you're con-

FRENZ: Can I make a point of order-

SALAS-FERGUSON: Yeah, Dee, you need to-

(Crosstalk)

FULTON: What I'm proposing is in alignment with what we did. It's not contradictory.

ADAMS: We need to vote on the current motion. And the current motion was adopt the EMC draft, as is. And Peter, will you take a vote on that motion? Before my edits.

FRENZ: Just as a point of order, Chair, there needs to be some decorum. Respectfully, Commissioner Fulton, you interrupt everyone. Ms. Cardwell has waited patiently. And whether she and I agree or disagree, she needs to have an opportunity to say what she has to say. She's waited a long time. You keep interrupting. So I just make a point of order that we allow everyone to have every Commissioner to have their turn to speak respectfully. That's all.

ADAMS: But I think Melissa did you have any other comments to make?

CARDWELL: I did have another comment because there is this motion on the table. And I think adding "residential" is problematic because, as Malia said, it's not commercial. It's either commercial or residential. So if we say it's not an occupied unit or residential, that's not accurate because it is residential. It's got to be one of the other, right? So I don't think we can phrase it in that way.

ADAMS: So I think we're at the case of making a vote on the original motion. Lee, do you have a comment on the original motion?

McINTOSH: The original motion was to accept it as is. If that's true, then why are we making all these changes?

ADAMS: That will generate a new motion.

ROBINSON: Chair Adams, I withdraw my motion.

MOTION WITHDRAWN

ADAMS: Okay. The motion has been withdrawn. Now I need a new motion, and the new motion needs to deal with, we could do Dee's, which was to scratch this "Appellant maintained" piece as well as put in "DEM Director." It sounds- "Or residential," if it's Dee's motion, that's what she wanted. And then to correct the date of the meeting.

SALAS-FERGUSON: Georjean there are other date corrections in there.

McINTOSH: This is Commissioner McIntosh. Is it possible to choose this as a document to work from and make changes and then accept it at the end, rather than having to try and articulate what each and every change has to be through a motion? Can we do that?

CARDWELL: I think that's an excellent idea.

ADAMS: I don't know, Robert's Rules people, can we?

McINTOSH: I don't know what the Robert's Rules are, which is why I'm asking.

SALAS-FERGUSON: The way to do what he's proposing is like what I said earlier. You make a motion, you guys go through, you do your edits, and then you make a motion to accept the edited version.

CARDWELL: I'd like to make a motion to accept this document as it is with the understanding that we're going to make grammatical changes to it and date changes.

MOTION and SECOND: Commissioner Cardwell made a motion, to which Commissioner McIntosh seconded, to adopt the Findings of Fact and Conclusions of Law as drafted by the Environmental Management Commission, with additional edits for clarity and accuracy.

SUR: The motion, let me get this straight, to accept the-

CARDWELL: Document as is with the understanding that we're going to make grammatical changes for accuracy.

FRENZ: Sorry, just to interrupt. I'm so sorry. This is technically Sinclair's arena, but I don't see him on here. Robert's Rules of Order says we have a motion. We have a second. Then you do your discussion. You would talk about whatever changes or grammatical corrections you want to make, and then you would- I think it's too early for our roll call. I'm so sorry. I'm not sure where Sinclair is, but have a discussion about the grammatical under changes you want to make, and then just clarify the motion to approve as amended based on the discussion, and then vote. Sorry.

DISCUSSION:

ROBINSON: Georjean, do you want to start at the top the dates up there. I saw a couple of April 20s.

ROBINSON: And there was another one in the findings of fact, I believe.

KEKAI: And sorry, Malia just jumping in real quick. So in that first paragraph, you would change, where it says Appellee, you would change that to say Director, throughout the document.

ADAMS: So we're going to take out Appellee wherever it occurs?

CARDWELL: Yeah, because it's too confusing.

ADAMS: This is going to a court.

McINTOSH: You are just changing Appellee to Director.

ROBINSON: You can leave that in, Georjean. Everything after No. 1, I think, is what she meant.

FRENZ: Don't strike it. Just delete Appellee and type in Director. Sinclair can fix it I'm sure thereafter.

ADAMS: But there's a Director right above it.

FRENZ: Yeah. So it's Director of the Department of Environmental Management. And then we say kind of herein after. So just change Appellee and type in Director. And everywhere else that you have Appellee would put Director. I believe that's what you guys want, right?

CARDWELL: Yes

McINTOSH: Yes.

FRENZ: And Sinclair can fix that.

SALAS-FERGUSON: And just so you know, no lawyer is going to be confused over Appellee or Director. So this is a legal document written for judges and attorneys. So they will understand that.

ADAMS: So anyway, everywhere we got an Appellee, we're going to change it to a Director. And you'll catch that. I'm just trying to have something people can see. Are there other April 20ths that need fixing?

ROBINSON: I thought there was one more at the bottom.

ADAMS: There was one at number five?

ROBINSON: Georjean, I think we also need to take out residential unit, because it is.

ADAMS: We had, is Dee no longer with us?

CARDWELL: No, she stepped off.

ADAMS: Okay. So if we take out residential, which I agree is-

ROBINSON: Redundant, maybe.

ADAMS: And unnecessary.

SALAS-FERGUSON: You know, Dee did have a point. You can say that the structure the DEM director determined to be on an occupied unit per, blah, blah, blah, was not an unoccupied unit, because that is something you guys found, right? You can't take that out. You can just take out "Appellant maintained that" and just (start with) "The structure the DEM Director determined ..."

ADAMS: Is everybody okay with that? This will be the draft that we do vote on. And now I talk about where the fact came from. Director said, oh, yes, it is an unoccupied unit. And we decided, no, it isn't.

SALAS-FERGUSON: I mean, you could even delete that one.

ADAMS: This one, number four, just take it out?

SALAS-FERGUSON: I mean, if you want to make it even cleaner.

ADAMS: It's kind of obvious he did, otherwise he wouldn't have done what he did. So we got to renumber that. I hate Word. You'll be cleaning this up, right? And then the conclusions of law are we have a definition of unoccupied unit, and this is it. I'm not even sure why we're saying that, but this is true, too. It gets a maintenance fee. We get to decide if something is violating the law or erroneous. And this is our finding because it didn't currently receive a water bill as required.

SALAS-FERGUSON: I think you guys should just go ahead and vote on what you guys just did and just accept it.

ADAMS: Are you ready to take this? Am I done making changes? Short of putting Director instead of Appellee?

McINTOSH: Yes.

ADAMS: Okay, let us in the current draft as shown, except for putting in Director for Appellee everywhere, is the motion. Will somebody else make it?

GAFFNEY: I thought we had a motion on the floor.

CARDWELL: Okay. Because it's just a discussion. We haven't voted on it yet.

ADAMS: Okay, this is a version now that we are going to vote for with a caveat that I didn't necessarily catch all "Appellees."

VOTE: Ayes 5 (Cardwell, Gaffney, McIntosh, Robinson, Adams); excused 2 (Burns, Olson); absent 1 (Fulton). Motion carried.

SALAS-FERGUSON: So Georjean. You can send that to me and Peter and then we'll get it to you for your signature and get it sent to the parties. And thankfully we're done with this for now, so I'll be here.

Respectfully submitted,

Peter Sur, Secretary