

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

November 13, 2020

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No: 15KD-183  
Kauai

*Amend Prior Board Action of April 22, 2016, Item D-1, Sale of Lease at Public Auction for Business Purposes, Lot 11-B Hanapepe Town Lots, 1st Series, Hanapepe, Waimea, Kauai, Tax Map Key: (4) 1-9-005:053.*

The purpose of the amendment is to: change the lease term from 10 to 30 years; provide for the upset rent appraisal to set rent for the first 10 years of the term with a known step-up for the second 10 years; and provide that the lease rent shall be reopened at the end of the 20<sup>th</sup> year of the lease term.

BACKGROUND:

At its meeting of April 22, 2016, Item D-1, the Board of Land and Natural Resources approved the sale of a 10-year lease at public auction for business purposes for the subject State property located in Hanapepe Town Lots, 1<sup>st</sup> Series, Hanapepe, Waimea, Kauai. See Exhibit 1 attached.

REMARKS:

A lease term longer than 10 years is preferred by both DLNR staff and the current revocable permit tenant. Staff is recommending increasing the term of the lease to 30 years with the upset rent appraisal covering the first 10 years of the term with a known step-up for the second 10 years. Therefore, this section of the prior Board action should be amended to read as follows:

MINIMUM UPSET ANNUAL RENT:

To be determined by staff or independent appraisal, subject to review and approval by the Chairperson. The appraisal shall determine the upset rent for land and improvements for the first 10 years of the lease, as well as a percentage increase for the second 10-year period of the lease to provide the successful bidder

with rent certainty for the first 20 years of the lease. Rent for the remaining 10-year period of the lease shall be determined by staff or independent appraisal. The appraised rent should reflect a "net" lease where all maintenance obligations are the responsibility of the lessee.

Staff is further recommending an amendment of the prior Board action to change the lease term from "10 years" to "30 years" on page 2 of the submittal under the "LEASE TERM" section.

To be consistent with the foregoing amendments, a "RENTAL REOPENINGS" section should be added to read as follows, "At the end of the 20th year of the lease term, by independent appraisal".

RECOMMENDATION: That the Board:

1. Amend its prior Board action of April 22, 2016, under agenda Item D-1, as set forth above.
2. Except as amended hereby, all terms and conditions listed in its April 22, 2016 approval to remain the same.

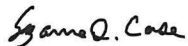
Respectfully Submitted,



Alison Neustein  
Land Agent

WTM

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

April 22, 2016

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.:15KD-183

Kauai

Sale of Lease at Public Auction for Business Purposes, Lot 11-B Hanapepe Town Lots, 1<sup>st</sup> Series, Hanapepe, Waimea, Kauai, Tax Map Key: (4) 1-9-005:053; After-the-Fact Issuance of Revocable Permit to Saim Caglayan and Maggie Lea, Lot 11-B Hanapepe Town Lots, 1<sup>st</sup> Series, Hanapepe, Waimea, Kauai, Tax Map Key: (4) 1-9-005:053.

**PUBLIC AUCTION**

**REQUEST:**

Sale of lease at public auction for business purposes as allowed under County zoning.

**LEGAL REFERENCE:**

Sections 171-6, -13, -14, -14.5, -16, -17 and other applicable sections of Chapter 171, Hawaii Revised Statutes, as amended.

**LOCATION:**

Portion of Government lands, Lot 11-B, Hanapepe Town Lots, 1st Series, Hanapepe, Waimea, Kauai, identified by Tax Map Key : (4) 1-9-005:053, as shown on the attached map labeled Exhibit A.

**AREA:**

0.136 acres, more or less.

**ZONING:**

State Land Use District: Urban  
County of Kauai CZO: Commercial

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON

April 22, 2016 uo.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act  
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Previously encumbered under General Lease No. S-5822 to Saim Caglayan and Margaret Heide for Business Purposes. Lease expired September 30, 2015.

CHARACTER OF USE:

The lessee shall use or allow the premises leased to be used solely for business purposes.<sup>1</sup>

LEASE TERM:

Ten (10) years.

COMMENCEMENT DATE:

Sixty (60) days after the date of sale; provided that if such date is not on the first day of any month, the commencement date shall be the first day of the month following such date; and further provided that the Chairperson may amend the commencement date for good cause.

MINIMUM UPSET ANNUAL RENT:

To be determined by staff or independent appraisal, subject to review and approval by the Chairperson. The appraisal shall determine the upset rent for land and improvements for the term of the lease.

METHOD OF PAYMENT:

Semi-annual payments, in advance.

PERFORMANCE BOND:

Twice the annual rental amount.

---

<sup>1</sup> This is the same character of use set forth in recently expired General Lease No. S-5822 that previously encumbered the premises.

PROPERTY CHARACTERISTICS:

Utilities – Water, electricity, phone and sewer.

Existing improvements – Air conditioner, painted interior, 320' fencing, 3 custom gates and a garden.

Legal access to property – Staff has verified that there is legal access to the property off of Hanapepe Road.

Subdivision – Staff has verified that the subject property to be auctioned is a legally subdivided lot.

Encumbrances – Staff has verified that the property is currently unencumbered.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

See Exhibit 'B' attached.

REVOCABLE PERMIT

APPLICANT(S):

Saim Caglayan and Maggie Lea, Husband and Wife.

LEGAL REFERENCE:

Sections 171-13 and -55, Hawaii Revised Statutes, as amended.

CHARACTER OF USE:

Business purposes.

COMMENCEMENT DATE:

Retroactive to October 1, 2015.

MONTHLY RENTAL:

\$1,117.00 per month (same as last rent under expired General Lease No. S-5822).

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental.



CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See Exhibit 'B' attached.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>	NO <u>  </u>
Registered business name confirmed:	YES <u>X</u>	NO <u>  </u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u>  </u>

REMARKS:

The subject State property is a 5,909 square foot lot in Hanapepe town, with a 960 square foot State historic structure located on property. The property is commercially zoned and in close proximity to retail stores, art galleries, gift shops and cafes in the area. The subject property has been utilized as an art gallery and studio for the past ten years.

The subject parcel was previously leased to the Applicants on September 5, 2005, under General Lease No. S-5822, awarded via public auction. The 10-year lease expired on September 30, 2015. Applicants have continued to occupy and pay rent on the premises at the same rate that was due under the expired lease.

Prior to the lease, the property had been vacant for extended periods, following three unsuccessful attempts at public auctions. The subject property has also been under two or more revocable permits, which were later terminated and/or rescinded due to permittee default. The last being rescinded by the Board at its March 25, 2004 meeting under agenda item D-5, for permittee failure to meet appraiser requirements (Exhibit C).

During their tenancy, under General Lease No. S-5822, the Applicants made considerable investments and improvements into the building, including landscaping and the parking area (Exhibit D). The Applicants failed to request Board consent for an extension of their 10-year lease before its expiration and are now requesting issuance of revocable permit pending re-auction of the property. The Applicants intend to continue to utilize the property for business purposes and operation as Hanapepe Fine Art Gallery.

The Applicants have not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions. Due to the unsuccessful previous efforts to auction property and the reliability and success of current occupants/Applicants, it is staff opinion that at current time, a month-to-month tenancy to the Applicants/current occupants is most appropriate use of subject parcel, until such time that a lease can be awarded through public auction. The Applicants understand that the revocable permit is temporary, while KDLO staff prepares the property for lease at public auction.

Comments were solicited from the agencies identified below with the results indicated.

State Agencies:

DOH	No objections
DLNR-Historic Preservation	No response by suspense date
OHA	No response by suspense date

County Agencies:

County Planning	No response by suspense date
Public Works	No objections

RECOMMENDATION: That the Board:

**PUBLIC AUCTION:**

1. Find the area to be an economic unit in terms of the intended use.
2. Find that the subject area is not suitable for hunting, nor will it become so during the term of the lease.
3. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
4. Authorize the sale of a lease at public auction covering the subject area for business purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - a. The standard terms and conditions of the most current business or commercial general lease form, as may be amended from time to time;
  - b. Review and approval by the Department of the Attorney General; and
  - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

**REVOCABLE PERMIT:**

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

2. Authorize the issuance of an after-the-fact revocable permit to Saim Caglayan and Maggie Lea covering the subject area for business purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - a. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;
  - b. Review and approval by the Department of the Attorney General; and
  - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

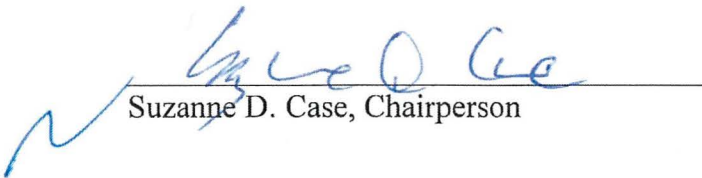
Respectfully Submitted,



---

Kurt Yasutake  
Land Agent

APPROVED FOR SUBMITTAL:

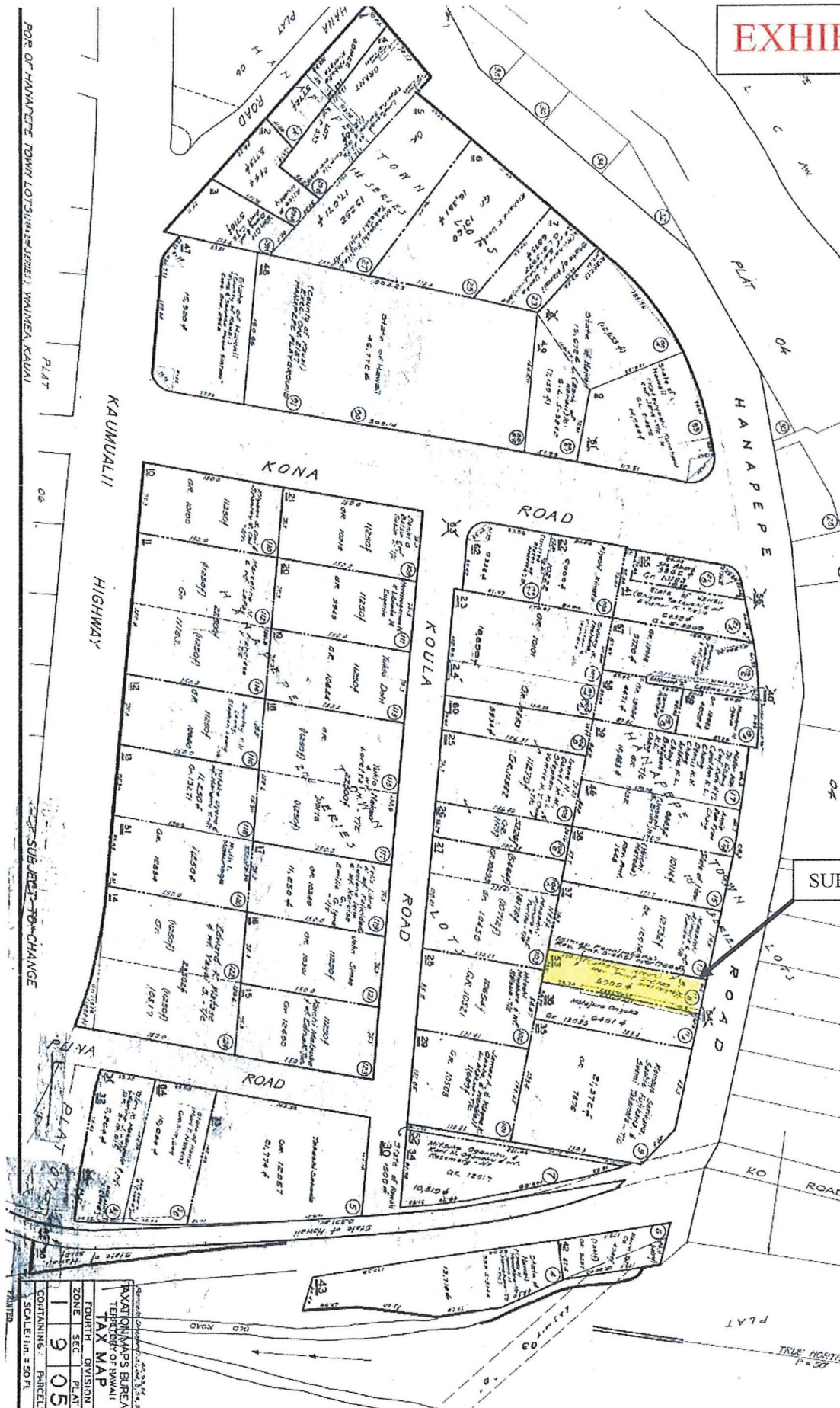


---

Suzanne D. Case, Chairperson



SUBJECT PROPERTY





**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

April 22, 2016

SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA  
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

TO: Land Division

THROUGH: Suzanne D. Case, Chairperson

FROM: Kurt Yasutake, Land Agent

DECLARATION OF EXEMPTION FROM THE PREPARATION OF AN ENVIRONMENTAL ASSESSMENT UNDER THE AUTHORITY OF CHAPTER 343, HRS AND CHAPTER 11-200 HAR, FOR SALE OF LEASE AT PUBLIC AUCTION AND ISSUANCE OF A REVOCABLE PERMIT TO SAIM CAGLAYAN AND MAGGIE LEA, LOT 11-B HANAPEPE TOWN LOTS, 1<sup>ST</sup> SERIES, HANAPEPE, WAIMEA, KAUAI, TAX MAP KEY: (4) 1-9-005:053.

The following permitted activities are found to be exempted from preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR:

**PSF Number:**

15KD-183

**Project Title:**

Sale of Lease at Public Auction and Issuance of a Revocable Permit to Saim Caglayan and Maggie Lea, Lot 11-B Hanapepe Town Lots, 1<sup>st</sup> Series, Hanapepe, Waimea, Kauai, Tax Map Key: (4) 1-9-005:053.

**Project Description:**

The subject State property is a 5,909 square foot lot in Hanapepe town, with a 960 square foot State historic structure located on property. The property is commercially zoned and in close proximity to retail store, art galleries, gift shops and cafes in the area. The subject property has been utilized as an art gallery and studio for the past ten years.

The Applicants for the revocable permit do not intend to utilize the subject property for purposes other than its previous use as an art studio and retail gallery.

**Exhibit B**



The month-to-month revocable permit will allow the property to be occupied until such time that the DLNR is prepared to issue a new lease by public auction for the same character of use that was permitted under the prior lease for the property – business purposes. The Applicants understand that the revocable permit is temporary, while KDLO staff prepares the property for lease at public auction.

The use of the property will remain the same and no expansion of use is proposed or planned.

**Consulted Parties:**

Staff solicited comments from the Department of Health, DLNR-Historic Preservation, Office of Hawaiian Affairs, County of Kauai Planning Department and the County of Kauai Public Works Department and no objection nor concerns were received.

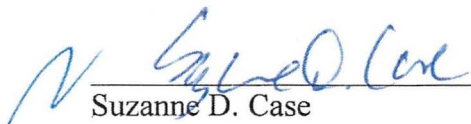
**Exemption Determination:**

After reviewing HAR § 11-200-(8), DLNR has concluded that the activities under this permit would have minimal or no significant effect on the environment and that issuance of the permit is categorically exempt from the requirement to prepare an environmental assessment.

According to the Exemption List for the Department of Land and Natural Resources, as reviewed and approved by the Environmental Council on June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item 47 that states “Leases of state land involving negligible or no expansion of change of use beyond that previously existing”, and Item 51, “Permits, licenses, regulations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing”, respectively.

**Conclusion:**

It is recommended that the Board declare that this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

  
\_\_\_\_\_  
Suzanne D. Case  
Board of Land and Natural Resources

  
\_\_\_\_\_  
Date

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

March 25, 2004

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

File: 03KD-143

KAUAI

Rescind Land Board Approval of 6/13/2003, Item D-6:  
Issuance of Revocable Permit to Sharlene K. Mata dba  
Hawaii's Keepsakes, Hanapepe Town Lots, Waimea, Kauai,  
Tax Map Key (4) 1-9-5: 43

**BACKGROUND:**

On June 13, 2003, the Board approved the issuance of a revocable permit to Sharlene K. Mata dba Hawaii's Keepsakes for business purposes. This revocable permit was to place the first tenant in a recently repaired and renovated State historic structure in Hanapepe town.

On July 20, 2003 the applicant was requested to remit a check in the amount of \$3,750 in order to retain the services of an independent appraiser. This was necessary in order to determine the monthly rent since the Land Division did not have a staff appraiser. Followup letters sent on 9/6/03 and 11/12/03 resulted in confirmation that she still wanted the permit, but did not submit the appraisal deposit nor arrange staff requested meetings to resolve her concerns.

It has now been 8 months since staff initially requested the appraisal fee. On January 13, 2004, staff sent a copy of a rescission submittal and requested comments from her. No response was received. Staff can only conclude that the applicant is no longer interested in the permit and that a rescission is in order. Staff can then seek a replacement tenant for the property, or prepare for the sale of a lease at auction.

**RECOMMENDATION:** That the Board:

- A. Rescind its action of June 13, 2003, under Agenda Item D-6.

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON  
March 25, 2004 *Kuk*

ITEM D-5



**Hanapepe Artworks ~ Saim and Heidi Caglayan, Gallery Owners**

Actual Costs for Improvements @

Hanapepe, HI 96716

TMK: (4) 1-9-5: 53

General Lease No S-5822

**EXHIBIT "D"**

2005-06

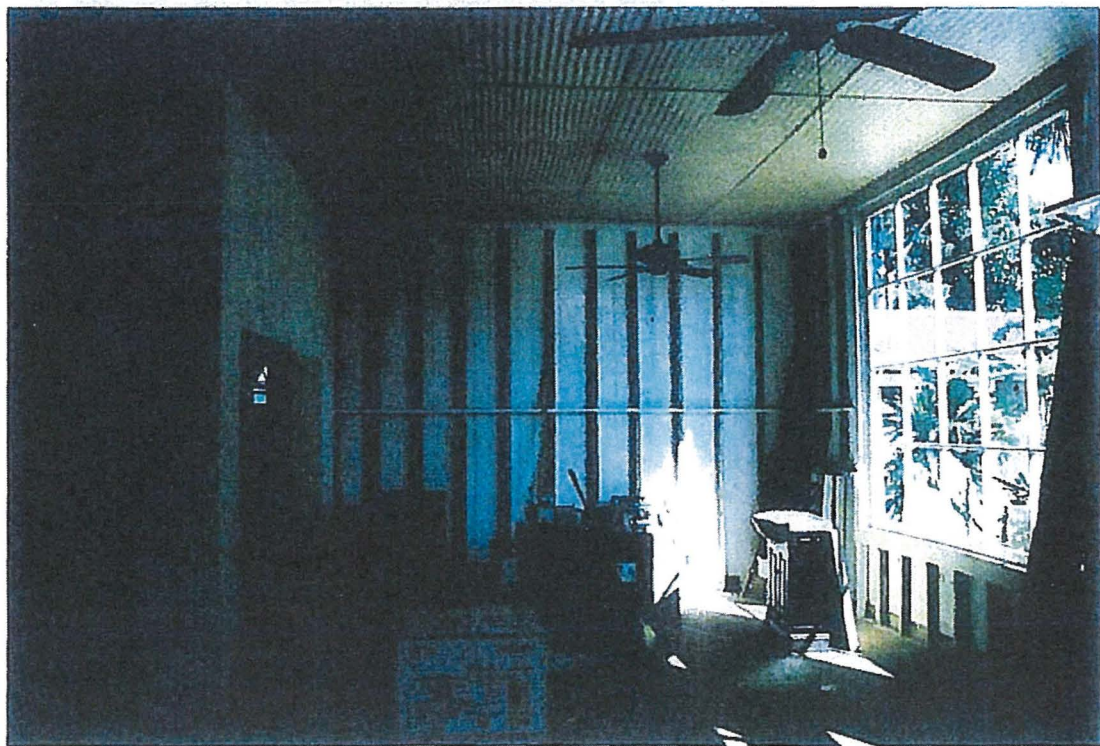
Carpentry/Materials	\$9600
Rough Plumbing	\$6600
Sewer Hook Up	\$4996
Electrical	\$9700
Ceiling Treatment	\$6597
Painting	\$5000
Dry Wall	\$8000
Insulation	\$1020
Carpet Floors	\$5466
Screens	\$1910
French Door	\$359
3 Wood Doors	\$710
4 Ceiling Fans	\$1000
Toilet	\$202
Bathroom Sink/Mirror	\$769
Faucet	\$189
Work Counter/Granite	\$1500
Work Sink/Faucet	\$758
36" Cabinet	\$405
2x24" Cabinet	\$349
36" Cabinet Doors	\$290
24" Cabinet Doors	\$264
Electric Water Heater	\$719
Track Lights Installed	\$2739
Bath Vanity Light	\$175
Bath Ceiling Light	\$100
Back Lanai Light	\$100
2 Front Lanai Lights	\$320
Refrigerator	\$649
Bathroom Fixture	\$219
Air Conditioner	\$1329
Gardening/Gravel	\$2531
Business Sign	\$1300
Phone/Fax	\$320
Telephone/Installed	\$500
Sales Tax	\$3188
Total:	\$79,873

2010-15

Air Conditioner	\$500
Interior Painting	\$3000
320' Fencing	\$9500
3 Custom Gates	\$3000
Garden Restored	\$4000
Total:	\$20,000

2005-15

Total Invested ~ 10 years	\$99,873
---------------------------	----------



2005-06  
Before



October 14, 2015

