

MINUTES

PLANNING COMMITTEE

February 21, 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 Wednesday, February 21, 2007, at 9:18 a.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
Honorable Mel Rapozo

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: We have on our agenda Bill No. 2204 regarding vacation rentals and we have this morning three (3) people/consultants who have been involved in studies or processes regarding this very complicated issue. So it is the Chair's intention that we first have these presentations of 10 to 15 minutes with maybe no more than 5 minute quick questions about the presentation and then I am going to ask all three (3) members and Mr. Stokes (if you still have time, you will be part of the three (3)) to answer any other questions or have a quick dialogue and then I will open it up to members of the public and then to discussion by the Committee. I am going to ask, first, Mr. Ken Stokes who was hired by the vacation rental association to look at this issue of vacation rentals on Kaua'i. Could we have some assistance for Mr. Stokes? Thank you. Can you just state your name for the record and then start?

There being no objections, the rules were suspended.

KEN STOKES: Aloha kakou, my name is Ken Stokes and I am the Executive Director of the Kauaian Institute, an independent economics research organization. I was first hired in late 2002 by the Kaua'i Vacation Rental Managers Association to conduct a count of the number of vacation rentals on Kaua'i. Subsequently, I was retained by the realtor associations on the islands of Maui and

O'ahu to conduct the same research. As of this date, I believe it is a fair statement that the counts the Kauaian Institute has generated for those three (3) islands represent the best available data. There is a sense in which I regret that is true because our State's Department of Business, Economic & Development which produces the visitor plant inventory has intended to derive a better count for each island. Unfortunately, two (2) years into that effort, we still have no results. Having said that, it is helpful that beginning in 2003, the visitor survey which is administered to every incoming airline and cruiseship passenger has added the question... the option to answer that you have stayed at a vacation rental. So since 2003, we have fairly reasonable data which I will be showing you in the presentation. I am going to begin... I've just got eight (8) slides and only some of this is new and beginning with the count for Kaua'i. This is effective 2005 and you have all seen this table. I just want to sort of review what is here. In the immediate first left column, the IVU's which stands for Individual Vacation Units summing to 750 at the bottom... that was our count in 2005 for single family homes operated as transient vacation rentals. You will notice four (4) columns over, there is a similar count for B&B's that totals 172. Altogether, those two (2) combined called transient vacation rentals or TVR's sums to 922. That number may have increased slightly based on some growth... I will show you in just a moment. This is a map indicating where those 922 transient vacation rentals are located. Just generally, you can see that they are effectively distributed in virtually every community on the island with some fairly sizable clusters on the southshore and the northshore.

As a consequence of our work on Maui and O'ahu, I have compiled a list of the top 20 towns in the State, excluding the Big Island, where we are showing the share of transient vacation rentals as a percentage of all housing. You will notice that there are only 10 or 11 towns where that number is higher than 10% and of the top 10, five (5)... actually six (6) are located on Kaua'i and most outstanding 'Anini Beach. Obviously, a fairly small area (about 55% of the housing) there is transient vacation rentals. Hanalei, the estimate is 40%, Hā'ena 25%, Po'ipū 18% and then you get to a Maui location (inaudible) with 18% and an O'ahu location (Lanikai) with 18% and then on down. That is just for some perspective. Here we are looking at 10 neighborhoods on Kaua'i where I am showing you the share of the TVR's represent of all housing which is the red bar as well as the shares that TVR's represent of all rentals which is the green bar. Again, you can see that the outstanding cluster with those percentages is 'Anini Beach, 53% of all housing, 72% of all rentals... I believe this was in an earlier presentation and the conclusion that I think one draws from this and some of the other data previously presented is that, at least on Kaua'i, the largest concentrations measured as a percentage of housing are in areas that are not otherwise known as low rent neighborhoods and bears on the question of short term rentals squeezing out long term rentals.

Here is some of the new data. We have now three (3) years worth of the survey data from the visitor survey and what I am showing you on this chart is the total number in thousands of visitors who said that they were staying at either a

vacation rental home or a B&B. You will see the O'ahu numbers climbing from 114,000 to 130,000 to 155,000 over that three (3) year period. The corresponding numbers for Kaua'i are nearly 73,000, nearly 85,000 and nearly 88,000. You will notice that the rate of growth on the other three (3) islands continue to accelerate between 2004, 2005, that appears not to be the case on Kaua'i. Here is the share of visitors, all visitors, to each island who said that they stayed either in the vacation rental home or a B&B. Again, for the same three (3) years and focusing on Kaua'i where the share is the highest of all the islands. It was in 2003, 7 ½% of all visitors, 2004, 8.3% and last year because it was slower, the growth rate dropped back down to 8.1%. You will notice on the far right, the share of all visitors statewide into 2005 reporting going to a TVR was 4.3%. Here are the growth rates for the two (2) periods that we have good data. 2003 and 2004 which is in blue, 2004 to 2005 which is in purple, again, focusing on the Kaua'i numbers. You will notice that in the first period, 2003 to 2004, Kaua'i had the highest growth rate, 16% whereas, in the most recent year, that growth rate dropped back down to 4%.

On Maui, exactly opposite occurred. Very slow rate in 2003-2004, 5% and the following year increased to 15%. Finally, I have conducted an analysis of the data on the survey where the visitors reported where they stayed, and based on the average party size, average length of stay, I have computed how many TVR's would be required to meet that demand. Obviously, 100% occupancy, those numbers are shown in orange. That is say that on Kaua'i, 551 units would be needed to meet all of our transient vacation rental demand. As I have showed previously, the count was actually 922. You can see the ratio between those two (2) numbers is approximately the same on each island and as a round sort of measure, we find that by inference, the occupancy rate in vacation rentals statewide is somewhere around 50%. That concludes the data portion. As a consequence of my work, I had the opportunity to look very closely at the housing markets on all three (3) islands and in some detail on Kaua'i and I would certainly be happy to respond to any questions you might have.

Ms. Yukimura: Thank you very much Mr. Stokes. Can you make these slides available to us?

Mr. Stokes: Yes I will.

Ms. Yukimura: Thank you.

Mr. Stokes: As soon as I get home, I will put them up on our website and all of my other research is also on the Kauaian.net website.

Ms. Yukimura: Thank you. Any questions of Mr. Stokes? Councilmember Furfaro?

JAY FURFARO: Yes, I have a few questions. I can wait until all the presentations are done or specifically ask Ken a couple of questions here.

Ms. Yukimura: I'd like to have questions that would help us clarify the information and then policy questions, perhaps we wait until the end.

Mr. Furfaro: These will clarify the analytical numbers that are there. Ken, thank you very much for a very complete presentation. In the year 2005, you projected Kaua'i's vacation rentals had a 16% increase in occupancy levels?

Mr. Stokes: That was actually, I think 2003-2004 and in 2004-2005 it declines to 4% growth.

Mr. Furfaro: Okay. On both of those years, could you tell us what the overall islandwide occupancy was comparatively?

Mr. Stokes: I don't have that number at hand.

Mr. Furfaro: I will get those from the HVB. When we look at the 88,000 occupants, do you have an idea of what that calculates in a way of average length of stay?

Mr. Stokes: In the final chart that I showed, the number of units needed, I used the party size and length of stay for the average Kaua'i visitor.

Mr. Furfaro: And I am sorry if I didn't catch those because I don't have a hard copy of your presentation and the size of party and the average stay in your calculation was?

Mr. Stokes: Again, I don't have those numbers at hand, but it would be average for all visitors to Kaua'i.

Ms. Yukimura: So that means hotel and all that put together.

Mr. Stokes: Yes.

Mr. Furfaro: Yes, but this was specifically on your questionnaire, the demand on vacation rentals, family size and...

Mr. Stokes: Yes, but as the data is presented, they do not break out length of stay or party size for vacation rental users.

Mr. Furfaro: Okay, so I guess that is why I am struggling here to try and understand that. You then said that if we have 922 units on the island of which seven hundred and some odd number are vacation homes, the balance of bed and breakfast... without having average length of stay on the participating factors nor comparing the growth demand on vacation rentals over hotels, how did you

arrive at the 551 units, but then determine that is what Kaua'i has been (inaudible).

Mr. Stokes: Again, I am making an assumption and I am not really suggesting that this is the demand. I am using the best available which is for all visitors, but the intent here was to indicate whether or not the numbers that I derive for each island, the counts if you will, from an Internet search, seem to be in the right ballpark. I know that on all three (3) islands, there has been some concern that the numbers are really much larger than what I was able to derive. I am basically backing out of the best available data to indicate that what I am showing you combined with... On Kaua'i, we actually did an occupancy survey and there, again, our finding was the average occupancy of all TVR's on Kaua'i was about 50%. So, again, these are an attempt to show that the consistency or order of magnitude that suggest the numbers are probably fairly close.

Mr. Furfaro: And, basically, they are based on some of these assumptions that we need to firm up some of the statistical information.

Mr. Stokes: That is correct.

Mr. Furfaro: Let me ask you, I didn't see it on your chart. Do you know in your analyzing these numbers, what then, that contributes in the way of the transient accommodations tax?

Mr. Stokes: In the report that I did file, you will find an estimate of that amount. Again, I don't have it right at the top of mine.

Mr. Furfaro: Thank you Ken and thank you for a very nice presentation, but I would be interested in those numbers when you can back. Thank you Chairwoman.

Ms. Yukimura: Thank you Councilmember Furfaro. Councilmember Kouchi?

RONALD KOUCHI: Hi Ken.

Mr. Stokes: Hi.

Mr. Kouchi: Can you go back to that '03-'04, '04-'05 slide? I just wanted to be clear, Jay, is this the one that you were looking at on the first question?

Mr. Furfaro: Yes.

Mr. Kouchi: Because I thought I heard you use the word occupancy and what the islandwide occupancy, but this is just growth.

Mr. Furfaro: I meant 16% growth is what I referenced over those two (2) years, but I would think what is also important to measure what the growth demand is against traditional hotels.

Mr. Kouchi: But my question is, since you seem to be agreeing with Jay, so that growth represents a number of people?

Mr. Stokes: Yes.

Mr. Kouchi: Staying in vacation rentals.

Mr. Stokes: Who reported they did, yes.

Mr. Kouchi: Just when I had initially looked at the slide, I thought it was the increase in... or growth of amount of units by percentage, so I am glad that you asked the question because I misinterpreted the slide.

Mr. Stokes: If I might, it would be difficult to make an inference about the growth in units based on the growth in visitors particularly given the low occupancy of the existing base.

Mr. Kouchi: I am just guessing too that from some of the earlier testimony that we have received, it appears that the normal way to rent would be for a week minimally, and so part of the guess would be that. Even if you stayed five (5) days, that unit... the other two (2) days still aren't available because it was rented out for the week anyway.

Mr. Stokes: Exactly.

Mr. Furfaro: Thank you again Ken.

Ms. Yukimura: Other questions? Councilmember Bynum?

TIM BYNUM, NON-COMMITTEE MEMBER: (Inaudible). There is one chart with the (inaudible)... just to be sure that I am clear about this. The green line is the share of available rentals?

Mr. Stokes: Of all rentals, yes.

Mr. Bynum: I noticed the cluster in the other chart in Wailua/Kapa'a... I didn't see that on this chart. Would you be able to generate those numbers for the Kapa'a/Wailua area?

Mr. Stokes: Yes, I think those numbers are available in this initial count chart. All the way on the right, you will see those percentages and, again,

that is in the report that is online.

Mr. Bynum: Thank you.

Ms. Yukimura: Other questions? If not, I have a couple. When you were calculating demand, that demand can be changed by advertising and so forth, so I don't know if we can assume a constant demand.

Mr. Stokes: I am not sure I understand.

Ms. Yukimura: Or by change in visitor preference of stay. I mean, is there a way to project... I think this has been a trend that has been ongoing for a while and it has hit the islands and in particular Kaua'i because we have the kind of environment that is conducive to it. But it seems like there is a growing desire to stay outside of a hotel situation.

Mr. Stokes: Yes, that is clear.

Ms. Yukimura: ...in a residential...

Mr. Stokes: Various alternative accommodations, yes.

Ms. Yukimura: And, so I don't know if we can assume constant demand.

Mr. Stokes: And I wouldn't want anything that I have presented here to suggest constant demand. But to answer the first part of your question, again, deriving the numbers needed, I did use the assumption of a similar length of stay and party size as for all Kaua'i visitors as Ron has suggested. That might be the role of the assumptions, but it is the best available data and, again, the intent is just to get us in the right ballpark.

Ms. Yukimura: Okay, and then, one of the issues is the idea of incipient places or places that may begin to move toward an 'Anini situation and I have noted actually that that might be Kekaha and even in Kapa'a town on the makai side. So is there a way for us to assess that or, you know, some red flags that can tell us that this is beginning to happen?

Mr. Stokes: Yes, you could retain... when (inaudible).

Ms. Yukimura: No, but that is something that I am interested in. How we would get this kind of... because my question to you before we started was, could you update to 2007 and you said, yes, but it would be... take considerable effort and money.

Mr. Stokes: Yes, and the reason for that is that... as you know, the Internet is evolving so rapidly, people's strategies for using the Internet to promote is

changing rapidly and you would (inaudible) have to start again every year.

Ms. Yukimura: Can people hear okay? You might want to... okay, good. Yes, and the other thing that came out of the presentation that would be made by Elizabeth Kent in the stakeholders group was that universal registration. That we need to require every transient vacation rental to register, so that we know who is out there.

Mr. Stokes: Right. That may or may not be an effective tool. I can simply report from other islands where it has been ineffective. My personal opinion is that in a regulatory environment where the rules are not necessarily clear or where there is a market demand that might require something more like a gray market or a black market, that you are not likely to get compliance. My guess is that if Kaua'i were to adopt rules that were consensually derived, that you might get a higher share who were actually registering and I would simply note that an offer to provide for that kind of registration independently by the industry was made actually several years ago. Having said that, I also want to note some work that I and...

Ms. Yukimura: Mr. Abrams?

Mr. Stokes: During the consensus process, Louie Abrams and I developed a set of monitoring measures that included things like caps and triggers, so if there were an ongoing monitoring process, some kind of more onerous trigger might be in effect if you rose above a certain level. Let me just take this opportunity to express a concern there and I said the same thing on the other islands. The work that I have done shows fairly... I think persuasively that vacation rentals are not generally a huge problem, but there are a handful of neighborhoods in which they are. So I think each island is looking for... (inaudible)... more of a scalpel approach than a sledgehammer that would require a much more careful data work throughout.

Ms. Yukimura: Thank you. Any other questions? Councilmember Furfaro?

Mr. Furfaro: Ken, again, thank you for a nice presentation. Statistically, I didn't see it in your numbers here, but if it was there, may I apologize. Of the 922 units that you summarized, how many are actually and currently legal in VDA areas?

Mr. Stokes: I think you can get a quick sense of that just by looking at the chart. As I recall, it was something around 50 or slightly more than 50%... if you just take the towns there and just by your knowledge...

Mr. Furfaro: Po'ipū and so forth?

Mr. Stokes: Yes.

Mr. Furfaro: So, roughly, of the 922, about 50 to 55% are in the VDA area and currently allowed by ordinance?

Mr. Stokes: Yes.

Mr. Furfaro: Thank you very much.

Ms. Yukimura: Actually, I think at least based on a County Attorney opinion, they are all allowed, but I think what you were meaning...

Mr. Furfaro: My question is, specifically in VDA.

Ms. Yukimura: Okay.

Mr. Furfaro: Thank you.

Ms. Yukimura: Thank you very much. Council Chair?

BILL "KAIPO" ASING, NON-COMMITTEE MEMBERS: Ken, the presentation that you just made is an updated version of the one that you (inaudible). I believe the one that we have is dated 2004, so...

Mr. Stokes: Yes, the chart on the screen you have seen before. That is not new data. The only new data are the charts later in presentation on the 2005 numbers from the survey.

Ms. Yukimura: In other words, the report is all the same. The only thing that is updated is this chart.

Mr. Stokes: No, that chart is not updated.

Ms. Yukimura: 2005?

Mr. Stokes: That is the count that is still the best available data, the one that is on the screen.

Ms. Yukimura: Well, it is updated to 2005.

Mr. Stokes: Yes.

Mr. Asing: And, you know, you mentioned demand and do you have anywhere... is the demand tied to economics in the sense that... or let me put it this way and ask the question. Is it more economically for a family to stay in a hotel rather than stay in a vacation rental? Which side is cheaper, more expensive vice

versa.

Mr. Stokes: (Inaudible) on the restriction on the island of O'ahu where we looked at rates and occupancy in more detail than we did on the other two (2) islands, it is clear that four (4) large families, vacation rentals are an extraordinary bargain.

Chair Asing: So the demand could be tied to economics then?

Mr. Stokes: Depending on party size, yes. For a particular class of visitor, yes, there is doubt that this is a bargain.

Chair Asing: And the reason I ask is... you know, when you mentioned demand, then I take demand and I want to tie that to something and I think it is economics that is driving the demand.

Mr. Stokes: Yes.

Chair Asing: Especially for larger families.

Mr. Stokes: Yes, my own impression is from the long term trend in data. I think a case could also be made that the preference for now over 8% of our visitors to be what you might call off resort could be taken as a measure of success if you will of our visitor industry marketing. That is they have stayed in the condos, they have stayed in a time..., stayed at the hotels and now really want to be part of a community. So that demand if you will might be an expression of a good thing on the part of visitors who are really quite loyal to our island.

Chair Asing: Have you compiled information regarding the price ranges and what they look like?

Mr. Stokes: Again, we did not do that on Kaua'i. We do have a good set of price and great information for O'ahu.

Chair Asing: Are you planning to do that?

Mr. Stokes: It was not part of the contract. I would certainly... if there were, on occasion to update, we want to make sure that was including in the next Kaua'i (inaudible).

Chair Asing: So you have that information for O'ahu only?

Mr. Stokes: Yes. I can characterize that generally if you are interested.

Chair Asing: Yes, please.

Mr. Stokes: A large fraction and to the best of my recollection, something like 20% of the O'ahu vacation rental market is at what you might call extreme high end. That is upwards of a thousand dollars a night. I think you would have to agree that reflects a particular niche in this market place. The numbers of units that are available for \$100 a night or less is similarly about 20% and the others would be in between.

Chair Asing: Okay, thank you.

Ms. Yukimura: Councilmember Iseri-Carvalho?

Ms. Iseri-Carvalho: In reference to your slide where it showed the numbers 551 versus 922, is that as needed versus counted? Can you explain what data you used to (inaudible).

Mr. Stokes: The 922 would be my actual count of vacation rentals that are available for rental. The 551 figure would be derived from how many would be required to satisfy those who said that they were staying at vacation rentals on Kaua'i given assumptions about party size and length of size. The 551 in that sense would reflect 100% occupancy for those 551 units.

Ms. Iseri-Carvalho: And you are saying, how many would be... what was your targeted group? Where did you get the number from?

Mr. Stokes: All Kaua'i visitors, how long they stayed and how big the party size was.

Ms. Iseri-Carvalho: There was a survey?

Mr. Stokes: That data is generally available from DBEDT, yes.

Ms. Iseri-Carvalho: Thank you very much.

Ms. Yukimura: Councilmember Rapozo?

Mr. Rapozo: Thank you Ken. These numbers are vacation rentals and B&B's or just...

Mr. Stokes: The 922 is a combination of the two (2).

Mr. Rapozo: Both and I guess you did the same study for Honolulu as well. Those numbers were counted?

Mr. Stokes: Yes.

Mr. Rapozo: On the Internet? Is that how you...

Mr. Stokes: Yes.

Mr. Rapozo: Interestingly and I guess that is, I guess, one of the problems in this issue is the who has the right data. I mean, it is who...

Mr. Stokes: Yes. This morning's newspaper references on how many track study which has been repudiated by DBEDT itself. The principle defect in that study and the defect that I think my methodology cured is that it included many duplicate properties. I have to tell you from the long hours that I spent doing this on all three (3) islands, it is a huge amount of work to weed out the duplicates and the duplicates are the (inaudible) with multiple listings, using different names, different photographs and it is an enormous amount of work to make sure that you are not counting twice.

Mr. Rapozo: Yes, and I am not sure if... all it says... I know they mentioned omni track in another study, but they talk about a 2005 state study based on Internet searches by...

Mr. Stokes: That is the same one.

Mr. Rapozo: It is the same omni track?

Mr. Stokes: Yes.

Mr. Rapozo: Found more than 1,900 units, so you would say that there is probably some...

Mr. Stokes: 1,300 I think is a better count.

Mr. Rapozo: 1,300?

Mr. Stokes: Yes.

Mr. Rapozo: Okay, thank you.

Ms. Yukimura: Other questions? Councilmember Furfaro?

Mr. Furfaro: Ken, I heard you referencing, you know, the \$100 and below rate and so forth, but today in Hawai'i, the average daily room rate is about \$157 I think. So that is actually below possibly what the average daily rate is in a hotel.

Mr. Stokes: That is true, there is a fraction that are available at that price point.

Mr. Furfaro: Let me try and restate what I think the Chair's question was. Is there any data on the people that are using vacation rentals because you said 20% are at the high end. Is there any indication that with the loss of some of the economy inventory we have on Kaua'i such as Beach Boy and Islander and so forth into interval ownership, is there any data that you have that shows the family income brackets that use vacation rentals?

Mr. Stokes: I wish there were. I think there is data from which you can infer that and I think this was your question, that price is seldom the factor. I think it is ambiance, amenity, location off resort generally.

Mr. Furfaro: I would think for more moderate travelers, the other attractiveness is, they perhaps spend more in the local neighborhood markets and so forth based on convenience of...

Mr. Stokes: Yes.

Mr. Furfaro: Would you say that is...

Mr. Stokes: There is ample evidence that those who frequent vacation rentals are more like part-time residents in their activities in the stores that they frequent and activities that they participate in, yes.

Mr. Furfaro: Thank you. I just think that is a statistic worth looking at going forward. Family income brackets as they select non-traditional hotel rescues.

Mr. Stokes: Yes. Generally, as you know Jay, the income distribution for Kaua'i visitors has been ratcheting up. That is that we are getting a larger share of the wealthier visitors over time which would be the basis for my inference that price was not really an issue.

Mr. Furfaro: Good comparison. Thank you Councilwoman.

Ms. Yukimura: Question about the idea of duplicates. Is it possible that some of the duplicate properties are due to multi-family use of single family vacation rentals?

Mr. Stokes: It is possible. I can tell you that in the weeding out process, I did run into a number of properties where it took an extraordinary amount of effort to ascertain exactly which units were being referenced. I would... my professional sense is that... you know, I might have missed some, but I don't think it is a huge difference in the numbers. This might be an occasion to add, however, that as I

have observed what you might call regulatory environment flaring up or cooling down, it has been really fascinating to observe changes in Internet marketing approaches and perhaps this is a cautionary note for Kaua'i as well. Based upon those responses and how things are promoted, it is not obvious to me that a tighter regulatory environment would result in fewer vacation rentals. There are so many different ways to book people into your units. It is not even necessary anymore to have them advertised on the web. Chances are, as I have experienced on Maui, the more difficult, shall we say, the regulatory environment, the more it is going to become what you might call a gray market. That is to say that they will be a tougher find.

Ms. Yukimura: Now are you saying they will be tougher to find or they won't be as many?

Mr. Stokes: Tougher to find. They would be filled through other means.

Ms. Yukimura: Such as?

Mr. Stokes: Clubs, friends... I mean, you know, this really goes as much as the enforcement question and I have had the opportunity to look over the shoulders of the O'ahu enforcement group. It is a (inaudible) task to ascertain who is in that unit, are they paying, are they related to the family, etc., etc., etc. I think being mindful of that, many operators are already, through other management companies, providing other ways of booking, so that they don't, in fact, have to show on the web each individual unit.

Ms. Yukimura: So this idea of sharing (that was in this morning's paper) information about GET and TAT payments would become more important.

Mr. Stokes: It is conceivable and you can get a better count that way. It is not obvious from the paper this morning that the lawyers are necessarily comfortable with that approach, but it is conceivable that that could be an assistance in a monitoring process. Isn't there a fine for that?

Ms. Yukimura: I don't know. Okay, so any other questions of Mr. Stokes because... you do have? A couple more. We are going far beyond what I anticipated, but I am allowing partly because I don't know how long he can stay.

Mr. Stokes: Not much longer.

Ms. Yukimura: You are going to have to leave within about half an hour at the most?

Mr. Stokes: 15 minutes.

Ms. Yukimura: So I think we need to ask all the questions that may come

to mind at this point. Council Chair and then Councilmember Bynum.

Chair Asing: Just two (2) questions. Any reason why Hanamā'ulu and 'Ele'ele was left out?

Mr. Stokes: We could not find any in those two (2) towns.

Chair Asing: And this may seem like a little loaded question, but I just want to get a feel from you. On the accuracy, you feel that there is probably more than you got or do you feel fairly comfortable that you are right in the ballpark? Do you think there are more out there or less out there?

Mr. Stokes: I am sure there are more, but not many. I do believe that for all the reasons previously stated, these are reasonably reliable ballpark numbers. The message to Kaua'i is the same.

Chair Asing: You are on the low side then, if anything?

Mr. Stokes: Well, it could be a matter of another 50, another 75 on top of 1,000, but the message to Kaua'i is the same that my work suggests... needed to be transmitted to each island and that is that to the best of our ability to count, the numbers are dramatically lower than many of us thought.

Chair Asing: Thank you.

Ms. Yukimura: Other questions? Oh, I know what I wanted to ask you. Is it the nature of B&B's quite different from the nature of single family vacation rental? For example, can you imagine finding a B&B that is \$1,000 a night?

Mr. Stokes: Good point and the quick answer is no. Having said that, in my search of the Internet and perhaps this is a cautionary note for you as... well, as you apparently intend to deal with these two (2) categories separately. Let me put it this way. There is no FDA for advertising here and people will call something a B&B that would not, I am assuming by your definition (change side of tape). I didn't care whether they called it a B&B or not, I tried to ascertain, is there an owner on property and is there a kitchen for example. I have tried to tease those out that is why I provided the separate counts, but just so you know. In the business, the line between the two (2) is not so clear.

Ms. Yukimura: But if you have a clear definition, they are of a different nature.

Mr. Stokes: Yes.

Ms. Yukimura: Okay, and the last question. Did you notice any attribution or any rate of attrition that is significant? I mean, you know, B&B's... I

mean vacation rentals going out of vacation rental business and into long term rental or...

Mr. Stokes: Yes. Two (2) points that I would make although I don't have the numbers in front of me, I did provide an estimate of the number of units that had initially been available for short term rental that had gone back to long term rental and I think that was a fairly sizeable number. Secondly, and this I think is especially true on Maui. The biggest single variable in the dynamics of the housing market is the demand for second homes. The principle consequence of the ups and downs of regulation would be, is that second home on the market for short term or not. If it is not, it will be vacant. On the island of Maui, only 40% of their second homes are in the vacation rental market. In my opinion looking at the housing market, it is the preoccupation with building second homes that is intended to bid up prices to squeeze out availability of housing especially reasonably priced rental units. But I would say that my experience on all three (3) islands clearly suggest that if you make it more difficult to be in a vacation rental market place, you will not expand the supply of long term rentals. They will stay vacant.

Ms. Yukimura: Okay, then I have the question, if vacation renting is disallowed for second homes, what does that do to the second home market?

Mr. Stokes: I am not sure that it would have much affect. Many of these people are banking on appreciation. You may recall during the consensus process, Louie Abrams provided a spreadsheet on what the economics are here and certainly at 50% occupancy, it is not obvious that people are making money.

Ms. Yukimura: Yes, although I have heard testimony that suggest that there are people who are trying to leverage... they are middle income people trying to leverage into a larger wealth by doing this second home vacation rental business.

Mr. Stokes: There are certainly cases where that is occurring.

Ms. Yukimura: So on the lower end of the second home market, that is a speculative factor or layer that the idea that you could rent it as a second... I mean, you could rent it as vacation rental.

Mr. Stokes: Yes, and I think you might find some of those who may, based on that, perhaps optimistic assumption have run into problems paying your mortgage. You may find that those are the ones more likely to flop to long term rental.

Ms. Yukimura: Any other last questions? Councilmember Furfaro?

Mr. Furfaro: In your statewide statistics... as you know, in the State of Hawai'i, there are opportunities to have fractional ownership.

Mr. Stokes: Yes.

Mr. Furfaro: As a... up to, I think it is one-eighth.

Mr. Stokes: Yes.

Mr. Furfaro: Does any of your statistical information mix fractional ownership into the counts?

Mr. Stokes: No, but good question and in doing our counts, we did derive, to the best of ability, a good current count of fractional ownership units. Again, relying on DBEDT's visitor plant inventory. Again, doing some of the weeding out of duplicates, but in the chart that I showed at the beginning, there is an estimate of the fractional share units currently on Kaua'i as well.

Mr. Furfaro: Ken, thank you again for an excellent presentation and I am looking forward to some of that information that might not be readily available in these charts. Thank you again.

Ms. Yukimura: Where in this information is your fractional? Is that...

Mr. Furfaro: It is coming up.

Ms. Yukimura: Do you want to just refer to it in the chart?

Mr. Stokes: Timeshare.

Ms. Yukimura: Oh, it is under timeshare, okay, but that is different from the club.

Mr. Stokes: If the question was, are there single family units...

Mr. Furfaro: Let me rephrase the question because statewide, many families, second, third generation, have taken advantage of fractional ownership to keep a home in the family, so their siblings could use that residence as it... and they are not timeshare units.

Mr. Stokes: Yes.

Mr. Furfaro: By law, they can be fractionally allocated for ownership up to eight (8) partners.

Mr. Stokes: And that is the difficulty in the count that I referenced earlier about different approaches that can be used and are being used. The club approach, the family share's approach, which makes more difficult the enforcement question and the monitoring question for that matter.

Mr. Furfaro: Thank you Ken.

Ms. Yukimura: Alright, anymore questions? If not, thank you very much. This has been very useful and helpful information. Okay, we will have Scott Ezer. Mr. Ezer is a consultant hired by the Planning Department to develop its information. Scott Ezer works for Helber Hastert & Fee Planners from O'ahu. Thank you very much for being here.

SCOTT EZER: Thank you. Aloha kakahiaka. I'd like to just provide a context for what Ken and I did differently although we were part of the same process. Ken was hired by the real estate folks here. I was hired...

Ms. Yukimura: (Inaudible-both parties talking at the same time).

Mr. Ezer: I was hired by the Planning Department specifically to implement general plan guidance on B&B's and TVR's. It really was an effort to establish the zoning mechanisms necessary to implement the process. With that as a background, I just want... I am not going to read my entire presentation because I don't like to do that, but I would like to read one section of my report which is a couple of paragraphs and it asks the question of whether zoning is a science or an art. I note by your questions that you are very interested in specific details and that is a very important part of coming to make a decision. Zoning ordinances across the United States are filled with detailed standards and rules. Many of these requirements have been firmly established as zoning tools that are universally accepted. As zoning tools, they have been effectively used to assist local governments like yourselves to achieve desired community goals. It is certainly instructive to review what other jurisdictions are doing relative to a local zoning issue. However, we find ourselves asking about... or looking at a wide distribution of value when other zoning regulations are reviewed for consistency. For example, should a setback be five (5) feet or ten (10) feet? Should heights in residential districts be restricted to 25 or 35 feet? Should certain non-residential uses be allowed as conditional uses in residential zoning districts? What is an appropriate standard of parking? There is no uniformly correct answer to any of these questions and local governments just like yourselves have made use of many different approaches to solving the same issue. There are several questions to consider when writing new zoning regulations. Citizens, agencies and adoptive bodies should ask themselves whether the new regulation is consistent with the goals, the values and objectives of their own community. They should question whether the regulation is related to public health, safety and welfare and they should consider whether the regulation is consistent with prevailing legal doctrine which requires that all citizens receive equal protection under the law and that due process is followed when implementing and enforcing regulations.

It was from this perspective that I move forward in trying to deal with the question and issue related to zoning. I think...I will move pretty quickly through

these early slides and I just wanted to lay a foundation for when we began with the General Plan guidance was in dealing with my study. All these quotes are from the General Plan. The County shall recognize alternative visitor accommodations such as B&B's, vacation rentals, inns, cabins and retreat centers. The County shall enact clear standards and permit processes for regulating alternative visitor accommodation structures and operations in residential, agriculture, open and resort zoning districts. Permitting processes should consider cumulative impacts that a large concentration of alternative visitor units can have on a residential neighborhood. The Planning Department shall prepare CZO amendments to facilitate the permitting of existing non-conforming alternative visitor accommodations. Those were my marching order so to speak in how I move forward and what we did.

Like Ken, we were very interested in data and I really have to commend the work that Ken has done on this subject throughout the State because he has provided a very valuable set of data that, otherwise, would not be available and would be very difficult, time consuming, and costly to put together. I am going to walk through, again, some data that I think is important in how we approach this discussion. One of the things that we looked at was a distribution of new housing types built on Kaua'i in the decade between 1990 and 2000. The first thing we saw was that 47% of all the units built in that time period are seasonal units and these are single family and multi-family, so they are being used for visitor accommodations. Owner occupants were building about 38% of the total units or almost 2,100. For renters, there were a little under 1,100 units built within that time period representing 15% of the total. This is on a total basis of 7,405 units, so you see a large percentage of new housing built on Kaua'i in that decade is going for seasonal use. This is what I call some indicators of vacation home rentals. This is based on U.S. census data. The census characterizes and we have used this in looking at census data called Seasonal Recreational Occasional Use (SROU) and that is a field that is in the census data itself.

Between 1990 and 2000, the number of housing units in Hawai'i increased 18%, yet, the number of seasonal, recreational and occasional use units were up 100%. This is a very interesting statistic. I looked at data from around the United States in terms of the SROU's that were a percentage of all housing (inaudible) interestingly led the entire country with 15.6% of their units, their housing units in SROU's. Hawai'i was tenth in the country at 5.5%, but if you break that out by island, you see Kaua'i is very close to Maine's numbers being as first in the country. The phenomenon that I think we have seen here in Hawai'i particularly in the last... around 2000 and forward were looking at a situation where Hawai'i is now part of a global real estate market. In the report, there is some anecdotal discussion about visitors coming to Hawai'i and how the industry has changed since the 50's and the 60's and where we are today. Again, if you look at the number, just the volume of people that come to Hawai'i and if you took a small percentage of those numbers, even 1% of the almost 8 million visitors that we get a year who want their piece of paradise and who have the wherewithal to buy real estate in Hawai'i.

There is certainly a large number of people that can qualify to do that and, in fact, have chosen to do so. So how does that work? They come here and they make a purchase in Hawai'i real estate. By and large the selling prices and we will get into that data in a minute. ...very high mortgages, absentee owners that leads one to put units in short term rentals. There is a high long term rental cost and the reason... what happens after that is a conversion to short term rentals and that contributes to a tight real estate market; however, it also increases demand and a low supply for seasonal properties. I think in the discussion that you are having with Ken, clearly, the market has spoken and whether there are rules and regulations to govern TVR's and B&B's or not, people are going to stay in them and people are going to use properties for those reasons. This is a chart showing just resales and not new sales, but resales or existing units on Kaua'i in the last... between 1993 and 2005 and this is the latest data available. From the early 90's, you see a dramatic increase in the number of units being resold, both condo and single family and peaking in 2002 and coming down a little bit, but still pretty solid even in the last two (2) or three (3) years with an increase in condominium sales. So large numbers of units are cycling through resale and resale. I found this, again, at a gut level, you know that this is happening, but when you see the numbers, it is fascinating. In terms of all resort purchases on Kaua'i between 2002 and 2004, where do these people come from, who are they? What we saw from this data from a total number of sales of 476... over 40% alone came from California. 24% came from Hawai'i and that isn't broken out island by island, those are Hawai'i owners and the balance are from all over. So what you are seeing is fully three-quarters of all resort purchases on Kaua'i are being made by out-of-state buyers. This just shows you how, again, between the Big Island, Kaua'i and Maui on how prices are increasing. There has been some flattening in the market in the last six (6) months, but the numbers are still trending upwards.

Ms. Yukimura: Scott, how are you relating the resort properties to single family vacation rentals? Or is it individual dwelling units? Is that coming up?

Mr. Ezer: They are included in this are single family units that are within resort areas that are being sold as resort properties. They are not, I guess, purchased by owner and intending to live in the unit, so they are designated as a resort property. This data is taken from some work that Ken did. Again, clearly what you see... if you look at the colors, the green on the circles indicate the percentage of owner occupants and you can see that in older neighborhoods, non-VDA, that owners are dominant in Po'ipū, in Wailua and in the Princeville/Hanalei, you see a much higher percentage of these so-called seasonal units. We will get into this data in a little bit more depth. This is data based on... Ken presented this. It is identical to the numbers he put forward in his presentation. Again, interestingly, if you look at, in red, Hā'ena, Wainiha, Hanalei and 'Anini, the highest percentages of TVR's as a percentage of all the housing units by far. There is a reason for that and that is because there are the most attractive in terms from a visitor's perspective. Again, where are the TVR's located? 40% of all TVR's are located in a VDA. 53% of all TVR's are located on the northshore between Kīlauea and Hā'ena

and that includes Princeville.

Mr. Furfaro: Excuse me, may I ask a question just on the statistic that is different from Ken's. Ken told us that the VDA made up 55% and your slide says 40% in designated VDA areas. What is the difference?

Mr. Ezer: It could be where my data was from the census data and he is getting his from Internet.

Mr. Furfaro: Census data meaning the year 2000?

Mr. Ezer: Correct, so that data is certainly is not the best available.

Mr. Furfaro: You've explained the variance to me. Thank you.

Mr. Ezer: 80% of the TVR's on the northshore are located outside of VDAs and 27% of all TVR's on Kaua'i are located in Hanalei and Hā'ena/Wainiha. These are some maps we put together using census data and we were able to drill down below the census track level into a set of data known as census blocks and each one of the green... the areas with the different color represent a census block. These maps are in my report. They have not been updated since 2005, but basically, the darker areas have a higher concentration... oops, sorry. Again, we are looking at from 'Anini to Kīlauea, so in Kīlauea, we are looking at between 25% and 50%, whereas, again, this is a phenomenon you will see in other areas. The further from the ocean, the percentages go down. The demand is oceanfront or as close to oceanfront as you can get. Hā'ena to Hanalei is very interesting. In the Hanalei area, you have almost between 25% and 50%. Over 50% in this stretch on the north side of Hanalei.

Ms. Yukimura: Which is 'Anini?

Mr. Ezer: 'Anini was the one back.

Ms. Yukimura: Oh, yes, that is right. Okay, so where is that then?

Mr. Furfaro: That is Kahalahala and Lumahai.

Mr. Ezer: And then there is another concentration out near Hā'ena. Now, also, I should point out that a lot of these properties in this area are in the State conservation district and you have no jurisdiction over that.

Ms. Yukimura: Correct.

Mr. Ezer: And it is up to DLNR to enforce, but enforcement is a question and we will spend some time talking about enforcement as well. This is, I know, Councilmember Yukimura is very interested in Kekaha and you can see that there

are TVR's in the Kekaha area. They are not at the density that exist on the northshore nor in the numbers that exist in Princeville or in Po'ipū.

Ms. Yukimura: When you say density, what is the unit you use for density? I mean, because the larger the area, you can dilute the density.

Mr. Ezer: In terms of density specifically at the census block level, we are looking at and if you... unfortunately, you can't...

Ms. Yukimura: So it is number per census block or number per acres or number per...

Mr. Ezer: Number per census block, but it is the percentage of TVR's as a function of the total number of housing units in that census block. What you can't see, there is a couple of different numbers here. The red number, I believe, is the census block number. No, that is the number of... that is a census block number. The number below that... my eyes are not as good as they used to be. There is a number that shows the number as a total, the number of TVR's as the total number of housing units.

Ms. Yukimura: Okay.

Mr. Ezer: And that is in the report and I will make all of this information available.

Ms. Yukimura: Okay, but that is how you are determining density.

Mr. Ezer: Correct.

Ms. Yukimura: A number of vacation rentals over total number of houses.

Mr. Ezer: Correct.

Mr. Rapozo: And that is the blue figure, so if you see 1/30, that is one TVR and 30 existing housing units.

Mr. Ezer: Thank you Councilmember Rapozo. That was...

Mr. Rapozo: That is what is said on the legend.

Mr. Ezer: Even with my glasses, I am not that good. I need a prescription filled. So when I started on my work, the stakeholder process had not yet begun. Partially through my work, Councilmember Yukimura was instrumental in bringing a large number of people together from around the island to discuss this important issue. As I sat through all of the meetings and I went to all of the public meetings involved concerning this issue, these were some of the issues that were

brought home to me as capturing the essence of what the community was talking about. First, there was certainly an overall sense that we were losing our sense of community in very specific neighborhoods. I think you've seen from Ken's data and the information that I presented that there are areas on the island that are more profoundly affected than others. There was also a perceived reduction in access to affordable housing both either as rental or purchases for Kaua'i residents as, again, the units may be taken out of long term rental or long term use bought and sold and put into short term rental. On the other hand, there was a significant portion of people who made their living from this industry either as owners or as support services for the housing and the TVR's that really affect a significant number of people and their livelihoods are now dependent on having TVR's and such for them to provide their services. If I were to say which was the most significant that popped out, it was this... over and over again, this discussion of the loss of sense of community in very specific neighborhoods. I don't mean to down play the other two (2), but that is certainly was one of the key thoughts presented during discussion. Exactly what are the factors affecting affordable housing on Kaua'i and you are not any different than other communities in Hawai'i. First of all, there is a general real estate market affecting affordable housing meaning that there is a low supply and high demand. Universally throughout Hawai'i, developers are making choices to build high end housing and not to build a market and affordable housing and there is a specific reason for that and that is because the risk involved in moving forward as a developer, you have a much higher margin on these high end houses and in order to get through the process, for them, it makes more sense to build high end because they get a higher profit and the demand is there.

There is a shortage of infrastructure to support new development in areas that are already urbanized and whether that is roadways, water, wastewater, electricity, whatever, there is not enough infrastructure to support new development. I already mentioned the unpredictable and lengthy land use approval process, again, not unique to Kaua'i. This is a statewide problem, but it does affect a decision making by developers on what to seek approval for. High construction cost and insufficient labor pool all contribute to the end cost of any single housing unit that is developed and put into the market.

Ms. Yukimura: Scott, are you almost...

Mr. Ezer: I am almost pau.

Ms. Yukimura: Thank you.

Mr. Ezer: There is a tax relief within the Kaua'i County for owners of long term rentals and it doesn't roll back taxes, but it provides a cap on increasing taxes on units that are in a long term rental and it limits that increase to 6% a year. What did the report do? These are recommendations taken directly out of the report and they are my recommendations. First, we need a clear definition of TVR's and B&B's in the CZO. TVR's should be a permitted use only within VDA's as a

class one zoning permit subject to meeting specific criteria. B&B's should be permitted as a Class II zoning permit within VDA's and a VDA residential district is in a Class IV and a use permit in residential non-VDA's. Existing TVR's and B&B's should be allowed to continue as non-conforming uses and should be required to obtain non-conforming use certificates under a pre-set number of criteria and conditions. There are three (3) up there, there is a larger number of those in the report. Any advertisement for a TVR or a B&B must include either the non-conforming use certificate number or the approved permit number for the TVR and the approval of any TVR shall require the identification of a 24-hour contact who is a resident of Kaua'i. These are general recommendations. They are in the report and they were followed in large measure in the bill that is now before you. I do have a couple of other observations and perhaps first and foremost is one related to enforcement. The Planning Department should be allocated additional staff as they require to handle the increased work load associated with the regulation of TVR's and B&B's. You can pass whatever law you want, any zoning requirement and it seems reasonable on paper, but if the County doesn't have the will and the ability to enforce, then the law itself will not be worth the process we are undergoing today.

As Ken mentioned, even in the face of enforcement, that will create still a black or a gray market of TVR's that will not come forward and register either as non-conforming uses or to get their proper permits. I think the County should also consider a differential property tax rate for owner occupied dwellings and long term rentals and TVR's with the rate for TVR's to be closer or equal to the rate for commercial uses. Lastly, the County should investigate additional incentives at the County level for developers to construct affordable housing units for rental and purchase by Kaua'i residents. It is a little bit outside of what I was asked to do for TVR's and B&B's, but it certainly was a striking kind of a requirement. What I have provided here is a table that compares the bill before you, Bill No. 2204, and my report in terms of what is recommended or what is contained in either of the two (2) documents. I don't think it is really important to go into these differences right now, but what I do think is important is for the County to establish policies where you know what you want to establish, what districts you want to allow TVR's and how you want to permit them if at all and then make that decision and the bill will follow your general direction and meeting the objectives and goals not only of the community, but of the Council. That concludes what I have a formal presentation for.

Ms. Yukimura: Thank you very much. Are there any questions of Mr. Ezer to clarify his presentation? My intention would be, you know, to have those brief questions and then later on to call him back up after Elizabeth Kent's report, so we can have the three (3) reports sort of before us. Council Chair?

Chair Asing: I have a question on this last slide regarding the open and ag areas where there is complete silent. Any reason for...

Mr. Ezer: Why the bill was silent?

Chair Asing: Yes.

Ms. Yukimura: I think that is a question for the Planning Department.

Mr. Ezer: The Planning Department drafted the bill. It did have hearings and considerations before the Planning Commission. I believe that there were some adjustments made to the bill by the Planning Commission. In terms of being silent...

Chair Asing: I don't believe it is addressed in 2204.

Ms. Yukimura: Yes, I haven't seen it either, but we did ask the Planning Director or the Planning Department to have a person present to discuss this and I have just asked staff to check with them since they are not here, so we may have that question for Planning Director as well. Councilmember Kouchi?

Mr. Kouchi: I think just on that issue though given that opinion, I guess, they may have thought too that it wasn't going to be permitted and, so without language that permitted it, you know, it is couldn't happen, but I think that I hear...I am just saying, given that other opinion, I think clear to us if you want a prohibition... write a prohibition, don't be silent, say what you mean, mean what you say, and don't let an attorney years from now come back and say, well, nah, this is how it is. I understand your concern.

Chair Asing: (Inaudible) the Kobayashi report and you use that and silent ain't going to work. Silent is go.

Ms. Yukimura: Any other questions of Mr. Ezer?

Mr. Furfaro: Yes, I do. The one colored map that you showed with the high density from Makahoa Point, Kahalahala, Lumahai, that area, I don't think there is more than five (5) homes in that whole area. Three (3) of them are vacation rentals on State land and, you know, it makes it look like it is out of control. So I think most of those homes are down on Makahoa Point side. Am I correct?

Mr. Ezer: Yes. What is important is not only to look at the colors on the map.

Mr. Furfaro: But to look at the ratio of units.

Mr. Ezer: Exactly.

Mr. Furfaro: So I think the map was a bit deceiving if you took out the Makahoa Point and then the rest is on State Conservation land, I believe.

Ms. Yukimura: Other questions?

Mr. Furfaro: Yes, and the data is mixed here. You used 2000 census. Ken used numbers from 2005. Sometimes it is kind of hard to correlate the two (2), but otherwise thank you very much for the presentation.

Ms. Yukimura: Other questions? If not, thank you very much and now we will have Elizabeth Kent. Elizabeth comes to us from the Center for Alternative Dispute Resolution which she heads. It is under the Office of Chief Justice. Elizabeth graciously facilitated a very innovative stakeholder process and she is here to describe what happened. Thank you for being here.

ELIZABETH KENT: Thank you. Good morning, my purpose is to provide a background for the July 16, 2005 report regarding single family vacation rentals on Kaua'i facilitated meeting process. I am going to concentrate on three (3) P's. The people, the process and public input into the process. People first. The center was contacted in late 2004 by Councilmember JoAnn Yukimura who is on the centers board of advisors and she asked if we would assist with the SFER issue. We began work with a group that later became known as the design group and a number of members from the design group are here today and it is nice to see them again and I hope that if I get anything wrong that you will help me out and help clarify it. The design group wanted to come up with a way to include the public and to have a level playing field of understanding SFER's and then once information was shared to create that level playing field to discuss the issue and to discuss possible solutions.

The design group was a diverse group of committed individuals (and I will probably use committed a number of times) who came from different backgrounds, had different view points and different interests regarding SFER's. They had commonality too and that was a desire to work together for the best interest of Kaua'i. They also thought that the way to do this was to have a new kind of dialogue for sharing and clarifying information and assumptions, examining data and exploring possible strategies. They were committed to being as transparent in the meeting process and also to being inclusive in the meeting process. In other words, what they wanted to do was reach out in many ways and through different media to involve the public in a dialogue. One of the things that the design group realized is that although they were diverse, there were more interests that needed representation in this dialogue. So they identified some of those interests that were missing and found representatives' further interest. Those people were added to the group that later became known as the stakeholder group and if you look at pages 3 and 4 of the report, you will see that many of the people on that list have multiple interests. So what we were looking for was the ideal person and the ideal person represented different view points rather than being a single issue person. The ideal person was open to listening and was thoughtful and would consider the different information that was shared. The ideal person also had to be willing to work hard. So you can tell from the report that there was a lot of support for it and for the process. That support came in different forms through funds, through backing, time

and human resources. The report came from the executive branch, the County Council, design group members, stakeholder group members and the community. So that is it on the people. That is a brief overview.

Now this is a brief overview of the process. The Center for Alternative Dispute Resolution agreed to be part of the process and I used process as opposed to substance because our role is just done on meeting process. We don't get involved in the substance of the issues. So our job was to help create that level playing field and to design a balanced, effective, clear and fair meeting process. A lot of work went into this. There were at least 43 planning meetings, 5 facilitated meetings involving the public and there were at least three (3) hours long and some were longer than that. There were pages and pages of documents and the final written report which you have. This printout from the website, can I hand this to you? Thank you. This is from the Kaua'i County website and it gives you an idea of some of the documents that were shared and that were made available to the public. The stakeholder group agreed to strive to make decisions by consensus, so we talked about five (5) levels of temperature of agreement. One was unqualified, yes, you love it, it is like an "A" in school. A two (2) was, yes, I agree. Three (3) was, it is okay, it is fine, I can live with it. Four (4) was like a "D". It is not really okay, but I am not going to block it and if somebody in the group was a five (5), then that person felt that he or she couldn't live with a decision and that they would try to block it. So we talked about the levels of agreement one through five (5).

The first meeting was on April 8, 2005 from 1 p.m. to 7:00 p.m. The purpose of that meeting was to hear from presenters about the planning and legal framework and to define the issues, so creating that level playing field on information, so that everybody was operating with the same information, hopefully correcting any misassumptions that people might have. At the second meeting, the consultant Scott Ezer presented his preliminary draft report and the stakeholder group prioritized the issues. At the third meeting, the stakeholder group reached consensus on three (3) things. 1) that all SFER units inside and outside the VDA's should be required to register. 2) that there needs to be regulation beyond registration for SFER's outside the VDA. 3) that pre-existing legitimate SFER's should be established as non-conforming uses (grandfathering). At the fourth meeting, the stakeholder group addressed the decision tree that is laid out on page 7 and attachment A of the report and there was consensus on one question, that is question 6, and that is that if grandfathering is established to address existing units, then legal pre-existing use should be defined to include timely payment, paid when due, of GET and TAT and compliance with all Federal, State and County laws. The other questions didn't have consensus and the straw vote is indicated in attachment "A" and on some questions, it had the levels of agreement, the 1 through 5. Between the fourth and fifth meeting, a sub-group got together to draft a report of the process and then that report was sent to all stakeholders for review and made available to the public via the County website and they could access the report in other ways too. So the final meeting, the fifth meeting, was held on July 16, 2005 and the purpose of that meeting was to finalize the report

that you now have.

The third "P" I wanted to talk about is public input. The process included a commitment by the design group to keep the public informed about the meeting process and the issue. Radio, television including captioned, print media, the County website, letters and e-mails, person to person meetings, and all of these were used to keep people involved. As the facilitator, I can tell that our office received a lot of input from the public which would (change tape)... and through comments. That is a brief summary and it was... as a facilitator, it was a pleasure to be involved in this process which I hope and I think gave the community a different voice in governance. Thank you.

Ms. Yukimura: Thank you very much Ms. Kent. Any questions? Part of your report included all the comments that came in from the public in the various modes, right?

Ms. Kent: Uh huh.

Ms. Yukimura: So that is available as well and I think now, I will have Scott Ezer, welcome to our Planning Director and Ms. Kent maybe sit in front for general questions regarding the process or the substance. Does the Council have any generalized questions for any of the people in front of us? I will start then. One of the recommendations in Mr. Ezer's report was clear definitions and the issue of definitions was also addressed by the stakeholders group. So in terms of definitions and I have prepared some proposed amendments which I will be circulating at a point and in developing them, that was the question. Transient vacation rentals, today in the CZO, are defined as multi-family units or units in a building for multiple units that are for transient occupancy. The way I am trying to frame it or I see as logical and I would like your input on it is transient vacation rentals are units for transient occupancy and they include three (3) kinds: multi-family transient units, bed and breakfast, and single family transient units. Is that a logical breakdown in general?

IAN COSTA, PLANNING DIRECTOR: I think it is.

Ms. Yukimura: Can you state your name?

Mr. Costa: Ian Costa, Planning Director.

Ms. Yukimura: Thank you.

Mr. Costa: Those are the three (3) types that have been identified. The multi-family being identified previously in the CZO and through our process. The bed and breakfast and single family vacation rentals as well.

Ms. Yukimura: Mr. Ezer?

Mr. Ezer: If I just might add. I think there may be some danger in aggregating all three (3) under one definition because I believe you want to treat single family TVR's differently than you want to treat B&B's. They are different animals, they have different profiles and even during the stakeholder meetings, I think it was clear that there was less of a perception of negative impact associated with B&B's than they are with TVR's, but there is still is a desire to want to regulate and the approach that I took was that they would be regulated differently, so it may be better to have different definitions.

Ms. Yukimura: I understand the need to regulate them differently and I am thinking in the bill that we would do that, so that is why they would be part of an overall category. They are transient vacation rental, but we would then separate it in three (3) different categories and regulate the three (3) different units differently, so we would regulate bed and breakfast differently from single family transient vacation rentals from multi-family transient vacation rentals. So the potential is to define transient vacation rentals as a single family or multi-family dwelling unit. That is distinguishing them from hotel rooms which are not dwelling units which are provided over the course of one or more years and that is language currently in the bill. I don't know its source, but I am thinking that it requires one to show that its use is over a course of time to transient occupants and I believe we need a definition for that in the CZO. I don't think that is defined. For compensation with the duration of occupancy less than and I am going to be suggesting 180 days. Right now, the bill suggest 30, but actually the transient accommodation law uses 180 days for distinction for a transient accommodations and I think the group, the stakeholders group suggested 180 days to be consistent with the law. So that is... those are just up for comment or input from any of you. Any comments?

Mr. Costa: I think we just follow the 30 days because that is how it is currently written and it can be viewed as more restrictive I guess if you will than the 180 days.

Ms. Yukimura: Actually, 180 days is more restrictive because it covers more... what if you rent it for one month? Is it not a single family... excuse me, two (2) months, is it not a single family vacation rental? Where do we put, you know, rentals of that length or three (3) months? It is not a long term rental.

Mr. Costa: Although I am sure there are cases in long term rentals where there may not be... where that might be common depending on the tenants and...

Ms. Yukimura: Well, the Honolulu definition of transient exempts: non-paying guests of families occupying the unit, clients and health care facilities, full-time students, employees who receive room and board as part of their salary of compensation, military personnel, low income renters, receiving rental subsistence

for duration shorter than 60 days and overnight accommodations provided by non-profit corporations for religious, charitable and educational purposes where no rental income is transferred. So it tries to take out those situations and then make it where it is for compensation, it is 180 days.

Mr. Costa: Okay, just in general, I would think that it would be prudent to be consistent with the State definition.

Ms. Yukimura: Okay, that is something that we can still grapple with, but I am just asking for any thoughts or things that came up during the process of discussion.

Mr. Ezer: We looked at a lot of regulations from across the United States. You are not struggling with this issue alone. I think resort towns... whether they be on the East Coast or in Colorado or in California, are all concerned about this problem and how it affects their permanent residents. 30 days seems to be one of those universally accepted number that other jurisdictions use and who knows why that is and it is. Whether the up and down side between going between 30 and 180, I would have to think about that before I could give you a reason kind of a...

Ms. Yukimura: Well, and it is something for all of the public to think about as well in terms of, you know, what is the best place to draw the line. I appreciate that you did collect a lot of the information from the other jurisdictions.

Ms. Kent: We asked this question. Under the current CZO, a non-conforming use will cease if not used at least one day in one year. Assuming that grandfathering is established, do you agree that there is a public policy interest in requiring active use for the following amounts of time in one year, and we asked for one day, 30 plus, 60, and 180 days. This is under question 8 in attachment A.

Mr. Furfaro: Actually, I just asked Jade to pursue that, so we are at a little bit of a disadvantage right now Elizabeth.

Ms. Yukimura: I apologize. I think... receive the report, but that may not have been, so we are making that available.

Ms. Kent: So do you want me to go through those? Okay, so for one day... one was, people loved it--the best thing since sliced bread, and five (5) is that they didn't like it. For ones, there were six 1s, one 2, two 3s, three 4s and one 5, so one person said that they would block it. For 30 plus days, this was the one that had the highest level of agreement. There were seven (7) people who said it was great. There was a one, three 2s, two 3's, zero 4s and one person who was a 5. For 60 days, there were four 1s, three 2s, zero 3s, four 4s, and one person who was a 5. Finally, for a 180 days, there were two people who were a 1, one who was a 2, one who was a 3, one who was a 4, and eight who were 5's.

Ms. Yukimura: So actually what you are talking about is a requirement... the number of days that would be required to be rented in a year, so that a unit would be able to maintain or keep its non-conforming use certificate.

Ms. Kent: I think that is...

Ms. Yukimura: Right?

Ms. Kent: Yes. Thank you.

Ms. Yukimura: I don't know if it goes so much to the definition, but it does go to a very important point which is... because I think the City & County requires 35 days and in a year be rented at least to maintain a status as a vacation rental usage. I am guessing that that is why that even the definition, our current definition of transient vacation rental includes over a period of one year or more. That is kind of the unit by which you judge use, so the stakeholders group came down on what was it, 90 days or 60 days?

Ms. Kent: The highest level of consensus. There wasn't consensus, but the highest level of..

Ms. Yukimura: There wasn't 100% agreement on any number, but...

Ms. Kent: Right.

Ms. Yukimura: And the highest level of agreement or happiness I guess would be on 30 plus days and the lowest level was on 180.

Ms. Yukimura: Okay.

Ms. Kent: As I read those numbers. I group together... basically, if they were on their temperature, if they were 1 through a 4, then that is agreement and the most people were ones under 30 plus.

Ms. Yukimura: Right. I think Ms. Kent is describing a system where people can register the intensity of their feeling, right?

Ms. Kent: Uh huh.

Ms. Yukimura: And then that helps you get to where the general agreement is in the group. I think, though, that the numbers used in this case are how... the minimum required to maintain your status as a non-conforming use... in terms of the definition, it would be what areas or what units you would include as a transient vacation rental for regulation. Okay, other questions?

Mr. Furfaro: I have one. Maybe I am getting ahead of myself here, but when we talk in terms of bed and breakfast definition, we talk about an owner occupying the unit as a host to care and service for the guest as well as maintaining the rules. I am looking... I don't know where this definition piece came from, whose report, but this references a minimum of four (4) rooms and up to 20 rooms. That seems awfully excessive in a definition.

Ms. Yukimura: As bed and breakfast?

Mr. Furfaro: As a bed and breakfast. Could somebody help me understand where this came from?

Mr. Ezer: Councilmember Furfaro, I believe what you are holding up is a report prepared by the American Planning Association in a document I think they call, used to be the zoning digest, but it was a small pamphlet maybe a half a dozen pages or less specifically written about bed and breakfast operations. I think one of the things that they were showing is truly the vast number of different ways that you can come about approaching a definition for this or anything else. I don't agree with that.

Mr. Furfaro: Okay, I just want to make sure that, you know, we are getting material here we may not necessarily agree with, and I know in a presentation that I made to the stakeholders group, after five (5) rooms, it was considered a boarding house and not a bed and breakfast.

Mr. Ezer: I recommended that the limitation on the number of rooms associated would be two (2) and that would be the County acceptable limit for Kaua'i. Again, I go back to my earlier comment. If you do make a decision that you want to regulate, then you have to come to some common agreement on how you are going to regulate, and what works in Durango, Colorado or Palm Beach, Florida or Carmel, California isn't necessarily going to work for Kaua'i.

Mr. Furfaro: Thank you for agreeing with me, but, you know, you are the contracted planner that was going to make some recommendations for us, so what I am hearing from you although we are looking at these national terms, it was also an opportunity to look at the American Hotel and Motel Association and say, hey, once you get over four (4) units in a bed and breakfast, they really call it a boarding house. This is for longer stays, but related to business travel and so forth and not vacation. So do we have, at this point, in your recommendations or from the Planning Department, something that puts a suggested cap? It is in the report as two (2) for bed and breakfast?

Mr. Ezer: Yes.

Mr. Furfaro: For bed and breakfast?

Mr. Ezer: Yes.

Mr. Furfaro: I appreciate you clarifying that for me. Thank you very much.

Ms. Yukimura: Thank you. Any other questions? If not, I am going to dismiss and thank the speakers and consultants who have come. Thank you very much for the work you've put into this very long process. I am hoping that the Planning Director will stay on. We are going on into a 10 minute caption break and then when we come back, we will take input from the audience and then have a discussion within... amongst Planning Committee members. Thank you very much.

Chair Asing: Councilmember Yukimura, the two (2) figure just bothers me.

Ms. Yukimura: We are not adjourned yet and apparently Council Chair has a question and we have two (2) minutes, so if you could...

Chair Asing: The two (2) number bothers me. I guess it bothers me because... what is the difference between two (2) and three (3) and two (2) and four (4) and why cut off at two (2) and what are you going to do after that? You going to call it something else and how we are going to handle that?

Ms. Yukimura: That is a whole line of questions that we would have to address in regulating B&B's. One of the suggestions...

Chair Asing: It is going to be a monster.

Ms. Yukimura: ...that has come up is that maybe the Council just address single family vacation rentals and then do B&Bs as a separate bill which is something that I think we should talk about because as you raised it...

Chair Asing: It is just that I stayed on Maui and I just happened...

Ms. Yukimura: You have to speak in your mike.

Chair Asing: No rooms available, I had to stay at one and I think it had about six (6) rooms and I just felt that is what it was and then when I hear the figure two (2), I am saying, what do we do with the sixes and the fours and the threes and what do we call that and what name do we give that?

Ms. Yukimura: We will have to continue and we will continue this discussion. I think the Chair has raised good questions. I am sorry that the time is out right now. You can stay for another 10 minutes and come back and address it though. Thank you very much. We are going to recess now for 10 minutes.

There being no objections, the Committee recessed at 11:04 a.m.

The meeting was called back to order at 11:20 a.m., and proceeded as follows:

Ms. Yukimura: I am going to invite Mr. Ezer back to the mike just to finish up or give any response that you might have to the Council Chair's question that we left off on and then I will open it up for other input from the public.

Mr. Furfaro: May I ask one question Madam Chair? Will you be having a sign up list or... I mean it is a pretty sizable group today.

Ms. Yukimura: Okay, why don't we do that, thank you.

There being no objections, the rules were suspended.

Mr. Ezer: Chair Asing...

Ms. Yukimura: Can you state your name again?

Mr. Ezer: For the record, my name is Scott Ezer. The number of bedrooms question, how many really is workable for a bed and breakfast. We considered... we are looking at neighborhoods and what we were trying to do was keep a cap on the extent of the impact within any one neighborhood. Probably one of the largest issues relating to B&B's that we heard complaints about were the number of cars in the neighborhood and I think you can make an assumption that if you have a number of different rooms in a house being rented out individually, each one of the rooms being rented will probably have an automobile associated with that room. When you start getting into higher number of bedrooms, the number of parking requirements is quite high. We were looking at something in trying to keep with Kauai's rural character and two (2) is no better. There is nothing scientific about two (2). It was an attempt on our part to identify what was appropriate for the County. During your discussions, you think three (3) or four (4) may be more appropriate, so be it. It is... you have to understand and you know better than I what your community is like and if you want to establish a higher cap legally and for any other reason, there would be nothing wrong with doing that.

Chair Asing: Thank you.

Ms. Yukimura: Thank you. Any other questions? If not, thank you very much Mr. Ezer. We will now take testimony or comments from the public and our staff is circulating sign up sheets for any of you who wish to testify, so the first person is Scott Lindman.

SCOTT LINDMAN: Good morning. I am Scott Lindman from Hanalei and I wrote a letter because it is easier to remember what I want to say. Dear Committee Members, I am writing to voice my approval of the ordinance to amend Chapter 8 of

Kaua'i County Code 1987, relating to the Comprehensive Zoning Ordinance (CZO). The fact that not all visitors wish to stay in a VDA area as I (inaudible) given the number of visitors who occupy vacation rentals or B&B's outside of these areas. It seems that many of our visitors like to enjoy a bit of the local atmosphere that these accommodations provide. In some of our neighborhoods, it seems that things have gotten a bit out of balance perhaps over time; this ordinance will correct this imbalance. I applaud your vision in creating a mechanism... I think it is paragraph 8, anyway, that would allow through issuance of a use permit, vacation rentals in non-VDA areas to be created and permitted in the future. My thoughts are not so much concerning the visitor, but concerning the home grown residents. By adhering to the standards in the ordinance and obtaining the use permit, local residents would have a chance in participating in a ownership position in the visitor industry. Given the economic realities of life on Kaua'i for a home grown resident... oh wait. Given the economics of harsh economic realities of life on Kaua'i for a home grown residents, the idea that an extra room or house can generate visitor industry income for the family is one that has helped Kaua'i families for years. To continue to allow this in the future for those who wish to enter this field as well as those that already have is commendable. Thank you for your consideration.

Ms. Yukimura: Thank you Mr. Lindman? Any questions? Are you speaking as...

Mr. Lindman: As myself.

Ms. Yukimura: As yourself, individual self. I know you are the head of the realtors association.

Mr. Lindman: I am president, but me today.

Ms. Yukimura: Of the Kaua'i board, but you are speaking as an individual realtor today.

Mr. Lindman: Just myself.

Ms. Yukimura: Okay, thank you. I just wanted to clarify that.

Mr. Lindman: JoAnn, about your thing about that 30 days, we have... my family has several units in resort areas which none of which are vacation rentals, all of which we either live in or long term rent. So if you change it to 30 days in your bill, would that mean that if I have a tenant that has been there for... to 180 days, does that mean that if I have a tenant that moves out after three (3) months, I have to pay an extra 10% tax? Is that what you are saying?

Ms. Yukimura: No. I think if you are doing short term rentals on a regular basis up to 180 days, you would, but if you are having a... do you have a long term lease and that lease is broken or it is...

Mr. Lindman: Usually, I like to rent it month to month, so that I have more control. If they are humbugging, I can get them out easier than if they are not, so if you change it to 180 days...

Ms. Yukimura: And is it a relative or a person working for you or...

Mr. Lindman: No, the one that I am thinking about is just a regular person that rents a house.

Ms. Yukimura: Uh huh. I don't know. I would have to look at the... I think the intention was to align it with the TAT law and I am not familiar with the details of that.

Mr. Lindman: Okay.

Ms. Yukimura: But thank you for raising the issue.

Mr. Lindman: If you make more tax, then it makes it less affordable.

Ms. Yukimura: And you are renting so called long term affor... you have long term affordable rentals...

Mr. Lindman: I don't know if they are affordable. I don't know what the definition is, but I am saying...

Ms. Yukimura: No, no, but generally speaking. I am not talking technically.

Mr. Lindman: Yes, I think they are affordable.

Ms. Yukimura: In a visitor destination area?

Mr. Lindman: Exactly.

Mr. Rapozo: I think we can fix that by the definition of transient occupant as a non-resident.

Mr. Lindman: Our intent is to have a long term rental, but sometimes they move out.

Mr. Rapozo: Right, so to protect the month to month renters, you just further define the... what a transient occupant as opposed to... because then many of the landlords have month to month for that specific reason. It is easier to kick them out if they don't work out.

Mr. Lindman: Exactly.

Mr. Rapozo: So if we define what is a transient occupant meaning a non-resident visitor, then you are covered. So that is a good point and...

Ms. Yukimura: That is true. It is a dwelling unit which is not the person's primary residence under the Internal Revenue code.

Mr. Rapozo: Yes, so you would not fall under the transient accommodation... you don't pay TAT and I think you are renting the... you are renting to local people.

Mr. Lindman: Yes.

Mr. Rapozo: So...

Ms. Yukimura: Thank you for raising that, so that we can make sure our language addresses it in the proper way.

Mr. Lindman: And then on my letter, I just like to say that the way the bill is written now, I am in accordance with it, because it allows people to grow economically (inaudible)...

Ms. Yukimura: Okay, thank you. Would you give us a copy of your letter? Thank you. Our next speaker is Bruce Pleas followed by Jeff Avery.

BRUCE PLEAS: Bruce Pleas for the record. First to add to Elizabeth's presentation on public participation. The stakeholder meetings were on Hō'iike, all of those were on television, captioned and everything and we also had some radio spots too that we did, so we made a really good effort to try to get the people out there that couldn't make it the meetings to be able to see it. Second, I would like to check that you got the written testimony that I sent in yesterday. Hopefully you have that. If not, well, maybe you should find it.

Mr. Furfaro: I have it and I acknowledged that we have it. I think Councilman Rapozo also acknowledged that we have it.

Mr. Pleas: Okay. I also mentioned in there that, yes, the planning... we have budget coming up and Planning Department if this bill passes, we will need two (2) extra bodies to specifically work what this bill has to say and if there is time leftover, they can do other enforcement activities. Also, too, what needs to be written in is penalties is a fine. Usually, the fines are written as a maximum of \$1,000 or a maximum of whatever, so that you have small infractions when people can afford it or not fine exorbitant amounts. I would suggest that you have a... any penalties and fines will be at minimum of say, \$10 per day, so that way, the low people will be covered and you have an open ended on the County government to

whatever maximum you are allowed to fine people. It gives you some teeth to what you are fining, so that some people can afford \$1,000 a day, but if you are fining a million dollars a day, they are going to stand up and say, but I don't think you can do that legally. Let's see. On the rooms, I believe, currently, in a single family and multi-family under our zoning laws, you can currently have five (5) non-related persons per house, people per house. I believe that is an existing ordinance that we have now and that gives you some idea as to where you may go for the amount of rooms you can have for a bed and breakfast and vacation rental. Also, separate bills, at this point, for TVR's and bed and breakfast, I believe, would be a good way to go. We should probably concentrate on TVR's because I think with TVR's and bed and breakfast under the current bill combined together, you will end up with a lot of questions and it is going to take a lot of work and I believe that should be separated and that is it if you have any questions.

Ms. Yukimura: Any questions of Mr. Pleas? I have... well, not a question, but just a response. In the current CZO, our zoning ordinance, under 8-17.6 which is the chapter on transient vacation rentals and timeshares. There is a penalty section which says that for any owner in violation of this article that there will be a fine of not less than 500 and not more than \$10,000 for each offense and that if the person fails to correct the violation within one month, then the person shall be subject to a new and separate violation for every day of the violation... that the violation continues to exist. This is a penalty of between \$500 and \$10,000.

Mr. Pleas: Yes, and that could be what the enforcement people that the Planning Department could have would be able to identify and collect from them which would probably pay for more than their salary.

Ms. Yukimura: Well, and there is also registration... not a registration, but a permit fee. Thank you.

Mr. Pleas: Okay.

Ms. Yukimura: Mr. Jeff Avery.

JEFF AVERY: Good morning. Yes, it is still morning. For the record, my name is Jeff Avery representing myself. I have a property, one property, single family home on this island that I have been vacation renting for quite a while. My only... I generally support this bill as I mentioned the last time I spoke. I think it is a good idea, but something was said this morning that has been a little concerned and I think it was Mr. Ezer, is that how you say his name? He said about taxes and I know that there has been discussion of taxing property that is rented as a vacation rental at a commercial rate. I think that would be really tough on people because if you have a hotel, for example, that has hundreds of units, very broad revenue base. Single family home has one unit right now revenue based, so if you start taxing at a very high level, that is going to force that person possibly to have to sell that property and that is my major concern is if you overtax a single family home even if

it is rented as vacation rental, they may or may not be able to continue to own that property and I think it would be a shame because a lot of these properties, if they are sold, they would not go into a long term rental pool. They would go into vacant housing is basically what they would become. Somebody's second or third home that they leave vacant except when they are using it. So that is my 2 cents on taxes.

Ms. Yukimura: Thank you. Any questions? Councilmember Furfaro?

Mr. Furfaro: Jeff, how many years has this home been in your family?

Mr. Avery: Well, my grandfather moved to Hanalei around 1900, so it has been about that long.

Mr. Furfaro: And how long have you been vacation renting your unit roughly?

Mr. Avery: About 32 years. It may be a different number than I said last time, but it is around there.

Ms. Yukimura: Give or take.

Mr. Avery: Give or take a few years.

Mr. Furfaro: Thank you very much.

Ms. Yukimura: Councilmember Rapozo?

Mr. Rapozo: So your position is that your taxes should remain at residential?

Mr. Avery: That is my position, yes. They are already high enough, so it is... sometimes it is difficult to keep raising rents to cover the increases in taxes every year.

Mr. Rapozo: Okay, and I am not sure what the difference in commercial versus your rate is right now.

Mr. Avery: I don't know exactly what it is either, but there is a... I think there is a fairly significant difference. I know it is a popular idea to use to do that to some sense discourage vacation rentals, but it might not always have the result that you want. In other words, you might not end up with a property that now is a long term rental pool or owned by a local resident.

Mr. Rapozo: Right, but I guess the argument is that it is a commercial operation, it is a commercial activity and...

Mr. Avery: Well, any rental is a commercial activity.

Mr. Rapozo: Right, and that is another argument.

Mr. Avery: So if you are going to tax everybody as a commercial activity that is renting their house, that is one thing, but if you are going to single out different categories of rentals for different rates, I think that is another...

Ms. Yukimura: You don't think there is a distinction between \$1,000 a night versus a \$1,000 a month or \$12,000 a month rent for long term?

Mr. Avery: Well, if you are renting out your personal property, I would say that it is only a question of the amount of income that is coming in, but it is still the same kind of activity. For example, if you rent on a vacation rental basis and somebody cancels, you don't have an opportunity to re-rent that generally speaking because they will cancel before other people are ready to make reservations, whereas, at a commercial activity such as a hotel, you spread your expenses out over a large number of units, so one cancellation doesn't affect you.

Mr. Rapozo: But the tax bill on a hotel is much larger as well.

Mr. Avery: I realize that.

Mr. Rapozo: I mean, it is all relative. I mean the proportions are the same. I think it is apples and oranges when you are comparing a hotel versus a timeshare or a long term versus a vacation rental because... I mean, it is a choice that you make when you go into vacation rental.

Mr. Avery: If it is apples and oranges, then they shouldn't be taxed at the same rate should they?

Mr. Rapozo: What do you mean?

Mr. Avery: You just said that it is apples and oranges between a hotel and a single family...

Mr. Rapozo: It is, it is.

Mr. Avery: So they should not be taxed...

Mr. Rapozo: Well, we are not taxing the resort. I mean, that is a different class in itself.

Mr. Avery: I don't know what a proposal would be. All I am bringing up is that if you tax a single family home at a much higher rate because it is rented as a

vacation rental, you might end up getting a result that you don't really want (i.e., that property is longer affordable for that owner). They sell it someone who does not put it into the rental pool, long term rental pool and does not live here and those are couple of your goals. All I am saying is that if you raise the tax rates on that kind of property to something that is a commercial rate, I think you are going in the wrong direction.

Mr. Rapozo: Well, and the question was if you felt it should be residential because I think the recommendation from the consultant was, we set up a new tax rate that is close to or equal to commercial and I am asking you if you feel it should be residential. Because I think what Councilmember Yukimura said, I think it is right on point is that there is a huge difference between \$1,000 a night versus \$1,000 a month.

Mr. Avery: No, I agree with that.

Mr. Rapozo: The impact to the neighborhood is a lot different as well and to the argument about if you had to sell your vacation rental, yes, possibly, it could be to a person that will keep it vacant, but it also could go to a resident here that could afford it and live in it as a primary residence. So there a lot of variables, I think, and that is what I think we are trying to figure out is what is fair. Do you think we should create a new tax classification for vacation rentals that is close to or equal to commercial?

Mr. Avery: I don't think it should be close to or equal to commercial, no. You could create a new tax structure if you wish, but I think that to encourage people, what you are trying to do, it seems (inaudible) people not to vacation rent in some cases.

Mr. Kouchi: I guess I also disagree with the consultant on commercial, but, really, two (2) weeks ago, I said that... I believe going forward (inaudible) vacation rentals should be in a visitor destination area because they are visitor in units and what is the appropriate category for a visitor accommodation is in the hotel and resort class. But it doesn't matter what you want to call it because the rate for hotel and resort is the same as commercial and it is \$7.95 for the building, \$6.95 for the land versus \$4.30 for the building and \$4.00 for the land in residential, but, you know, I get all of this testimony that tells me about what visitors want and that this is filling a need for visitors. Now when I want to treat you like a visitor accommodation, now you are telling me that you are not and you shouldn't be. You either are or you are not and if we are going to permit tourist to stay here and vacation rent and accommodate visitor needs, then shouldn't it be taxed like any other visitor accommodation by tax rate? My conclusion is yes.

Mr. Avery: Well, I don't completely agree with that because one of the reasons people use vacation rental is so that, as an owner, you have an opportunity to use the property yourself if you don't live there, okay. So it is a little bit different

than a strictly commercial operation such as a hotel that is why I don't think that it should be... that is another reason I don't think it should be taxed at a hotel/commercial rate.

Mr. Kouchi: Condominiums are taxed the same way today. Owners buy a unit and choose to use the unit for a portion of the year and the rest of the time, it is rented out to visitors, but they are by definition in that hotel and resort class or the apartment class, they all pay the same rate, so you are still asking to be treated differently than any other visitor accommodation that we have by tax rate policy. All I am looking for is that if I am going to acknowledge that you can, in fact, operate that we are consistent in how we treat all of our visitor accommodation units.

Mr. Avery: Well, if you are consistent, one can't argue too loudly, but the idea of being taxed at a commercial rate from what I hear today and I have heard it before is... I think that would raise my tax rates considerably, right, by about 30% I think you just said, 50% actually.

Mr. Kouchi: Double.

Mr. Avery: That would be tough to take.

Mr. Kouchi: Double and 75% per thousand.

Ms. Yukimura: I actually think that your situation may be better addressed by a tax policy that I suggested a while back because of people like yourselves to have owned it in the family for many, many years. There are quite a few of you. Some of you living here, some of you absentee, but still coming back regularly with this idea that if you are willing to dedicate and say that you are not going to sell your property for 10 years, then you get a lower rate. This is separate of whether the issue of vacation rentals. We may decide as a policy matter, no more vacation rentals unless you are grandfathered in, but you would have a choice of even discontinuing vacation rentals if you didn't have to pay your taxes. If you didn't need it to pay your taxes and the idea was, if you are willing to dedicate that you don't sell it for 10, 20 years, then you get a lower... then you get a residential tax rate.

Mr. Avery: Well, that is a good approach. I mean, that is one approach that you could take.

Ms. Yukimura: Or, you know, we may take it, so we defer the taxes until time of sale. I mean, there are a lot of different ways to do it, but I know that there has... I have been really trying to see how to address situations like yours because I know there are many long term people who got the property when it was very cheap. It didn't mean that you were rich when you got the property.

Mr. Avery: It didn't in my case that's for sure.

Ms. Yukimura: For most people, yes, if you got... if your family got it in 1900, but the rising taxes have really made it difficult for you to hold onto your property and renting it as a vacation rental has helped you pay those taxes.

Mr. Avery: Uh huh, that is correct.

Ms. Yukimura: And then you see...

Mr. Avery: And if I see the taxes double, I mean... no, but I think it would be pretty tough to continue.

Ms. Yukimura: A tax rate doubling on an assessment... assess Hanalei Bay assessment is very significant.

Mr. Avery: Well, that, in itself, is enough... has driven it up a lot if you double the rate on top of that. Now you've really increased your cost, so...

Ms. Yukimura: The points raised by the Councilmembers across the table or us being consistent with vacation rentals in our tax policy whether they are hotel or timeshare or whatever is also the balance that we have to keep as well, but thank you for your input and any further questions of Mr. Avery? If not, thank you very much.

Mr. Avery: Thanks.

Ms. Yukimura: The next speaker is Louie Abrams followed by Chris Moore.

LOUIE ABRAMS: Good morning Councilmembers. Louie Abrams speaking for myself. Your General Plan distinguishes a difference between single family or single vacation rentals or single B&B's as opposed to two (2) vacation rentals or two (2) B&B's on the same property, so you need to take a look at that. In looking at the definitions in the CZO relative to dwelling units, single family detached, single family attached, multi-family dwellings, you need to recognize and I am not sure a single family attached goes with two (2) dwelling units for two (2) families. So if you are going to address single family detached, I think that you need to clarify also attached, so that there isn't any misunderstanding relative to the word single family because single family attached actually means two (2) families, so it is a little confusing under the CZO. And perhaps the Planning Director or maybe it is the Building Department could provide some input on that. Mel, you mentioned the transient occupant as a way to go ahead and define the difference under that 180 days. How do we now go ahead and determine who is a resident and who isn't? The last time I visited that question, someone could go ahead and register to vote here in this County if they intended to be a resident. They don't need to be there for

(change side of tape)... the biggest area that you are going to need to work on has to do with the non-conforming uses. You have a Section 8-23 which basically defines non-conforming uses. It basically says that you can be non-conforming and continue that non-conforming for as long as the use is there, so long as you don't discontinue it for one year. So that means that you could do it for 364... not do it for 364 days and do it for one day and you would still fall under our CZO right now relative to non-conforming uses. I think that you need to understand, I guess, I would see that is for a number of people who would be trying to register as non-conforming units as to how that would apply. You have an occupancy requirement. You also have a determination right now where you are suggesting that they need to be in business for anywhere up to 180 days where your CZO says, at that point, that you are non-conforming at the time the law changes. Henceforth, they don't define what continues it, it just simply defines what you would discontinue it as and they leave 365 days as the threshold, so thank you very much.

Ms. Yukimura: Are you complete with your comments?

Mr. Abrams: Done.

Ms. Yukimura: Any questions of Mr. Abrams? Councilmember Rapozo?

Mr. Rapozo: You talked about the... like occupancy rate, the bill does state a minimum of 90 nights of usage in the previous year, is that something that you think would work?

Mr. Abrams: Um, not within the CZO right now if you are defining it as a non-conforming use.

Mr. Rapozo: But what kind of occupancy rate you would...

Mr. Abrams: I am suggesting that you follow the CZO and the CZO basically says, one bed. Well, it doesn't even say one bed.

Mr. Rapozo: Right.

Mr. Abrams: It implies that one bed would do it, so if you are going to do that, okay, and have this pre-existing use and I realize that there is some credibility to try and figure out who is a vacation renter at that time who would qualify for a non-conforming use. Right now, our CZO addresses that as all you need to do is be doing it for one day and if the law changes the next day, you are non-conforming. Thank you. One last thing. Kaipō, the VDA maps are on the zoning maps and they are not in the General Plan maps. The General Plan maps don't include all of the areas that are in the VDA, so when you do amend those, the bill calls for it to amend the General Plan maps and they are not there, so you will need to change that.

Ms. Yukimura: Thank you. Question Councilmember Kouchi?

Mr. Kouchi: Well, I guess Louie, though, based on what Jeff just testified to, it would be rather difficult to have a vacation rental and do the activity for one night and be able to meet the financial obligations tax wise or fee wise that, you know, are associated with owning a property that would carry that kind of value if you had been doing it before.

Mr. Abrams: Yes, I agree.

Ms. Yukimura: Other questions, comments? If not, thank you very much Mr. Abrams. The next speaker will be Chris Moore.

CHRIS MOORE: Aloha Councilmembers. My name is Chris Moore. I am a bed and breakfast operator in the Po'ipū VDA. I am on R-10. We have nine (9) vacation rentals and a single family dwelling that we operate as a bed and breakfast with four (4) suites and four (4) bathrooms and no one residing in that residence. My comments are relative to specifically bed and breakfast and it is clear to me as an operator that the bed and breakfast bill at this point... the criteria is really aimed at bed and breakfast in residential areas where you and I live. It really doesn't address a more commercial style bed and breakfast and we have concerns about that because we don't want to get thrown in the mix and then what do I do? I really think, right now, the bed and breakfast as it is defined in their requirements would be better called transient rooms for rent. In that case, two (2) rooms makes some kind of sense. So I brought this to your attention by written testimony and just want to bring that up again that we really, as a commercial operator, need to be considered. We are paying commercial property tax a lot of money. I pay a lot of payroll, health insurance, all those commercial expenses throughout the year. I think probably the most variable comment that I heard this morning was considering taking bed and breakfast out of this bill or perhaps redefine bed and breakfast and write a bill for commercial (inaudible) bed and breakfasts... call them inns or call them bed and breakfast, but clearly, we could define those more simply when they are in the commercial or the VDA zone. That is really the extent of my comments. I can't get into every little detail, so thank you for the opportunity. I guess one final comment. I am sorry. Earlier today testified... one of the graph showed 30 or 31 bed and breakfasts in Po'ipū. There certainly aren't that many in Po'ipū. I can pretty much name them all on one hand, so I don't know where that is...

Ms. Yukimura: Thank you. Questions? Councilmember Furfaro?

Mr. Furfaro: Yes. Chris, thanks for being here especially in your... I just want to make sure I understand. You are in R-10 and you are in a VDA area?

Mr. Moore: Correct, in Po'ipū.

Mr. Furfaro: That is Po'ipū and that is not Kōloa, that is Po'ipū?

Mr. Moore: Yes.

Mr. Furfaro: Okay.

Ms. Yukimura: I have a question. You are in a R-10 zone, VDA area with one B&B and nine (9) vacation, single family vacation rentals?

Mr. Moore: Multi-family, so we have a triplex, fourplex and duplex that is nine (9) multi-family vacation rentals and then we have a large single family home that we operate as a bed and breakfast and the basement portion of that is our back of house offices and laundry and that sort of thing.

Ms. Yukimura: So you have a triplex, a duplex... 3, 2, and 4. I am sorry, the triplex is one condo unit?

Mr. Moore: No, the triplex is three (3) units, fourplex is four (4) units.

Ms. Yukimura: They are attached...

Mr. Moore: One bedroom in that case or three (3) attached like a little apartment building.

Ms. Yukimura: Okay, and they are present... they are considered a multi-family transient vacation...

Mr. Moore: Well, I assume that is what they are considered.

Ms. Yukimura: Right, so in a VDA area and they are not bed and breakfast, so at this point, you don't need any permits?

Mr. Moore: That is correct.

Ms. Yukimura: With respect to your single family B&B in a VDA area, what is Planning's ruling on that? That you still need a...

Mr. Moore: I am understanding that I need a use permit, but it is not real clear.

Ms. Yukimura: Okay, and you... it is your feeling that the issue of bed and breakfast would be better dealt with in a separate bill, than mixing it with a single... with the regulations for single family vacation rentals.

Mr. Moore: In light of the direction that this bill is taking, yes. Well, I watched it since the fourth stakeholder meeting on and it has always maintained as

two (2) bedrooms and it makes it sound like a home stay bed and breakfast is in the industry what it might be called and that it is not a commercial operation and, sure, a family does live there. In our case, we are proud of the fact that family doesn't live there... this is a boutique inn and it is for guest only and they enjoy all the common areas of the house which does not include a kitchen. The kitchen is back of house and that is for staff use.

Ms. Yukimura: So actually, you wouldn't even qualify under the definition... the proposed definition of bed and breakfast because it says that the owner lives on the property on in the dwelling unit.

Mr. Moore: Correct.

Ms. Yukimura: Okay, so I am not sure it would even be called a B&B.

Mr. Moore: Well, and that is a good point and (inaudible) call ourselves a motel and I don't even know what those standards are.

Ms. Yukimura: Okay.

Mr. Moore: We market ourselves as a bed and breakfast.

Ms. Yukimura: And so how many guests are accommodated in this bed and breakfast that you call...

Mr. Moore: Up to eight (8).

Ms. Yukimura: Eight (8) and you said that there is no kitchen, but they provide breakfast?

Mr. Moore: Yes, and that is based on two (2) per guest rooms, so there are four (4) guest rooms.

Ms. Yukimura: Okay, alright, thank you for bringing your particular situation to us because we need to know what the various forms of vacation rentals are taking on this island in order to know what the best way is to regulate them... I mean, we only, in my mind, have the right to regulate when there are conflicts or impacts on other property owners or on the community at large, you know. I am aware that there is a whole variation of uses in the category of either B&B or transient vacation rentals. In fact, the General Plan says that we need to match the regulation with the intensity of use and impact. So that is one of the things we... and we need to look at cumulative impact as well. So it helps us to know what is out there and thank you very much.

Mr. Moore: Thank you.

Mr. Furfaro: Can I add something?

Ms. Yukimura: Sure.

Mr. Furfaro: So being in residential 10, the residential part, you are covered by this bill. The units of 10 per acre depending on quad, triplet or duplex is fine, but this bill does imply that you would have to move for non-conforming use permit.

Mr. Moore: Right, so at that point, then as an owner, I decide, would we maintain... I guess if we could get approved the four (4) bedrooms, we can keep it that way or otherwise it would go into vacation rental... this dwelling, I would turn it in to a vacation rental.

Mr. Furfaro: And, of course, the other one is an occupant on the facility.

Mr. Moore: That is tough on us and one of the reasons it is tough and we certainly are available to our guest 24-hours a day, but we are giving up rentable space, valuable space to house a resident manager.

Mr. Furfaro: Well, Chris, again, thank you, but that is how I do read the bill, so the end you see would be required.

Mr. Moore: Right.

Ms. Yukimura: I have one more question. You have a resident manager living in the B&B?

Mr. Moore: No.

Mr. Furfaro: Living elsewhere.

Ms. Yukimura: Outside?

Mr. Furfaro: With response to the guests.

Ms. Yukimura: Yes, so you already have a 24-hour...

Mr. Moore: We have an MOD type of situation and all guests have their own phones. This has gone on prior to my ownership in 1999. The original owner started in 1979 and this has gone on that long.

Ms. Yukimura: What did you say, you have an MOD?

Mr. Moore: Manager on duty.

Ms. Yukimura: Oh, excuse me.

Mr. Moore: That was for Jay.

Mr. Furfaro: Or anybody in the military.

Ms. Yukimura: Not dog on duty, huh?

Mr. Moore: No.

Ms. Yukimura: Okay, thank you. There were no more questions. That is all that we have in terms of sign in sheets. Is there anyone else who wishes to testify? I see Mr. Mickens and Ms. Robeson following and Mr. Taylor after that.

GLENN MICKENS: Thank you JoAnn. Just a short comment. I believe that both Ken and Scott touched on this. When they said that without any enforcement mechanism in place, any ordinance or law you passed regarding these TVR's is worthless. JoAnn mentioned the fining schedule for violations, but, again, without enforcement, it is just an exercise in futility. I would suggest that you put the enforcement mechanism in place first, no matter what decision you happen to make and then go after the problem. Thank you JoAnn.

Ms Yukimura: Thank you. Anymore questions?

Mr. Furfaro: I have something for Glenn. A very good point, but, you know, if you use the current foundation of the funds and so forth for the discrepancies, you know, ultimately when you regulate this, the end results if you are issuing permits for people who do business and they don't comply, just remove the permit, then they are very illegal and then you can pursue them in court.

Mr. Mickens: But the point... you get the point that I am saying that...

Mr. Furfaro: I get the point.

Mr. Mickens: Your enforcement mechanism no matter whether it is this or anything else, it needs to be in place first.

Mr. Furfaro: Glenn, what I am saying, if you can send a fine, they don't pay, you send a fine, they don't pay, you can send a fine, they don't pay.

Mr. Mickens: Right.

Mr. Furfaro: That is an enforcement issue, but when you actually physically take away a permit and just take them to court, there is a lot of bite and maybe that is something that should be here. After the third violation, you lose

your permitted... your regulated permit or whatever we end up with.

Mr. Mickens: That is a great point. That is a great point Jay. I hope that for particular enforcement you are mentioning is there to be able to do it, but so many of the times, it is just, you know, hey, whether your property tax or what, there is not enough people to go around and check out the...

Mr. Furfaro: But I think you agree with me. If we end up with something that issues a regulatory permit and they ignore the enforcement and you take away the permit, you clearly have a case for prosecution.

Mr. Mickens: But you are saying, they take away the permit. Who takes away the permit?

Mr. Furfaro: Well, whoever we do. I mean whoever we decide is the enforcement agency.

Mr. Mickens: Right.

Mr. Furfaro: And if we have people that ignore these things, put a little bit more in it and you get a little more compliance, you have an opportunity to lose a benefit and a privilege that is now regulated by an ordinance.

Mr. Mickens: I agree. Thank you Jay.

Ms. Yukimura: Thank you. I think Mr. Taylor.

KEN TAYLOR: Chair and members of the commission, my name is Ken Taylor. I would like to talk on a couple of issues. Not only the taxes and the enforcement... I think, again, enforcement is the meat of the whole issue and I believe that this conversation that went out, I think is a very important part of this. But one of the issues and concerns that I have as seeing some of the illegal units in my neighborhood is that the homeowners are also taking homeowner exemptions which I think is incorrect when you have a vacation rental associated with the property, so in enforcement activity, those things need to be looked at also. JoAnn mentioned earlier about a 10 year tax special rate. I think that is a good idea. In California, we had situation similar to that for agriculture and it was rolled over every year, so that every year, you had 10 years and if you wanted to opt out at any point, you had a 10 year process of paying the regular tax rates before you were able to get out or pay a lump sum at the time that the decision was made and I think that concept would be very good for people that are having these problems. After the last meeting and hearing discussion about why people stayed in vacation rental units and the last couple of weeks, I've spent a lot of time tracking down tenants and the facilities around my home and asking them why they made the decision. Every single one of them says that was the cheapest way to be here. There was no wonderful feeling of being with a family or anything else. It was strictly economics

and where does that put their spending situation if they are really so tight budgeted to be here. Does that free them up to spend money elsewhere in most of these places that are illegal? They have microwaves and toaster ovens as kitchens with a small refrigerator and sink and so on which makes it possible for them to eat in most of their meals. I would imagine that probably only one or two (2) meals are actually eaten in restaurants here on the island while they are here for a week. So where is the benefit to the economy? They are renting a rental car that all the money goes off island. They are using up the road space and everything that is costing the taxpayers a lot of money to wish we could resolve the problem.

Mr. Kouchi: Not if they are eating at home.

Mr. Taylor: Well, if they are eating at home, yes. Well, they are out during the day doing other things and they are home eating, I am sorry. Eating is not the only issue that is...

Mr. Kouchi: Safeway, Foodland, Big Save, Cost-U-Less would all be benefits. They all employ people who are trying to pay their rent or mortgage, so it is a different kind of spending and certainly those people appreciate the business that they get from vacation and timeshare people in the area.

Mr. Taylor: Right. There certainly some. I don't deny that.

Ms. Yukimura: So Mr. Taylor, your three (3) minutes is up and can you summarize.

Mr. Taylor: In summary, I just want to say that enforcement is the most important issue and eliminate as soon as possible all the illegal units outside of the designated vacation rental area.

Ms. Yukimura: Okay, thank you. Questions?

Mr. Furfaro: May I just share a few comments with Mr. Taylor just if you would permit the time?

Ms. Yukimura: Yes.

Mr. Furfaro: First of all, when we are looking at the tax piece, I think we need to understand that Kaua'i generates about \$15 million of transient accommodation tax. It all goes into the State pot. By a legislative formula, the State then gives us back a percentage and I think Kaua'i is like 14% of the pot after they pay for the convention center. So we get about \$11 million when that comes back as well as the fact of the matter is, Kaua'i our recent period of time and it is very concerning for me. Most of our economy or budget minded operations have converted into interval ownership and timeshare and under the State rules, we have no authority to even apply a conversion tax when these people sell this piece

and it is very important that we understand that there should be, perhaps, something looked at the State level referencing a conversion tax which can then be used for some of the things that you are pointing out, but we have no tax jurisdiction there and I just wanted to point that out. Thank you Councilwoman.

Ms. Yukimura: Thank you Councilmember Furfaro. Mr. Taylor, just one question, you say that there are people taking homeowner exemptions on units that are being used as vacation rentals?

Mr. Taylor: I have a neighbor that lives in the house and they have a unit above the garage that they use for vacation rental and the tax roles when you look at it, they are receiving a homeowner's exemption. I don't think that is correct or shouldn't be.

Ms. Yukimura: I think a homeowner's exemption is allowed, but you don't get a homestead classification if you use part of your home for commercial purposes. We will check into that. Thank you. And then your interview of people... you talked to people in vacation rentals or bed and breakfast?

Mr. Taylor: Right, my neighborhood, not bed and breakfast, they are more vacation rentals.

Ms. Yukimura: They are vacation rentals and that the owner is not living on the property?

Mr. Taylor: No, in this case, the owners are all living on the property.

Ms. Yukimura: Okay, so in my mind, that is a bed and breakfast.

Mr. Taylor: Well, no there is no breakfast being served.

Ms. Yukimura: Okay.

Mr. Taylor: Unless they are making it themselves in their toaster oven.

Ms. Yukimura: I mean, you can see that this gets, you know... we start getting into those definitions and they are not that clear cut, but the owners living on property providing guest accommodations... basically, visitor accommodations on that same property?

Mr. Taylor: That is correct.

Ms. Yukimura: And you've talked to people who are renting those places and they've said that they have chosen and this isn't on the coastline, right? It is in them more interior neighborhoods?

Mr. Taylor: About four (4) miles in land.

Ms. Yukimura: And these are the economy visitor units basically that they have chosen because hotels are generally too much for them.

Mr. Taylor: Right.

Ms. Yukimura: And that is interesting because everybody says that the vacation rentals are all on the coast and that may be if we are talking single family vacation rentals, I don't know, but for bed and breakfast, they are not all on the coast. They are in our interior areas.

Mr. Taylor: In my neighborhood, I can point out seven (7) units

Ms. Yukimura: What is the density if you use the definition of number of vacation units to number of long term residences, do you know?

Mr. Taylor: I would have to do some looking into that one.

Ms. Yukimura: Okay.

Mr. Taylor: It...

Ms. Yukimura: If you get that information later, I would be interested in it. Thank you very much. Any further questions? If not, Ms. Robeson?

BARBARA ROBESON: Thank you Councilmember Yukimura. Thank you Councilmembers for being here and hearing this again. January 24th... Oh, Barbara Robeson for the record, sorry. On January 24, 2007, Caren Diamond and I presented testimony on this specific Bill No. 2204. We don't have any changes or any additional comments to make to that, but I am assuming that you are going to be having an amended bill come forth at a future meeting hoping that it would correct those technical and formatting problems that we were very concerned with, so that is all that we have at this time.

Ms. Yukimura: Alright. Any questions? Councilmember Furfaro?

Mr. Furfaro: Barbara, do you have any comments regarding the length of use we talked about this range?

Ms. Robeson: That 180 days?

Mr. Furfaro: 180 days, one day, 35 days...

Ms. Robeson: I am tending to favor the 180 now that I have heard the

discussion about it. It seems that it would capture more of the uses than what was originally proposed.

Ms. Yukimura: I have a question too. Do you have any opinion about separating out the bed and breakfast from the single family vacation rentals?

Ms. Robeson: I think it is an excellent idea. I think the issues are very different. The impacts on the community are very different and based on being involved in the whole discussion over a number of years, the intensity of discussion is about TVR's... it is really not about B&B's, so I...

Ms. Yukimura: You mean, single family vacation...the intensity of discussion and use.

Ms. Robeson: Yes.

Ms. Yukimura: Okay.

Ms. Robeson: And the concerns from the community.

Ms. Yukimura: Alright, thank you very much.

Chair Asing: I have a question for Barbara. Barbara, what are your thoughts regarding the both ag and open not being addressed?

Ms. Robeson: I think it was an omission in the bill, but as presented in our testimony, we proposed deletion of the section in the 2204 that allowed by use permit, vacation rentals outside the residential area, but we also included in that, outside the ag and the open. So if you excluded vacation rentals outside the VDA and if you did not permit those at all, then it should cover the ag and the open as well as the residential.

Chair Asing: You think so?

Ms. Robeson: Yes.

Chair Asing: Okay.

Ms. Robeson: But you might want to close the little loophole there if there is one.

Chair Asing: I think that is a loophole, but if you feel comfortable...

Ms. Yukimura: I have some proposed language to look at.

Chair Asing: I don't think you are going to cover it. Thank you.

Ms. Yukimura: Okay, thank you very much.

ANN CROYDEN: My name is Ann Croyden for the record. I wasn't going to speak today that is why I am dressed the way that I am, but I did want to say something after I heard the discussion about the taxes. You know, I know you guys probably look at me and say, oh, poor you, your house is worth a lot of money, but when we bought it, it wasn't worth that much money. We do pay and I think, JoAnn, you had asked me at one point, how much taxes we paid and we paid close to \$7,000 a year now in taxes. To be taxed at a commercial rate... part of the reason we converted to vacation rental was because we couldn't afford and I would love to tell you that I am not going to sell my house over the next 10 years. My intention is to not sell, but if something happens to my husband, I would have to. Either that or stand to lose my home that I live in with my children, so I don't know. I know that I am one person. I know that it probably doesn't matter in the grand scheme of things, but to double my taxes for me to pay \$14,000 a year even doing a vacation rental, I don't think I could swing it. When we did do long term rentals, we were taxes, you know, the same way, but we pay more than our neighbors that live there as permanent residents. We were already paying a differentiation because we don't live in the house, so people who are next door to us whose property is worth just as much as ours, they are paying \$1,000 and we are paying close to \$7,000. So I feel like we are already carrying a pretty big burden. I am not complaining and I am not asking you to roll it back. I am just saying that if it doubles, it is going to kill us.

Ms. Yukimura: Excuse me, can we have the side conversations, please, if you want to talk outside of the hall. Thank you.

Ms. Croyden: We also don't charge \$1,000 a night. I keep hearing these figures thrown out there about these huge numbers and we have fairly a large house in a nice desirable location and we can't get that kind of money. I think before you make snap decisions... excuse me, it is not a snap decision. I know that you guys have been working on this, but before you make decisions like that, be sure that you understand that people aren't charging \$1,000 a night. Maybe if you are on the bay and you got views and the whole nine (9) yards, maybe you can get that. but people that are not on the bay are not getting that kind of money.

Ms. Yukimura: Thank you. Any other questions? Councilmember Bynum?

Mr. Bynum: Hi Ann.

Ms. Croyden: Hi.

Mr. Bynum: Since you raised it, if I wanted to stay in your vacation rental for a week, what would I pay?

Ms. Croyden: It would depend on how many people you had.

Mr. Bynum: I see.

Ms. Croyden: And it would be... it is \$3,800 for the week.

Mr. Bynum: That is kind of the standard fee?

Ms. Croyden: Yes, and actually, you know, more often than not, we don't... that is if you have a full house. More often than not, it is not a full house and for the main portion of the house, it is... I think Guy has talked to you about this, it is \$1,700 a week.

Mr. Bynum: And then and just so that you are clear that the bill that we are discussing really doesn't affect the tax issue that the discussion that is happening on the slide.

Ms. Croyden: Right, I understand.

Mr. Bynum: Things are complex, but, you know, maybe in the long run when we look at taxes that... it is not same as the resident, but it is also not the same as commercial.

Ms. Croyden: Uh huh.

Mr. Bynum: There is a whole range of possibilities and different avenues to approach that. As you pointed out, there is a differential now given that you are not... you don't have a homeowner's exemption or a long term rental thing.

Ms. Croyden: We did look into doing the long term rental before we converted. I was totally against doing vacation rentals because I had had all this bombardment on how evil it was. I have changed my mind since then, but that is my own opinion. But before that, we discussed the possibility of doing it. The problem is, our house is larger than... I think it is like a three (3) bedroom and you can charge \$1,500 or something like that. I don't remember now, but... and then your taxes would be rolled back and I looked into it and I called and talked to people and they said, well, it doesn't address your house, your house is... it would be the same. It would be \$1,500 is the max that you could charge. That didn't even come close to covering our mortgage, so what we were ultimately going to have to do was lower our rents even more in order to get this tax benefit, which, in the long run, financially, was just going to put us further behind. Truly, what we want to do is just keep the darn thing. We want to be able to have it. We like being able to use it. We really want to have it. Kids grow up and they have somewhere to come home to, so...

Ms. Yukimura: So actually, what you are addressing here is what we looked at when we looked at the rent levels in our affordable housing tax bill. What you are saying is if we could... that affordable varies actually from different... from parts of the island... what is affordable in Hanalei in one sense is a different...

Ms. Croyden: Is different than what is affordable in Kapa'a.

Ms. Yukimura: Yes, and so by raising the level, we might address or encourage more people to take the affordable housing.

Ms. Croyden: I don't think so because people are buying houses in Hanalei for millions of dollars now and they are not going to turn around and rent it out for \$2,000 a month.

Ms. Yukimura: But you might have it at back at that point.

Ms. Croyden: Back at that point, we might have, but that is then. We've changed everything.

Ms. Yukimura: Are you saying that more than one family can rent your place?

Ms. Croyden: No.

Ms. Yukimura: Okay.

Ms. Croyden: It is single family.

Ms. Yukimura: Okay, but you have a portion of your house for \$1,700 a week.

Ms. Croyden: Yes, the main portion of the house and if they want an additional bedroom, they can rent additional bedrooms.

Ms. Yukimura: Okay, I see. Alright, thank you. Any more questions?
Council Chair?

Chair Asing: What would be your occupancy rate? Do you have any rough idea?

Ms. Croyden: Right now?

Chair Asing: Yes.

Ms. Croyden: I think we... I am guessing. I wish I could tell you for sure. I am going to say 70% and I am a very aggressive marketer, so I attributed to

that.

Chair Asing: Thank you.

Ms. Yukimura: Thank you. Any other questions? Thank you very much. Is there anyone else who wishes to testify? If not, I will call the meeting back to order and open it for discussion in the Committee.

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

Ms. Yukimura: I also want to pass out some proposed conceptual amendments that I have developed for input and discussion which I don't expect to act on today, but I would like to distribute to Councilmembers to look at and also to member of the public, so that we can... (inaudible) to the ADU bill, get your input and ideas on how these amendments might impact you or what you think in terms of the community. We will distribute that. In the meantime, is there anyone from the Planning Committee who wishes to make comments?

Mr. Furfaro: I would like to ask. Should we take a lunch break and read this, so we can break the staff.

Ms. Yukimura: I was thinking it was 11:30 a.m. I am sorry. No, we will complete soon. I am thinking there be that much discussion right now, but is there any... first, that is why I am asking.

Ms. Iseri-Carvalho: What is the intent of the Chair with respect to this Committee today?

Ms. Yukimura: To have these amendments circulated and give you time... so to actually defer the matter. I am not planning to take any action today.

Ms. Iseri-Carvalho: I guess I want to know what the long term plan is. Is it that we are going to defer it just for one more meeting or is it that we expect to defer it for many meetings?

Ms. Yukimura: It depends on the level of agreement or conflict we have among ourselves in terms of a final bill, but my intention is that the next Committee meeting would be a working Committee meeting in terms of amendments. If we come to, you know, a place where we are ready to vote, then we would vote on it and pass it out to the Council at the next Committee Meeting. I am trying to pass these out instead of the morning of our Committee Meeting for dialogue and thought.

Ms. Iseri-Carvalho: I am sorry. You were planning to pass this out when?

Ms. Yukimura: Instead of passing out amendments the day that we are going to act on it, I am trying to give some time for people to look at the amendments.

Ms. Iseri-Carvalho: I guess I recollect the last meeting that we were here that there were people that were ready to vote.

Ms. Yukimura: I am sorry.

Ms. Iseri-Carvalho: My recollection of the last meeting that we had that there were people that were ready to vote, so that is why I am asking, you know, how long do we expect this to take. I don't need very much more time.

Ms. Yukimura: Well, good.

Ms. Iseri-Carvalho: I don't know about other people (inaudible)... are going to have to come back all over again for another meeting.

Ms. Yukimura: Well, if you are ready to vote on these amendments, then I will try to get them into amendment format for the end of the Committee Meetings today if that is what you would like.

Ms. Iseri-Carvalho: I would. I don't know what other people... what else other information there needs. I think there might be others who might have amendments, I am not sure.

Mr. Furfaro: Here is my take on it. I would like to have the time to study these amendments for the purpose, number 1, if you are going to try to get them ready while we are on lunch, then someone from the staff has to work on them and that seems to be something maybe we don't want to rush into right at the moment, but I am prepared to vote by the next Committee Meeting. I have been very close to this for a very long time even going as far back as the, you know, the mission outlined in the General Plan which is almost seven (7) years ago now. So I think giving us the time to study these amendments, giving us the week to work on a new document, I will be ready to vote by our next Committee Meeting. That is my commentary Councilwoman.

Ms. Iseri-Carvalho: Thank you Councilmember Furfaro. I guess I would want to know if... I could probably live with that if we are going to be voting at the next meeting. I would have hoped that these amendments would have been in the proper format. I don't know how much time and like you said, I don't want the staff to be working on these during lunch, so I am, I guess... I will be supporting that if we intend to vote for the next meeting, but it is my anticipation that I am ready to vote and I hope others are too.

Mr. Kouchi: I guess I said quite a bit two (2) weeks ago, so I am... you know, I am pretty close to ready myself, but I don't have a problem in having that time to go through it. I certainly haven't seen these, so I don't know what is in it, so the only comment that I would make is that I don't feel badly because I did speak two (2) weeks ago, but I have a conflict in my schedule, so I will be missing the next Committee Meeting. If that is the process, however, I will submit any written comments that I have to the amendments, but I believe that if the Committee is ready to go and there is at least two (2) votes, my absence should not be an excuse to hold the bill back. I think most people know my sentiments and then they may not be ready to vote in the full Council meeting which is the official action, so I won't have a problem to vote to defer this today.

Ms. Yukimura: Thank you. I want to point out that the existing bill does not embody at least the position that Councilmember Kouchi and a few others spoke, you know, about... so it needs some amendments and I welcome any amendments. I would like the courtesy of being told that you are proposing amendments if you are. These conceptual amendments do, I hope, embody the basic principle that we will grandfather in or allow people to apply for non-conforming use certificates if they have an ongoing operation, but that no other units will be allowed outside VDA areas. You know, they are conceptual because if we don't agree conceptually, I don't want to go through all the trouble of developing these amendments that we are going to have to change anyway that is why I've laid out these proposed conceptual amendments.

Mr. Furfaro: I really appreciate the work that you have done on that Councilwoman, but, you know, I would like to take the material and read it and digest it. If you would like to know where I am today, so you can anticipate if I am going to be submitting any amendment and so forth. From what I have seen from the presentation today are consultant attached to the Planning Department and his report. I think he has pointed out in good summary where I think we are at... hold on just a second and finding his recommendations that are outlined with the exception of making sure that we clarify a statement about prohibition for any new operation outside of the VDA. I think it is very important that that piece be in there. In fact, I think most of their recommendations start in the overview on page 40. I think your bills with the exception of what I have not been able to read yet, touch on all of those issuing some non-conforming permits to those that currently are operating, that it is something that does not go with the land, but rather with the current use that it will have some of its own affect as people change their minds. There will be some natural attrition. I think I am feeling comfortable about that. I think a big portion here that I need to share is the concern that we need to regulate, so that the rules are very clear, so that we can enforce even if that enforcement over a period of time ends up taking away the privilege for those because they are not in compliance with the use. I do agree that the bed and breakfast particulars of need may be some additional attention... I don't know what it is right at the moment. I am not sure if I want to hold up the transient vacation bill if we are going to end up looking at a separate B&B bill or B&B's can be

included in this bill now and looked at it at a future date, but clearly, I think everything and the work that you have done which I am sure is excellent in these amendments, do not compose of any major conflict with me if you are asking me where I am at this time.

Ms. Yukimura: Thank you for the input. Actually, I think some of the issues that you have raised may not be included here and I would want to include that. That is the usefulness of getting your input, so what I will ask for then is I am going to ask Committee members and non-committee members may also as well. If you have some amendments to propose that might be incorporated here, if you would get them to me by next Wednesday and then I will work them into actual amendments. Also, any inputs that you have in terms of things you disagree with or have problems with, so that we might... I mean, I could try to address them in the amendments as well and then we will have those ready at least three (3) days before our Committee Meeting or actually we are changing our schedule. Those of you who are following this may want to know. I think...

Mr. Furfaro: I am afraid on the 9th, there is a very good chance that you will not have... even with Councilman Kouchi's announcement of him not being here, I do not think both Councilman Bynum and myself are going to be available.

Ms. Yukimura: On the 9th?

Ms. Iseri-Carvalho: Committee members...

Ms. Yukimura: So for those of you who are wondering what is going on, we normally have our meetings on Wednesday and because of various schedules and so forth, we are looking at having our meeting on the 9th, but this is something that has been in progress and is that true that if we have it on the 9th, Councilmembers will not be present.

Mr. Furfaro: I am sorry. My date of Friday, March 9th had been booked for some time and...

Ms. Yukimura: Both of you?

Mr. Bynum: Yes. I am not a Committee member, but...

Mr. Furfaro: That is true. You are not a Committee member, so maybe we do have a quorum. We have three (3) people...

Ms. Yukimura: But if it is going to be a working session, it is not... I mean, I think we need people present and these issues, actually, (inaudible) when you get into the details are not that simple.

Mr. Furfaro: I can assure that I can meet the deadlines that you have

set for my written commentary. I will do that.

Ms. Yukimura: We will see. We will do the best we can. I think if there turns out to be a lot of conflict that needs to be... we need to have everyone's participation and we may have to defer it one more time, but we will aim for March 9 and, everyone, that is going to be the next Committee Meeting (Planning) and it is a Friday and I will (change tape).

Mr. Furfaro: I do want to thank you for your work and leadership and chairmanship on this Committee on a very important issue for our community. Thank you Councilwoman.

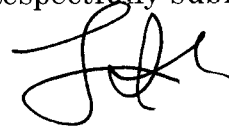
Ms. Yukimura: Thank you.

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

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

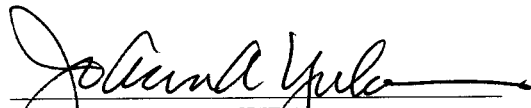
There being no further business, the meeting was adjourned at 12:37 p.m.

Respectfully submitted,



Lisa Ishibashi
Council Services Assistant

APPROVED at the Committee Meeting held on March 21, 2007:



JOANN A. YUKIMURA
Chair, Planning Committee Chair