

MINUTES

**PLANNING COMMITTEE**

**February 6, 2007**

A meeting of the Planning Committee of the Council of the County of Kaua'i, State of Hawai'i, was called to order by Councilmember JoAnn A. Yukimura, Chair, at the Historic County Building, Room 201, Līhu'e, Kaua'i, on Tuesday, February 6, 2007, at 1:22 p.m., after which the following members answered the call of the roll:

Honorable JoAnn A. Yukimura  
Honorable Jay Furfaro  
Honorable Shaylene Iseri-Carvalho  
Honorable Ronald Kouchi

EXCUSED: Honorable Jay Furfaro  
Honorable Mel Rapozo

Minutes of the October 30, 2006 Special Planning Committee Workshop Meeting (Bill No. 2177).

Upon motion duly made by Councilmember Iseri-Carvalho, seconded by Councilmember Kouchi, and unanimously carried, Minutes of the October 30, 2006 Special Planning Committee Workshop Meeting (Bill No. 2177) was approved.

The Committee proceeded on its agenda item as shown in the following:

**Bill No. 2204**      A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8 OF THE KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO THE COMPREHENSIVE ZONING ORDINANCE (Transient Vacation Rental and Bed and Breakfast operations)  
**[This item was deferred.]**

JOANN A. YUKIMURA, PLANNING COMMITTEE CHAIR: I want to apologize again for not being present at the public hearing. I have the disks and I am looking at them right now; however, I will get all the information that was provided that day. I want to open it up for input from the public in a moment, but before I do, I would just want to let the Committee know that it is my intention to have the Bill deferred today. At our next meeting, as a way to help our Committee get into the volumes of data and work that has been done on this Bill, I am planning to, with your consent, invite Elizabeth Kent who helped to facilitate the stakeholders discussion, Ken Stokes who did a study for the vacation rental organization, and Scott Ezer and the Planning Department who developed the

report for the County. I have asked them to be available as resource people and maybe summarize each of the findings of the reports, so that will help us get into the materials and the issues and that would be at our Committee meeting on the 21<sup>st</sup>. Before I open it up for public discussion, is there any objection or questions about that process?

SHAYLENE ISERI-CARVALHO: I guess for me, I am not sure if a workshop is necessary. I think they've spent endless and countless hours on the Bill. I have read the Bill and I talked to numerous members that have worked on the Bill. For me, I don't know what benefit it would be to have another workshop on the issue after they've had multiple rounds of meetings already.

Ms. Yukimura: Well, that is why I am not planning a workshop. This would just be Committee work. I was initially thinking about a separate day long workshop, but in talking to the Vice-Chair, he suggested that maybe we could do a modified process and just have these people available with a short summary at our next Committee meeting.

Ms. Iseri-Carvalho: Okay, so it is your intent that they would just come up, give a five (5) minute summary on the position and...

Ms. Yukimura: And if there are questions from the members, I don't know if everyone like you has had a chance to go through all the materials and I thought that would be one way to go through it. The groups that did work through it, you know, found that there were multiple levels of issues and a lot of aspects to consider in developing this, so that is the intention. My intention is not to have a separate workshop.

Ms. Iseri-Carvalho: And how long do you expect... I mean, I guess I am looking at a timeframe. If you are going to have all of these four (4) people, are they going to be limited by time as to how much their presentation, in light of the fact that it is going to be set on a regular meeting day?

Ms. Yukimura: Well, I am thinking that, you know, it would be anywhere from an hour to an hour and a half.

Ms. Iseri-Carvalho: For each person?

Ms. Yukimura: No.

Ms. Iseri-Carvalho: For the total?

Ms. Yukimura: Yes. Certainly not any longer than we spent on some issues like Nuhou Road and others. Any other questions? Comments? If not, I will now suspend the rules.

There being no objections, the rules were suspended.

Ms. Yukimura: I will open it up to any public testimony on the subject matter. Is there anyone who wishes to testify either substantively or as to process? I see Chris first and then the gentleman in the back.

CHRIS KOBAYASHI: Aloha Councilmembers. I am Chris Kobayashi and I have said this before, but I am life long resident of Hanalei. My family has vacation rentals on the beach at Hanalei Bay. My mother started vacation renting in the 1960's in the days of Hanalei Plantation Hotel and when Tahiti Nui was the only bar in town. I would like to comment on: 1) the use of the property; 2) if the use passes on to immediate family members or goes with the property; 3) commercial tax; and 4) enforcing those who do not pay their GE and TAT taxes. On one of our properties, we have two (2) houses, both vacation rentals since the 60's on a lot that allows two (2) houses. There has been talk of limiting one house per lot for vacation rentals. If you are going to limit the use, will there be a reduction on real property taxes? Is that possible? Or is that unrealistic? I believe that the present use of the houses should be allowed to continue. Further, I believe that the current use of the property should also be allowed to continue. If a property is large enough to build another house on it and the use has already been in vacation rentals, that use should be allowed for the new house also.

I personally think that limiting the vacation rental use only to immediate family members is short sighted. I, for one, have only nieces and nephews to convey my portion to, so that would exclude them from vacation renting the property. So in both cases, the only option would be to sell the property at the going market rate and who will afford to buy it? Only the ultra rich because they are the only ones who could afford to have it stand idle for any length of time and then when they decide to sell, then only another ultra, ultra rich person would be able to buy it. This selling will change the neighborhood and the quality of our neighborhood. It will perpetuate exactly what we all don't want to happen. Multi-million dollar homes owned by folks who may not care about the community of Hanalei, skyrocketing property taxes, possibly forcing other long time neighbors to sell also and no new affordable rentals generated. Here we have a State that relies on our visitor industry. On one hand, we are trying to promote it and on the other hand, limiting the present vacation rentals in doing the opposite. Visitors who stay in vacation rentals do so because they don't like the hotel experience.

In our case, we also have people from as close as Kapa'a and as far away as the Big Island that come and stay in our homes. There are so many people who benefit from the vacation rentals. The gardeners, the yard cleaners, window washers, waitresses, grocery stores, gift stores, salesclerks, fishermen, farmers, farmer's market... I mean, everyone benefits in some way. I don't believe it is fair to tax vacation rentals at commercial tax rate. We are not hotels and we are not the size of hotels. We who are legitimately collecting and paying the GE and TAT taxes should not be penalized and there should be enforcement, so that all vacation rental

owners are paying their GE and TAT taxes. So quite possibly, that may cause some of them to stop doing it if there is enforcement.

Ms. Yukimura: You can come back to finish up after we hear the other speakers and you can summarize right now if you want to.

Ms. Kobayashi: I just wanted to add that, you know, like we all pay our TAT taxes and I am curious to see how much of that TAT tax is generated coming from Kaua'i. It goes to the State I assume, but how much of it is generated from this island and if something can be done maybe, so that it is equitably brought back to our island for whatever, but someone may have to look into that, I don't know because I am sure that our island generates a lot.

Ms. Yukimura: Okay.

Ms. Kobayashi: Thank you.

Ms. Yukimura: Thank you very much. Ms. Kobayashi was part of the stakeholders group too, so thank you. Sir?

SHAIN HAM YOUNG: This is very informal. Good afternoon Councilmembers. My name is Shain Ham Young. I am a life long resident of Wainiha. My family has gone in every which way you might say that life can possibly take... my wife for one works in the vacation rental business and has for over 12 years. My kids basically have grown up around it. Again, people, we do have a General Plan that was basically designed way back when Mr. Asing... that resort area was supposed to have stayed on the other side of the black bridge. Unfortunately, it did not and it is a little late to say, what are we going to do and what we not going to do because too much majority out there and we are going to lose this battle that we've already lost. I don't envy your jobs because this is a very, very touchy situation that no matter who or what is called upon as far as the law goes, it will affect families out there. Again, good luck in what you are trying to do. I hope for the best because, again, it is part of my family that we all, you know... back our politicians to lead us the right way in life. The Kobayashis, again, we are all behind them because what did our tourist economy or basically, our economy has gone to that tourist level way back in the 60's or even when, you know, the movies all started coming. We all wanted the money. It is here, it came, it went, and those of us that didn't take advantage of it, of course, are wherever they are. But, again, life goes on and like I said, I don't envy your decisions or rulings that you have to make, but please make the right one on behalf of all of our people of Kaua'i. You know, good luck.

Ms. Yukimura: Thank you Mr. Ham Young. Are there any questions?

BILL "KAIPO" ASING, NON-COMMITTEE MEMBER: Yes, I have one.

Ms. Yukimura: Okay.

Chair Asing: What is your feel of grandfathering the existing ones that have paid their General Excise and TAT taxes?

Mr. Ham Young: Take care of our tourist.

Chair Asing: So you don't have any problem with that?

Mr. Ham Young: No problems with that.

Chair Asing: Do you have any problems with new ones going into the area?

Mr. Ham Young: I feel that as long as it is regulated which we need to do it someway, somehow, and I think maybe even through the real estate companies, they need to maybe work hand in hand together too to come to some kind of regulative way that, you know, that feeds back to the County.

Chair Asing: Thank you.

Ms. Yukimura: Thank you. Any other questions of Mr. Ham Young? If not, thank you very much. Any other speakers in the audience? Go ahead Madam.

DEANA SHELBY: My name is Deana Shelby from Anahola. I guess my biggest concern is, what are you guys going to do? You know, if you grandfathered in the ones that are existing now, then mine would be grandfathered in, so I wouldn't have a problem. I pay my GE tax, I pay my TAT tax and I also pay income tax (State and Federal). I also pay property tax, so I am paying five (5) taxes on the income that I get and then I am hearing talk that you want to charge me another tax in the form of a license fee. I am starting to get worried that it is just going to get to the point where cheating is the way because of all this stuff that is piled on top and how in the heck are you going to enforce people to be honest if the only way to be honest is to lose money. So that is my real concern is that it is just going to be worse and worse and worse instead of getting better. Anyway, that is my concern.

Ms. Yukimura: Hold on. Any questions of Ms. Shelby? Councilmember Bynum?

TIM BYNUM: Deana, I think you said earlier today that you have been in Anahola since 2000?

Ms. Shelby: Right.

Mr. Bynum: And you have a vacation rental in Anahola?

Ms. Shelby: Yes.

Mr. Bynum: Is it okay if I ask where it is in Anahola?

Ms. Shelby: It is on 'Aliomanu Road.

Mr. Bynum: And it...

Ms. Shelby: It was a vacation rental before we purchased the property and one of the ways that we can afford the property is because it is a vacation rental. We have a managing agent that has standards that make sure that our property lives up to their standards and we choose to have a managing agent, so that we have somebody who is familiar with the travel industry helping us fill it rather than just putting something on the web and getting anybody who happens to call up, so we have an agent. We pay the agent a fee too.

Mr. Bynum: So you also reside in Anahola?

Ms. Shelby: Yes.

Mr. Bynum: And part of your decision to make that purchase was because of the income that the vacation rental would produce, so I assume the salary then had some history that they could show you what kind of income it generated and that kind of thing.

Ms. Shelby: Right.

Mr. Bynum: Okay, thank you.

Ms. Yukimura: Any other questions? Let's see, I have one question. So your vacation rental is on a separate property than the one that you live on or is it on the same property?

Ms. Shelby: When it was presented to us to purchase, we could have bought one or both, so apparently, there was a capability of splitting it and only buying one or both or whatever. Well, we just decided to buy both in order to afford the one that we live in. So we live in a house that is sitting on a property that could be considered the same property as the vacation rental, but it is all separated off, so the vacation rental people feel like they are in a separate place.

Ms. Yukimura: You mean you have some landscape barriers or something, but it is adjacent if you consider it separate properties. They are adjacent to each other and they may have been one parcel which was condominimized perhaps which is why you could have bought and sold them separately, no?

Ms. Shelby: The way that it was described to us, we could just buy the main house or just buy the small house or buy both of them.

Ms. Yukimura: I see, okay. It might have been two (2) separate properties then. I asked this because in the vacation rental report done by the consultant hired by the Planning Department, they are defining bed and breakfast as a different entity as single family vacation rentals and they are defined as... there are different standards for permitting them, you know, or disallowing them, so the bed and breakfast is defined as either... as a unit that is on the same property where the owner lives.

Ms. Shelby: So it could be considered a bed and breakfast.

Ms. Yukimura: Yes, that is why I was trying to figure out which category it would fall in.

Ms. Shelby: It could fall into either category, but we live adjacent to the property that has the...

Ms. Yukimura: But you have a separate management company to rent it out.

Ms. Shelby: Right.

Ms. Yukimura: One of the differences that is...

Ms. Shelby: That is the way that it was done prior to our purchasing the property by the previous owner, so we just continued whatever she was doing figuring if it was legal for her then it would be legal for us, but maybe the rules are changing that is why we are here to try to find out what is going on. We don't want to be hit over the head with rules changing and never have an opportunity to participate in the decision.

Ms. Yukimura: Yes, so I think it is very responsible of you to be here. So the distinction made between bed and breakfast and single family vacation rentals are that, one, the owner is on the property, so there are greater chances of a cultural exchange and also greater chances that the visitor will have some accurate information about, you know, what to do, where to go, where not to go and some of the community sens... how to be in tune with some of the community sensibilities. I am just asking you the questions because I am trying to think in terms of those two (2) categories. They are both regulated in the bill that is before us and I am just trying to see how the bill would apply or not apply and what kind of issues we have to look at in terms of the reality of what is out there.

Ms. Shelby: Uh huh.

Ms. Yukimura: Okay, thank you very much.

Chair Asing: I just want to make it clear for me. Both units are on the same TMK (tax map key)?

Ms. Shelby: Say what a TMK is?

Ms. Yukimura: Tax map key. Are they on the same...

Ms. Shelby: I think so.

Ms. Yukimura: Do they have the same tax map number?

Ms. Shelby: Yes, I think so because right now since we bought it as one unit... I mean we bought them together, so we didn't separate them. We get one property tax bill and it includes both properties. One that we live in and one that we...

Ms. Yukimura: Okay, thank you very much Ms. Shelby. Next speaker? Who wishes to speak? I think Mr. Imparato.

CARL IMPARATO: Good afternoon. My name is Carl Imparato and I live in Hanalei. I just wanted to add a few points to the testimony presented a few weeks ago. First and foremost, I think the issue before you is a question of balance. It would be one thing if neighborhoods were 10% vacation rental, but when they are 20%, 30% or 40% of the neighborhood as in Hanalei and maybe Hā'ena. When 40% of a neighborhood has been taken over for commercial uses, we have problems and if you don't act now, we know where this is going to end, 50%, 60%, 70% and neighborhoods will be gone. I ask that you focus your concerns on the residents of the communities and not so much on tourists who would like to stay in vacation rentals and not so much on mainlanders who see vacation rentals as a way to afford real estate, so that they can move here in the future. We should focus on the residents please of the island. The major issues I'd like you to consider in the bill are: 1) that new TVR's and bed and breakfast should be prohibited outside the visitor designation areas. 2) New vacation rentals and bed and breakfast should be prohibited in the open and ag districts. 3) Grandfathering shouldn't be allowed for vacation rentals that are operating illegally. I think the County should not grant these privileges to someone who is breaking the law. 4) The bill should establish strict standards to protect the community from noise... too many occupants in a place, too many cars, etc. The standard should apply to all the grandfathered vacation rentals and to any... there shouldn't be any new ones. Those permits... there will be new vacation rentals certainly inside the visitor destination areas and in fairness to the people who live in the visitor destination areas, there should be strict standards to protect the residential neighborhoods there as well. The standards should be such that permits will be revoked if people violate the standards. Lastly, the bill should require enforcement against currently illegal

vacation rentals and against grandfathered vacation rentals that in the future violate laws and regulations. We need to have meaningful penalties.

The last point that I would like to make is that with this kind of approach, you have a smooth transition which wouldn't really create any upheaval I think for the honest operators of vacation rentals. Those who are operating legal ones and it wouldn't create much upheaval ultimately for the people who work for them. The cleaners, the gardeners, all of those... I note that there are 6,200 new tourist units planned and proposed still in the 2000 General Plan. That is a 70% to 80% increase in the number of tourist units currently on the island. With a 70% to 80% increase in the number of tourist units in all of these other areas within the visitor destination areas, there will be no shortage of employment for those who are currently servicing the vacation rental industry. So please take into account that if, indeed, we do close illegal vacation rentals or vacation rentals are limited through attrition, that there will be plenty of jobs for the people who are working in these fields based on the current approach of allowing all these new timeshares, hotel units, etc. to be approved and I thank you for your time.

Ms. Yukimura: Thank you Mr. Imperato. Any questions? Then I have one. What are, if any, are your recommendations regarding bed and breakfast or are you lumping them altogether?

Mr. Imperato: I think basically the same. It is ironic to me that the draft of the bill that I have seen created more restrictions on bed and breakfast than it did on vacation rentals when bed and breakfast are... actually, have resident owner, so I think that the standards for bed and breakfast should be the same as the standards for vacation rentals actually in terms of what would happen if there are noisy tenants and the redress that people who live nearby have. But I think the bigger issue, to be honest, is the vacation rental issue because they are not on site managers and things can get bad. I get calls as president of the community association from people who say, can't we do something about this because I got a vacation rental right in front of me where there are 15 occupants, single family house. I've got people making noise all the time. I haven't heard any calls about bed and breakfast, so I think the focus should be TVR's, but basically same rules for vacation rentals should be legitimately applied to B&B's as well I think.

Ms. Yukimura: Okay, I appreciate your answer. The issue with bed and breakfast, though, is they are... if they don't have a use permit, they are operating illegally now, so there is no actual opportunity for the ones that are in existence to show that they have been operating legitimately.

Mr. Imperato: I think, ultimately, you are going to have to make some decisions as to applying a rule of reason because there are some question... for example, one could argue based on whether one accepts the Kobayashi decision or not that all of the existing vacation rentals are operating illegally. I think that, to my mind at least, when we talk about something operating illegally, to my mind,

that is an illegal unit in a ground floor unit in a flood zone. An illegal use is having five (5) bedrooms where the permits for the house allow four (4). Two (2) kitchens where the permits allow one. Three (3) bedrooms where the septic allows two (2). Those, I think, are the substantive illegal kinds of activities that I don't think warrant grandfathering.

Ms. Yukimura: Which means that whatever grandfathering standards that we set as a Council in an ordinance, the actual implementation by the Planning Department... when the applications come in for a grandfather status are going to be key. I mean, how those provisions are actually enforced and implemented are going to be where the rubber hits the road.

Mr. Imparato: Correct, sometimes I wonder if it is was worthwhile to even come to these meetings because the Planning Department does such a miserable job of enforcement in the first place. If you pass a great law, there may not be any enforcement to any... in any event, I would argue that there are other laws out there, environmental laws, where to the extent that the government doesn't do its job in enforcing. Citizens can bring lawsuits on their own or they can bring lawsuits against the County for non-enforcement or they can bring lawsuits or some civil actions against the operators who are polluting or possibly doing something illegal. I would argue that given the miserable history of our Planning Department's enforcement, that unless you put something in there that says that the Planning Director will lose his job if he doesn't enforce things... unless you don't go that far, you might want to consider allowing alternative enforcement mechanisms that allow something to happen if we continue to having a Planning Department that doesn't do their job.

Ms. Yukimura: In fact, enforcement was one of the issues in the stakeholder discussions, you know, because there is already a law on the books against multi-family use of single family dwellings. Right now, as you point out, there are single family dwelling units that are being used as multi-family vacation rentals like a mini-hotel and that there is no need for any law, new law, but is really an issue of enforcement, so that is very critical. With respect to regulation of vacation rentals, however, there is no real law in place and that is one of the things we are looking at now as we consider this bill. So I am saying that there is, in some respect, a need for new law and in other respect, it is a need for enforcement of existing laws.

Mr. Imparato: I understand. Hopefully, the bill would go to the extent of actually creating a fund through some sort of new taxes on vacation rentals which would fund specific positions for the enforcement of the law.

Ms. Yukimura: Yes, I appreciate the suggestion and there is also a way the Council can do that without including or earmarking any fees in the bill. We can just simply in the budget put in moneys for enforcement as well.

Mr. Imparato: Great.

Ms. Yukimura: Councilmember Iseri-Carvalho?

Ms. Iseri-Carvalho: You know, it is nice to talk about enforcement in that manner as if it is going to happen. You can put as much money as you want in the budget and it is not like it is not there anyway. You know, those funds just don't get utilized for that purpose. I know, Carl, you are saying, well, individual citizens have the right in some instances to bring causes of action individually, but these lawsuits are very expensive and they are very time consuming and they require a lot of research. It will be far and few between when you have a person... I know that Caren is sitting over there that really had to take on the battle herself in those shoreline cases that came up where the County had refused to. I think public awareness has to be raised as far as the opportunity that citizens need to garner more support to be involved with the County processes to ensure that enforcement is not only on paper, but it is actually utilized as a mechanism to collect fees or deter illegal behavior. I think that is why illegal behavior has grown in this County with respect to these kinds of activities simply because there hasn't been and there is no deterrent factor for the person who wants to do it. So hopefully, again, with your support and the rest of the community, they will be pushing for more enforcement because it is not like those laws aren't on the books as they are right now.

Mr. Imparato: I understand and, actually, on the drive down here, I was thinking that maybe the best thing you folks could do (certainly a different topic) would be to put forward an amendment to the County Charter that took enforcement out of the hands of the Administration and put it into some separate area that basically gave some control to this body to see that enforcement was going to happen (separate issue, but that is how bad things are).

Ms. Iseri-Carvalho: I understand.

Ms. Yukimura: Well, yes, and the Prosecutor's Office is supposedly by... by the fact that the Prosecutor is elected, a separate arm of enforcement with respect to criminal laws and the citizen lawsuits that you mentioned can sometimes be facilitated in terms of the problem. Councilmember Iseri-Carvalho has raised which is a legitimate problem by allowing attorney fees recoupment by successful citizens.

Mr. Imparato: Right.

Ms. Yukimura: So that is another thing to look at. Any other questions of Mr. Imperato? If not, thank you very much.

Mr. Imparato: Thank you.

Ms. Yukimura: Is there anyone else who wishes to testify? I think I saw a hand there. And is there anyone else who would like to testify afterwards? Thank you.

ANN CROYDEN: Good afternoon. My name for the record is Ann Croyden. I am getting better at this. I wanted to come before you once again. I hope that you are listening with open ears. I wanted to say that I think Chris Kobayashi made some very important points and I want to reiterate one in particular. She talked about the rights running with the property. She also mentioned... I believe she mentioned and if she didn't she should have that having two (2) vacation rentals on one property, I think, that in the current bill would eliminate that from people. I want to be clear that we only have one vacation rental on our property. We only operate it as one vacation rental, so I have nothing to gain by saying that personally, but I do feel that there are people out there that are going to suffer if you let that pass through in the ordinance. I, too, want you to focus on the local population as Mr. Imperato suggested. I'd like to take it one step further to say that there are people who currently own homes who may want to do a vacation rental someday or may have to do a vacation rental someday and not even realize at this point that that is going to be the fact. They may be long term... it is hard for me not to focus on the northshore because it seems like that is such a heavily congested area, so I am going to go ahead and focus there. There are a lot of families, old time families, that own property there. When they die, if they are not currently doing the vacation rental right now, their kids are going to have to sell that place. Are they going to be able to afford taxes? They are not going to be able to afford, they are going to have to sell. So what we have effectively done is we removed a sliver with a sledge hammer or machete. I think that the issues that are coming up that keep seem to change all the time can be addressed through groups of vacation rental owners and maybe their neighbors to be able to sit down and say, these are the real problems. Not, I just heard that such and such said that it is noisy, so I am going to say that it is noisy, you know, or traffic or parking or whatever. You know, sit down as a group and say, okay, these are the things that are the problems and this is how we have to address them as neighbors.

We have to take care of each other, we live here. We all live here and we have to take care of each other. I know that there is a lot of people from the mainland that own vacation rentals and they come here for short periods of time and they want to retire here, but there is a lot of local people that are trying to make it and trying to keep their properties by doing vacation rentals and I am so afraid that when these kinds of ordinance pass, those are the people that are going to suffer, not the rich people who can afford to vacation rental or not vacation rental. It is the people who are working hard to keep their properties and I just really, really want to drive that home to you folks. There are people that are out there that are unseen. One, it is not local style to come before you guys and talk, it is so uncomfortable. It is uncomfortable to fly above the radar and there is a lot of local people who won't do this, but they are out there. I know they are out there. So in summation, I hope that you will take that into consideration that if you do pass

an ordinance, that you will look at the people who currently own properties who may want to vacation rental someday, but not even realize that they may want to do it someday and that you also take them into consideration. Thank you.

Ms. Yukimura: Thank you. Are there any questions of Ms. Croyden? If not, I have a question. You said you have one vacation rental on property, do you live on the property as well?

Ms. Croyden: No.

Ms. Yukimura: Okay, so it is a single family vacation rental separate?

Ms. Croyden: Yes.

Ms. Yukimura: And are you suggesting that we should allow anyone to do a vacation rental as a way to solve the real property tax problem?

Ms. Croyden: No, I didn't say that. I don't think that it is a real property tax problem. I think it is just, in general, that things come up in people's lives that they need to offset their financial situations and vacation rentals are not as huge as some would like you to believe. You don't make tons and tons of money, but you make more money than you do long term renting. And, certainly, you make more money than if you are living in it yourself.

Ms. Yukimura: Actually, we saw during the stakeholders group, a demonstration of a proforma that showed that you couldn't always make money vacation rentals.

Ms. Croyden: I agree with you and I don't think that all areas you can. Actually, we've had people testify to say that you cannot... that is why I am not worried about it spreading all over the island because there are only certain areas where you can vacation rental and even breakeven.

Ms. Yukimura: Except if the world gets worst outside of our island because we never dreamed, for example, that Hanalei would be selling for prices that they are selling today and we don't know what kind of market there is out there in the world for our real estate. I mean, we do know that some very small cottages that, you know, don't seem like they are worth multiple millions are attracting some of those prices.

Ms. Croyden: So then you make an ordinance that says, anything that is purchased from this day forward, so that people know when they are buying their property that they cannot vacation rental it someday. Not people who have already bought and are sitting on it thinking that they may need to or maybe not even realizing that they may need to someday.

Ms. Yukimura: Well, I don't know that we can... there is such a thing as due process and equal protection, so there are some equities we have to watch. We would love to say, for example, that, you know, residents get all the tax break, you know, and not non-residents and sometimes it is not possible to do that or that non-residents can't buy property. I mean... Anyway, but thank you very much for raising the points that you have. I think they are important ones for us to consider. Mr. Taylor and Ms. Pycha.

KEN TAYLOR: Chairman and members of the Council, my name is Ken Taylor. First of all, I would agree 100% what the comments that Carl made earlier instead of having to repeat them all. I will just go on record of saying that I support his comments completely. I would just like to talk a little bit about some of the things that do go on. We hear things about, well, I can't afford to buy something if I don't have this vacation rental. A few years ago when I was buying my house and looking around, I was showed properties that had vacation rentals and in some cases, they weren't as... the quality of house that I ended up buying and I said, well, why is this so much more expensive than this? Well, because you have a source of income here, so the source of income has increased the price, not necessarily kept the price down. So I think that is an important issue. I think also in the situation when you buy into a residential neighborhood, you anticipate that that residential neighborhood is going to be single family residential neighborhood today and tomorrow and into the future. You don't anticipate that somebody is going to come along and most cases, a lot of them that are out there are all illegal units and the County is not benefiting from any of these kinds of activities. This morning in the presentation on the 3 R's, it is was said, convenience, convenience, convenience. In this particular case, it is enforcement, enforcement, enforcement of the existing rules and regulations. That is what is supposed to happen and it is not just here, it is in all of the zoning rules and regulations that are on the books and it is a sad situation that the County is not enforcing the rules and regulations. (Inaudible) the problem, but we do have to put a line in the sand and, say, okay, no more. If you want to get involved in vacation rental, you should buy in the appropriate zoned area and you would go to work. You compete with everybody on an equal basis and not go out and work in the background and save money here and there. The folks that do operate these things legally are penalized because they are operating legally, but there are a lot of folks out there and I have a bunch of them in my neighborhood. They all work together and they say, I am over loaded, so I will send it over here and I'll send it over there. They don't have to advertise and they don't have to pay any fees for any activity that is going on. They are probably not even paying income tax on the activity and then you ask them, well, why are you doing this and this in this neighborhood when it is not supposed to be happening. Well, I couldn't afford to be here if I didn't do this. Oh, I am sorry, if you can't afford to be here without (inaudible)... you don't belong here, I am sorry, that is the way it is. It is hard, but it is reality, so anyway, thank you very much.

Ms. Yukimura: Thank you Mr. Taylor. Any questions? May I ask where you live?

Mr. Taylor: I am out on Kawaihau Road about a mile past Kapahi Park.

Ms. Yukimura: So it isn't just a coastal issue, but there are vacation rentals in the...

Mr. Taylor: There are seven (7) of them that I am aware of right there in my neighborhood. We are four (4) miles from the ocean.

Ms. Yukimura: Okay, thank you very much. Ms. Pycha?

CYRILA PYCHA: Good afternoon. Thank you for the opportunity. For the record, my name is Cyrila Pycha. I just have a real quick question. I was hearing someone before me talk about commercial. My question is, how are long term rentals called commercial uses? The reason I ask is that a three (3) bedroom house, two (2) bath... maybe it has a king bed, a queen bed and maybe the third room has two (2) full beds, so that will sleep six (6) people max, so the use of that house is the same as another family that is here on vacation. They will sleep there. They will prepare meals there. They will rest and also for hygiene, clean themselves, wash themselves, bathe and that sort of thing. So the use of that house is the same as a vacation rental and long term. So I was just trying to figure in my mind the term commercial. Do we call vacation rentals commercial? That is my question and that is all.

Ms. Yukimura: That was your testimony?

Ms. Pycha: Yes.

Ms. Yukimura: Any questions of Ms. Pycha? If not, I just want to help clarify the situation. We don't always answer questions that the public raises. Right now, I think all residential property is categorized in terms of real property tax as residential. However, both long term rentals and vacation rentals pay excise taxes. Vacation rentals pay an additional transient accommodation tax that a long term rental doesn't pay.

Ms. Pycha: Correct.

Ms. Yukimura: There has been proposals in our real property tax reform tax... real property tax task force proposal that we consider that... they were proposing two (2) categories, one being the more commercial, so that the industrial, commercial, ag and other being residential in which they would, I think, put owner occupants and long term residential. That is a proposal to create two (2) different categories. The idea being, I think, that you can get more income from... the factor of income from property use makes it a commercial, but there are different ways to cut this issue, but thank you for raising the question. I mean, I think it is relevant to how we look at the whole picture.

Ms. Pycha: Mahalo.

Ms. Yukimura: Yes, thank you. Anyone else wishing to testify? Please come forward.

SUZANNE KOBAYASHI: My name is Suzanne Kobayashi. I have my little notes. I just wanted to say that it seems that very few people who live on this island that are not retired are able to say that themselves or someone in their family does not drive income from the tourist industry. The tourist industry is pretty pervasive (change side of tape)... if you are taking care of the local people and tourism is your number 1 economy, then you kind of have to take care of tourism in all of its aspects. I think at this point in time, the vacation rental market and the bed and breakfast market is a pretty substantial thing and I think that the tourist do want it. And I don't think just because the tourist want it necessarily is why we should do it, but I think because everybody works in the tourist industry. If you are a waitress in a restaurant, every meal that comes in helps your income whether they are staying in a vacation rental or not. I can fledge you folks with testimony from people who come to the island yearly that would not come to the island yearly if they had to stay in the current VDA districts that we have. If they had to stay in Princeville, Po'ipū, what have you, it is not where they want to be, there is a lot of other places that have fabulous weather, not just us. So this is from... this is this week's U.S. Weekend and you know that it comes out in all the papers. All the little guys have it and there is this small article right here and it just kind of trips me out. Save on Hawai'i's getaways with B&B. I am not a bed and breakfast owner and I don't even really know anybody that has a bed and breakfast, but I think, my goodness, what a fabulous cottage industry. When you talk about how tight and how hard it is to live on the island here, everybody needs a little boost. I know a lot of people... I know that there are a lot of bed and breakfasts out there. These people can't come and testify in front of you because we never had a mechanism for making them legal other than to have a zoning variance (use permit). I understand that there is only like six (6) that have them, but there is maybe a couple of hundred B&B's. When you wipe out things like bed and breakfast and vacation rentals, you are not hurting the really wealthy. You are wiping out the middle man, the middle income people and it is very hard to own property here. If you are a young couple and you have a house that has got... you can finally afford to buy a house and you have an extra bedroom and you want to make it a vacation rental, if you have that aloha spirit that would make people want to come back to you, you might have a successful thing. It might help you keep your property. It might help you retain... if you are an older family and you have been here a long time and your Auntie died and you want to keep that property... maybe your family decides that they want to vacation rental it because it keeps it in the family, then maybe somebody can go live there in the future. I truly agree that you have to... I understand that you are going to regulate, no problem. We have vacation rentals, we pay our taxes and I am sure that we would be grandfathered in.

As the bill is going to be, I have a problem with. You know, you should be able to... well, I think everybody should pay their taxes whatever business you are doing, anybody. I have a problem with limiting who you are going to pass it on to. You know, I don't think you can say, well, it has to be a certain genealogy that you can pass it on to for their use to run with it. I think...

Ms. Yukimura: Your three (3) minutes are up, so if you can summarize.

Ms. Kobayashi: I think that there should be a mechanism for new ones and I think if you have two (2) houses on one property or you have the ability to build two (2) houses on one property and you already are in vacation rental, you should be able to vacation rental the other one. I don't think that it should be so squashed and so overregulated. Thank you.

Ms. Yukimura: Any questions of Ms. Kobayashi?

Ms. Iseri-Carvalho: Do you think that vacation rentals should be limited to... being allowed in only certain areas or they should be allowed as long as people want them?

Ms. Kobayashi: Truly, I think they should be allowed as long as people want them because if they are in an area that is not really appropriate... if the neighbors don't really want them, the people that stay there are not going to get good vibes. They are not going to come back and the people that own that property are not going to be able to continue to vacation rental it because they will discover that they would get more money long term renting it. So I think if it is in a very inappropriate area, I don't think it is going to fly financially or the other way to look at it is, maybe you redefine the VDA. Maybe you look at it as a more realistic approach and say, where are the neighborhoods already, you know, all vacation rentals. I mean, maybe you are talking about one block in from the ocean or something like that and maybe you extend the VDA like as Mr. Ham Young said, you have to look at what is really here. You know, maybe if you want to have no vacation rentals outside the VDA, then you have to look at, where are the majority of vacation rentals now and where is it appropriate. I am not against paying taxes, we do it and I wish some of it went to the County instead of the State.

Ms. Iseri-Carvalho: And do you think that VDA's have any negative impact on rural communities? Do you think it has any impacts whether negative or positive on communities? For example, I know of a family that lives on a road that has... that lived here for 20, 30 years and that they've got 10 or 11 vacation rentals right on that road and according to that person, changes the character of the neighborhood. It is not a homey place. The kids come home from school, they really don't have anybody to play with on that street because everybody is gone, they are here on a vacation. Kids go to school and the kids don't want to live in that neighborhood anymore because there is nobody to play with. I mean, there is no way to gain that kind of social connection that you've developed in a residential

neighborhood. So do you think that kind of experience should be preserved for the people that has lived here for a long time or, you know, wherever people want to put them up, if the value is there, then this is the American way and whatever amount of money that you can make off regardless of what kind of experience it had on that neighborhood, then you should have that right.

Ms. Kobayashi: I don't feel what you just said, that very long sentence there. I don't feel that way. I wonder... I mean, I don't know this person's neighborhood.

Ms. Yukimura: You can take 'Anini for an example because they are theoretically 50% or 60% vacation rental. People... they say people come in and they like take their showers in the bottom level shower. These are strangers, but nobody is around because there is no constant family there and it is people coming in and out. There is a lot of kind of lawlessness that goes on that wouldn't be possible in a neighborhood where neighbors are watching out for each other and know who belongs in the neighborhood and who doesn't.

Ms. Kobayashi: I can see that, but when you have properties that are already... if you have no vacation rentals at 'Anini.

Ms. Yukimura: So that is a question. It is a matter as Mr. Imperato said of balance and that maybe you can have some vacation rentals, but at a certain point, it changes the community so dramatically that you don't have a local community anymore and you have these other issues that come up. Is it a matter of balance and is there a limit to the percentage or number that should be allowed in any neighborhood?

Ms. Kobayashi: I would think going forward, yes, but I think that it is not realistic to look at like an inland neighborhood like what you are talking about or something like that. I can see, you know, limiting it and I can see making specific areas for it, but I think you have to be realistic in looking at these coastal properties. I don't know anybody... I don't know too many people with kids on Kaua'i that could afford a property in 'Anini if it wasn't a vacation rental.

Ms. Iseri-Carvalho: People have had it for a long, long time.

Ms. Yukimura: And there are people who say because you can vacation rental, the price goes up. There is an added layer of income.

Ms. Kobayashi: I heard that and I think that is occasionally true, but I think even more than that, it is the location of the property.

Ms. Yukimura: So what about Kapa'a Town? All the makai portion now is starting... has the potential to become (inaudible)... places that were very local and local people live there, but now people are coming in looking at that property in

a different light thinking they can vacation rental, use it as a second home and that place could become like 'Anini or Hanalei.

Ms. Kobayashi: If you do the bill the way that we were talking about having a 75%... you know, if it is a local neighborhood and you have enough people there to say, we don't want a vacation rental here, that is a reasonable thing to do. I think that is a mechanism for keeping a local neighborhood.

Ms. Yukimura: And that portion only applies right not to bed and breakfast and not to single family vacation rentals. We can amend that, so, yes, that is a mechanism that we need to look at. I appreciate that you let us engage in conversation like this because it helps... this is part of the dialogue that went on in the stakeholders groups. The issues aren't that simple and they have many aspects and I appreciate Councilmember Iseri-Carvalho's question.

Ms. Iseri-Carvalho: And I guess I was pretty shocked because I used to think that it was in the northshore, a lot of it was in the northshore. I know now that there is a lot in Kapa'a (in the remote areas over in Kapa'a), but Kekaha. I mean Kekaha is a totally different town. I mean, you drive down there and we were just there last week and I was just shocked. I mean, that is changing. I don't even live in that neighborhood and I wouldn't want to know, but it is just a totally different place than what people have of what the westside used to look like. So it is all over; it is not necessarily just the northshore.

Ms. Yukimura: Councilmember Bynum, you have a question?

Mr. Bynum: I think maybe one of the reasons you are getting the questions is because you said, I think, we should have new ones. I think that, you know, where I see us going is saying, let's recognize the reality that is out there now and that is why we keep using the word grandfather. But, you know, I think we've all heard numbers of instances where new ones did impact neighborhoods. You know...

Ms. Kobayashi: Well, I say mechanism for new ones. That is what you are trying to do is regulate anything new coming in and I think that there should be regulations for it. I think it should be allowed if it suits the neighborhood. If it doesn't suit the neighborhood, then it shouldn't be allowed and I think that if you have neighbors able to say, no, I don't want that next door, that is one way to curb it.

Mr. Bynum: And I personally had a reaction to that. It was, oh, so, if I am of means and I can afford one of these neighborhoods, then I should be able to use a mechanism of vacation rental to make it possible. But if I can't afford it and I live mauka, I can't. It is like... do you understand what I am saying? Like there is an economic difference there. It is like... if I can afford to move in by the ocean side, then I can use this mechanism of vacation rentals outside the VDA to make my

house payments. Maybe that is not the character in Kapa'a, so we are not going to allow it there.

Ms. Kobayashi: But, frankly, if you can afford to be by the ocean, you probably don't need the vacation rental anymore. I mean, that is how much properties cost by the ocean.

Ms. Yukimura: Actually, there are people of median incomes who are trying to leverage into those neighborhoods using vacation rentals.

Ms. Kobayashi: Right.

Mr. Bynum: It is pretty complicated.

Ms. Kobayashi: It is, so if we don't have those middle guys leveraging in, then we will just have the (inaudible)... buy them instead, you know.

Ms. Yukimura: Okay, well, thank you. I think you've raised... your willingness to engage in the questions and look at it is helping all of us engage with the questions, so I appreciate your coming forward. Anymore questions of Ms. Kobayashi? If not, thank you very much.

Ms. Kobayashi: Thank you. I realize it is a tough job and you guys do a really good job.

Ms. Yukimura: Is there anyone else who wishes to testify? Mr. Abrams and Ms. Diamond?

LOUIS ABRAMS: My name is Louis Abrams. I guess you are going to really have to struggle with this use permit thing with B&B's. Your General Plan generally thinks that B&B's are less intense than a single family vacation rental, but they require a use permit and you only have eight (8) of them at this point right now. The way the bill is written right now, is every single one who has a B&B right now is considered illegal and they would not be allowed in.

Ms. Yukimura: Except those eight (8) that have permits.

Mr. Abrams: Except the eight (8). That is the exact type of units that your General Plan says that you want to encourage. So you are left with a decision, do I legalize all of these illegal people or do I turn around and look at the vacation rentals who didn't have the use permit criteria simply because of the definition and proliferated in and out of the VDA area and all of a sudden, you are going, do I want to stop those? The bill itself right now has a use permit provision for outside the VDA.

Ms. Yukimura: So B&B's.

Mr. Abrams: No, this bill has it for transient vacation rentals.

Ms. Yukimura: Okay, thank you for correcting me.

Mr. Abrams: So it does have that thing saying that you should go back. If it goes back under the rate that it did with B&B's, I don't think there will be very many that are going to be coming in. Your challenge is going to be with this grandfather provision which everybody... at this point and it could be argued on both sides relied on the fact that there was no prohibition and, in effect, created vacation rentals and, in effect, they are going to be grandfathered in provided they were lawfully conforming. And, of course, I believe Barbara Robeson's and Caren's submittal has a good article from the Planning Department in 1988 that spells out the difference in non-conforming uses because you have to decide between non-conforming structures and non-conforming uses (those are two (2)). Remember, you can always cure a non-conforming structure. At least that is the way our code enables it at this point right now. If something is a matter, the light switch is too low, you can always make it higher and then become in conformance and would be allowed your permit, but trying to gain this balance. I think Carl really kind of hit it on the head there where in some neighborhoods, it is a real problem and in some it is not and that, perhaps, a percentage or something that would be workable. That turned out to be one of the discussions of the stakeholder group in regards to a percentage that would be allowed in a particular town or not and that it would vary from area to area. But those are going to be the areas that you are going to have probably most of the thought that you are going to need to give to is the use permit and the non-conforming use in order to get a handle on this... what has been created since 1982. Thank you.

Ms. Yukimura: Thank you. Any questions of Mr. Abrams? If not, thank you very much. Ms. Diamond? Anyone else after Ms. Diamond?

CAREN DIAMOND: Hi, Caren Diamond. I know that you have noticed the uncontrollable growth that has happened to our island and it is nothing compared to what is coming on line. If you look at the tentative approvals that has happened at the Planning Department, thousands and thousands and thousands of visitor units, so many, and if you listen to everyone saying that the tourist prefer to stay in our neighborhoods, you can see that we really have a real problem. If we have over a million visitors and 60,000 residents, we can't have the visitors compete for the residential lands. Long ago when... that is why they set up visitor destination areas which had really great foresight, so that our residential areas were protected. I think that is really the purpose of zoning, so that you have residential areas, you have visitor destination areas and it doesn't go by where the visitors would prefer to stay. It is... It really... I mean, your job, as I see it is to protect our residential neighborhoods so that the residents have a place to live. The fact that Planning has not enforced any of multi-family vacation rentals has really escalated the problems. If there is no enforcement and no enforcement has happened for so long, properties

get sold and sold and sold and this problem has escalated so, so I really ask you to... like we've studied it, we've had so many public hearings to really make some regulations and take no more transient vacation rental uses in our neighborhoods. So I know that is really difficult, but I ask you to please, let's go forward from here. I think one of the worst problems is that we have visitors staying all along our ocean, all along the coast. We have no lifeguards anywhere. We have really rough seasonal surf. We have the advertisements advertising, come snorkel, these are the most calm waters, come and snorkel here. People wake up in the morning newly getting here, they jump in the water where it is really rough... I think we have no tsunami evacuation plans. We don't even have a tsunami siren in Hā'ena. It hasn't worked for months and months and months, so when... we've had three (3) evacuations lately or three (3) tsunami warnings and after those, I've talked to the visitors who were staying around there, hardly any of them were even aware that there was a tsunami threat. What we are asking for is just a... if we actually have a tsunami, we have people who are so unfamiliar with that area and they have no idea where to go. There is nowhere to go and that is very different from the residents who know exactly how the land is and where to go. So I really ask you for the safety of the visitors, for the neighbors, for everything, to please put our visitors in the correct area and preserve our residential neighborhoods.

I will sum up. I also think that you possibly need to have a real tax break for people who are not going to continue to vacation rental to make it easier on them because most people really say that it is the taxes that they pay that is causing them not to be able to keep their property. If you could help in that aspect, then that would really be helpful to people. The commercial uses and I know on my corner, we have occasional weddings that the vacation rental retreats and it is advertised for 14 people and it is really a commercial enterprise. It is way different than having a family who would live down the corner from me.

Ms. Yukimura: Can you sum up? Actually, is there anyone else who wishes to testify? So you can have another three (3) minutes. You can have your second three (3) minutes.

Ms. Diamond: Thank you. You know, if you look at the northshore, the Northshore Development Plan really, you know, that is part of why they approved Princeville as being the resort destination for that area and Wainiha and Hanalei were supposed to be protected and supposed to remain residential with low development. I know it is very gorgeous there, but that is all the more reason for it to be protected. Princeville has so many thousands and thousands and thousands of visitor units that it is not necessary to have it on the rest of the Northshore. I really thank you for being brave, taking the steps you need to help it from here on out to restore our neighborhoods.

Ms. Yukimura: Thank you. Any questions of Ms. Diamond? If not, thank you very much. Ms. Shelby?

Ms. Shelby: I just wanted to make a comment about changing neighborhoods.

Ms. Yukimura: Can you just speak your name into the mike?

Ms. Shelby: Deana Shelby.

Ms. Yukimura: Thank you.

Ms. Shelby: Just to talk about changing neighborhoods. I can remember when I was a young married couple moving into a neighborhood and the place that we could afford to move into was an older couple selling their home. Well, everybody in that neighborhood was an older couple, so we were a young couple moving in and as the older couples died and their families didn't want to move into the home, then younger couples moved in and then it became a neighborhood full of young couples with young kids and they all played together. As the kids got older and went off to college, it became a neighborhood of older couples and that is the nature of neighborhoods, they keep changing. It seems... I realize that it is a tough situation where people want to have their cake and they want to eat it too, but you can't force things to happen. People are going to be people. People are going to do what they need to do in order to survive and do you want to stop people from coming here and make regulations that are so restrictive that nobody wants to come here and live, nobody wants to come here and visit and you don't want to do that. So it is agreed (inaudible), but just don't think that you can make a law that makes neighborhoods and never change because they are going to change. There are going to be neighborhoods that are all older people and they are no kids to play with. There is going to be neighborhoods where old people don't want to live because that is all that is there is these screaming kids. So you can't play that game of saying, let's never change a neighborhood. Anyway, that is all.

RONALD KOUCHI: Not a question. I think the only comment is that the one consistent theme of the neighborhood you described was a permanent resident.

Ms. Shelby: Yes.

Mr. Kouchi: So you had a community and that is the issue that they are trying to raise, not about change, but that you had a permanent area for those older people and what has normally happened here is, they become Uncle, Aunty, second Grandma and when you have to go, they help watch your kids and if your kids get in trouble, they call you up and say, I saw your kid, you know what they doing and that is a community.

Ms. Shelby: We've had those kinds of neighbors. I never actually lived in a vacation neighborhood like Cape Cod or any of the other places that are real popular vacation places until I moved here. All my other places that I've lived were

neighborhoods where it was changing, evolving.

Ms. Yukimura: Well, I think all neighborhoods are changing and evolving and I think you are correct about that. I do want to comment that one of the reasons people... visitors like to live in the neighborhoods is because there aren't so many tourists around and they have a sense of what the community is like, but if it becomes so filled with other tourists, they may not want to come back to that kind of experience, so it is a question of balance and it is very hard to strike and we've been called upon to do that, so wish us well. Thank you. Anyone else wishing to speak?

Ms. Kobayashi: Hi, Suzanne Kobayashi back. I now had time to think about what you asked me. In the neighborhood that you are talking about, if you went with a bill that is present where you had to have, you know, approval of your neighbors in that neighborhood that you are talking about, do you think that that particular road that the lady lives on that has the vacation rentals, do you think that the neighbors around there would say, no, we don't want a vacation rental?

Ms. Iseri-Carvalho: Yes. It depends on how much though because if 75% of those are vacation rentals and they get to say in how much vacation rentals they are going to go with, I assume they don't care because they are all vacation rentals. For example, for people I know that have had the property passed on from generations and generations and generations similar to yourselves, you know, they enjoy being there at one period of time and they don't have anywhere else to live. This is where they have grown up all their lives and like Councilmember Kouchi was saying, you know, you have the grandkids come over and now they are a family unit which used to be the whole community is now limited to one or two (2) houses on that street. You know, that is a sad experience for, I think, those kids and they feel like it is a sad experience for them too because they have nowhere else to go. This property was handed down through generations and they can't afford to buy anyplace else. If they sell, they don't have anyplace else to buy, so that is what I mean about not having that experience. When you go home and you are the only child there and you don't have any other kids to play with or as much kids as your older brothers and sisters has, I think this change has come about rather quickly. I mean...

Ms. Kobayashi: It is sadder still if your kids have to leave because you don't have any jobs on the island for them, so now they are living on the mainland.

Ms. Iseri-Carvalho: And that has happened too to some of our families too.

Ms. Kobayashi: And that is why I say, this whole... you have to be real careful with this tourist baby because it does provide us a way to keep our kids on the island in the same regard that maybe a bed and breakfast in Kapahi or wherever they all are, I don't know where they all are, it may be enables that couple to stay there in their retirement years or it enables a young family... it creates an

option. I think it is really good to protect the neighborhoods, but also demographics are changing and if you want housing that is affordable and stuff, you have so many huge, huge developers and so many big, big developments that have been done and where was the affordable housing component of those. Many people promised it, it never came through. True, I think we are waiting for more affordable housing from Princeville. I wonder if I will be alive when A&B puts out affordable... I don't mean to pick on them, but the southside guys, the big ones, I would be amazed if I see affordable housing from them. And to your question about... you think maybe only people on the oceanfront, those are the only ones that could afford to do the vacation rental thing that is why I think you leave it up to the neighborhood. If you have a strong neighborhood of local people that opposes it, then excellent, then there are no vacation rentals allowed there.

Ms. Iseri-Carvalho: And I guess I would make a comment as to that. It shouldn't necessarily just be that because that community is also part of a bigger environment, you know. It shouldn't be limited to those 12 people that live on that street to make a decision about that street in my opinion anyway.

Ms. Kobayashi: True, who better than them because they live on that street. The closer you are to the situation, the more important it is to you.

Ms. Yukimura: It is always the question about the local situation and the larger whole and how we keep a balance there and the issue about affordable housing is not going to be fully addressed by how we treat vacation rentals. We have, in fact, an affordable housing bill before us and we invite any of you who are interested in that to come and speak to that and participate as we make the decision on that too. Any other questions of Ms. Kobayashi?

Ms. Kobayashi: And I apologize to the big development company that I said because I didn't mean to name any particular one.

Ms. Yukimura: Thank you. Is there anyone else who wishes to testify? If not, the Chair will call this meeting back to order.

The meeting was called back to order, and proceeded as follows:

Ms. Yukimura: Is there any further discussion?

Mr. Kouchi: Yes, Madam Chair.

Ms. Yukimura: Yes, Councilmember Kouchi.

Mr. Kouchi: You know, I waited to comment on the suggestion about the workshop until the public testimony portion was over and the public testimony portion only validated what I believe to be true. So I shouldn't say workshop. I appreciate the format in which the summaries will be presented with the exception

of Ms. Shelby, everyone who testified here today testified two (2) weeks ago. Everyone who testified today essentially said the same thing they said two (2) weeks ago and I don't mean to say that... Oh, I am sorry, Mr. Ham Young was not here as well. I don't mean to say that in an insulting way, I mean to say that, in that if I were a stakeholder like them, I would be at every meeting that I had a chance to try to make my point across because the biggest thing that any of us own is a home generally speaking. So you would be foolish not to be here and I respect that, you know, it is important to you and that you are here, but I am really not expecting any earth shattering revolutions or no new news that is going to come before us two (2) weeks from now. But I also expect everybody who is here today to be here two (2) weeks from now because of the importance in each of your lives that this issue has as well as you should be, but at this point having looked at Mr. Ezer's report and gotten information from the hearings and talking to people who participated in the stakeholders meetings, I just feel an obligation to at least point share some of my ideas with you because you have taken so much time and effort to come out and present information to us. Having voted on the two (2) General Plan updates and having chaired the Northshore Development Plan Update in 1983 and 1984 and having down zoned property in Hanalei to try and preserve that rural characteristic in adding special treatment zones in the development plan update that had not existed before for that Hanalei area... I know for a fact that it was never intended to have any vacation rentals outside of the VDA and that is what I had voted for and I am disappointed with Mr. Kobayashi's opinion. It is still our obligation to follow the law, but going forward, I don't see myself casting a vote to support any process that would permit a new vacation rental outside of the VDA area.

Also, as it has been testified by many people on both sides of the issue if you are operating and you have been law abiding and paying your taxes and if your building is correct, then you should be able to continue to have your vacation rental continue forward. If you have not paid your tax and if your building is in violation and you are outside of the VDA especially, then you should not be permitted to have your use continue. What we need to do as it has been clearly testified is commit staff for enforcement. The other thing that I don't know if we can legally do it because of Kona decisions and what was traditionally done by County employees versus what you can actually contract, but this may be something, if possible, that we could contract services, so we could immediately get out there to get the assessments done and identify and move forward. Obviously, for those who are doing it right, there is now a lot stronger incentive to help us in the self policing of your own industry. And I guess I should qualify this by saying, at this point, I am only speaking on the vacation rental aspect and not the bed and breakfast of it. You know, commercial versus residential, long term and commercial tags onto VDAs, I think the Committee Chair did a good point or on vacation rentals did a good job in pointing out that those are really real property tax issues and we are looking at real property tax reform. So that is something on the radar screen, but we do have a break for people who put their long term rentals into certain income categories, so perhaps out of this discussion, a commercial category for any kind of rental that

isn't dedicated would help maybe have more affordable units that are out there in the process. The last thing is that I don't really support, at this point, a process where permitting... there be a permit process about how to let another unit continue or what the neighborhood is, but I do believe that if there are neighborhoods that have such an overwhelming use of vacation rentals and there is such a prevailing attitude there that that should occur, then not spoke about today, but certainly available to those areas is the opportunity to go through the Planning Department and ultimately the Council to seek a rezoning. But the problem is, you get these defacto vacation rentals occurring, you increase the density and you increase the use on parks, roads and everything else with an inability for the County to then have adequate planning. But if you need to go through the planning process to get that, then we have, what I believe, is the necessary reviews that would make a vacation rental area, you know, better managed by the County and have all of the agency reviews that should have occurred as this transformation has happened really without any kind of County review up until today.

You know, if there are new arguments, you know, I am always open and I look forward to hearing the summaries as the Committee Chair knows, besides Scott Ezer, I hold Elizabeth Kent in the highest regard and have worked with her on numerous projects and will listen very carefully to what she has to say as well. I just want to try to be fair with people who have sacrificed all of their time to be here and I don't want to sit here like a stone and, you know, not give you any kind of clue about what my thoughts are because this has been about five (5) or six (6) hours of testimony we've had over three (3) meetings now.

Ms. Yukimura: Thank you Councilmember Kouchi. I think by sharing your thoughts, you helped move the conversation forward, so I appreciate that. Is there any other comments at this point? Councilmember Bynum?

There being no objections, the rules were suspended.

Mr. Bynum: I want thank Councilmember Kouchi for giving his thoughts and I think at the public hearing, I kind of made clear where I was coming from with this. I've said this too many times lately, but I have been a resident of Kaua'i since 1991 and I didn't come here lightly. I came here with lots of thought and lots of soul searching as my family sought a community to raise our children in and it has been a really good move for my family. Some of the things I saw was that some of the planning and thought that went into the idea of visitor destination areas and attempts that the community was making to strike a balance and that is the key word, I think, in this whole discussion is finding that balance. It wasn't until I was living here that I found out that some of those intentions were being realized in terms of visitor destination areas, being where transient accommodations occur and that that was changing and it was changing slowly and then suddenly more rapidly. Kaua'i is... the appreciation that I have is just this incredibly remarkable place not only because of the physical environment and because of where it is, but because of the community that Kaua'i is which has been a wonderful blessing for my family.

As these changes accelerated, I saw a lot of discussion in 2000 and I thought, okay, you are going to find that balance in 2000. I think the one key that I heard debated here about because we have focused a lot on Hā'ena and Hanalei is the impact of vacation rentals in working class neighborhoods. On one hand, I know it is a struggle to make those economically viable, but the lure of this place to visitors is so strong and that we have seen the popularity of Kaua'i have what was built as vacation rentals now being sold as second homes in our mauka neighborhoods like in 'Ele'ele and in...

Ms. Yukimura: You mean what was regular residences.

Mr. Bynum: Was regular residences or even sold as affordable housing for working class people is being resold now as second homes or retirement homes because the lure is so great. You know, I heard stories in 2000 and 2001 of my friends in Kalāheo who had... were approached about selling their home at what they thought was an inflated rate and they asked the buyer, how can you afford to pay that? Well, because I am going to turn it into a vacation rental and I don't know if those were... those were successful, but I do... I am concerned about vacation rentals moving into working class neighborhoods and changing the nature of those neighborhoods. I think it is... that is where a lot of the testimony the last couple of weeks have been about those high end vacation rentals and those are unique circumstances in many ways to what I have seen happen in other neighborhoods. Council person Iseri-Carvalho mentioned Kekaha. I had the occasion to walk door to door doing politicking a couple of times in the last several years and from... in two (2) years, I noticed the difference walking between those neighborhoods in Kekaha where, wow, isn't it great that working class people can live so close to the ocean in such a wonderful place and then just come back two (2) years later and find a number of those homes converted to vacation rentals and talking to the neighbors and saying, oh I lost my neighbor here. So I don't want to minimize those impacts on the working class people and people who have been here generations longer than I have who I feel are newcomers to the island have to really honor and bend over backwards to honor the economic realities of the kama'āinas that have been here for a long time. It has been a blessing for me to become part of the community and I've said before, you know, not only my family choosing to adopt Kaua'i, but having that reciprocated because of the aloha and this place. I will be seeking that balance in this and I agree with some of the things Mr. Kouchi has said regarding what the original intent of the VDAs were and trying to find that. I can't see myself supporting a bill that would allow new vacation rentals to be created outside of the VDA. I am struggling with the idea of those properties that already are in vacation rental and whether or not that should move with the property. I would be seeking a way to find a way that it move in a family, but not to a new buyer from outside. I don't know how to do that legally. I am going to be looking into that in terms of how we can accomplish that. I've heard people talk about the ability to put properties into family trust and that they can move into a trust where the owners can decide who benefits from that. I just wanted to share those musings with all of you as well and I'll look forward to seeing you in two (2)

weeks.

Ms. Yukimura: Thank you Councilmember Bynum. Any other discussion? Councilmember Kouchi?

Mr. Kouchi: Thank you. I thought I made good notes and I didn't. I did have that discussion with Carl a couple of weeks ago about transfer of ownership and like Tim, that is something that I haven't been able to resolve in my mind as to what would be appropriate. I truly find that to be a really difficult decision. The second thing I forgot to add is that I am having a hard time with testimony presented by the Kobayashi family because they have established a use prior to the CZO and that is different from those who have built after other legislation was adopted and I haven't exactly figured out how to deal with that either. As everyone has said, this isn't easy anyway, so I don't feel so bad that I haven't figured it all out yet. Thank you.

Ms. Yukimura: Thank you. Any other discussion? Council Chair?

Chair Asing: First of all, I am not a member of the Committee, but will be making my remarks. It is just too early in the game. There are lots and lots of things to consider to put together. I have done some of my own investigations and I have some ideas, but I will keep on listening to the public and see what the public feels is important to them and together what I feel is important to the overall good of the community. I think I want to stress this because some of you people that have testified today, I am going to say it again. We have a General Plan and the General Plan dictates where we should grow, how we should grow, what types of growth there should be and we need to follow that General Plan. The General Plan was initiated and put together by members of the community together with government officials and we need to follow that. You know, it is the same thing that happened to the farm dwelling agreement that we just had. Farm and ag districts were designed and by the General Plan it was associated-ag districts for ag purposes, commercial district for commercial purposes, so we have this in the General Plan and if we totally disregard that and go by, well, the opinion of the community, that is not right. We have a plan, let's stick to the plan, let's follow the plan, so thank you.

Ms. Yukimura: Thank you Council Chair. Councilmember Iseri-Carvalho, did you want to say anything?

Ms. Iseri-Carvalho: I guess for me, the concern has always been what is best for the island and not only what is best for that community, but what is best for the entire island. There are a lot of competing interests and I think the purification of vacation rentals has occurred rather rapidly that it kind of took us from behind. So it is real difficult trying to weed out not only your personal thoughts. Having been born and raised here and having our families for generations been here and seeing the change in island since that time, I think

(change tape)... the concern that I have is that, yes, there is a Planning Commission and a planning process and they are supposed to look at things that happen overall across the entire island, so that we get good planning. That there are these oversight procedures in place, but it is just that it hasn't always taken place and more and more we are finding that to be the case. So a lot of what is on paper, I think hasn't really been followed and had it been followed like the General Plan, like all of the other enforcement mechanisms that already have in place... like the goodwill of the community and self-policing illegal activity, I think if everybody shared that part in overlooking what is happening to our island because it matters a lot to everyone who live here and for everyone who comes here. I think people come here because they want to experience the uniqueness of the island and they don't want to go to places that have all vacation rentals, so the balance, of course, is key because they come here to experience the lifestyle that we are fortunate enough to live everyday. I think that is, overall, my priority in trying to preserve that because I really believe that is what sustains our tourist industry that is why they come because of the people and the hearts of the people that live here and the aloha and the special kinds of culture activities that we share and really that closeness that you don't really feel elsewhere. I think it is that aloha spirit that we should all be trying to strive for because I think that is what we live here for and that is why tourist come here for to have that special experience. That would be where my vote would be coming from and also I think it is really important that whatever laws we pass that there is some strict enforcement measures in place and that it is funded, so that it can actually take place as opposed to the ones that we currently have that really haven't provided really any deterrent effect towards illegal activity.

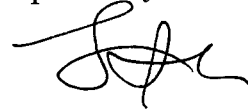
Ms. Yukimura: Thank you very much. I really appreciated the comments made. I sense that we are moving toward consensus on some of the issues. You know, the stakeholder discussion which was quite extensive choose to focus on single family vacation rentals, so the issue of bed and breakfast has not been as thoroughly discussed and debated publicly as has the single family vacation rental. Ironically, the one that seems most beneficial to the community... in fact, the one that might benefit moderate income homes more than anything else as well as increase the possibility of cultural exchanges and building friendships across the water. That is the one that has been most difficult because it has required a use permit whereas because of the Kobayashi opinion and it wasn't a decision, it was a County Attorney's opinion, you know, that single family vacation rentals do not require a use permit. There has been more discrimination against the bed and breakfast, so it is an area that we haven't... hasn't had as much discussion and since it is in this bill and since it is a visitor unit, we need to address it. So that is an area that needs some work and development I think, but I will plan unless I hear strong objections to have these resource people here at our next meeting and we can continue our discussions with our other two (2) missing Councilmembers who are excused today and couldn't be here. Hopefully, after that, in the next Committee meeting, we will be able to consider amendments and do decision making, so that we can pass it out to the Council. Councilmember Iseri-Carvalho did say correctly when she said it that this thing has happened quickly and sort of took us by

surprise. I must say that the community has been raising this issue since 1999, so I am very proud that this Council is addressing this issue and we are going to take it to decision making, so that we can put in place some framework for everybody to have this problem addressed. Hopefully, very effectively and in a way that finds the best balance for our community. With that, if there is no further discussion, the Chair will entertain a motion to defer.

Upon motion duly made by Councilmember Iseri-Carvalho, seconded by Councilmember Kouchi, and unanimously carried, Bill No. 2204 was deferred.


There being no further business, the meeting was adjourned at 3:08 p.m.

Respectfully submitted,



Lisa Ishibashi  
Council Services Assistant

APPROVED at the Committee Meeting held on March 9, 2007:



JOANN A. YUKIMURA  
Chair, Planning Committee Chair