

**MINUTES**

**PLANNING COMMITTEE**

**March 9, 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, Lihu'e, Kaua'i, on Friday, March 9, 2007, at 10:19 a.m., after which the following members answered the call of the roll:

Honorable JoAnn A. Yukimura  
Honorable Shaylene Iseri-Carvalho  
Honorable Mel Rapozo  
Honorable Bill "Kaipo" Asing, Ex-Officio Member  
Honorable Tim Bynum, Ex-Officio Member

EXCUSED: Honorable Jay Furfaro  
Honorable Ron Kouchi

Minutes of the February 6, 2007 Planning Committee Meeting.

Upon motion duly made by Councilmember Rapozo, seconded by Councilmember Iseri-Carvalho, and unanimously carried, Minutes of the February 6, 2007 Planning Committee Meeting was approved.

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

**Bill No. 2204**      A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8 OF THE KAUA'I 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: As the events have unfolded since our last Planning Committee Meeting, it has become quite apparent that there are many issues regarding this bill that we need to look at carefully. So the... on top of that, we have two (2) members... we just have mere majority of our Committee present, so the Chair would be recommending at the end of our discussions today that we defer the bill, but there is a lot to discuss today. So the plan is to have a discussion and then a deferral, so that we can have, hopefully, a full Committee next Committee meeting and time to digest some of the things that will be brought up today. I have circulated amendments. As you recall, I

asked all Councilmembers to give me some feedback by last Wednesday and I received some feedback and using that along with the conceptual amendments that I had proposed at our last meeting, I have developed a set of formal amendments which have been circulated to all the Councilmembers present here and to the audience. So if you are in the audience and are interested in a copy and haven't received yet, please raise your hand, so that our staff can pass that out to you.

At some point in this meeting, I will go over the amendments, but I think I first like to also acknowledge that we received last night, a memo from the Kaua'i Board of Realtors attaching a legal analysis by private attorney Jonathan Chun on some of the issues as respects proposed conceptual amendments. Mr. Chun is in the audience, so we can have him come forward too for any questions that Councilmembers may have. So have at least those two (2) documents and then we have some written testimony which indicates that and I am sure that there is some verbal testimony. So what I would like to do is start off first with testimony from the general public and then we will have Mr. Chun and then I will call the meeting back to order, go over the amendments that I am proposing and then we will have a general discussion in the Committee. If that sounds okay to members, then the Chair will suspend the rules and ask for anyone who wishes to speak. I see Mr. Mickens.

There being no objections, the rules were suspended.

GLENN MICKENS: Thank you JoAnn. Are we on 2204?

Ms. Yukimura: Yes, we are.

Mr. Mickens: Thank you. Dr. Chuan couldn't be here this morning. He is still recuperating from his accident, but he is coming along very well. He asked me to please read this for the record. You have a copy I believe, right?

Ms. Yukimura: Yes.

Mr. Mickens: Please let me read it for the record. The original unamended version of this vacation rental amendment must go down in history as the most audacious and ill-considered legislation ever presented to this Council by the Planning Commission led by our Planning Director. This unamended version basically allows any and all illegal vacation rental operations all over the island, in whatever zone or district, to be grandfathered with permits and without any penalty, as long as they come to the Planning Director to confess their sins within six (6) months after the passage of this bill.

Councilwoman JoAnn Yukimura's amendment here before this hearing sounds good, but leaves out, again, whether deliberately or not (as with Ian

Costa's similar disappearance of the SMA rules) ignores H.R.S. 205A, which derives from the Federal Coastal Zone Management Act, and for the enforcement of which the Federal Government pays our County for enforcing it.

Under H.R.S. 205A, a "development" which includes commercial activities such as vacation rental (as this County in the past has so defined vacation rentals), requires a public hearing to obtain an SMA permit. When necessary, the hearing will also include the requirement of a cumulative impact statement. In order to avoid the public hearing, this County invented what it called a minor SMA permit if the improvement on the property costs less than \$150,000. An outstanding example of this is the large commercial building (which one sees first on entering Hanalei Town) that includes offices of Coldwell Banker, one of the largest real estate companies in the country, a fancy gift shop, restaurants, etc. with a large parking lot in the back of this new building was given a minor SMA permit. It is absolutely obvious that the cost of the building far exceeded \$150,000, but that is the way our Planning Department conducts business.

In 1997, I filed a lawsuit against this County for gross violations of H.R.S. 205A for allowing unpermitted operation of large numbers of zodiacs out of Hanalei Bay. At about the same time, a group of Northshore Hawaiians had also gone to Governor Cayetano to complain about this unpermitted activity. After personally inspecting the activities in Hanalei, Cayetano, by edict, evicted the zodiacs. This rendered my lawsuit moot, and the County asked the judge to dismiss my suit, which Judge Masuoka did, but added that the suit was dismissed "without prejudice" which means that I can come back to court when the County of Kaua'i is again in violation of the same H.R.S. 205A.

This, I informed the Council on January 13, 2007 (ironically, that is when Ray had his bad accident) that I would do, if the Council were to pass the bill to allow vacation rentals in violation of H.R.S. 205A. Now that the bill, with the Yukimura amendment, is before this Council, I am once again giving notice that I will re-file my lawsuit. Thank you for hearing my testimony as well as understanding where I stand before the court on this matter.

Ms. Yukimura: Thank you Mr. Mickens.

Mr. Mickens: Thank you for his testimony JoAnn.

MEL RAPOZO: Thanks Glenn.

Ms. Yukimura: Anybody else?

BEAU BLAIR: Aloha Council. Thank you for this opportunity. I am just going to read a brief letter and I can submit it to you if you would like it. First of all, I'd like to thank the Kaua'i County Council and...

Ms. Yukimura: Beau, can you give your...

Ms. Blair: Beau Blair. I am sorry. I was trying to get it within my three (3) minutes. First of all, I'd like to thank the Kaua'i County Council and the those members who have decided to brave the current environment of rampant real estate sales and speculation to bring this bill to its current state. The regulation that is posed in this bill stands to change the way that our kama'aina families will be able to look at the potential for not only reclaiming their neighborhoods, but hopefully return a glimmer of hope to our younger adults looking to be able to remain in Kaua'i, get a job, raise a family, and eventually be able to own or rent a home on this island.

Because the aspect of rampant vacation rentals are speculative real estate sales were never foreseen in 1987, comprehensive and proactive changes have been long been overdue in our CZO. These changes are vital to ensure that as our island visitor population continues to explode, there will always be residential areas that protect the integrity of our resident population. We should all agree that without hope of being able to rent or own a place to call "home," we will not be able to encourage our working population to stay here.

After eight (8) long years on unregulated proliferation, it is truly time for some decisive and good policy from this Council. I am so happy to support the hard work of Council Chair Yukimura and the amendments that she submitted to the Council at your last meeting. I believe the very most important recommendation is adding the following new sections to Article 17, timesharing and transient vacation rentals and I believe it is on page 12 of this new bill.

Section 8-17.8 Single Family Vacation Rentals and the wording is just a little bit changed. Notwithstanding any underlying zoning designation, single family vacation rentals are prohibited in all areas not designated as Visitor Destination Areas and single family vacation rentals are permitted uses in all Visitor Destination Areas. The wording is just a little bit different on the bill. Without this addition, there will never be a potential for our neighborhoods to remain intact. As for the Deputy County Attorney's opinion on "grandfathering," I believe it is just that, an opinion and my opinion is contrary to that. Prohibiting unregulated commercial development activities such as transient vacation rental businesses in residential neighborhoods outside of the VDA should be a part of this bill and "grandfathering" should not be allowed to continue as permitted non-conforming uses, whether in single family or multi-family dwellings. Non-conforming permits being granted to those who can prove they have been in business since April 2004

only continues the blight on our neighborhoods. This is simply one more example of this County's inequitable history of granting "after-the-fact permit," and attempts to legalize uses which will continue to over stress the already dangerously overburdened infrastructure in the most adversely affected areas like 'Anini, Hā'ena and Hanalei. I am almost done.

If "grandfathering" of some of these existing businesses in residential areas is the only way to have some legislation passed, then the "grandfathering" should unequivocally be terminated at the time of any sale or transfer of property deed. This is the only reasonable nexus to guarantee that these areas will have a chance to eventually be returned to the residents. I would like to, again, than the Councilmembers who want to do the right thing and reemphasize that I believe there is no legal right to run a commercial vacation rental business in a non-VDA just because it wasn't stated as such in our CZO. Mahalo.

Ms. Yukimura: Thank you. Any questions of Ms. Blair? Thank you very much. Anyone else wishing to testify? Ms. Robeson?

BARBARA ROBESON: Barbara Robeson for the record. Thank you Councilmember Yukimura for all of these improvements that you have made to the Bill No. 2204 that was circulated several meetings ago. I haven't had a chance, of course, to look at the details, but I did note a couple of the things that Caren Diamond and I testified on January 24 at your meeting and several of those suggestions that we made at that time looked to have been... well, maybe not our suggestions, but suggestions that were incorporated into the various sections of 2204. One was significant improvements in the purpose section. We appreciate that you have been able to improve that. There are a number of new definitions that close loopholes and clarify some specific concerns that we had previously expressed. I didn't find, yet, if the open and ag were specifically addressed as being as the TVR was prohibited in the open and ag, but I don't know if that is in there or not, but maybe you can check on that.

Ms. Yukimura: It is on page 13 at the bottom.

Ms. Robeson: Okay, thank you. And then cleaning up with that whole Section 8-17 because it... as the bill was originally drafted and sent to you folks, it was kind of crummy actually. Anyway, thank you very much for taking care of those things and I will be back next time. Thank you.

Ms. Yukimura: Questions? Yes.

SHAYLENE ISERI-CARVALHO: Barbara, was there any other suggestions that had not been incorporated in Councilmember Yukimura's proposed amendments?

Ms. Robeson: Well, on January 24, the things that we talked about were omitting references to amendments regarding the open and ag, so I think that has been taken cared of now.

Ms. Iseri-Carvalho: Okay.

Ms. Robeson: And the purpose statement, we felt was... definitions that we felt were relevant.

Ms. Iseri-Carvalho: So those have been incorporated.

Ms. Robeson: And the whole thing about having a use permit to get another one, so that has been incorporated too because I think the current bill as proposed by Councilmember Yukimura does not allow for new TVR's by use permit, so I think that is taken cared of. And then just some kind of formatting things about information that was in the wrong section. I think everything has been taken cared of and as to the details, I will have to look those over.

Ms. Iseri-Carvalho: Right, okay. And I just got back last night and had not had the time to see Councilmember Yukimura's amendments fully, so I am glad to hear that those have been incorporated.

Ms. Robeson: In general, it looks excellent. Thank you very much.

Ms. Yukimura: And one of the reasons why... one of the reasons it will be good to defer this matter and have it come up in Committee is that we can all take a look at the details of this. It is a pretty complicated amendment and I want to acknowledge Aida Okasaki for helping me put together and Jade Tanigawa. Were those your questions Councilmember Iseri-Carvalho?

Ms. Iseri-Carvalho: Yes, that was it, thank you.

Ms. Yukimura: On the bottom of page 13, I don't really address open, but I address any land that is districted agriculture and I think we are talking about those lands that are zoned open under County zoning, but in ag districted lands under State designation. I think I am covering it, but if you will take a look and make sure...

Ms. Robeson: I don't have it in front of me, I have it back there, but in the Blaine Kobayashi decision in his... I think it is the first or the second paragraph, he mentioned that you need to specifically identify which are prohibited uses. So I think it (inaudible) be more specific rather than just having it...

sometimes it is hard to find if it is not in that particular section that you are looking at.

Ms. Yukimura: Well, just for everyone's edification, that section which Ms. Blair read and it is on page 12 where it says notwithstanding any underlying zoning designation with the exception of national and historic register properties, single family vacation rentals are prohibited in all areas not designated as visitor destination areas and single family vacation rentals are permitted within (inaudible). That tries... this is the attempt to be a clear prohibition, but I may not have achieved it, so if, you know, if we need to make some changes...

Ms. Iseri-Carvalho: Tighten that up.

Ms. Yukimura: Then we need to look at that.

Ms. Robeson: Blaine Kobayashi, in the second paragraph, he said and he is talking or quoting from Anderson's American Law of Zoning. Zoning ordinance must spell out the prohibited uses of land with precision and completeness, so I am just wanting to make sure not that I agree with his opinion.

Ms. Yukimura: Yes, although, you know, it is contrary to the basic zoning law that unless it is explicitly permitted, it is not allowed.

Ms. Robeson: Correct, yes.

Ms. Yukimura: You know, so... I sent that question.

Ms. Robeson: But that is where we are working from, so I can see that.

Ms. Yukimura: Okay, any other questions of Ms. Robeson? Thank you very much and thank you for the analysis that you and Ms. Diamond did, that was a big help. Any other people wish to testify at this time? If not, I am going to ask Jonathan Chun then to come forward and under the office of the Kaua'i Realtor's Association, Mr. Chun has prepared a legal opinion and it was submitted just last night, so I don't know if members have had a chance to read it.

Mr. Rapozo: No, I am reading it right now.

Ms. Yukimura: What we can do if you like is we can recess the meeting to allow people to read it. We are not going to... we don't have the advantage of the County Attorney's opinion on these matters, so we can... it has been sent to the County Attorney, but we received it last night and it was sent last night to the County Attorney's Office.

Mr. Rapozo: I would just ask if Mr. Chun can give us a...

Ms. Yukimura: A run down?

Mr. Rapozo: That the people can understand, not the attorneys because I am reading this and I...

JONATHAN CHUN: It is long.

Mr. Rapozo: So if you could kind of give us a layman's terms of what, in fact, you are trying to say and that would be very helpful more for the people in the public that is watching this right now.

Mr. Chun: I will try Councilman Rapozo. Thank you. If it gets too confusing, just stop me and I will try again.

Mr. Rapozo: Stop, I am just kidding.

Mr. Chun: Anyway, thank you Councilmember Yukimura and Councilmembers. The bottom line...

Ms. Yukimura: Can you just state your name?

Mr. Chun: My name is Jonathan Chun.

Ms. Yukimura: Thank you.

Mr. Chun: The bottom line of the letter that I wrote to the real estate association really focuses upon what the State has given the County the power to do. In other words, you can do zoning, but in that law that I cite which is the basis of the County's zoning powers, it is clear that you can't effect through your zoning power non-conforming uses. Now the question and it is a legitimate question and I think that is what everybody will be talking about later on in your meetings is how do you define non-conforming uses. What is that creature on non-conforming uses? I attempt in my memo to kind of at least give some parameters where other jurisdictions that have struggled with this question because it is not unique. What the Council is doing today is not unique. It has been tried in other situations in another kinds of places due to regulate something that they thought needed to be regulated. So in those kinds of situations, I have outlined in my memo where the parameters that the Council needs to consider when affecting non-conforming uses. The basic thrust, let's not use the word thrust. The basic theory, I guess, that most people use or most courts use when you look at this is was this person, when it was non-conforming, was he operating properly under zoning law. The question to that one... if the person can say, yes, at least can provide some kind of information that

he was in operation before the law was passed, then the court says, then you are going to have to at least give that person a chance to explain and to allow him to continue. At least some kind of a hearing situation and when the ordinance says, no, I am going to automatically say, no, no matter what you say, you are non-conforming in my eyes now or you are not non-conforming and you are illegal now, that is when the courts are going to step in and say, hey, wait, this guy at least had a right to do it. It was doing it with no problems before the law was passed, you have to allow him at least the chance to explain what is going on and to allow him to continue in the future.

Mr. Rapozo: Providing the use was lawful, right?

Mr. Chun: Right, and that is why I say, you have to provide him with some kind of situation in which you say, yes, I can prove it. In your proposed bill, you did try to do that by saying, well, I am giving you a list of things that you can provide to show that you were doing... the problem with that or the issue with that is that I think the list, even though it is a good attempt, you know, will limit in general what the person... what persons can or can't apply and I think that is where you need to look in the details. Are you really limiting or you are trying to... trying to really look at individual situations on a case by case basis. I think that is when you are going to start getting a lot more questions from people who are using... who are doing non transient vacation rentals. Going into detail, I think I will start boring people with the legal niceties, but theory basically is if they were using the property in the past before, they should be allowed to continue and that is it. I mean, there are very limited situations where you can't. The last point I want to make is... I think you are looking at, well, the Legislature, I am the Council, I can determine what is legal and I can make... I can provide for things to phase out, non-conforming uses and the theory of that is, eventually over time, things which aren't right for the community should be able to be phased out and the law does allow you to phase out things. But I encourage you to read the section of the statute which talk about the Council's ability to phase out non-conforming uses because there are certain things that you have to do if you are going to try to phase it out. I think after you had a chance to read that, then we can maybe get into discussion with what those things are. Especially, I would urge you to check with your County Attorney's Office. I am open to talking with them and where I got these cases and what kinds of authorities there are out there. But in all fairness to the County Attorney's Office, they should be having to take a look at that and get involved in the discussion. So I can answer any questions if you have regarding the memo.

Mr. Rapozo: I have one question and it is specific to your opinion on page... the third page. You know, you talk about the Waikiki marketplace.

Mr. Chun: Yes.

Mr. Rapozo: And you are saying that the payment or lack of payment of the GET or TAT or any other tax is irrelevant to the determination whether a lawful use is allowed to be continued. Can you explain that a little bit? I read the quotes that came out of that case and it says, refer to compliance with previous zoning laws and not the building codes or other legal requirements, but...

Mr. Chun: Right.

Mr. Rapozo: Isn't that what makes it lawful is the fact that they were paying taxes?

Mr. Chun: What is lawful... the word lawful I think is kind of broad and what (inaudible) court of appeals did in Waikīkī marketplace was saying for the purpose as a zoning which is... 46-4 is your source of zoning.

Mr. Rapozo: Correct.

Mr. Chun: That term when used in regards to zoning only is in reference to zoning and land use matters, not taxes, not licenses, not building codes, it only makes reference to zoning and that is what it means by lawful in that section. The court didn't make up this argument. I mean the court of appeals... this was not an unusual point that the court raised because as pointed out in the memo, other courts have looked at the same situation, basically say the same thing. For purposes of non-conforming uses in the zoning laws, what is the lawful in those ordinance... when they say use the term lawful means, lawful under zoning, not lawful under taxes, not lawful under permits and licenses. In fact, there is one case out there where there is no argument that the person was lawful... a lawful garage was there, he was operating lawfully as a mechanic in an area where it should have been at first, but the only issue on that one was whether he paid his State taxes. Of course he didn't because he said that the State taxes were paid (inaudible) another legal entity and they tossed him out on that basis. In that case, the court say, no, no, he was lawful because under zoning (inaudible) there is no issue that he was proper under the zoning.

Mr. Rapozo: So this is specifically addressing 46-4?

Mr. Chun: Yes, it was specifically under 46-4. What does it mean by lawful uses under that statute.

Mr. Rapozo: And I guess, you know what, we will probably ask the County Attorney as far as how the Council defines lawful use. Would that... are we bound... I just cannot imagine and whether it is a garage, a mechanic, a vacation rental or what, operating without paying taxes is just simply not lawful.

Mr. Chun: Okay.

Mr. Rapozo: Under the law. Maybe not 46-4.

Mr. Chun: You can define what lawful is in general police powers.

Mr. Rapozo: Correct.

Mr. Chun: And I have no dispute or issue on that. The question, though, is if you are exercising a power under 46-4, you are limited under 46-4.

Mr. Rapozo: Right, okay, and that was really the question, is it just simply because of 46-4, but we have the ability to define lawful by staying away from 46-4.

Mr. Chun: Right.

Mr. Rapozo: I mean...

Mr. Chun: If you have some other source of authority for this ordinance other than 46... other than the zoning ordinance, then you could do that.

Mr. Rapozo: Thank you.

Ms. Yukimura: Other questions of Mr. Chun?

Mr. Rapozo: I guess I will have more later. Right now, we are trying to get through this.

Ms. Yukimura: Okay, so I have a couple. So, basically, any vacation rental on ag zoned land given the State Land Use law requiring a farm dwelling (inaudible) would be illegal and, therefore, not qualified for non-conforming use, right?

Mr. Chun: I wouldn't say that is a slam dunk. The question is because there has always been a question under 205, what kind of ag use qualifies for farm dwelling. How much and how little and there has been no cases and decision or any opinion as to that, so I can see a situation where it is possible for somebody to have some kind of ag use on the side on their property and also doing a transient vacation rental at the same time. Just because it is a transient vacation rental, doesn't mean that you can't have an ag use at the same time.

Ms. Yukimura: Well, it is not a farm dwelling.

Mr. Chun: The farm dwelling just means that it has to be used in conjunction with ag use. Like I said, since ag use hasn't been defined, you know, there is no decision or guidance or anything that you can't have. It doesn't say, only farm (inaudible)... you have to have some kind of ag use.

Ms. Yukimura: Well, okay, but I think the Council can choose to let that be decided by a lawsuit challenging our decision that agriculture... that vacation rentals are not qualified for a non-conforming use.

Mr. Chun: Yes, the problem with that and I think, yes, I would say, yes, you can do it and let somebody file a lawsuit against the County and involve the County in another lawsuit.

Ms. Yukimura: And prove that that is a farm dwelling under the definition of State law.

Mr. Chun: See, that is where the problem comes because no one can prove it because neither the County has any standards that the State will recognize under 205 nor the landowner.

Ms. Yukimura: Well, if the burden of proof is to prove that it is a farm dwelling, then we are okay.

Mr. Chun: Well, again, that is the problem. The beginning, I came back and I said, under the most law guidance in the courts, the landowner can show that he (inaudible) using it and then the burden shifts and there is a case that talks about the burden has to shift then to the government to show why he is not non-conforming. That is where you are going to run into a problem if we do it that way. I am not saying, you can't, but then the burden of proof situation or the issues become foremost and how are you going to address the burden of proof for either side where even the State who did the law has no guidelines.

Ms. Yukimura: Well, we will address that when it comes to it. In the meantime, hopefully our Planning Director is hearing this... In the meantime, we will define our ag uses.

Mr. Chun: Yes, you ca...

Ms. Yukimura: And through our zoning law and make that clear.

Mr. Chun: Right.

Ms. Yukimura: In the process of doing our ag planning process that has been mandated by the State.

Mr. Chun: You can do that under the County zoning and what is ag use on the County zoning, yes, but then the question... again, (inaudible) affect existing uses at that point in time. It goes back to the same non-conforming issue and that is all that I am addressing. I am not talking about whether you can in the future say, anybody building a dwelling unit on County ag zoned, this is the requirement you have to make to meet County ag requirement. I am not saying that you can't do that.

Ms. Yukimura: Are you familiar with the city of New Orleans versus Dukes?

Mr. Chun: If you give me the fact pattern, I might. I am not good at names sometimes.

Ms. Yukimura: It is a United States Supreme Court case involving vendors and New Orleans regulation that required a showing of eight (8) years of doing business in order to qualify for non-conforming use. It was challenged by a vendor that had been using... doing vending for three (3) years and the court held that the city was entitled to set the timeframe for use, you know, to comply... or to qualify for a non-conforming use.

Mr. Chun: I am not quite familiar with that under the vendor situation. I can probably take a look at it. My initial feeling is on vendor on commercial uses involving sales. It is not the courts to have re... not been that strict because it doesn't involve the real property right, but when it comes down to real property rights, land rights, they look a little bit more closely as to that, but I am not quite familiar with New Orleans and that decision, but I would say that is something that should be looked at. That is correct.

Ms. Yukimura: And what about Dr. Chuan's statement that use of a single family home for vacation rental purposes is a commercial use that is within the requirement of develo... or the definition of development under the SMA law and thus requires an SMA permit as part of the zoning requirement.

Mr. Chun: I think that would be a stretch of the interpretation of the SMA. I won't necessarily say, no, because I don't wear the black robe on that because only the person wearing black robe can say that.

Ms. Yukimura: Right.

Mr. Chun: But the issue on that one really focuses not on commercial or not. The issue is, is the renting of property of your home to someone else, is that a residential use or more of a commercial use, okay. I don't know if you can make a

further distinction, well, if I am renting only for one week versus one month versus two (2) years, that might be another distinction, but the first thing that you are going to have to look at is, renting a property a commercial use. In general... versus residential use. In general, the answer to that is the renting of property as long as the person renting it is going to live there, that is still residential use, not commercial use. I know that there has been some discussion, well, if I am renting only for one month versus one year, that draws the further distinction. That is still an open question and that, to me, is more of a zoning issues as opposed to an SMA issue because the SMA... when you look at development, it does say that it is a development, but I don't believe there has been any cases that has really cut it that thin in terms of renting to one month versus renting to one year. I think in that one, again, the burden becomes on the County as the enforcing agency to prove that that is a violation under the SMA. I am just saying that not because I am saying one side is because from personal experience when we did expand the SMA to look at uses, the burden was placed on the County to show how those uses adversely affected the coastal zone, okay. We were luckily in that case able to prove that, that is why the courts have been supportive of the efforts of applying uses as being a development. But, again, when you look at that kind of situation, the County has to look at and this was when I was with the County. I have to look at, first, do I have the facts to at least being to raise that question in there to show the impact. I can't just say it and make it true. I have to have the facts to make it up, so if you are going to look at the SMA, 1) it is an non-conforming issue, again, but the second thing, if you want to apply it like that, you better have the facts to show the SMA is the CZM, the coastal zone is negatively impacted by that kind of use.

Ms. Yukimura: Okay, and are you aware that the City & County of Honolulu vacation rental law requires three (3) years of operation.

Mr. Chun: Yes. I am and I was with the City & County when they did that ordinance.

Ms. Yukimura: Okay, so... there has been no lawsuits to my knowledge challenging it. It is existing law in the city?

Mr. Chun: Yes.

Ms. Yukimura: How do you...

Mr. Chun: Well, first of all, when we did that I think it was late 80's. I think it was the late 80's... '88, '89, before I left. The Waikiki decision wasn't had in '97 (inaudible). The second point is, the funny thing what happened is, yes, we tried to do registration back then and we did get a pretty good turn out. In fact, we got more turnout than we anticipated in the beginning. But what we found is, later on as the years went by, more and more people stopped registering, but that didn't

make the industry less. So did you find more and more people, so when you ask your question, why isn't there no lawsuits, I think probably because the city really hasn't been pushing that issue more. I don't think there is even that much enforcement and second of all, the non-registered guys keep on doing it anyway. So until somebody stops and they are not going to file the lawsuit.

Ms. Yukimura: So that is an issue of enforcement.

Mr. Chun: Yes, it is a practical issue.

Ms. Yukimura: I mean because in the laws that... the County law that we are looking at, I mean, everyday can be fined for I think up to 10,000 after.

Mr. Chun: I don't believe and I could be wrong. I think the County needs to check with their counterparts in City & County, but I don't believe that they have had a situation where they actually brought in somebody for the fines or to stop them and had this issue litigated.

Ms. Yukimura: I mean, if you don't have enforcement, why have a law? You know, I mean...

Mr. Chun: That is not my question.

Ms. Yukimura: Right, but I mean, if we are not going to enforce them, let's just forget because it is meaningless.

Mr. Chun: You are correct.

Ms. Yukimura: And, you know, we are counting on the Planning Department to enforce this when it passes.

Mr. Chun: You are correct if you don't have enforcement, it makes it very difficult to pass the law or to get the law followed. I would not, though, and when you go through this bill and I am not... it is not inside my letter, but when you go through the bill, please look at how things can be enforced because even though it looks good on paper, when it actually comes down to doing it, it could be very, very difficult. I know I mentioned the breakfast one in passing. I think you took that out in the amendment.

Ms. Yukimura: I did in my amendment take out the requirement...

Mr. Chun: For serving breakfast.

Ms. Yukimura: Or the prohibition against...

Mr. Chun: In an earlier version, there was a provision in saying that to be a bed and breakfast, you have to serve breakfast. You know, that is really difficult to have a County inspector go over and say, are you serving breakfast and here is my apple and this is my breakfast.

Ms. Yukimura: Right. No, I think in any law that we pass at this table, we have to think about ease and effectiveness of administration of the law.

Mr. Chun: Right.

Ms. Yukimura: So we, you know, that is a very good charge to heed or advice to heed. Any other questions of Mr. Chun? If not, thank you very much.

Mr. Chun: Thank you.

BILL "KAIPO" ASING, EX-OFFICIO MEMBER: I have a question.

Ms. Yukimura: Council Chair?

Mr. Chun: Yes, Council Chair.

Chair Asing: Jonathan, I guess you are being employed by the Board of Realtors?

Mr. Chun: Yes.

Chair Asing: And your, I guess, mission is to look at the what we are passing and your comments as raised in this memo are basically the section on zoning land use? That is the main target of your concerns?

Mr. Chun: The main concerns of the association that is raised in my letter is the non-conforming uses. How do you stop somebody who is engaging in transient vacation rentals now and then pass a law like next month to say that you can't do it anymore? The point raised in my memo is that there is a specific limitation on the County's ability to do that in State law basically saying that you cannot stop them immediately. You have to allow them to go into... as a non-conforming use.

Chair Asing: Okay. Thank you.

Ms. Yukimura: How would the County then stop a rush for permits, so that somebody just, you know, one day before the law goes out and says, puts up a

sign that says, vacation rental and says, I have my TAT and, therefore, I am vacation rental. I mean, that is not...

Mr. Chun: The permit, I think, is not a big problem in my view. This is my humble view. A non-conforming use will be somebody who is actually using... he has the permit and is actually is using the property. So somebody... on the last day is going to apply for their permit, I don't think you would qualify for a non-conforming use just because you apply for the permit.

Ms. Yukimura: There is no application process right now.

Mr. Chun: If they are building a house and they want to use their house for a vacation rental (inaudible-more than one person talking at the same time) comply.

Ms. Yukimura: ...existing house...

Mr. Chun: The existing house then, again, that is, I said is addressed. For people who have the existing homes, you are correct that the burden of proof is on them to at least show that there is a use, a transient vacation use that they had prior to, but it is not a situation of permit. It is just that they have to show that they have the use.

Ms. Yukimura: Well, and could not the County define because right now transient vacation rental although it applied to multi-family says, over a period of one year, it says that they actually have that interval of a year that says that if used for transient accommodations. So could not the County define use as... because, you know, just one day, is that really a use? So, I mean, it seems to me that one year might be a reasonable requirement as part of defining use.

Mr. Chun: I would say that depending on how you do it, you are going to be walking down a slippery slope and you might have it come back and boomerang against the County on that if you did that. If you want, I can talk to you on how it might hurt you if you did it that way. In general, 46-4 says that the use that they had was lawful at that time. I was renting out my property to a visitor or not, then they can continue it. You asked an interesting question is, what happens if one person comes to me and says, yes, I rented out. I only rented out for one day out of 365 days of the year (change side of tape)... and to do that because if you try to do it on an overall basis in the law I say that, I think you run a lot more danger of doing it that way because enviably you are going to catch up the good with the bad even though you didn't intend to do that, that is going to jeopardize your law. You are safer if you want to take out that one abuser... that one guy that is abusing it and then provide a provision or a situation or procedure in which you can rightfully say, no, I make a factual determination that this doesn't really qualify or shouldn't. One day out of 365 for the past 10 years, you got a point there, but (inaudible) a law

saying, where are you going to draw that line, right? And that is going to be very, very difficult because when you enact a law, you are saying, you are going to be catching up things that you intended, plus things that you didn't intend. I don't know if that is the best way to handle it. The law is going to apply to everybody no matter what equally.

Ms. Yukimura: I think that we are doing, but, okay. Other questions? Alright, you have given us a lot to think about. Thank you very much Mr. Chun. Is there anyone else who wishes to speak? Please state your name.

CYNTHIA BLOOM: Hi, my name is Cynthia Bloom and I know I am way too late and the process has gone very, very far.

Mr. Rapozo: No, it has just started actually.

Ms. Bloom: Okay. I own several properties on Kaua'i and what I am concerned is, with all due respect, the Council taking away rights from citizens in terms of property rights. I am also concerned about how litigious this County and Council seems to have become. You know, with all due respect when you say, you know, we will do something and we will wait to see if there is a lawsuit. One of my concerns especially living in Kapa'a is the money that I am paying and the other citizens are paying for property tax has gotten really, really high. I would like to see personally is improvement in roads, etc. Also, I want to go on record of... I am against the bill limiting vacation rentals. I believe that, indeed, people should be doing it legally in the sense that they are paying GET and they are paying their TAT. I just want to go on record as that. Number 2 is the worse case scenario if you do pass this bill is to seriously look at redefining the VDA because, right now, I think the VDA is pretty restricted. Thank you for listening.

Mr. Rapozo: I have a question.

Ms. Yukimura: Thank you. Councilmember Rapozo?

Mr. Rapozo: Which part of the bill... I don't know if you had the opportunity to read the amendments or the bill. You said that you are against the entire bill, but the things that you agreed that you said the taxes and, so forth are covered in the bill, so what part are you against?

Ms. Bloom: In all honesty, I have not read the amendments. I read the original.

Mr. Rapozo: And what part of the original bill do you oppose that would affect you and what you are doing?

Ms. Bloom: Well, for example, I have vacant property on Moanakai in Kapa'a where there is a great deal of vacation rental properties. Almost everyone around me is and as I understand when I read the previous version of the bill, that if I were to build a house on my lot, I would not be allowed to vacation rent it. Whereas, I am part of a CPR on the house behind me is being vacation rented. The houses to the sides of me, but this new house that I were to build, I could not vacation rent. Is that true? Am I interpreting that...

Mr. Rapozo: That is true, but that is not what you said in your opening statement. You said that you currently own several properties and I assumed that you meant vacation rentals. You don't have the vacation rental yet, is that what you are saying?

Ms. Bloom: I do not have vacation rentals.

Mr. Rapozo: Okay, I am sorry, I just misunderstood.

Ms. Bloom: And I am just very concerned about how this whole issue of property rights and I know you guys have a tough situation because there are a lot of issues in terms of having affordable housing for the residents, having affordable rentals for the residents and I know this is a really big, tough question that you are dealing with and I have thought about it. But I just want to go on record that, you know, where I stand for whatever that is worth. I apologize that I wasn't able to come to the previous meetings.

Ms. Yukimura: It's okay.

Mr. Rapozo: No, this is just as important. I mean, the bill is here now and with the amendments and the amendments haven't even been introduced yet, so this is a perfect time to be here.

Ms. Bloom: Right.

Mr. Rapozo: I appreciate that you came.

Ms. Bloom: And it just seems very unfair as a landowner especially in an area where it is so predominantly, you know, vacation rental anyway.

Mr. Rapozo: And the reality is, it was never always that way. Moanakai was actually a residential neighborhood at one time, so it has become a beast on this island. Not just Moanakai, but I am talking about the vacation rental industry as a whole. It is popping up everywhere and there are people that support it and there are people that don't. This body needs to determine what is best for the entire community and that is what we are trying to do right now.

Ms. Bloom: And you guys have a tough job.

Mr. Rapozo: Oh, yes.

Ms. Bloom: And I do want to point out that I... my family and I live on Moanakai and we live there full time.

Mr. Rapozo: How long have you been on Moanakai?

Ms. Bloom: I've lived there for about four (4) years and we have both long term rentals there and short term rental. I have to be honest with you that in some situations, it might be more advantageous as a homeowner. It seems that I have less noise problems or parking problems with the people who are right next to me who are vacation rental than the people two (2) doors down who are long term rentals who tend to park on my lot and all this. I am not saying... I don't want to denigrate anybody, but I am just saying from my point of view, one, the vacation rental folks seem to be better neighbors to me. Number 2 is, given unless the Finance Department is going to significantly reduce our property taxes, I think it is unfair to homeowners to take away a possibility of generating some income to compensate for what it is costing. So I would like the option of like my personal residence which I haven't vacation rented to date, but let's say that I go away for three (3) months in the summer or whatever, is by vacation renting that for that three (3) months, I can help cover my cost.

Ms. Yukimura: Councilmember Iseri-Carvalho?

Ms. Iseri-Carvalho: And I guess my question is then based on your last statement that you feel that there should be no restrictions on vacation rentals that they should be able to appear whenever the owner so chooses in whatever area that the owner so chooses, is that your statement?

Ms. Bloom: Right, I am basically for individual property rights. What I am saying though... I am saying, yes, if you do it legally in the sense that you are paying your taxes, the GET and TAT. I am also saying if there are certain communities that decide, be it a new CPR or a new development, if they want to have their own CC&R's and homeowner's rules, that precludes that in that community. That is great, I am for that. They can put that restriction on that.

Ms. Iseri-Carvalho: But you also basically said that we should extend the VDA's which sort of implies that VDA's should be allowed everywhere. Is that your position?

Ms. Bloom: What I am saying...

Ms. Iseri-Carvalho: I mean TVR's should be allowed everywhere.

Ms. Bloom: I am sorry, TV...

Ms. Iseri-Carvalho: Transient vacation rentals, I mean, that is the term that they use.

Ms. Bloom: Okay, what I am saying is from where I am coming from, my best case scenario is, I think people, except for the cases where there is subdivisions and CPR's which have the conveyance that restrict vacation rentals. I think individuals should have the right to vacation rent their house as long as it is, one, it is up to code whatever that might be (building code or whatever) and that it is a safe rental and they are paying their taxes and they are doing it that way.

Ms. Iseri-Carvalho: Do you think... who do you think should be responsible for enforcing these types of regulations?

Ms. Bloom: In terms of paying their taxes?

Ms. Iseri-Carvalho: Paying their taxes, in terms of whether they are up to building codes because that is one of the major issues I think. You know, I don't think that there is sufficient self regulation on the industry currently and had there been that, I don't think maybe this bill would have been necessary at this time.

Ms. Bloom: Right.

Ms. Iseri-Carvalho: But clearly one of the points have been and not only with vacation rentals, but with other violations of building codes in different kinds of planning aspects.

Ms. Bloom: Right.

Ms. Iseri-Carvalho: The County has not really had the resources in order to administer any type of enforcement. Even the way that it is set up or designed now where, you know, you would have to show proof. I mean, the administrative cost of having somebody determine that is going to be extremely high I think. So in I don't think we could leave it up to vacation rentals or renters to regulate itself because, apparently, there are a lot of areas that have vacation rentals that are not legal. And then the second even for those that are legal, it is unfortunate that they follow the laws and the other people don't either.

Ms. Bloom: Right.

Ms. Iseri-Carvalho: So there has to be some sort of balance in regulation, so that those that do comply get the benefit of compliance versus those that do not.

Ms. Bloom: Yes. Who right now regulates whether or not, indeed, the TAT taxes are... isn't there a tax board or something?

Ms. Iseri-Carvalho: No.

Ms. Yukimura: There is an office of taxation at the State level.

Ms. Bloom: And they would have ultimate responsibility.

Ms. Yukimura: But they would have a much easier job if they knew who was actually doing vacation rentals and one of the purposes of this bill and one of the points that was unanimous in our stakeholders group was that there should be registration of all vacation rental users.

Ms. Bloom: Okay, I am fine with registration. I think that is fine and I have no trouble with doing the business upfront legally. What I am saying is, do not preclude homeowners from having new vacation rentals. That is my point.

Ms. Yukimura: Are you done? If you think it is a properties owner right to do whatever they want to with the property...

Ms. Bloom: That is not what I am saying. I am saying it is the property right to... from my point of view, to use that property as a vacation if they so choose.

Ms. Yukimura: Do you think they have the right to use it for a commercial place too?

Ms. Bloom: That is an interesting question that Mr. Chun brought up. This is an issue of commercial versus, you know, residential.

Ms. Yukimura: Because, basically, the law from the Supreme Court is that you don't have the right to do whatever you want...

Ms. Bloom: Right, clearly.

Ms. Yukimura: Commercial or vacation rental and that is not a right that is not subject to some regulation. And, I mean, are you also saying that people in a condo association or a subdivision can subject everyone in that area to conveyance which restrict use, but a larger community cannot restrict property owners to similar restrictions?

Ms. Bloom: Right, I don't think it is appropriate for this Council to blanketly tell everyone on the island that, hey guys, from now on, you can't do vacation rental. What I am saying is, you know, when you have a condo association, typically, there needs to be a vote of 75% of the owners within the condo to make an amendment. If those... if 75% of the people get together and say, okay guys, we don't want vacation rental in this situation, then I would say, again, it is this issue of, are you... it is kind of like can... are you going to have someone from (inaudible) tell the residents what they can do or not do versus the residents telling themselves what they can do.

Ms. Yukimura: And I am asking you, what is the difference between a neighborhood group that says, we are having some negative impacts from certain uses and, therefore, we want to restrict it...

Ms. Bloom: Right.

Ms. Yukimura: To the larger community that says, we are having some negative impacts from certain uses that we feel we need to restrict.

Ms. Bloom: Right, and that is your call. All I am saying is, I am one individual with several properties on Kaua'i and I have been listening to some of these meetings on the television and they are definitely people who are on the other side and I can sympathize and understand and I hear what they are saying. All I wanted to do today is, say, okay, I am on this side and I appreciate the listening that I am getting.

Ms. Yukimura: And we appreciate that you've come and spoken your feelings and position because we want to hear that too.

Ms. Bloom: I appreciate that.

Ms. Yukimura: Any other questions?

Chair Asing: I don't have a question, but I have a comment. I guess I understand where you are coming from on property rights, but I hope you understand what we are trying to do. Property rights are, you know, it is something that we have wrestled for years and years on this Council on what people can and cannot do with their property.

Ms. Bloom: Yes.

Chair Asing: And to make a generalization of, you know, I own this property, don't tell me what I can do or I cannot do. We have enacted specific areas on the island for specific purposes.

Ms. Bloom: Yes.

Chair Asing: That is why we do ag zoning, we have commercial zoning, we have industrial zoning, resort, you know, they are there for a specific use.

Ms. Bloom: Yes.

Chair Asing: And that is part of our planning process and to not have any regulation would be chaos. You know, you can imagine if we don't have this.

Ms. Bloom: Yes.

Chair Asing: Then people can do any and everything with their property and that is not right too in the broader perspective of what do we want our island to look like, so that we can all live comfortably and provide all the services that everyone wants and needs.

Ms. Bloom: Yes.

Chair Asing: And that is our struggle on how we are trying to do it and that is why we are trying to do this bill to make it as fair as possible.

Ms. Bloom: Right.

Chair Asing: But I understand what you feel and what you are trying to convey.

Ms. Bloom: Yes, thank you very much.

Mr. Rapozo: Thank you.

Ms. Yukimura: Thank you. Is there anyone else who wishes to speak? If not, the meeting will come back to order and the Chair would open it up for discussion. Oh, I was going to actually go over the amendments that I have circulated and if everybody has... is there anyone who wants a copy who does not have a copy? It is the... at the top it says, March 9, 2007 and there is a small parenthesis (4) which actually means that this has gone through four (4) drafts. Can we get Councilmember...

Ms. Iseri-Carvalho: I have the attorney letter and that is it.

Ms. Yukimura: So I will just go over this quickly. The first change was just an expansion of findings and purposes and I just want to point out that something that I didn't include in the conceptual amendments, but I've added to the purpose is on page 3. It is the first full paragraph. It just states the fact that this law... this proposed law holds vacation rentals as a violation of the farm dwelling requirement and, therefore, considers any vacation rentals on ag lands to be illegal and not entitled to a non-conforming use. It also points out the policy reason for doing this which is that we are in the process of identifying ag lands of importance to the State and revamping our laws with respect to ag zoned lands.

Chair Asing: Councilmember Yukimura, I think it would be helpful if when you make references like you are making references now, to read the page number and the section. It will be easier for everybody to follow because I believe you are on page 3 and the second paragraph from the top.

Ms. Yukimura: Right. Thank you. I will try to do that. So that is just an addition to the conceptual amendments. And then in bed and breakfast operation definition, I took the liberty of expanding it and this totally negotiable and discussable, I mean changeable, amendable. On bed and breakfast, I have defined it to mean...

Ms. Iseri-Carvalho: Page 3.

Ms. Yukimura: Yes, page 3, thank you, bottom third of page 3, definition, bed and breakfast operation. I have defined it as a situation in where the owner is on property not necessarily in the same house. We can... I just thought that would have a broader reach, but if people have concerns about that, please let me know.

Mr. Rapozo: I am on page 3, but where does it...

Ms. Iseri-Carvalho: Section 2.

Mr. Rapozo: Yes, but where does it say that they don't have to...

Ms. Iseri-Carvalho: On the same parcel.

Mr. Rapozo: On the same parcel, I see.

Ms. Yukimura: Rather than in the same dwelling unit.

Mr. Rapozo: Which really... I heard the testimony at the last meeting and I think the gentleman is here today, but, anyway, it is discussable right you said?

Ms. Yukimura: Yes, open for discussion. The rest of the definitions follow what I had proposed in the conceptual amendment.

Mr. Rapozo: On more ques... I know in the third, well, the second true paragraph, full paragraph on page 3, you are basically taking B&B's out of this...

Ms. Yukimura: That is correct.

Mr. Rapozo: So why would you define...

Ms. Yukimura: Just to distinguish them from single family vacation rentals just because I think it needs to be clear what the difference is. And I want to say that as we... it is my intention to then really look at bed and breakfast after we pass this. If we find that this definition is not functional or appropriate, we can, at that time, amend it, you know. So this is kind of working...

Mr. Rapozo: If there are jurisdictions that allow that because I just...

Ms. Yukimura: Allow bed and breakfast?

Mr. Rapozo: With the owner not in the house or with the operator in the dwelling.

Ms. Yukimura: Yes, I mean, there are situations where... I mean, the main purpose of bed and breakfast as we've seen it distinguished from single family vacation rentals is that the owner is not present. In the case of an owner living on property, he or she is present.

Mr. Rapozo: Right.

Ms. Yukimura: So it seems to...

Mr. Rapozo: I mean, I think when you get... if you have a facility whether it is a two (2) bedroom, four (4) bedroom or whatever it is and you hire... you are not on property, but you hire staff to cook the meal and so forth, it is no longer a bed and breakfast, I think, the way bed and breakfasts were intended. I think it becomes like an Inn or a motel as opposed to a bed and breakfast which I thought and, again, I am just curious to know and maybe the gentleman can help... I know that he runs one that are there jurisdictions around that have bed and breakfast operations that are called bed and breakfast that the owners or the operators are not in the facility itself. I know the Chair said that he stayed the night in Maui and I am not sure how that was run? Was that run with the owner?

Chair Asing: Yes.

Ms. Yukimura: It was on property and if you look at Scott Ezer's report that the Planning Department commissioned, he shows some of the different definitions or levels of bed and breakfast. You can have a bed and breakfast in house, two (2) rooms, four (4) rooms, you can have a bed and breakfast inn which is defined with bigger impact and a bigger operation. Those are the issues I think we will be addressing when we address bed and breakfast.

Mr. Rapozo: And that is my only concern because, again, I don't know if it is a bad idea, I just want to make sure we are calling it what it is because what you are running is a little hotel. If you have staff that is preparing meals, staff that is cleaning the beds and the rooms, to me, it is different category now. You now are a small hotel or a motel or an inn because the bed and breakfast concept is to share with the family that owns the house and they prepare the breakfast. You sit around and eat and when we are getting away from that now and having a commercial kitchen or whatever it is, you have staff caterers bringing in food, it is not bed and breakfast anymore.

Ms. Yukimura: Well, those are the issues we will address. I mean I stayed in a bed and breakfast in East Hampton. He had several individual houses on his property, so we slept in those rooms and we all entered the dining room and ate breakfast which he cooked himself.

Mr. Rapozo: And I think that is...

Ms. Yukimura: And we had a great time talking about, you know, his family had been there for four (4) generations, blah, blah, blah. Anyway, those are the issues that are going to come up when we address bed and breakfast and they are distinguished from single family rentals. I mean, you still have people come in and cleaning the house. You don't have any provision of meals, they don't clean the house everyday, maybe, you know. So those are... you begin to start to define the differences and you don't have anybody on property to answer questions although if you have a 24/7 number, it gets closer because you do have a rental agency that you can call at all times to get response. Anyway, let's see on page 4, this was per the suggestion from Ms. Robeson and Ms. Diamond. We added another purpose to the residential section of our CZO and that is on the bottom of page 4 where we add the last underlined paragraph to maintain the character and integrity of communities within residential districts and to support residents in continuing to live and raise their families in these neighborhoods.

And then the next section... you will see at the bottom of page 4, generally permitted residential uses and structures, and then if you go to page 5, transient vacation rentals... I guess we left bed and breakfast operations within designated vacation areas... so if you have a residential zoned land that is within a VDA, they

are a permitted use. Okay, and I don't know why we allowed... we kept bed and breakfast in there. I think because we said, oh, this is a... as long as they are in a VDA that should be okay that is why we did it. I believe that is the same as the Planning Department's bill. I will check that.

And the on page 7, development standards. I hope this is in the right place. I thought it was in the resort area. These are development standards for transient vacation rentals in resort areas because I am thinking we are allowing them... they are all part of VDA's, so we needed some standards. And then in all the other sections, we just showed that transient vacation rentals are permitted uses as long as they are in VDA's.

Okay, and then on page 12, these are additions to the section in our CZO on timesharing and transient vacation rentals and we add a whole section on single family vacation rentals because, as you know, until... unless we pass this bill, there is, in the CZO, no real definition of single family vacation rentals or where they belong. So this section which is quite involved... first of all, on page 12 under Section 8-17(A) entitled single family vacation rentals. As Ms. Blair pointed out, section A is defining section which says where they are allowed and where they are prohibited. Basically, it says they are only allowed in Visitor Destination Areas. We are allowing properties that are on the national and State historic register to also apply for a use permit. That is stated more definitely further down and I will point that out. And then section B defines non-conforming uses because we are allowing uses that are in effect at the time that this law passes. As Mr. Chun pointed out, that is one of the most complicated parts of this bill. So we showed development standards and then on page 13, we talk about registration for all transient vacation rentals. We say that all single family and multi-family transient vacation rentals existing in Visitor Destination Areas at the effective date of this ordinance shall apply for and secure a Class I zoning permit no later than 12 months after the ordinance. I have chosen and I welcome any input on this to use the Class I zoning permit process as the registration format because it is an existing process. I didn't get any feedback from the Planning Department at the deadline of last Wednesday, but I am still open to any input that they may have.

And then it says that no single family transient vacation rental outside of Visitor Destination Area can operate without a non-conforming use certificate and then the following section defines how you get that certificate. Okay, right now, in section B, it says that anybody who is... wants to apply for a non-conforming use certificate shall by one year from now establish to the satisfaction of the director 1, 2, 3, 4, 5, 6 things, 7 things.

Ms. Iseri-Carvalho:            On A, was there a reason why one year was picked as opposed to any other time period?

Ms. Yukimura: No, and we could change that. I think City & County allowed six (6) months for uses, you know, to come in, but I did think about our ADU deadline and I didn't want to set it at the end of the year because... actually, that is the end of the year in 2009, but I just didn't want us having too many deadlines at the same time.

Ms. Iseri-Carvalho: But that is up for discussion, right?

Ms. Yukimura: Yes, indeed. So according to these amendments, an owner would have to show that the building was completed one year before the ordinance. I mean, you can't use it unless it is actually in existence. That the use was in existence which means vacation rental use... I see something... I think I was going to say that you could show that if use was in existence by showing that at least 35...90 days out of 365 were used for vacation rentals, but I see that it didn't get in there.

Ms. Iseri-Carvalho: It is not here, right?

Ms. Yukimura: No, it isn't, but that is the key. I think attorney Jonathan Chun told us that we have to define use very carefully. They also have to show that there is no outstanding building and zoning violations at the time of applying for this non-conforming use permit.

Ms. Iseri-Carvalho: JoAnn, when you say no outstanding zoning, would they have had to have been issued a notice of violation in order to be that?

Ms. Yukimura: I don't know. That is a good question on how we would define that.

Ms. Iseri-Carvalho: Okay, because...

Ms. Yukimura: Right, and then all required permits relating to the use were secured in a timely manner that meant that this could not be an after-the-fact building, that all required taxes were paid in a timely manner. I know that Mr. Chun has raised some questions about that in his opinion and also that single family transient vacation rental is not located on ag zoned or districted land.

Mr. Rapozo: And is it your intention to add open in that. I know we had a little discussion on that, but...

Ms. Yukimura: I am thinking we don't need to add open because if the underlying district, the State district is ag, it is covered, but I did want everybody to look at this and see if we are missing anything.

Mr. Rapozo: And I guess we will check.

Ms. Yukimura: Yes. And that you said use has continued legally up to and through the effective date of this ordinance. Okay, so those were my attempts in trying to be real clear on what it would take to get a non-conforming use permit and all of this is up for discussion and certainly scrutiny in terms of its legality. Much of this was taken from the City & County ordinance.

Ms. Iseri-Carvalho: Of Honolulu?

Ms. Yukimura: Uh huh. On page 14, the next paragraph says that the owner/operator shall have the burden of proof of establishing that the use was properly non-conforming and it itemizes the documentation that is required. And then in section (C) and it is about the middle of page 14. It says, the failure to obtain a non-conforming use by March 31, 2008 shall mean that the alleged non-conforming use is not a bonafide non-conforming use and shall be treated as an illegal use. And then the next section requires for annual renewals.

On page 15, we are talking about enforcement and it... you know, it says that the Planning Director or member of the public may initiate proceedings to revoke a non-conforming use if it can be shown that the applicant initially misrepresented a material fact in the application. It also shows how the Planning Director shall serve notice of revocation, and it also allows a (inaudible) in (D) to appeal the decision of the Planning Director regarding a non-conforming use to the Planning Commission.

Ms. Iseri-Carvalho: Councilmember Yukimura, again, I would have some concerns with the definition of intentionally. I mean, there is a legal definition of intentional, knowing and I don't think it needs to rise to that level. It is very difficult to prove intentional as opposed to maybe a knowing violation, so I would have some concerns with that type of language.

Ms. Yukimura: That is a good suggestion. We can make an amendment or we can change that.

Chair Asing: Councilmember Yukimura, is there any reason for that September 1 to October 15 and every even number thereafter.

Ms. Yukimura: That came from the City & County and where are we Chair. Can you tell us where we are?

Chair Asing: We are on page 14, the middle of the page under (D).

Ms. Yukimura: I think I followed City & County and it was just... I think it was to stagger things out and I guess this renewal is every two (2) years.

Chair Asing: I am not sure what the significance is of the September 1 and October 15 and every even number year thereafter.

Ms. Yukimura: It actually just tried to limit the paperwork on the Planning Department to three (3) months, but also give people enough time to make the renewals and every even number year, I think was to require renewal every two (2) years instead of, you know... that is certainly subject to change if we feel that there is a more streamline and better way to do that.

And then on page 15, the very last underlined section...

Mr. Rapozo: JoAnn, I have a question on (E). You cite sections 8-17.6 for the penalties, but it is not here.

Ms. Yukimura: Yes, because it is an existing law.

Mr. Rapozo: Okay. That is not being amended, right?

Ms. Yukimura: No.

Mr. Rapozo: I will look at it later, that is fine.

Ms. Yukimura: That may be an inaccurate cite. Jade, is that...

Mr. Rapozo: I asked Jade, so she is actually researching it too.

Ms. Yukimura: Is that a correct cite? Okay.

Mr. Rapozo: And I will review that later, but it is the right cite.

Ms. Yukimura: Okay. And so, finally, on page 15, the last underlined paragraph is the exemption for historic properties. It does allow them to go for use permit and it came out of the testimony that was received from at least one owner of historic property pointing out that that... that the burden of maintaining a historic property and the need to have some income on it. It still requires them to go through a use permit which can be denied if it is not an appropriate use. So that is the brief rundown and you have already pointed out some things we need to change, but at least we have a framework from which to start. So any questions?

Chair Asing: You want to, again, on page 15, the historic properties exemption, do you want to explain that a little bit?

Ms. Yukimura: It came out of a very extensive we got from a property owner on the westside who owns historic property and he actually laid out all his bills and all his... because they can't make changes to the property. They have to keep it, so if we feel that that is not a good thing to do, we can take it out. But I put it in because I thought that we don't have that many properties. I think there is a special burden on historic properties to keep up that I know of other jurisdictions that have given those kinds of benefits to offset the burden of historic property designations.

Chair Asing: I think when we start singling out, you know, properties, I get concerned about the property right issue on...if this, as an exemption, you know, other people can start coming in with other reasons why they should be exempted to and it just opens it up and that is my concern.

Ms. Yukimura: I think that is a legitimate concern and if the Council feels or the Committee actually first, feels that it is something that we should not include, we can exclude it. Other questions? If not...

Mr. Rapozo: I just... I know that we will have much more discussion, but I just wanted to... one of the things after listening to Mr. Chun, we talked about the definition of lawful use and I am hoping that the County Attorneys can advise us as far as what is within our parameters, what is authority, police authority or police power to define outside of H.R.S. 46-4, so how much latitude do we have to define in the ordinance lawful use, so that is one item. The other one, JoAnn, I guess it is for you and I know I think we had some discussion on this a meeting or two (2) ago. The 180 days duration of occupancy and I apologize if you explained that before. I guess I don't remember, I may have stepped out, but what is the rationale for changing from 30 to... it is going up to six (6) months basically.

Ms. Yukimura: It is a broader coverage of transient vacation rentals because they are not long term rentals when you rent for three (3) months or four (4) months, or five (5) months or six (6) months. They are not long term rentals, so it includes those that are just rented for less than 30 days, but it also includes anything that is rented for less than six (6) months and it correlates to the TAT law (the transient accommodation tax law) and that is how they define transient accommodations.

Mr. Rapozo: So TAT is six (6) months as well?

Ms. Yukimura: Yes, uh huh. So I thought instead of having a variety of definitions that always make... if it didn't hurt, then it would be better to have a parallel definition.

Mr. Rapozo: That is all that I have right now.

Ms. Yukimura: I am going to actually go against what I said. I am going to open it up to see if there is any comment from the public while we are at it and then close the meeting if we can defer it.

Ms. Iseri-Carvalho: I have some discussion.

Ms. Yukimura: Then let's hold off. I am sorry.

Ms. Iseri-Carvalho: And the discussion was, I believe when this bill initially came over, there was a confirmation that the bill had been reviewed by the County Attorney's Office for legality. I mean, that was my recollection, but I think we had not wanted to review it had it not been reviewed by the County Attorneys before.

Ms. Yukimura: I don't know. I am sorry. We can ask Mr. Costa.

IAN COSTA, PLANNING DIRECTOR: Ian Costa, Planning Director.

Ms. Iseri-Carvalho: Ian, was the original bill that came over, 2204, was that bill reviewed by the County Attorney's Office before... I mean, during the deliberations over at the Planning Commission as well as when it came over here?

Mr. Costa: I know County Attorney participated in the...

Ms. Iseri-Carvalho: Drafting and the discussion?

Mr. Costa: Reviewed by the Planning Commission to public hearing, through deliberation. I guess you would have to verify with them whether there was an extra review aside from that.

Ms. Iseri-Carvalho: Okay, but at all times that the bill was being deliberated and drafted, you are saying that the County Attorney had their input, their legal input into the document?

Mr. Costa: Participated through I guess the normal process in the Commission as well as I believe along the way at that time, I think Deputy County Attorney Loo was assigned to the Planning Department. I know that in its drafting and prior to getting to the Commission, we asked her to participate in several discussions to address legalities. In fact, I believe she might have met in this very room on several occasions in crafting a bill.

Ms. Iseri-Carvalho: Maybe before my time probably (inaudible).

Mr. Rapozo: She has been gone for a while.

Ms. Yukimura: Yes, so I don't think she was present when the Planning Commission dealt with the bill.

Mr. Costa: It might not have been her, but there was an attorney present.

Mr. Rapozo: I guess the question is, before it comes here, does an attorney review the bill. I am not talking about in the Planning Commission and so forth giving advice, but does somebody review the bill in its entirety, in its final (change tape). I assume that every time we get a legal document or a draft ordinance and maybe I just assumed wrong, but I would have assumed that it goes through that channel and comes to us basically approved for legality and...

Mr. Costa: Typically, that would occur prior to even going to public hearing.

Ms. Iseri-Carvalho: That would have occurred?

Mr. Costa: But I can tell you with certainty that upon Commission action, I don't believe that we have consistently said, okay, before we transmit to Council, let's have another review by attorneys.

Mr. Rapozo: Really?

Mr. Costa: Yes, we transmit as soon as we can.

Mr. Rapozo: So it comes to us from the Commission?

Mr. Costa: Yes, from the department.

Mr. Rapozo: Right, but the Commission's draft, if you will, will come to us and there is, at that point, no more legal review?

Mr. Costa: The time to review is prior to Commission action, so that you don't have Commission acting on something that is not legal to begin with.

Mr. Rapozo: So in your opinion then, when it comes to us, it has passed the legal test?

Mr. Costa: Yes, well, I mean through our involvement with...

Mr. Rapozo: No, I mean, what you believe.

Mr. Costa: Our involvement with the attorneys.

Mr. Rapozo: Whether it is right or wrong, I am not asking that, but as far as you are concerned, when we get it, it has passed that legal test and it meets all the legal requirements, in your mind.

Mr. Costa: By virtue of, I guess, that office not telling us, stop...

Mr. Rapozo: That something is wrong?

Mr. Costa: Yes.

Mr. Rapozo: Okay, thank you.

Ms. Iseri-Carvalho: Thank you Ian. Councilmember Yukimura, I think that had been the policy here of the Council that any legal documents or ordinances were reviewed by a County Attorney and that raises some concern when we have another attorney, Mr. Chun, who is hired by the Board of Realtors claiming that some of the provisions that were in the amendment are to his knowledge not within our power to do which would make it illegal. So I don't know what your intent is. I would hope that they would be able to review some of the concerns that were raised, the legal concerns that were raised by Mr. Chun, but, again, it seems to be kind of... kind of backwards the way that we are working at it because, you know, had that process... we would have hoped that that process had taken place prior to it being on the Council floor.

Ms. Yukimura: Well...

Ms. Iseri-Carvalho: And I am not saying the fact that they would have had to have known what Mr. Chun was going to say, but any person that is reviewing for legality on the provisions of the powers of... that be, in order to make zoning regulations that that would have simply been an issue that they would have reviewed even before Mr. Chun coming here today to raise it.

Ms. Yukimura: We are sending... we have sent the opinion to the County Attorney's Office and we will see what we get. You already have seen what I got from prior questions, so, you know, we may have to make our decisions as soon as we make our decisions.

Ms. Iseri-Carvalho: Well...

Ms. Yukimura: But, anyway...

Mr. Rapozo: I would concur that the County Attorney needs to review the matter brought up... the matters actually brought up by Mr. Chun as well as the concerns that we have.

Ms. Yukimura: Okay.

Mr. Costa: I guess, is that with respect to a retroactive?

Ms. Iseri-Carvalho: No, there was just... he brought up other things on...

Ms. Yukimura: You haven't seen his opinion?

Mr. Costa: I have, but one of his concerns was with a retroactive requirement or a retroactive law which in essence has to do with requiring one to show past years of compliance. That discussion was integral the whole way because... I believe initially some of the proposals went back 10 years. So I think anytime we try and enact laws that go back in time is probably not, cannot be done.

Mr. Rapozo: Well, I think the question, though, what was lawful at the time the ordinance is passed. I think that is the question and that is why I am asking that question not so much... obviously, we cannot expect to retroactively punish someone that is doing something legally. If you change the speed limit from 35 to 50, you cannot go back and cite everybody...

Mr. Costa: Exactly.

Mr. Rapozo: The same thing, but if it is unlawful at the time the bill is passed, then it is unlawful and there is no... for me, anyway, I am not the lawyer, but at this point, you are not covered anymore, so I think that is the debate is what is lawful. Mr. Chun has cited H.R.S. Section 46-4 and I am asking, is that all that we have to go by or can this body implement a definition of lawful use that goes beyond the confines of that section, the H.R.S. So that is what I am hoping that the County Attorney can provide for us.

Mr. Costa: My understanding of having that... whether it is one year, 10 years, 3 years, I think that was always... the intent of that was primarily to prevent a rush... the fact that we've talked about it for two (2) or three (3) years...

Mr. Rapozo: I think that was Councilmember Yukimura's concern is that everybody is going to come running in now and renting... what is the determination? What determines it as a lawful use and hopefully we will get that squared away.

Mr. Costa: Just as an example, ADU, we never had a rush. We have now.

Mr. Rapozo: Yes.

Mr. Costa: I am where I used to maybe sign one or two (2) a month, I sign three (3) or four (4) a day now.

Ms. Yukimura: If we hadn't moved the deadline, you would maybe not been alive at December 31.

(INAUDIBLE, MORE THAN ONE PERSON TALKING AT THE SAME TIME).

Mr. Rapozo: And that is going to happen here as well, so thank you.

Mr. Costa: But they have a couple of years now to rush. We talked about it for that long.

Mr. Rapozo: I agree, but, you know...

Ms. Yukimura: Anymore questions of Mr. Costa? Thank you. Any further discussion? Councilmember Iseri-Carvalho? I am just going to open it up and if it gets out of hand, I will close it. If there is any initial commentary on the amendments, I am going to open it up.

Mr. Rapozo: Madam Chair, I know we have a caption break.

Ms. Yukimura: Well, let's try this and see. Ms. Robeson and anybody else? Mr. Costa, Ms. Bloom.

Ms. Robeson: Barbara Robeson for the record. Do you want specific kind of word (inaudible) comments now or little sentences that may be wrong or something?

Ms. Yukimura: I think you can turn those in between now and the next Committee meeting.

Ms. Robeson: Okay, I will do that.

Ms. Yukimura: Thank you. Mr. Costa, you...

Mr. Costa (speaking as a member of the public): Thank you. This is only the second time that I have spoken as a member of the public and only...

Ms. Yukimura: Are you speaking as a member of the public?

Mr. Costa: I am because I think that is only... I need to share some of my knowledge and experience (manao). First of all, touching on the history of vacation rental, there has always been vacation rentals on Kaua'i except we never called them vacation rentals. They were called grandma's extra house, but they were rented. I think Kaipō, Jade, and there are a lot of families who have extra homes that we didn't rent it for profit. That brings me to what I believe has raised this issues and made it a real problem. People are now buying... people who are not from here are buying and from day one, they are commercial ventures and they build mansions. We don't build mansions. The lady came up and testified, she bought multiple properties for that purpose. That is what is creating a problem. Through our process, I think I've said that, you know, enforcement of this is key, but it cannot only be achieved through zoning. We have to amend our taxes. If we don't like vacation rentals, let's tax them. We want long term rentals, let's give a meaningful dedication program to rent at affordable rates. We don't have to go construct 200 or 300 homes every time. We can let the people provide it, the homes that are already there. The definition of B&B, I think it needs to remain single family residence/owner occupied. Once you get into owner/occupied property with multiple structures, that is an inn, that is a boarding house, that is a mini hotel. One of the things I believe that is a ramification of providing a... whether it be...you have to show one year of legal ownership, to me, it penalizes the local family who has owned the property for 20 years and maybe once or twice in 20 years has rented it that way. And the guy who benefits is the guy who bought and from day 1, operated as a vacation rental. You have many where the owner has never even lived in that neighborhood. He doesn't understand that neighborhood, but he is marketing it, he is selling it. How you prevent a rush, it is more how you encourage a rush talking about it extensively, debating... if you wait for a perfect law, you are going to debate it forever. I think we need to take a first step forward and, obviously, we need to amend our laws over time. With respect to the State Land Use Ag, that only covers County ag and open zoning within the State Land Use ag district. We do have ag and open zoning in the urban district that would not be covered. Just a historic look at... how the Planning Department has looked at vacation rentals. Number 1...

Ms. Yukimura: Now, are you talking as a Planning Director.

Mr. Costa: I am sharing my experience as a member of the public.

Ms. Yukimura: Okay, but, I mean, some of these things would have been very appropriate to make the deadline and send comments in as the Planning Director. I think it is really awkward when you mix the two (2).

Mr. Costa: Okay, I think when I come up as Planning Director, I actually only respond to questions. I am not allowed to...

Ms. Yukimura: No, that is... we've sent you. Now, your role as Planning Director is...

Mr. Costa: Thank you very much.

Ms. Yukimura: ...provide advice and recommendations to the County Council that is under the Charter in planning and zoning matters. So, I mean, I welcome comments from you as the Planning Director, but you told us at the beginning of this statement that you are wearing a private hat, so I am a little confused and I want to get clarified.

Mr. Costa: I am here to speak as a member of the public. I believe I said that clearly.

Ms. Yukimura: Do you want to finish then?

Mr. Costa: So I guess in closing, I think we just need to be mindful of who some of these provisions benefit and I think it is largely people or landowners that have really bought properties for that very purpose (never intended to live there) as opposed to some of our long term residents who have paid taxes on that property for 20 plus years. Thank you.

Ms. Yukimura: Okay, Ms. Bloom.

Ms. Bloom: Hi, Cynthia Bloom. I agree completely with what Mr. Costa just said about people like myself who have lived in my house and haven't vacation rented it like when I left in the summer being penalized by this law versus people who bought properties are going to be grandfathered in. So that was a really good point. So just to reiterate my position, you know, I am personally distressed by what I am seeing here. My position is, I believe that new vacation rentals should be allowed. I think the language you have in there about registration and permitting is excellent. I think that is something that we do need and there is good language that would, in there. I disagree with the idea of defining transient vacation rental as being 180 days doesn't provide... I think it provides a (inaudible)... I understand the tax law says that you must pay the transient accommodations tax if you have a tenant in there less than 180 days, that is true. But I think some creativity can be used in the language in here to permit use for 30 days or more. For an example of a family who has children on the mainland to be able to leave in the summer and to be allowed to rent their house for 30 days to help cover their expenses, I think in no way is that a commercial use or is generating problems. I really would encourage the language say, you know, if indeed this goes through which it probably will, but

if it does, put that 30 days instead of 180 and just have one of your creative legal people use a different term than transient... you know, that differentiates between the tax language and how you are defining vacation rental. If this does go through, I very much encourage redefinition of visitor destination areas. And then, a question that I have, does this permit run with the land or with the owner? So if someone has the permit and they sell the property, does it get to stay vacation rental or do they lose the right? Does the land... does the home lose the right to be a vacation rental?

Mr. Rapozo: In the current bill, I believe it is with the owner.

Ms. Bloom: It is with the owner?

Mr. Rapozo: Yes.

Ms. Bloom: Okay, so is there going to be a mechanism in place to dramatically reduce the property tax on properties that get sold? Because, right now, I think the reason the home valuations are where they are is because, especially on some of the shoreline properties, is because it can be vacation rented to support that property tax. So if that property gets sold and the vacation rental income level no longer supports that value, is there going to be a mechanism to go in and reassess these properties and...

Mr. Rapozo: You know, I know that Councilmember Kouchi is not here and he has always stated that the tax rate for a vacation rental should be resort.

Ms. Bloom: Uh huh.

Mr. Rapozo: And that is where it should be and, so obviously, if the use changes, then the tax rate would change as well.

Ms. Yukimura: It depends how we fashion the tax bill and that is a separate...

Mr. Rapozo: Exactly, and we haven't even gone there yet and I think a lot is going to be dependent on what happens with this bill and what happens. So obviously, when the use changes, if you went from commercial to residential, your tax rate would change.

Ms. Yukimura: Right.

Mr. Rapozo: So I would assume that the tax rate would change.

Ms. Bloom: I understand and I am differentiating between tax rate and assessment because, clearly, a property that is assessed at a very high value is paying high taxes. But if that gets sold and the person buying it cannot vacation rent it, doesn't have the income, it is quite possible that property value could decrease dramatically.

Mr. Rapozo: I would assume not being a tax expert, but I would assume that if the use of the... again, if there is no possible use for vacation rental, then it would definitely... the assessment would definitely show that.

Ms. Yukimura: And we are not to really get into a major conversation here.

Ms. Bloom: Yes.

Ms. Yukimura: And vacation rental income is not the only criteria that the tax office uses to assess the value of a property either.

Ms. Bloom: Right, but it is going to be a little tricky because, you know, you look at comps in a neighborhood, so if you have a neighborhood with vacation rentals and then you have a new house that is sold that can't be vacation rented, it is almost unfair that it is being assessed at the same value.

Ms. Yukimura: So buyers don't care whether you can get income or not.

Ms. Bloom: Right.

Ms. Yukimura: So that is still... so sometimes the income capacity of property does not affect the buying, but sometimes it does. Anyway...

Ms. Bloom: Okay, and then one last point is, I would request that if there is language in there about ag is that vacation rental use be allowed in ag and open zoning that is in the urban area. Because if it is already in the urban area, it is not going to conflict with your desires for true ag land.

Ms. Yukimura: Okay, thank you very much. Any questions? Is there anyone else who wishes to speak although we have to do a caption break in three (3) minutes.

Ms. Iseri-Carvalho: I think we need to do a lunch break.

Ms. Yukimura: And a lunch break, yes. If not, the meeting is called back to order and the Chair would entertain a motion to defer.

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

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

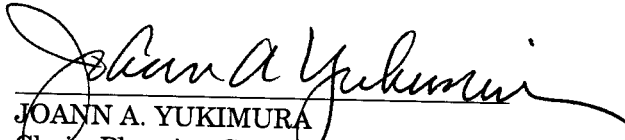
There being no further business, the meeting was adjourned at 12:12 p.m.

Respectfully submitted,



Lisa Ishibashi  
Council Services Assistant

APPROVED at the Committee Meeting held on April 4, 2007:



JOANN A. YUKIMURA  
Chair, Planning Committee Chair

(March 9, 2007)<sup>(4)</sup>

FLOOR AMENDMENT

BILL NO. 2204, Relating to Transient Vacation Rentals and Bed and Breakfast operations

Introduced by: JoAnn A. Yukimura

Amend Bill No. 2204 in its entirety as follows:

“[SECTION 1. The advent of Transient Vacation Rentals (TVR) and Bed and Breakfast (B&B) operations in Residential Districts has led to concerns relating to the reduction in the long-term rental inventory and loss of communities/neighborhoods, as well as other issues.

Because of the lack of clear regulations for TVRs (including single-family dwelling types) and B&Bs, one of the high priority implementation items in the 2000 General Plan involves the development of standards and regulations for these operations. The General Plan recognizes these types of alternate visitor accommodations, however it also acknowledges the need to develop regulations and standards to ensure that these uses are properly regulated and do not create any adverse impacts.]

SECTION 1. Findings and Purpose.

The Council of the County of Kaua‘i finds that there is a compelling need to address the issue of single-family vacation rentals on Kaua‘i. Single-family transient vacation rentals are occurring at a greater rate and inflicting a larger impact on the community of Kaua‘i than was ever anticipated by the drafters of the County’s Comprehensive Zoning Ordinance. While this type of visitor unit could be compatible with the character and nature of Kaua‘i and while it has certain positive advantages to the community and is desirable in terms of offering a mix of accommodations to the visitor, the uncontrolled proliferation of vacation rentals in residential areas outside the Visitor Destination Areas (VDAs) and the lack of appropriate regulation are causing significant negative impacts to some residential neighborhoods.

The County General Plan, updated in the year 2000, recognizes this fact by its policy for “Alternative Visitor Accommodations,” which reads as follows:

“4.2.8.2 Alternative Visitor Accommodations

(a) The County of Kaua‘i shall recognize alternative visitor accommodations, such as B&Bs vacation rentals, inns, cabins, and retreat centers.

(b) 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.

(c) County development standards and permit processes shall be scaled to the size and potential impact of the use:

[...]

(d) Permitting processes should consider the cumulative impact that a large concentration of alternative visitor units can have on a residential neighborhood.” (pp. 4-16 to 4-17)

Census data shows that seasonal rentals account for 45% of the new housing units built on Kaua‘i between 1990 and 2000, a greater percentage than housing built for long-term renters (14%) or for owner-occupied use (36%). Since 2000, out of the 2,050 new residential units, 1,070 have been built for the seasonal homes market and less than half have been for local families to rent (46) or own (936). The potential for vacation rental use increases the value and thus the selling price and investment rating of property on Kaua‘i, which increases prices and adds another potential layer of speculation in the real estate market. This also means that the limited available infrastructure and resources on Kaua‘i, including roads, water, sewer capacity, building materials, and contractor time are being used primarily for expensive and/or second and third homes rather than the primary home needs of local residents.

In oceanfront or other places of premium real estate value, second and third homes and vacation rentals (which are often one and the same) are displacing traditional neighborhoods where people of low and moderate income have been able to live in the past. Besides contributing to a lack of affordable housing in the community, this is changing the social character of neighborhoods where neighbors used to know each other. This has tended to make these neighborhoods more vulnerable to crime. While regulating single-family vacation rentals will not guarantee more affordable housing, it will dampen speculation and bring a halt to uncontrolled growth and cumulative impacts of vacation rentals which have affected the traditional neighborhoods of ‘Anini and Hā‘ena, and which could or are beginning to also affect neighborhoods such as Waimea Valley, Kekaha, and the makai side of Kapa‘a Town.

The Council also finds that the transient accommodation and general excise taxes on various vacation rentals are sometimes not being paid causing a loss of revenue to state and county governments and a failure to pay for impacts associated with visitors.

The purpose of this bill is to restore a balance between primary residences and single-family vacation rentals by: 1) requiring permits of all

single-family and multi-family vacation rentals no matter where they are located, 2) prohibiting new single-family and multi-family vacation rentals outside of established visitor destination areas, and 3) allowing nonconforming uses where single-family vacation rentals have been operating legally and paying all taxes for a specified time prior to approval of this bill.

Because existing State law requires all dwelling units on "Agricultural" District lands to be "farm dwellings," and because the County is in the process of identifying "Ag Lands of Importance to the State" and revamping its laws with respect to Agriculture-zoned lands, single-family vacation rentals on Agriculture-zoned lands are not eligible for a nonconforming use permit, nor are single-family vacation rentals allowed on "Conservation" district lands since the County has no jurisdiction over "Conservation" district lands.

This bill does not apply to bed and breakfast ("B&B") operations. It is the intention of the Council to address bed and breakfast units as a separate matter after establishing a regulatory framework for single-family vacation rentals. B&Bs are presently regulated through the use permit process.

In order to promote a high quality of life for all people on this island, protect traditional neighborhoods and the diversity of incomes and backgrounds that has made Kaua'i a model community and a place of Aloha, and to promote health and safety and the general welfare, the Council of the County of Kaua'i does hereby enact the following law.

SECTION 2. Section 8-1.5, Kaua'i County Code 1987, as amended, is hereby amended by adding the [definition] definitions for "Bed and Breakfast [operation]" Operation (B&B), "Director," "Transient or Transients," and "Visitor Destination Area or VDA," and amending the definition for "Transient Vacation Rentals" to include the definition of "Single-Family (Transient) Vacation Rental" and "Multi-Family (Transient) Vacation Rental" to read as follows:

"Bed and Breakfast Operation (B&B)" means a use in which overnight accommodations are provided to guests for compensation, for periods of less than one hundred eighty (180) days, on the same parcel as that occupied by an owner, lessee, operator or proprietor of said parcel.

"Director" means the Planning Director of the County of Kaua'i.

"Transient or Transients" means any person who owns, rents or uses a dwelling unit or a portion thereof, for less than one hundred eighty (180) days and which dwelling unit is not the person's primary residence under the Internal Revenue Code. This definition shall not

apply to nonpaying guests of the family occupying the unit and to patients or clients in health care facilities, full-time students, employees who receive room and/or board as part of their salary or compensation, military personnel, low-income renters receiving rental subsistence from state or federal governments whose rental periods are for durations shorter than sixty days, or overnight accommodations provided by nonprofit corporations or associations for religious, charitable, or educational purposes where no rental income is transacted.

[“Transient Vacation Rentals’ means rentals in a multi-unit building for visitors over the course of one (1) or more years, with the duration of occupancy less than thirty (30) days for the transient occupant.]

“Transient Vacation Rental” means a single-family or multi-family dwelling unit which is provided over the course of one (1) or more years, to transient occupants for compensation or fees, including club fees, with the duration of occupancy less than one hundred eighty (180) days.

“Single-Family Transient Vacation Rental” means a single-family dwelling unit, other than a bed and breakfast home/operation, which is used as a transient vacation rental.

“Multi-Family Transient Vacation Rental” means a multi-family dwelling unit which is used as a transient vacation rental.

“Visitor Destination Area or VDA” are those areas of Po’ipū, Līhu’e, Wailua-Kapa’a, and Princeville designated as Visitor Destination Areas or located within Time Share Boundaries on County of Kaua’i Zoning maps.”

SECTION 3. Section 8-3.1, Kaua’i County Code 1987, as amended, is hereby amended by adding a new subsection (e) to read as follows:

“(e) To maintain the character and integrity of communities within residential districts and to support residents in continuing to live and raise their families in these neighborhoods.”

SECTION [3.] 4. Section 8-3.3, Kaua’i County Code 1987, as amended, is hereby amended to read as follows:

“Sec. 8-3.3 Generally Permitted Residential Uses And Structures.

(a) The following types of residential uses and structures are permitted in districts R-1, R-2, R-4, and R-6 so long as the dwelling unit limitations established in Sec. 8-3.2 are not exceeded:

- (1) Single-family detached dwellings;
- (2) Accessory structures and uses, including one (1) guest house on a lot or parcel 9,000 square feet or larger;
- (3) Two (2) multiple-family dwelling units or two (2) single-family attached dwelling units upon a parcel of record as of June 30, 1980; and

(4) Notwithstanding subsection (3) above, multiple family and single family attached dwellings developed pursuant to a Federal, State or County housing program.

(b) Multiple-family and single-family attached dwellings are permitted in districts R-10 and R-20 in addition to those types of residential uses and structures permitted under Subsection (a) above.

(c) Public and private parks and home businesses are permitted in all districts.

(d) Adult Family Boarding and Family Care Homes that comply with all State Department of Social Services and Housing and State Department of Health rules, regulations and requirements provided, however, that the Planning Director may require a use permit for such applications that may create adverse impacts to the health, safety, morals, convenience and welfare of the neighborhood or community that the proposed use is located.

(e) Transient Vacation Rentals and Bed and Breakfast operations within the designated Visitor Destination Areas established pursuant to Article 17 of this Chapter. These uses are prohibited in all non-VDA areas.

[SECTION 4. Section 8-3.4, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

“Sec. 8-3.4 Uses And Structures In Residential Districts That Require A Use Permit.

The following uses and structures in residential districts require a use permit:

- (1) Botanical and zoological gardens.
- (2) Cemeteries, mortuaries and crematoriums.
- (3) Churches, temples, and monasteries.
- (4) Clubs, lodges and community centers.
- (5) Diversified and specialized agriculture and nurseries.
- (6) Dormitories, guest and boarding houses; but not hotels and motels.
- (7) Golf courses.
- (8) Medical and nursing facilities.
- (9) Museums, libraries and public services and facilities.

(10) Private and public utilities and facilities, other than maintenance and storage of equipment, materials, and vehicles.

(11) Project developments in accordance with Article 18 of this Chapter.

(12) Retail shops and stores.

(13) School and day-care centers.

(14) Transportation terminals and docks.

(15) Three (3) or more -family dwelling units upon a parcel of record as of June 30, 1980, in the R-1, R-2, R-4, or the R-6 District.

(16) Three (3) or more single-family attached dwelling units upon a parcel of record as of June 30, 1980, in the R-1, R-2, R-4 or the R-6 District.

(17) Residential care homes.

(18) Adult Family Group Living Home.

(19) Any other use or structure which the Planning Director finds to be similar in nature to those listed in this Section and appropriate to the District.”]

SECTION 5. Section 8-4.3, Kaua‘i County Code 1987, as amended, is hereby amended to read as follows:

“Sec. 8-4.3 Generally Permitted Resort Uses And Structures.

The following types of uses and structures are permitted in RR-10 and RR-20 Districts, so long as the dwelling unit limitations established in Sec. 8-4.2 are not exceeded and provided that each use or structure is incidental to or accessory to resort development:

- (1) Accessory structures and uses
- (2) Apartment hotels
- (3) Automobile service and storage
- (4) Barber shop and beauty shop
- (5) Commercial recreation
- (6) Gift shops
- (7) Golf courses
- (8) Home business
- (9) Hotels
- (10) Laundromat
- (11) Libraries
- (12) Motels
- (13) Museums
- (14) Police and fire stations
- (15) Public parks and monuments
- (16) Restaurants and food service
- (17) Retail cleaning outlets
- (18) Retail clothing shops
- (19) Retail food and drug shops
- (20) Shoe repair shops

- (21) Single family detached dwellings
- (22) Transient Vacation Rentals

SECTION 6. Section 8-4.5, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

“Sec. 8-4.5 Development Standards.

(a) Residential. Subject to the density and acreage limitations in the particular Resort District as provided in Sec. 8-4.2, the standards for the development of single family detached residential structures shall be the same as those provided in Sec. 8-3.1.

(b) Hotels. Buildings containing hotel rooms shall be considered the same as multiple family dwellings subject to the same standards as provided in Secs. 8-3.5 through 8-3.8, inclusive, with the following exceptions:

- (1) there is no maximum distance requirement from buildings containing dwelling units to parking areas;
- (2) only one (1) parking space must be provided for each three (3) hotel rooms;
- (3) the maximum allowable land coverage shall be fifty percent (50%);

No hotel room in a structure containing more than three (3) rooms shall be converted to a dwelling unit without first obtaining a Class IV Zoning Permit.

(c) Motels. Development standards for motels shall be the same as those for multiple family dwellings as provided in Secs. 8-3.5 through 8-3.8, inclusive, with the following exceptions:

- (1) parking spaces must be within one hundred fifty (150) feet of the dwelling unit or motel room served;
- (2) at least one (1) parking space shall be provided for each motel room.

(d) Transient Vacation Rentals. Development standards shall be the same as those for single-family detached dwellings as provided in Secs. 8-3.5 through 8-3.8, inclusive, with the following exceptions:

- (1) only one sign no larger than three (3) square feet shall be permitted.
- (2) no direct illumination of the sign.
- (3) sign shall include the permit number for the operation.
- (4) an owner's name or contact person on-island along with a telephone number shall be filed with the zoning permit.

(5) a “rules of conduct” shall be filed with each zoning permit application. A “rules of conduct” shall be established for each dwelling unit and shall inform the occupants about noise generation in general and in relation to gatherings (not limited to parties, events, and activities.), hours for gatherings, types of

activities allowed, and other important information about the neighborhood to reduce the impacts of the visitor use of the property.

[(d)](e) Other Permitted Uses. Parking service, open space and other requirements applicable to each use other than dwelling units shall be the same as the regulations established in the district other than Resort where such uses are permitted and regulated.

[(e)](f) Other Requirements. Other requirements for development standards in resort districts are as follows:

(1) The Planning Director or the Planning Commission may revise the requirements if the plan review required for a zoning permit indicates that the specific nature of the overall development reasonably warrants the revisions.

(2) The Planning Commission may require the dedication of adequate public access ways not less than six (6) feet in width to publicly-owned land or waters and may require the preservation of all historic and archaeological sites, known or discovered on the parcel subject to development.”

[SECTION 7. Chapter 8, Kaua'i County Code 1987, as amended, is hereby amended by adding a new Section 8-4.7 to read as follows:

“Sec. 8-4.7 Non-Conforming Use Certificate for Bed and Breakfast Operations.

B&B facilities not in the VDA that obtained Use Permits prior to the effective date of this Ordinance No. (insert number) shall be allowed to continue as a Non-Conforming Use as provided in Section 8-23.2.”]

[SECTION 8. Section 8-4.7, Kaua'i County Code 1987, as amended, is hereby amended by appropriately renumbering the section as “Section 8-4.8.”]

SECTION [9.] 7. Section 8-5.3, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

“Sec. 8-5.3 Generally Permitted Uses And Structures.

(a) Neighborhood Commercial. The following uses and structures are permitted in neighborhood commercial districts:

- (1) Accessory uses and structures
- (2) Automobile services
- (3) Churches, temples and monasteries
- (4) Clubs, lodges and community centers
- (5) Household services
- (6) Museums, libraries and public services

- (7) Personal services, such as barber shops, laundromats, and shoe repair shops
- (8) Professional offices
- (9) Public parks and monuments
- (10) Retail shops and stores
- (11) Restaurants and food services
- (12) Single family detached dwellings on lots or parcels of no less than six thousand (6,000) square feet, and to a density not to exceed six (6) units per acre.

(13) Transient Vacation Rentals, provided they are located within the designated Visitor Destination Areas established in Article 17 of this Chapter.

(b) General Commercial. The following types of uses and structures are permitted in general commercial districts:

- (1) Accessory uses and structures
- (2) Automobile sales, repair and storage
- (3) Automobile services
- (4) Churches, temples and monasteries
- (5) Clubs, lodges and community centers
- (6) Commercial indoor amusement and parks
- (7) Department stores
- (8) Hotels and motels
- (9) Household services
- (10) Light manufacturing, such as handicrafts and garment fabrication
- (11) Minor food processing, such as cracked seeds, jellies, candies and ice cream
- (12) Museums, libraries and public services
- (13) Offices and professional buildings
- (14) Parking garages
- (15) Personal services
- (16) Public offices and buildings
- (17) Public parks and monuments
- (18) Research and development
- (19) Restaurants and food services
- (20) Retail sales
- (21) Supermarkets and shopping centers
- (22) Transient Vacation Rentals, provided they are located within the designated Visitor Destination Areas established in Article 17 of this Chapter.

~~[(22)](23)~~ Transportation terminals and docks

~~[(23)](24)~~ Warehouses

~~[(24)](25)~~ Wholesale outlets”

SECTION [10.] 8. Section 8-5.4, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

“Sec. 8-5.4 Uses And Structures In Commercial Districts That Require A Use Permit.

(a) Neighborhood Commercial. The following uses and structures in neighborhood commercial districts require a use permit:

- (1) Animal hospitals
- (2) Automobile sales, repair and storage
- [(3) Botanic and zoologic gardens]
- (3) Botanical and zoological gardens
- (4) Communications facilities
- (5) Construction materials storage
- (6) Diversified agriculture
- (7) Food processing and packaging
- (8) Light manufacturing
- (9) Multiple family dwellings and single family attached dwellings
- (10) Private and public utilities and facilities
- (11) Project development in accordance with Article 18 of this Chapter
- (12) Research and development
- (13) Schools and day care centers
- (14) Warehouses
- (15) Any other use or structure which the Planning Director finds to be similar in nature to those listed in this section and appropriate to the District.

(b) General Commercial. The following uses and structures in general commercial districts require a use permit:

- (1) Animal hospitals
- (2) Bars
- [(3) Botanic and zoologic gardens]
- (3) Botanical and zoological gardens
- (4) Commercial outdoor amusement
- (5) Communications facilities
- (6) Construction materials storage
- (7) Diversified agriculture
- (8) Food processing and packaging
- (9) Nightclubs and cabarets
- (10) Private and public utilities and facilities
- (11) Project development in accordance with Article 18 of this Chapter.
- (12) Residential dwellings, detached, attached or multi-family
- (13) Schools and day care centers
- (14) Warehouses

(15) Any other use or structure which the Planning Director finds to be similar in nature to those listed in this section and appropriate to the Planning Director.”

[SECTION 11. Section 8-17.1, Kaua‘i County Code 1987, as amended, is hereby amended to read as follows:

“Sec. 8-17.1 Limitations On Location.

Except as provided in this section, B&B operations, time share units, time share plans and transient vacation rentals are prohibited.”]

SECTION [12.] 9. Section 8-17.2, Kaua‘i County Code 1987, as amended, is hereby amended to read as follows:

“Sec. 8-17.2 Permitted [Time Share] Locations.

Subject to the limitations contained in Sections 8-17.4 and 8-17.5, time share units, time share plans and transient vacation rentals are allowed:

(a) In Hotels in Resort or Commercial Districts; and

(b) In the Resort RR-10 and RR-20 Districts and multi-family R-10 and R-20 Residential Districts when such districts are located within the visitor destination areas of Po‘ipū, Līhu‘e, Wailua-Kapa‘a or Princeville, as more particularly designated on County of Kauai Visitor Destination Area maps attached to Ordinance No. 436 and incorporated herein by reference. The boundary lines established on these visitor destination maps shall be transferred onto the official zoning maps for reference purposes.

(c) Time share units and time share plans are prohibited in the R-1, R-2, R-4 and R-6 Residential Districts.”

SECTION [13.] 10. Section 8-17.5, Kaua‘i County Code 1987, as amended, is hereby amended to read as follows:

“Sec. 8-17.5 Existing Uses.

(a) “Existing” shall mean existing as of September 22, 1982.

[(a)] (b) Existing Time Share Units, Time Share Plans and multi-family Transient Vacation Rentals in Projects Not Located in Visitor Destination Areas. Nothing in this Article shall impair the use in a project of an existing time share unit, an existing time share plan, or an existing transient vacation rental when such project is not located within the visitor destination areas described in Section 8-17.2. All such existing time share units, time share plans and multi-family transient vacation rentals in such a project shall be regulated according to the terms, if any, of the project instruments. However, no additional time share units, time share plans, or transient vacation rentals shall be created in such a project after [the effective date of this section.]

September 22, 1982, nor shall the terms of the project instrument be amended or modified after [the effective date of this section] September 22, 1982 in any manner that will allow an increase in the number of time share units, time share plans, or transient vacation rentals within the project. The uses left unimpaired by this subsection shall not be lost by the failure to exercise the use unless it clearly appears that the use has been abandoned for a period in excess of two years. This subsection shall not apply to hotels in Resort or Commercial Districts.

~~[(b)]~~(c) Existing Time Share Units, Time Share Plans And Transient Vacation Rentals in Projects Located Within Visitor Destination Areas. Time share units and time share plans in existing projects located within the visitor destination areas described in Section 8-17.2 shall be regulated in accordance with the provisions of Section 8-17.4.”

SECTION 11. Chapter 8, Article 17, Kaua'i County Code 1987, as amended, is hereby amended by adding the following sections 8-17.8, 8-17.9, 8-17.10, 8-17.11, and 8-17.12 to read as follows:

“Section 8-17.8 Single Family Vacation Rentals.

(a) Notwithstanding any underlying zoning designation and with the exception of properties on the National or State Historic Register, single-family vacation rentals are prohibited in all areas not designated as Visitor Destination Areas, and single-family vacation rentals are permitted uses within Visitor Destination Areas.

(b) Development Standards for Applicants of Nonconforming Use Certificates. Development standards shall be the same as those for single-family detached dwellings in Sections 8-3.5 through 8-3.8, inclusive, with the following additions:

(1) Applicant shall designate and provide the Planning Department and the public with the name of a contact person or owner's representative who shall be available on a 24-hour, 7-days-per-week basis.

(2) Only one sign no larger than 5" x 18" shall be permitted under the house number. Only the Nonconforming Use Certificate Number and the phone number of the 24/7 Contact person shall be permitted on the sign.

(3) There shall be no direct illumination of said sign.

(4) The applicant shall provide a list of requirements and information entitled "For the Safety and Comfort of You and Your Neighbors," which shall be provided to the Planning Department at time of application and shall be posted in a conspicuous location in the transient vacation rental. This list shall include suggested curfews, guidance with respect to

gatherings and noise, and what to do in cases of emergency and natural disasters.

Section 8-17.9 Registration Via Permitting of all Transient Vacation Rentals

(a) All single-family and multi-family transient vacation rentals existing in Visitor Destination Areas at the effective date of this ordinance shall apply for and secure a Class I Zoning Permit no later than twelve (12) months after the effective date of this ordinance. Any new single-family and multi-family transient vacation rental established in Visitor Destination Areas subsequent to the effective date of this law shall apply for and secure a Class I Zoning Permit prior to the operation of said rental.

(b) No single-family transient vacation rental shall operate outside a Visitor Destination Area without a Non-Conforming Use Certificate obtained under Section 8-17.10.

Section 8-17.10 Nonconforming Use Certificates for Single-Family Vacation Rentals.

(a) The purpose of this section is to provide a process for designating those single-family transient vacation rentals which have been in operation legally for at least one year prior to the effective date of this ordinance as nonconforming uses and to allow them to continue subject to obtaining a nonconforming use certificate as provided by this section.

(b) The owner, operator, or proprietor of any single-family transient vacation rental which is operating outside of a Visitor Destination Area on the effective date of this ordinance shall, by March 31, 2008, establish to the satisfaction of the director:

(1) that the relevant building was completed with all necessary permits and final inspection completed at least one year prior to the effective date of this ordinance,

(2) that the use was in existence at least one year prior to the effective date of this ordinance,

(3) that there is no outstanding building or zoning violation at the time of application for a NUC.

(4) that all required permits relating to the establishment of said use were secured in a timely manner (i.e., that there were no "after the fact" permits),

(5) that all required taxes were paid in a timely manner, and that the applicant had a State of Hawai'i general excise tax license and a transient accommodations tax license for said year,

(6) that the single-family transient vacation rental is not located on lands zoned or districted "Agriculture," and

(7) that said use has continued legally up to and through the effective date of this ordinance, or shall cease operation.

The owner, operator, or proprietor shall have the burden of proof in establishing that the use is properly nonconforming. The following documentation substantiating existence shall be provided and shall include records of occupancy and tax documents, including all relevant State of Hawai'i general excise tax filings and a tax clearance, all relevant transient accommodations tax filings, and federal and/or State of Hawai'i income tax returns for the relevant time period. Upon a determination that the use was in existence in a proper and legal manner for at least one year prior to the effective date of this ordinance, and has continued up to and through the effective date of this ordinance, the director shall issue a nonconforming use certificate for the single-family transient vacation rental.

(c) Failure to obtain a nonconforming use certificate by March 31, 2008 shall mean that the alleged nonconforming use, as of the effective date of this ordinance, is not a bona fide nonconforming use, and shall not continue as a nonconforming use but shall be treated as an illegal use.

(d) The owner, operator, or proprietor who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate between September 1 and October 15, 2009 and every even-numbered year thereafter.

(1) Each application to renew shall include proof that:

(i) there were in effect a State of Hawai'i general excise tax license and transient accommodations tax license for the nonconforming use during each calendar year covered by the nonconforming use certificate being renewed and that there were transient occupancies for a total of at least 90 days during each such year, and

(ii) there has been no period of 12 consecutive months during the period covered by the nonconforming use certificate being renewed without a transient occupancy, and

(iii) there has been no transfer of ownership of said property to a non-family member.

(e) Failure to meet these conditions will result in the denial of the application for renewal of the nonconforming use certificate.

(f) The owner, operator, or proprietor of any transient vacation unit who has obtained a nonconforming use certificate under this section shall display the certificate issued for the current year in a conspicuous place on the premises. The nonconforming use certificate obtained under this section shall cease upon sale of the transient vacation rental unit.

Section 18-17.11 Enforcement Against Illegal Single-Family and Multi-Family Transient Vacation Rentals.

(a) The Planning Director or a member of the public may initiate proceedings to revoke a nonconforming use certificate if it can be shown that the applicant intentionally misrepresented a material fact in the application for said certificate, including all attachments to such application;

(b) The Planning Director shall serve written notice of the proposed revocation on the applicant by registered or certified mail with return receipt.

(c) The applicant, may, within thirty (30) days after receipt of the proposed revocation notice, appeal the revocation notice to the Planning Commission per rules promulgated by the Planning Commission.

(d) Any person aggrieved by the decision of the Planning Director in the issuance or denial of a nonconforming use certificate may appeal the Planning Director's action to the Planning Commission. An appeal to the Planning Commission shall stay the provisions of the Planning Director's orders pending final decision of the Planning Commission.

(e) Advertising of any sort which offers a property as a transient vacation rental shall constitute prima facie evidence of the operation of a transient vacation rental on said property and the burden of proof shall be on the owner, operator, or proprietor to establish that the subject property is not being used as a transient vacation rental or that it is being used for such purpose legally. If any unit is found to be operating illegally, penalties established in Section 8-17.6 shall apply. Such advertising shall also constitute probable cause for a search warrant.

Section 18-17.12 Historic Properties Exemption. Single-Family Dwelling Units on the Federal or State Historic Register may be allowed to operate as a transient vacation rental through a use permit and by abiding by the standards of conduct specified herein. Any substantial violation shall be grounds for revocation of the use permit."

SECTION [14.] 12. Ordinance material to be repealed is bracketed. New ordinance material is underscored. When revising, compiling, or printing this ordinance for inclusion in the Kaua'i County Code 1987, the brackets, bracketed material, and underscoring shall not be included.

SECTION [15.] 13. This ordinance shall take effect upon its approval."

(Material to be deleted is bracketed. New material to be added is underscored.)

3/9/2007 9:05 AM

