

MINUTES

PLANNING COMMITTEE

March 19, 2008

A meeting of the Planning Committee of the Council of the County of Kaua'i, State of Hawai'i, was called to order by Councilmember JoAnn A. Yukimura, Chair, at the Historic County Building, Room 201, Līhu'e, Kaua'i, on Wednesday, March 19, 2008, at 2:40 p.m., after which the following members answered the call of the roll:

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

EXCUSED: Honorable Ron Kouchi

Minutes of the February 20, 2008 Planning Committee Meeting.

Upon motion duly made by Councilmember Rapozo, seconded by Councilmember Furfaro, and unanimously carried, Minutes of the February 20, 2008 Planning Committee Meeting was approved.

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

Bill No. 2252 A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO COMPREHENSIVE ZONING ORDINANCE (Bureau of Conveyances recordation requirement)
[This item was deferred.]

JOANN YUKIMURA, PLANNING COMMITTEE CHAIR: Thank you. We have here Deputy Planning Director Imai Aiu to answer questions. So Mr. Aiu, if you might take the mike. State your name for the record.

Imaikalani Aiu, Deputy Planning Director: Imai Aiu, Deputy Planning Director.

Ms. Yukimura: Okay, perhaps you...

Mr. Aiu: Good afternoon.

Ms. Yukimura: ...could just tell us what the main purpose or goal is with this bill that Planning has proposed and then we'll see what questions there might be.

Mr. Aiu: I can do. Purpose of 2252 is to basically help us enforce and ensure that conditions of zoning are met. It basically gives us a whole 'nother set of tools when conditions are recorded with the deed. It (1) puts any subsequent buyer on notice and by notice, it's more than just the guy can't come in and kind of do this "I didn't know" kind of thing, it actually is legal notice that gives you a much better standing when you go to court. It gets more parties involved; title companies, escrow companies are all involved. It, in fact, gives us the ability to, when/if we can pursue it monetarily, go after the title insurance to the property for unfulfilled claims. So, it will really just help us instead of, you know, a case like the Kiahuna bathroom where if you trace the history of those permits, the condition to complete that bathroom shows up in permit, in zoning permit after zoning permit and never gets done. This gives us another tool to run with that.

Mr. Furfaro: So the same is true of the bridge between the two shopping centers...

Mr. Aiu: Yeah, yeah, with the...

Mr. Furfaro: ...as another example that...

Mr. Aiu: ...yeah.

Mr. Furfaro: ...Councilwoman Iseri led the charge of this Council on, but that is the main purpose. Whether it's the bath house in Kiahuna or the bridge, if someone agrees to a condition, we will so record that condition and put it in the deed.

Mr. Aiu: Exactly. Yeah, without the ordinance you guys passed on that, that condition for the bridges, with unrecorded when the shopping centers changed hand would have become that much more difficult to enforce.

Mr. Furfaro: So, I think all of us understand the concept and the purpose here. What I wanted to ask and maybe I should check with the Chairwoman...

Ms. Yukimura: Go ahead.

Mr. Furfaro: What I want to ask is will it be, you know, in finance we talk about sending notices to people about shortcomings or failure to pay by sending them a dunning notice. Who actually tracks these conditions to make sure that they're done so that we, obviously, we don't want a parcel to be sold with a condition that's not completed. But, you know...

Mr. Aiu: Mm.

Mr. Furfaro: ...what is the Planning Department's present process in monitoring and sending these, for lack of any other term, dunning notices to these people that they are in violation of a condition?

Mr. Aiu: Of a violation of condition approximate notice. Usually, typical method of trying to get completion is we ask for completion up front of all conditions prior to building permit approval. However, some, just by their nature, cannot be completed prior to or we just didn't condition it prior to. In that case, then it becomes, you know, the long drawn out process of enforcement notices. You go through the motions to revoke the permit which goes through the Planning Commission and it is a very long and involved process.

Mr. Furfaro: Okay, but it is something that, you know, I just don't want to find us not using that process to sense of urgency in getting things done just like, you know, this is the catchall net that at the end of the day, you know, we can find ourselves pulling back and forth with the courts. I just want to make sure that we understand. I think there...

Mr. Aiu: Yeah.

Mr. Furfaro: ...is a certain amount of dependency...

Mr. Aiu: Yeah.

Mr. Furfaro: ...and I think if we had this in place, clearly it would have helped us with some of our dilemmas that we have today.

Mr. Aiu: Yeah, yeah, this, this, I won't say like recordation will fix every problem. You still may get an owner who doesn't want to play and it's, you know, nothing can stop that. However, the more ammo we have in our guns to go after that the better. And that's what this does.

Mr. Furfaro: Absolutely and I understand that, but I just don't want us to take a position that we're not pursuing...

Mr. Aiu: Oh, no...

Mr. Furfaro: ...regular compliance...

Mr. Aiu: No.

Mr. Furfaro: ...because we now have this safety net.

Mr. Aiu: Understood.

Mr. Furfaro: I think it's extremely important. Councilwoman,
thank you very much...

Ms. Yukimura: Mm-hm.

Mr. Furfaro: ...for letting me summarize that.

Ms. Yukimura: Surely. Are there any other questions?
Councilmember Bynum.

Mr. Bynum: So, Imai, we mentioned two famous issues, the
bridge and the Kiahuna bathrooms, and this also applied to another famous one like
the beach access at Kauapea that wasn't recorded and...

Mr. Aiu: You know, sorry, the beach access at Kauapea
when we investigated actually found that it was recorded.

Mr. Bynum: Is that right?

Mr. Aiu: Yeah. It's...

Mr. Bynum: Not wanting to...

Ms. Yukimura: It just went over a cliff. That was the...

Mr. Aiu: Yeah. The problem actually on that one came to
other issues, not really...

Mr. Bynum: Right.

Mr. Aiu: ...recordation.

Mr. Bynum: So it was recorded. But it would apply to those
kind of conditions...

Mr. Aiu: Yes.

Mr. Bynum: ...like access and make sure that the deeds or
whatever are actually recorded.

Mr. Aiu: Yes.

Mr. Bynum: Okay.

Mr. Furfaro: You know, if I can follow up on that, I think Councilman Bynum made a point, and that is what I'm saying in the fact that if I recall, thanks to Chairman Asing, on my first term on the Council five years ago, we all ended up going out on a site inspection only to find out that this right-of-way went over a pali, you know. And I guess that's where I'm back to my original comment, Imai, is, you know, we've got to make sure that things are in place, that, you know, somebody's out investigating this and looking at these particular parts because we did come to a fine conclusion and I have the new maps in my office still. I can share them with Mr. Bynum. But the fact of the matter is it was something that the trail ended being not really able to be used.

Mr. Aiu: Yeah.

Mr. Furfaro: So then the public perception is it was never recorded. Well, you know, thank you again to Chairman Asing, we all went on that site inspection and I felt a couple times there Mr. Rapozo had to help me keep my balance and I thank him for that, but those are the things that I don't want the Department to feel, okay...

Mr. Aiu: Hmm.

Mr. Furfaro: ...it's just going to be caught...

Mr. Aiu: Yeah.

Mr. Furfaro: ...in this net. Thank you.

Ms. Yukimura: Well, I mean I think that's a perfect example of how recordation is not going to solve every problem.

Mr. Aiu: No, it's not.

Ms. Yukimura: I mean, the problem there was not recordation, it was failure of our Planning Department when we put that condition on to check whether it was a walkable access or not.

Mr. Aiu: Mm-hm.

Ms. Yukimura: So, okay.

Mr. Furfaro: I didn't want to use that term "failure" of the Department, but I wanted to point out, Imai, that is an expectation that this Council has of the Department.

Mr. Aiu: Understood.

Ms. Yukimura: Okay. Other questions? Councilmember Iseri-Carvalho.

Ms. Iseri-Carvalho: Yes, Imai, who issues the building permits?

Mr. Aiu: Building permits? Building permits, the lead permitting agency is the Building Division of Public Works. We sign off on the building permit, though.

Ms. Iseri-Carvalho: Okay, so the process, I mean there would be such a creation of a form that would indicate whether or not there were conditions because it appears that the copy of the recordation goes to the Planning but the building permit issuance is by Building?

Mr. Aiu: Yes.

Ms. Iseri-Carvalho: Right?

Mr. Aiu: Yeah, mm-hm.

Ms. Iseri-Carvalho: Shouldn't a copy of that recordation go to Building?

Mr. Aiu: We can do that, but typically what we've been doing is because we have the review and those are our conditions written, as in typical with most Class 4's that we give out, we check for compliance with the conditions at time of building permit. So, it's during our review of the building permit application that we do this. So...

Ms. Yukimura: To clarify, that means that building permit cannot issue a building permit until Planning signs off.

Mr. Aiu: Yes, yes.

Ms. Yukimura: And so it's at your point of sign off that you're checking that the conditions were recorded.

Mr. Aiu: Yes.

Ms. Yukimura: So, until you sign off, a building permit will not issue.

Mr. Aiu: Yes, exactly.

Ms. Iseri-Carvalho: And, see, well, and the question I have, for example, is that if, I mean, I'm trying to see if there would be a situation where there wouldn't be, I mean would it be, wouldn't it just be simpler if Building, who

was issuing the permit, just have the applicant just give them a copy as opposed to waiting for you guys, and the reason is when we were having these housing task force meetings,...

Mr. Aiu: Mm-hm.

Ms. Iseri-Carvalho: ...it was very difficult to determine who was the jurisdictional agency. I mean, we don't know. I mean, we still don't know, even now because even when I was talking to Doug, Doug says well, I'm not sure if I was supposed to be the final guy or not the final guy. You know, I think it was Planning. Planning says, oh, no, no, no, that is a housing condition. So if it's a housing condition, it's supposed to be you guys. So, there's certain types of conditions...

Mr. Aiu: Mm-hm.

Ms. Iseri-Carvalho: ...that are there, but the Department themselves aren't sure who has the final say on it. And that's, I mean it's a problem that currently exists even now because a lot of times I know in the past when I've talked to the Housing Department they've had housing conditions which have never gone through Housing.

Mr. Aiu: Yeah.

Ms. Iseri-Carvalho: Housing has never signed off on to see whether or not the housing agreement was...

Mr. Aiu: Mm-hm.

Ms. Iseri-Carvalho: ...being fulfilled or not. Because it went straight to Planning and Planning didn't have a thing saying that they had to go to Housing and so they didn't.

Mr. Aiu: Mm-hm.

Ms. Iseri-Carvalho: So, it's, to me, if, you know, I can maybe see a situation where Building might say well, you know, I mean, why wouldn't it be easier that if you're the applicant you just give me the document instead of me waiting until Planning comes to me to give me the copy of the recordation.

Mr. Aiu: I would say because not every (inaudible) is going to have recorded conditions to it. Not every . . .

Ms. Iseri-Carvalho: And that's why I'm saying, how would they know, Building?

Mr. Aiu: Yeah. How would they?

Ms. Iseri-Carvalho: Right. I mean, whether there's a condition or there's not a condition.

Mr. Aiu: Well, see they wouldn't because it would come through Planning. I mean, a lot of the, with the...

Ms. Yukimura: How would they determine whether conditions are...because they don't know...

Mr. Aiu: 'Cause yeah, they didn't write 'em. We would have 'em. We would have 'em, so...

Ms. Iseri-Carvalho: Okay, so at every instance before anything goes, before a building permit is issued, whether it, for whatever reason, Planning would have to give the okay that all of the conditions or whatever has been fulfilled.

Mr. Aiu: Yes.

Ms. Iseri-Carvalho: All the time.

Mr. Aiu: Yeah, as of through the Class 4's, yeah basically.

Ms. Iseri-Carvalho: Okay.

(Inaudible – Iseri-Carvalho and Aiu speaking at the same time.)

Mr. Aiu: Every building permit also requires a concurrent zoning permit, yeah, and we always sign off on the building permit.

Ms. Iseri-Carvalho: So, now, then the question comes that I've seen in instances in the past where the Housing Department, on a housing condition,...

Mr. Aiu: Mm-hm.

Ms. Iseri-Carvalho: ...it didn't even go through Housing.

Mr. Aiu: Yeah, Housing is not a regular reviewing agency of a building permit and that, you know, that may be part of the problem right there is who building permits are routed through and who gets to sign off on them to their satisfaction because we sign off on a building permit to our satisfaction. If Housing isn't satisfied, it's not necessarily...

Ms. Yukimura: So, Housing, perhaps, should be made a part of...

Ms. Iseri-Carvalho: Automatic party.

Mr. Aiu: Yeah, that may be the more appropriate way to fix that is have...

Ms. Iseri-Carvalho: But it...

Mr. Aiu: ...Housing sign off on...

Ms. Iseri-Carvalho: But that is like an administrative rule...

Mr. Aiu: Yeah, it probably can be.

Ms. Iseri-Carvalho: ...that's how you guys have it set up?

Mr. Aiu: It probably can be.

Ms. Yukimura: You don't even have to have a rule. You just have to have a routing.

Mr. Aiu: Yeah, a line or something on there, yeah.

Ms. Yukimura: I mean,...

Ms. Iseri-Carvalho: Well, I...

Mr. Aiu: ...a practice, right, just a...

Ms. Iseri-Carvalho: Any permit, so you're saying any affordable housing condition wouldn't be part of this?

Mr. Aiu: No, it would be. If there's an affordable housing condition, you know, put on whatever project...

Ms. Iseri-Carvalho: Mm-hm.

Mr. Aiu: ...yes, it would be one of those...

Ms. Iseri-Carvalho: ...okay...

Mr. Aiu: ...recorded conditions.

Ms. Iseri-Carvalho: And I guess that's my problem. There have been instances where the Housing Department hasn't been consulted to determine...

Mr. Aiu: Mm-hm.

Ms. Iseri-Carvalho: ...if the housing condition has been fulfilled.

Mr. Aiu: Mm-hm.

Ms. Iseri-Carvalho: And, you know, Planning has signed off.

Mr. Aiu: I see what you're saying and...

Ms. Iseri-Carvalho: So, how do we prevent that from happening here,
but you're saying you're always a sign-off party...

Mr. Aiu: We are always a sign-off party, yes,...

Ms. Iseri-Carvalho: ...but...

Mr. Aiu: ...Planning is.

Ms. Iseri-Carvalho: ...sometimes you may not have all of the
information,...

Mr. Aiu: Apparently in those cases, yeah we didn't.

Ms. Iseri-Carvalho: ...for instance about a housing condition.

Mr. Aiu: I mean it was (inaudible) and lost, (inaudible).
So,...

Ms. Yukimura: So, it seems that Housing and Planning need to get
together so that you create some channels to get assured that the main person or
the main entity, which is the Housing Agency, would...

Mr. Aiu: Mm-hm.

Ms. Yukimura: ...would sign off on the housing...

Mr. Aiu: Mm-hm.

Ms. Yukimura: ...as part of the process. Now this doesn't have to
be with recordation, but it...

Mr. Aiu: It sounds like more of a follow through and a
practice thereof.

Ms. Iseri-Carvalho: Well,...

Mr. Aiu: That we need to pay more regular visits to Housing and (inaudible) them through their permits.

Ms. Yukimura: Well, you need to develop an agreement about how the routing's going to happen.

Mr. Aiu: Mm-hm.

Ms. Iseri-Carvalho: For example, if there's a condition to build an affordable housing here, right?

Mr. Aiu: Yeah.

Ms. Iseri-Carvalho: Okay, it'll go to you?

Mr. Aiu: Yeah.

Ms. Iseri-Carvalho: Right?

Mr. Aiu: Yeah, because it would have come through Planning and probably the condition...

Ms. Iseri-Carvalho: So, it does apply here...

Mr. Aiu: ...would have come right back.

Ms. Iseri-Carvalho: ...JoAnn, where you're saying it's a recordation issue. I'm talking about any condition, whether it be a housing condition...

Ms. Yukimura: Right.

Ms. Iseri-Carvalho: ...a road condition, whatever, every condition has to be recorded. Isn't this what they're saying?

Mr. Aiu: Yes.

Ms. Yukimura: It doesn't say that here. It says any condition. So, that's probably a correction you have to make. But that's the intention, that every condition will be recorded.

Ms. Iseri-Carvalho: Right? I mean, that's what I'm trying to find out from you, Imai. I mean, that is what this bill, the intention is that every condition,...

Mr. Aiu: Yes.

Ms. Iseri-Carvalho: ...whether it be a housing condition, a road condition,...

Mr. Aiu: Yes.

Ms. Iseri-Carvalho: ...a sewer condition, a water condition, any condition that have to be fulfilled need to be recorded.

Mr. Aiu: Yes.

Ms. Yukimura: Mm-hm.

Ms. Iseri-Carvalho: So, you know, and then, I mean so it may be appropriate to have it here, that the appropriate parties, for example if it's a housing condition, I would think that that would be automatic that the Housing Director would have to review or sign off.

Mr. Aiu: Mm-hm.

Ms. Iseri-Carvalho: You know, if it's a sewer condition, then the sewer guy should sign off; if it's a, you know, roadway, you know, then...

Mr. Aiu: Yeah and, you know, exactly, Waste Water and Engineering do sign off on the permit. So, yeah, you bring up a good point. Housing should have a sign off on this; they should have a review.

Ms. Iseri-Carvalho: Well I'm trying to see if that's just something that should be dealt with administratively or is that something that needs to be dealt with legislatively.

Ms. Yukimura: Well, in this bill, we don't talk about the process, we don't delineate...

Mr. Aiu: That is true.

Ms. Yukimura: ...the tracking that goes on, the routing that goes on. I mean, we could, but we don't have to either if you folks internally decide on it and you cover that issue that Councilmember Iseri-Carvalho has...

Mr. Aiu: Mm-hm.

Ms. Yukimura: ...raised, in terms of your routing.

Ms. Iseri-Carvalho: And, and, and...

Ms. Yukimura: And in terms of the sign off on each condition.

Ms. Iseri-Carvalho: And Councilmember Yukimura, that's my question. This has been an issue for the last three years that I've attended the Housing...

Ms. Yukimura: Right...

Ms. Iseri-Carvalho: ...meetings.

Ms. Yukimura: ...I understand.

Ms. Iseri-Carvalho: And they still haven't changed it. So, when you talk about this being, you know, something that they can do, that hasn't changed yet. And it's been brought up I don't know how many times that we've talked about it. So...

Ms. Yukimura: Well, we cannot pass this bill until...

Ms. Iseri-Carvalho: ...that's why I'm trying to...

Ms. Yukimura: ...they show us it has changed.

Ms. Iseri-Carvalho: ...establish, to assure that the procedures are in place. I mean, yeah, whether you guys do it administratively or not, I can tell you that for the past three years it hasn't been done administratively. And that, in fact, housing conditions have not have gone, where the Housing Director didn't even sign on, and whether there was full compliance with the condition or not.

Mr. Aiu: How about giving me a chance to investigate some of those cases back, particularly ones you bring up, and we can see what happened and we can...

Ms. Iseri-Carvalho: Because, you know, I can tell you right now.

Mr. Aiu: Yeah.

Ms. Iseri-Carvalho: Housing isn't a part of that...it's not.

Mr. Aiu: No, it isn't a part of the routing. That is, indeed, true. So...

Ms. Iseri-Carvalho: And that has been brought up for the last three years. That's what I'm saying.

Ms. Yukimura: So, I would recommend that you either come back to us with a new routing system that you can share with us or that you bring in language that would delineate it in the ordinance, in the bill.

Ms. Iseri-Carvalho: Right. And that's what I'm saying, that it needs to be done at the same time because we are aware of the problem and we have been aware of the problem and I, you know, did relate this and so did the Housing Department to, at our housing task force meetings, and I know that the form hasn't changed and they're still not put on there.

Ms. Yukimura: Okay.

Ms. Iseri-Carvalho: So, if you can address that.

Ms. Yukimura: Thank you very much.

Ms. Iseri-Carvalho: Thank you, Imai.

Mr. Aiu: So, yeah, we can address that.

Ms. Iseri-Carvalho: Okay.

Mr. Aiu: Yeah, give, some time later, bring me up to speed on what meetings you've had and where this has gone wrong and we can take a look at it.

Ms. Yukimura: We are going to defer this or my recommendation is going to be that we defer it in order to allow Planning to come back with some proposed amendments to clarify the wording and then at the same time I think we'd like to hear from you how you plan to address that issue, either administratively or through wording in this bill.

Ms. Iseri-Carvalho: Okay and...

Mr. Aiu: Okay.

Ms. Iseri-Carvalho: Chair Yukimura, you will be sending over a written communication to memorialize the discussion?

Ms. Yukimura: Yes.

Ms. Iseri-Carvalho: Thank you.

Ms. Yukimura: Okay, other questions? Chair?

Mr. Asing: Yes, I have a question. What, I hate to ask the question 'cause I think you answered it, but won't you do me a favor, and what is the intent of this?

Mr. Aiu: Basically the intent is to give us, when we have difficulty enforcing conditions and oftentimes there is, that we have more legal tools to go to to enforce those conditions.

Mr. Asing: Difficulty. What do you mean by difficulty?

Mr. Aiu: Oftentimes, to give you kind of a theoretical example, let's conceive of, you know, a large Class 4 project where an affordable housing project is promised with that; it's recorded in the conditions of approval. One thing that has to happen is, you know, they probably have to subdivide out a lot to get, to put that affordable housing on. So, we have to, you know, we have to process subsequent permits to go with these first Class 4's which we're kind of obligated to, right? I mean, we can't tell him, tell any applicant, we, fulfill the condition but we won't help you. Somewhere in between that, between the subdivision of the lot, they could sell the main project. They could, you know, sell the whole thing. New owner comes in unaware of these conditions, completely. They are not recorded with the deed, so its title search doesn't bring 'em up. They come in unaware of the conditions. They've come in assuming that, you know, to build the project they need X amount of dollars. They've lined up their funding that way. Suddenly, up surfaces the condition that they also have to put in affordable housing with this too. Between the original owner and the new owner, they say "You never told me that," you know, "I'm not responsible for that." The old guy says "I sold you the project, you are responsible for that." In the meantime, we're left with nothing. We're left with, you know, no units built because of, you know, this communication between the two failed, because that deal didn't go down that way. If it's recorded, the new owner is put on notice. His money has to be there to back it up. His title insurance has to be there to back it up. You know, so we have that much more means of pursuing it. So.

Mr. Asing: With that said, aren't all the conditions in the ordinance anyway?

Mr. Aiu: Yes.

Mr. Asing: So, what you really have, you have an ordinance with all the conditions. What more you want?

Ms. Yukimura: No, there's also permits...

Mr. Aiu: Yeah.

Ms. Yukimura: ...with conditions.

Mr. Aiu: There are those too, but those don't...

Mr. Asing: Wait.

Mr. Aiu: ...always make it...

Mr. Asing: Wait a minute, now.

Mr. Aiu: ...to the sale.

Mr. Asing: You talking about ordinances, right?

Mr. Aiu: No, Class 4 permits as well would be included in this bill.

Mr. Asing: It doesn't matter, but you have the ordinance that needs to be passed for those conditions to apply, right?

Mr. Aiu: In the case of rezonings, yes, but not, not in the case of a Class 4 permit.

Ms. Yukimura: And even whether it's zoning or permit conditions, Chair.

Mr. Asing: But every, all the information is here in the ordinance.

Ms. Yukimura: But the ordinance is not in the title search of the...so people don't know.

Mr. Aiu: That's where it gets lost, yeah.

Mr. Asing: Where is the Planning Department's responsibility to be sure that in the ordinance all the conditions are there. All you want to do is take those conditions and you now want to take the conditions and repeat these conditions and put it here with the Bureau of Conveyance.

Ms. Yukimura: That's correct.

Mr. Asing: Right. It's here.

Mr. Aiu: To gain more notice.

Mr. Asing: To gain more, it's here, though.

Ms. Yukimura: They're fulfilling their, because, Chair, the buyer doesn't know about this ordinance and there's no way to get it...

Mr. Asing: I'm not talking about the buyer. That's not the point. The point is you talking about the process, the permitting, the building, it's here. All that information is here.

Mr. Aiu: Yeah.

Mr. Asing: And why do you want to take and add more burden by putting it here? It's a repeat of what you have here.

Mr. Aiu: It is exactly that and it's...

Mr. Asing: Why are you doing it then?

Mr. Aiu: 'Cause it strengthens our case.

Mr. Asing: Why this extra step here? All the information that you are putting into the Bureau of Conveyance...

Mr. Aiu: Mm-hm.

Mr. Asing: ...you have here.

Mr. Aiu: Because that information does not always make it to title search and to transfer of property.

Ms. Yukimura: And, Mr. Chair.

Mr. Asing: I need, you need to give me more justification...

Ms. Yukimura: I will give you...

Mr. Asing: ...because it, it doesn't match up. All the information that you putting into the Bureau of Conveyance came from where? From here.

Mr. Aiu: It did.

Mr. Asing: And you have all of that.

Mr. Aiu: Yes.

Mr. Asing: Right?

Mr. Aiu: But yeah and it takes time to enforce that.

Mr. Asing: Why are you doing that then?

Mr. Aiu: So, because it gives us...

Mr. Asing: Why this extra work?

Mr. Aiu: It gives us more legal grounds to enforce.

Mr. Asing: Legal grounds? This is legal grounds. This is an ordinance, here.

Mr. Aiu: It is legal grounds and it is more legal grounds when it is recorded. It's official notice...

Mr. Asing: Hah?

Ms. Yukimura: Okay, so I'd like to say that there's a case in point. The recent Supreme Court decision on Brescia made it, the basis for their, the Supreme Court, decision was the fact that there had been a recordation of the setback and that was a key in Caren Diamond prevailing, and so I think the Planning Department is trying to do its responsibility by including this recordation as a requirement as a way to really ensure that everyone is aware of what the conditions are.

Mr. Aiu: To try and answer your question, Chair.

Mr. Asing: It's, it's a repeat of something that you already have, a document that you already have in your hands.

Mr. Aiu: I understand that, Chair.

Mr. Asing: It's a matter of responsibility and accountability of someone doing their work.

Mr. Aiu: I can understand that, Chair, and that's...

Mr. Asing: And that work is being transferred to somebody else, yeah, for an added feature and I don't see the need for it.

Mr. Aiu: Okay.

Mr. Asing: It just not, does not match up...

Mr. Aiu: Okay.

Mr. Asing: ...in my opinion.

Mr. Aiu: Okay, right.

Mr. Rapozo: I have a question.

Ms. Yukimura: Yes, go ahead.

Mr. Rapozo: Currently, whose responsibility is it or is there a law or is there some kind of requirement that the real estate person disclose these conditions?

Mr. Aiu: Yes.

Mr. Rapozo: Is there a law? What is, how, what is the structure now? What is the...

Mr. Aiu: You know, I honestly am not familiar enough with that law to state how...

Mr. Rapozo: Because we've heard the term buyer beware.

Mr. Aiu: Yeah.

Mr. Rapozo: And, but I'm just curious is what, where is that requirement that a real estate person is required to let the buyer know that hey, this property...

Mr. Aiu: Mm-hm.

Mr. Rapozo: ...has some outstanding conditions, has some outstanding violations, has some so forth.

Mr. Aiu: Mm-hm.

Mr. Rapozo: Where does that obligation, is it in the buyer right now? It's in the buyer?

Mr. Aiu: No, I, you know.

Mr. Rapozo: Where is that duty? Who has the responsibility to notify a potential buyer of property that there are some conditions attached to that parcel?

Mr. Aiu: I believe that is the seller's; however, but I'm...

Mr. Rapozo: But is that a rule?

Mr. Aiu: ...not an expert on real estate law.

Mr. Rapozo: Is that an ethical thing?

Mr. Aiu: I don't know.

Mr. Rapozo: Okay.

Mr. Aiu: I honestly don't know.

Mr. Rapozo: Okay.

Mr. Aiu: I believe there are disclosure laws, but, yeah, I can't recite them for you and state exactly what they say.

Mr. Rapozo: Thank you.

Ms. Yukimura: Okay, other questions? If not, I have some. In this underlined section (b) in Bill 2252, you have, you shall, let's see, "the applicant shall record with the Bureau of Conveyance of the Office of Assistant Registrar of the Land Court." I think the of is supposed to be an or.

Mr. Aiu: Yup.

Ms. Yukimura: I mean, because it's either the Bureau or the Land Court?

Mr. Aiu: Yeah, yeah.

Ms. Yukimura: And, you know, I asked you a question before the meeting began, but I think we should get that down on the record. In the next bill that we take up, 2253, there is also a recordation requirement and it wasn't that are, that's worded differently.

Mr. Aiu: Mm-hm.

Ms. Yukimura: And actually correctly with respect to the Land Court and the Bureau of Conveyances, but, you know, this one says it shall run with the land, the one in 2253, but 2252 doesn't talk about it running with the land. It's in two different sections of the CZO and so, the question is how do these two work together or are they one and the same and you're just repeating it? And I think you said maybe you could merge the two and just put them in one place in the CZO.

Mr. Aiu: Yeah, yeah, we could for sure. If both bills are to be passed, then the provision of 2253 of (c) becomes irrelevant because it will already be stated by 2252. So, I believe that's just because they're separate bills and the intent was to record either way, so.

Ms. Yukimura: I mean one says, the one in 2252 ties it to a building permit approval process which...

Mr. Aiu: Mm-hm.

Ms. Yukimura: ...is a way of ensuring recordation before the building permit is issued. And so, you know, that has perhaps an asset or a feature that's desirable if you're going to require recordation.

Mr. Aiu: Mm-hm.

Ms. Yukimura: But, so, anyway, I think these two provisions need some work and you folks are, you'll take this back and work with your Department on preparing a...

Mr. Aiu: And others, yeah, mm-hm.

Ms. Yukimura: ...an amendment. You know, it also says in 2252, it says "reflecting," well, it refers to a letter of approval which may work for the Planning Director and the Planning Commission but not for the County Council.

Mr. Aiu: Yeah, so.

Ms. Yukimura: And then it says "reflect any condition," but I think you want to say every or all conditions.

Mr. Aiu: All conditions, yeah. Yeah, we can change letter of approval to be conditions or conditions of approval...

Ms. Yukimura: Okay.

Mr. Aiu: ...or conditions of rezoning.

Ms. Yukimura: I actually had a, I have an amendment prepared, but I'm just going to give this to you because...

Mr. Aiu: Uh-huh.

Ms. Yukimura: I was not sure. We hadn't had a chance to talk.

Mr. Aiu: Okay.

Ms. Yukimura: So I made certain assumptions and...

Mr. Aiu: Okay.

Ms. Yukimura: You can use it for whatever it's worth.

Mr. Aiu: Excellent.

Ms. Yukimura: But make sure that it's achieving your goals.

Mr. Aiu: Okay.

Ms. Yukimura: Okay. Are there any other questions on this Bill 2252.

Ms. Iseri-Carvalho: I have a question.

Ms. Yukimura: Yeah, sure.

Ms. Iseri-Carvalho: Imai, you know this letter of approval, is that like a form letter?

Mr. Aiu: The Planning Department...

Ms. Iseri-Carvalho: I've seen...

Mr. Aiu: Yeah, it does send out a form letter.

Ms. Iseri-Carvalho: Is it titled? Is it supposed to be like a title letter for approval.

Mr. Aiu: Yeah, basically, basically.

Ms. Iseri-Carvalho: Okay. And so I don't know if that should be capitalized or not because there's a specific letter, right?

Mr. Aiu: Yeah.

Ms. Iseri-Carvalho: That is a letter of approval.

Mr. Aiu: There's a letter we send out as a matter of...

Ms. Yukimura: Well and, you know, the question is do you want that letter and the Council's ordinance, zoning ordinance recorded? Or are you going to have them put all the conditions in one document...

Ms. Iseri-Carvalho: One document.

Ms. Yukimura: ...for recordation? I mean, that's something you need to think about. The thing about recording the letter of approval and the

zoning ordinance is that you don't make any errors in the transfer of the language into another document. But I think that's a procedural thing you guys should think about.

Mr. Aiu: Mm-hm.

Ms. Yukimura: You can either say all conditions and then they're going to put in another document, you know, mixing the zoning conditions with the permit conditions.

Ms. Iseri-Carvalho: And, is that what the letter does?

Mr. Aiu: Yeah and that's a little, I'm not sure that would be the best thing 'cause they often function differently. So...

Ms. Yukimura: Yeah.

Ms. Iseri-Carvalho: So, is it something more that's getting recorded? I mean according to your ordinance? Is it just the letter that is being recorded or is there?

Ms. Yukimura: It's not clear.

Ms. Iseri-Carvalho: I don't know what this does based on the language in the ordinance.

Mr. Aiu: Yeah, well...

Ms. Iseri-Carvalho: It's just saying the letter of approval, but what is contained in the letter of approval? Not all...

Mr. Aiu: All our conditions. In our letter of approval, Planning Department, it lists all the conditions.

Ms. Iseri-Carvalho: All what conditions?

Mr. Aiu: All the zoning approval conditions.

Ms. Iseri-Carvalho: So, you reduplicate what is in the ordinance.

Mr. Aiu: I'm sorry, all the zoning permit approval, not the conditions of the rezoning, no.

Ms. Iseri-Carvalho: Right. Okay, so that wouldn't be recorded?

Mr. Aiu: The ordinance?

Ms. Iseri-Carvalho:
letter...

Yeah, I mean, well, whatever that's. I mean this

Mr. Aiu:

Yeah.

Ms. Iseri-Carvalho:
Council Chair's purpose.

...contains permits. I mean, again we go back to

Mr. Aiu:

Mm-hm.

Ms. Iseri-Carvalho:

Is it to have all of the conditions recorded?

Mr. Aiu:

Yeah.

Ms. Iseri-Carvalho:
going to be recorded.

Okay, but then we won't have, the ordinance is not

Mr. Aiu:
recorded and I can see that where, you know, where, this is where the technicality
of saying letter of approval...

Well, see the intent is for the ordinance to be

Ms. Iseri-Carvalho:

Okay, so you're going to work on language.

Mr. Aiu:

...comes up.

Ms. Iseri-Carvalho:

Yeah, right.

Mr. Aiu:
the...

Right. So, you know when the intent was to have

Ms. Iseri-Carvalho:

All of them.

Mr. Aiu:

...whole, all.

Ms. Iseri-Carvalho:

The whole thing.

Mr. Aiu:

Yeah.

Ms. Iseri-Carvalho:

Okay, so you need to change something there, right?

Mr. Aiu:

So...

Ms. Iseri-Carvalho: And then you're going to work on language to amend that so that it's clearer and that's why I think the Chair was kind of wondering what was the intent. I mean, I think you have an overall intent, but I don't think your intent is being stated in the bill.

Mr. Aiu: Yeah, I can see that.

Ms. Yukimura: It's not clear that you're implementing...

Mr. Aiu: I can see the point.

Ms. Yukimura: ...your...

Ms. Iseri-Carvalho: Intent. Right.

Ms. Yukimura: ...intent. So.

Mr. Aiu: I can see your point there.

Ms. Yukimura: Okay. And then you have a permit or license. Are you, you really have licenses that you issue?

Mr. Aiu: Mmmm.

Ms. Iseri-Carvalho: What is a license? What is a license?

Mr. Aiu: I'm trying to think of...I don't know if we have licenses that we issue.

Ms. Yukimura: So, I don't know if that word you really need or want. And even the...

Ms. Iseri-Carvalho: Well, I...

Ms. Yukimura: ...letter of approval is...I think you mean the Class 4 permit letter of approval or it, sometimes it's a Class 3?

Mr. Aiu: Yeah, we, well, there's, conditions can come with every permit. Down to the Class 1's you can run a condition...

Ms. Yukimura: Okay, well, so and the letter, I think Councilmember Iseri-Carvalho's question was is the letter of approval a term of art.

Ms. Iseri-Carvalho: Right.

Mr. Aiu: Yes.

Ms. Yukimura: And maybe you need to define it.

Mr. Aiu: Mm-hm.

Ms. Yukimura: So everybody's clear what you're talking...

Ms. Iseri-Carvalho: On what document that is.

Ms. Yukimura: ...what you're referring to.

Mr. Aiu: Mm-hm.

Ms. Iseri-Carvalho: 'Cause you might have lots of those, right? You're saying 'cause you can get conditions at various times, right?

Mr. Aiu: Yeah.

Ms. Iseri-Carvalho: So, which one is the letter of approval? Or can there be multiple letters of approval?

Mr. Aiu: I mean, by the intent of this bill, yes, there would be multiple...

Ms. Iseri-Carvalho: Multiple.

Mr. Aiu: ...letters of approval because it assumes that you could almost call the ordinance like a letter of approval is what it's getting by intent...

Ms. Iseri-Carvalho: Okay, so we need to clarify that, here.

Ms. Yukimura: You may want to do a definition if you...

Ms. Iseri-Carvalho: And then, it says the applicant for any permit or license pursuant to this Chapter and I'm not, I don't have the whole Chapter in front of me. So what other instances in the Chapter does it allow the Planning Department to issue licenses in the Chapter itself?

Ms. Yukimura: Chapter 8 is the CZO.

Mr. Aiu: Yeah, is the CZO, yeah, so. I'm trying to think of an instance of a license 'cause I don't really think we have licenses...

Ms. Iseri-Carvalho: Or even where's the authority in that section that allows you to issue a license.

Mr. Aiu: Yeah.

Ms. Iseri-Carvalho: So if you can just, yeah, look at that too.

Ms. Yukimura:
Planning's Deputy? Okay?

Okay, any other questions of Mr. Imai Aiu, Mr. Aiu,

Mr. Furfaro:

I have, I have.

Ms. Yukimura:

All right, Councilmember Furfaro.

Mr. Furfaro:
similar to my opening...

So, Imai, I think what the Chair shared with you is

Mr. Aiu:

Yeah, yeah.

Mr. Furfaro:

...comments, here.

Mr. Aiu:

Mm-hm.

Mr. Furfaro: You know, although we gave credit where credit is due to Caren Diamond's group, the reality, when you go back to the ordinance that was agreed on by Dr. Ferreira and the setback line was determined, the fact of the matter if we held our guns and we moved on the legalities of what was agreed upon in that condition that we wouldn't have found ourselves taking on a 10-year battle.

Mr. Aiu:

Mm.

Mr. Furfaro: And that's my point. I don't want this false sense of security that the fact of the matter is oh, you know, we got this net we can fall back on. It gives us a better legal standing. I think the point of Chairman Asing was we passed an ordinance, we have a condition, we have an agreed setback line, and yet, you know, we just need to have the fortitude to stand by these particular things that we agree upon as conditions. And I just don't want to have a false sense of security here that we're not going to keep, you know, the focus that we need to in the Department on the enforcement issue.

Mr. Aiu:

Yeah, no, I, I understand.

Mr. Furfaro:

And I just wanted to take this time...

Mr. Aiu:

Mm-hm.

Mr. Furfaro: ...to share with you, you know, that was my opening comment. That's kind of my closing piece, here. I know you're going to go back and work on this, on some of the items that the ladies shared. But it is a very important point, I think, that I just don't want us to have this false sense of security.

Mr. Aiu: No, you're absolutely right. If you don't act on it, nothing happens. You can repeat it as many bloody times as you want, right? If nothing happens, nothing happens.

Mr. Furfaro: Because on these other disclosures, you know, on sale, it is buyer beware. On the real estate ethics for sales people, you know, they sell somebody a piece of property in a flood zone and they didn't disclose it. You know, there is recourse on the real estate commission with ethics and so forth, but just know that in an ordinance and when we set a condition, you know, the Planning Department has to be prepared to pursue it. Thank you, Councilwoman.

Ms. Yukimura: Thank you. If there are no questions, I'm going to thank Mr. Aiu and we have to do a change of tape right now. So if people will stay in place and then I'll open it for public input on 2252.

There being no objections, the committee recessed at 3:17 p.m. for change of tape. The meeting was called back to order at 3:20 p.m., and proceeded as follows:

There being no objections, the rules were suspended.

Carl Imparato: Aloha, Councilmembers. My name is Carl Imparato and I'm speaking today on behalf of the Kaua'i group of the Sierra Club. We support the passage of Bill 2252. There's a sad history of broken promises by developers and there's also the potential for error or the misplacement of files within the Planning Department. Both of those strongly argue that the County of Kaua'i should do everything possible to ensure that all encumbrances, including conditions of development, are clearly known to the present and future owners of property. The requirement for recordation of all development conditions, for example obligations to keep trails cleared, the obligation to use lighting that protects against shearwater damage and all, all of these development conditions, not just the things that are in ordinances, all of these should be recorded publicly on the deed and that will protect Kaua'i's citizens and Kaua'i's environment by making it easier to ensure that developers are held to their obligations. So, we ask that you, after you clean up a lot of the wordsmithing and ambiguities that are in the bill, that you do see fit to move forward with this. Thank you.

Mr. Bynum: Thank you.

Ms. Yukimura: Thank you. Any questions? If not, thanks very much. Is there anyone else who wishes to testify? Mr. Blake.

Ted Blake: Good afternoon, Mr. Chairman and Councilmembers.

Ms. Yukimura: Can you just state your name?

Mr. Blake: My name is Ted Blake. I understand perfectly what you're saying, Mr. Chair, but this has to be looked at and something has to be done. However it is, that's, you know, it's easy for me to say that's your job, but when I look back at things that have happened in Kōloa, right now, I mean, because this . . . You know, if there's not enough planners, they don't know, Public Works doesn't know what the conditions are, so they just act on their stuff and, man, we seen these guys go through the, go out the starting gates and they ain't looking back, and try catch them now. And we got a good example is Moana and the development zoning rights they got back in '72. They sold it a couple times and then they broke up the parcel and now you got five partners, K&P Partners. They made an agreement with Knudsen Estate and they changed all the conditions all around. You gotta do this, you gotta do this, you gotta do this.

Mr. Asing: Who? Oh...

Mr. Blake: Excuse me.

Mr. Asing: Oh, go ahead, I'm sorry.

Mr. Blake: And then there's a condition, I forget what the document is. When I showed it to two councilmen, they said this is not legal because the council didn't act on it. We don't know. That's what they're telling us. The developers said oh, this is their responsibility, this is our responsibility. Fact of the matter is, they building and they still haven't done these things. So, whatever or however it gets done, it has to get addressed because, unfortunately, we never find out. You know, we, we always are in a, the public's in a reaction mode. We'd like to be proactive about it. We'd certainly like to get in there and, you know, we can, we can apply a hammer that others may find difficult doing, but, you know, I can understand both sides of it, but I just hope there's some way we can come to a win-win situation on this. Thank you.

Ms. Yukimura: Thank you, any questions. If not, thank you very much. All right. Is there anyone else who wishes to testify? If not, the committee's back in order and...

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

Mr. Furfaro: Madam. So, Madam Chair, your intention is to defer this.

Ms. Yukimura: Yes.

Mr. Furfaro: And have the Planning Department come back to...

Ms. Yukimura: Yes.

Mr. Furfaro: And I certainly understand some of what the speakers have said. Down in the Kōloa area there's supposed to be street lights in this area, a bath house in this area, and those particulars, you know, seem to get lost in the shuffle. Exactly what it is.

Ms. Yukimura: Yes.

Mr. Furfaro: But my message to Planning is we don't want them to be the department of redundancy. We want them to be the department of action, and we need to understand when we put those on record that they need to be pursued and I'm glad that they potentially will have this additional legal position, but the action has to start with them.

Ms. Yukimura: Mm-hm.

Mr. Furfaro: So, I wanted to just share that before the intent to move to defer and...

Ms. Yukimura: Mm-hm.

Mr. Furfaro: ...I'll leave for other comments.

Ms. Yukimura: Thank you. Is there any other discussion? Chair?

Mr. Asing: Yes, I, I have some concerns, but I understand what is being pursued and I'm going to wait until you get back with more information. I'd really like to know the intent and use. It is for whose use? I'm talking about this action that you are taking now. Who is it going to, who's going to be using this? Thank you.

Ms. Yukimura: Thank you. Any other discussion? If not, then the Chair would entertain a motion to defer.

Upon motion duly made by Councilmember Iseri-Carvalho, seconded by Councilmember Furfaro, and unanimously carried, Bill No. 2252 was deferred.

Ms. Yukimura: So this matter will be deferred to the next committee meeting and thank you, Mr. Aiu, for working on it in the interim. We will go to the next item.

Bill No. 2253 A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO COMPREHENSIVE ZONING ORDINANCE (parameters for adopting zoning amendments)

[This item was deferred.]

Ms. Yukimura: Thank you. I guess we'll ask Mr. Aiu to come forward also and the rules are suspended. Are there any, oh, well maybe you can first start off, if you would state your name again for our captioner and then tell us the purpose of this bill.

There being no objections, the rules were suspended.

Imaikalani Aiu, Deputy Planning Director: Thank you, once again Imai Aiu, Deputy Planning Director. The purpose of this bill is to eliminate the latent zonings that we've seen recently cause numerous problems around the island. Consider again, the Moana Corporation Kiahuna Mauka Lands is another one that keeps popping up in this area. In fact, much of the Kōloa-Po'ipū area either was zoned with the original zoning ordinance or in the case of like Moana Corporation Lands 1979, though much of those properties sat vacant for a long time and then came into play very recently, just a huge surge of permits for all of these lands back in about, I think it was '05, came through the Planning Department already zoned for approval, sorry not approval, but already zoned for resort-type development within the visitor destination area. Some of 'em in fact even zoned resort, if not zoned multi-family residential which means they can time-share it. Similar conditions exist out in Waipouli which exist from the original zoning and don't get me wrong, the intent of this bill isn't to repeal the original zoning. The intent of this bill is to, for new zonings, to make sure the same kind of condition doesn't happen again. So, in this case, you know, you look at what's happening out in Kōloa-Po'ipū. I don't need to tell you that, you know, the dust was the number one complaint. All of the construction came through at once, right? And I don't think we should expect that as an unusual condition. People are going to build when market times demand it. They are going to invest when market times demand it. So, if there is available land to build with entitlements like that in place, we should expect, you know, the building to come through in one big surge like that. It'll probably happen like that again if we have available unzoned lands that we do not have strong legal basis to deny building upon and I mean, there's no stronger basis than, sorry, the land is not zoned for it and we are not going to give you that zoning. Similar case is when you talk about Waipouli. Traffic was a huge complaint there, obviously, and also, the lack of open space. If you had the option at this time to, instead of the developer coming in just to build to get the permits to build the resort that those property was zoned for, instead to rezone that property resort, what would you ask for today? You know, how much more could you get out of that today in terms of road improvements? Perhaps some open space along that strip of resorts for public good and public benefit that you could use there. So, we just feel instead of, you know, zoning something and letting it sit forever and dealing with the consequences later when it is no longer relevant, you know, the times have changed for those zonings that we should repeal that zoning if there has been no serious commitment by the developer to enact that zoning.

Ms. Yukimura: Okay, any questions? Councilmember Furfaro.

Mr. Furfaro: Yes, Mr. Imai, thank you for being here, and the concept and intent of this bill, as you pointed out, was to prevent this overzoning that we are faced with that happened in the '70s, and there are a couple tools that we need to put in place. Clearly one of them is understanding when we can impose impact fees for the appropriate improvements. Another one, and I don't want to have to have a lot of dialogue on this because I understand that we are potentially in a lawsuit with the Waipouli Complex...

Mr. Aiu: Yes.

Mr. Furfaro: ...and the reality is at what point could we actually negotiate back density. That's something because it's not implied that the value is at zero when we attempt to negotiate back density, R20 versus trying to get it to R10.

Mr. Aiu: 10, yeah.

Mr. Furfaro: You know, the property still hasn't lost value. So there's those kinds of tools, and this is another one of those tools going forward and as you say, this performance time-frame is dealing really with zoning amendments from the effective date, should we pass this going forward.

Mr. Aiu: Yes.

Mr. Furfaro: My concern is the understanding, the thinking that's placed here, as well as focusing on the process of the 10-year cycle for General Plan Updates because the General Plan Updates actually identify, through community participation, any implied new designation, and the community has an opportunity in this 10-year cycle to participate in that. Secondly, how does the Planning Department plan to evaluate that 10-year cycle in the General Plan as it relates to this bill on potential new zoning? You know, is there any correlation between the mandate we have from the State on the 10-year cycle and the idea that we have here, this time limitation needed in addressing zoning amendments? And how much thought, and I'm hoping my questions are being recorded because I hope we could come back, and how much thought is then given to this, this process, and this is what I just want to share for the public, you know? We have parcels of land, the General Plan implying that there is a condition for new zoning in a 10-year cycle. That happens through community input. Then, within that implied designation, there is the possibility that you go in front of the Land Use Board...

Mr. Aiu: Mm-hm.

Mr. Furfaro: ...to redefine that district.

Mr. Aiu: Mm-hm.

Mr. Furfaro: And then you come back and actually apply for the zoning designation.

Mr. Aiu: Mm-hm.

Mr. Furfaro: Now, that's a substantial process. Could be as much as two years in front of Land Use and so forth. This bill basically says at the point we get, someone gets through those three, they then, when they apply for the zoning amendment is when the clock starts to run.

Mr. Aiu: Yeah.

Mr. Furfaro: Okay. And I look back on our records and there was only, since I've been on the Council, that we actually dealt simultaneously with General Plan amendment, Land Use amendment, and relationship to a zoning amendment, that we dealt with all three...

Mr. Aiu: Okay.

Mr. Furfaro: ...simultaneously.

Mr. Aiu: Mm-hm.

Mr. Furfaro: So, the majority of them go through this process.

Mr. Aiu: Mm-hm.

Mr. Furfaro: And I understand the intent and I support its concept, but what I don't understand from Planning is how are you matching that cycle, you know, that 10-year island-wide plan that comes up in the General Plan? And also, if I can be so bold is, in 1998 and 1999 the community worked on the 2000 plan. Where is the Planning Department in the 2008-2009 process to revisit, revise or update the 2010 Plan, which, you know, implies this designation since we're dealing with future zoning? I have to share with you that you have a 5-year period here with the option of a 5-year extension.

Mr. Aiu: Mm-hm.

Mr. Furfaro: That is 10 years...

Mr. Aiu: Mm-hm.

Mr. Furfaro: ...and maybe the timing is with the cycle,...

Mr. Aiu:

Mm-hm.

Mr. Furfaro: ...the General Plan cycle so that the community can participate. But if you use a 5-year cycle, it seems to me that we're going to be seeing more amendments to the General Plan in front of the Planning Commission than we really want to happen. I think the controls are important. I'm just asking and I'm thinking we're going to defer this for a later time, but I'm just wondering, you know, how does this relate to the 10-year cycle for the General Plan which needs to be updated, and secondly, you know, are we going to stay on a timely basis with the General Plan Update? That's important for me that the community gets to participate in the direction on a regular 10-year cycle and we don't go 15, we don't go 17. So, that's the only questions I have as it relates to this time limitation because a lot of people don't recognize what I just went through. That there is this, there are several processes before you get to...

Mr. Aiu:

Yeah, before you get to zoning. Indeed there are.

Mr. Furfaro:
Plan update.

And I think it should be in concert with the General

Mr. Aiu:

Mm-hm.

Mr. Furfaro:

Thank you, Councilwoman.

Ms. Yukimura:
response?

I think those are good points. Do you have any

Mr. Aiu: Not right now. I think, you know, if you give me the time to go deeper into that question. It is, you know, it is an important point, but, you know, not one that I am honestly prepared to address right now. We'd have to kind of examine...

Mr. Furfaro: No, it's something I think the Planning Department needs to examine...

Mr. Aiu:

Mm-hm.

Mr. Furfaro: ...as it relates to this and I think those are good controls . . .

Mr. Aiu:

Mm-hm.

Mr. Furfaro: ...because it provides opportunity for the whole community to participate in the General Plan review over...

Mr. Aiu:

Mm-hm.

Mr. Furfaro: ...a 24-month period.

Mr. Aiu: Mm-hm.

Ms. Yukimura: Okay, other...

Mr. Furfaro: Thank you, Councilwoman.

Ms. Yukimura: Thank you. Other questions. If not, I want to make sure I understand. You have here that the Council shall impose on each zoning amendment ordinance a condition that records the completion of all infrastructure improvement, site work and building foundations within a period no longer than 5 years from the zo...Now, is it the intention just to have substantial construction so it's not a completed building?

Mr. Aiu: Yeah, yeah.

Ms. Yukimura: You're just only gonna have a building foundation?

Mr. Aiu: Yes.

Ms. Yukimura: I, it's really important in doing, in creating laws that we have a very bright line, you know, so we know whether they've passed it or not and there's no question about whether they've met the requirement. So, I mean, when you say all required infrastructure improvements, I mean if a gate is missing yet or infrastructure requirements can be kind of small.

Mr. Aiu: Mm-hm.

Ms. Yukimura: I don't know. Or big.

Mr. Aiu: Yeah.

Ms. Yukimura: And so I'm not sure this is a very clear bright line.

Mr. Aiu: Okay.

Ms. Yukimura: And, you know, in one place we just said if they haven't started, if they haven't accomplished or achieved substantial construction, which we defined at 100% of the foundation of a phase, now what if it's the Kaua'i Lagoons project and it has a 15-year phase out.

Mr. Aiu: Mm-hm.

Ms. Yukimura: You're expecting them all to have all the foundations in 5 years?

Mr. Aiu: Well, in that case, you know, there are, there are going to be larger cases. Kaua'i Lagoons, Kukui'ula are definitely ones...

Ms. Yukimura: Well, how are we going to apply a law like this?

Mr. Aiu: ...that are larger cases. However, within 5 years, since you can extend 5 years, you know, I think you would expect to see progress at least in 5 years.

Ms. Yukimura: Well, I mean, I, I think Councilmember Furfaro's asking the question are we all going to be inundated, where the Planning Commission, with these requests for extension. If the time-frame is very, too short, and how do we know whether it's adequate is the basis of my question asking you what is the average time of completion from zoning approval to a foundation or substantial construction? I mean, it might be the average time is 8 years.

Mr. Aiu: So, you know, I doubt it's 8 years, but it does run a large spectrum. It does, indeed, do that. So...

Ms. Yukimura: And to make it something that where 50% are going to have to come and ask us for extensions makes no sense to me at all.

Mr. Aiu: Well, we can look at it that way for one, but then we can also look at it that if you haven't put something in the ground in 5 years, are you really committed to this project.

Ms. Yukimura: Well, it depends, okay.

Mr. Aiu: And is that the time, really, that we should start asking the developer are you really going to do this or not?

Ms. Yukimura: Well, you need to show us that the standard time for development from zoning to construction...

Mr. Aiu: You know, honestly, I don't think I can show that. I, I mean they've...

Ms. Yukimura: Well, then...

Mr. Aiu: 'Cause it runs such a spectrum.

Ms. Yukimura: But then why...because to me, once you give them approval . . .

Mr. Aiu: Mm-hm.

Ms. Yukimura: We should be, we're only supposed to give approval to the developments that meet our requirements and are something we want to see.

Mr. Aiu: Mm-hm.

Ms. Yukimura: Right? So, if we want to see, then we give them the time that it takes for a normal development to unfold. We don't make it so that they have to come back to us in the middle of their process to ask for an extension. I don't think that's good planning.

Mr. Aiu: So.

Ms. Yukimura: We only want to catch those that are not, are not, are languishing or are not fulfilling...

Mr. Aiu: Hm.

Ms. Yukimura: ...their commitment to do a decent development. So, how do we know what is re..., a reasonable standard is what I'm asking.

Mr. Aiu: So, honestly to me, I think, you know, a reasonable standard comes down to it's not going to be the same for every project because they're going to be of different sizes, scopes and nature each time.

Ms. Yukimura: Well, then, how do you...

Mr. Aiu: So...

Ms. Yukimura: How do you make...

Mr. Aiu: So that's why our standard really isn't based upon the time it takes a developer to complete. It's the time that it takes them to commit, and the time it takes to where you possibly should be looking at what has changed in that time to re-evaluate what you need.

Ms. Yukimura: Well, I, you know, I wish the development community would come and speak on this because...

Mr. Aiu: Mm-hm.

Ms. Yukimura: We, we don't want to make unnecessary work.

Mr. Aiu: Yeah.

Ms. Yukimura: For our people or for the development community. But we want to ensure against just sitting on zoning and then, or speculating on zoning, and just, you know, selling it and reselling it and nothing happens because then you do end up, after many years, with this during an economic boom time...

Mr. Aiu: Yeah.

Ms. Yukimura: ...with a, you know, a flurry of development that maybe we didn't want. Although I think Councilmember Furfaro's question is could it not be that we just do a General Plan amendment and we downzone everything that we don't think is appropriate any more.

Mr. Aiu: So...

Ms. Yukimura: I mean, that might be the more...

Mr. Aiu: Yeah.

Ms. Yukimura: That might be the more appropriate and, you know, the Big Island, the Planning Director has initiated a downzoning for 250 units around, I think, Honokōhau Harbor. I mean, so it's not and...I, it's something that actually is part of the planning process. Okay, so.

Mr. Aiu: So.

Ms. Yukimura: I mean I thought a certificate of occupancy would be a brighter line, but I don't know. I'm just asking these questions.

Mr. Aiu: Well, definitely with the, if you (inaudible) certificate of occupancy you have to go out farther and that, again, is going to depend on the nature of the development too, yeah.

Ms. Yukimura: Well, I'm not getting...

Mr. Aiu: We've always used, you know, footings in the ground, basically, as substantial within 5 years, so.

Ms. Yukimura: If you show me that most of the developments have gotten, that have been are reasonable developments, that 5 years is a standard for getting substantial construction in the ground, then, and you def...I think, I don't know. Infrastructure improvements, site work and building foundation, that's a lot of fudging. Maybe you just say, you know, substantial construction is defined by 100% of the foundation. I don't, I mean, I'm just trying to find an, a line that's easy to administer for everybody. So, I just give that to you to maybe consult with your

Planning Department to see if you want to still stand with this wording or if there's something easier to enforce that will still achieve your same goal.

Mr. Aiu: We can look at that. I am not married to that language at all. I mean it's, it's kind of what has worked for us before. It's what we've used; however, I said I have...

Ms. Yukimura: Where have you used it before and how often and how has those worked?

Mr. Aiu: Um, we've used it in quite a few Class 4's and whatnot.

Ms. Yukimura: But Class 4, not from the time of zoning, but from the time of last...

Mr. Aiu: No, from the time of approval, yeah.

Ms. Yukimura: Of Class 4 zoning permit?

Mr. Aiu: No. Yeah, from Class 4 zoning permit.

Ms. Yukimura: Okay, well that lops off about 5 years in itself.

Mr. Aiu: Not necessarily, you know.

Ms. Yukimura: Well, in all those examples, tell me how much time did it take between zoning and getting a Class 4 permit?

Mr. Aiu: Probably about 2 years.

Ms. Yukimura: Okay, well if you have the data to show that, I'd like to see that data.

Mr. Aiu: And then, ah, you can build it within 3, I mean, look how fast Waipouli came up, you know.

Ms. Yukimura: Well, as I sai..., Waipouli, their zoning...

Mr. Aiu: Across from Safeway?

Ms. Yukimura: Across from Safeway. Okay.

Mr. Aiu: I don't know. I never know official names of hotels because they change names all the time.

Ms. Yukimura: Well, but that zoning was there forever.

Mr. Aiu: Yeah, but I mean, look how fast they went to construction. So. I mean, they had zoning, so that's the same starting point, same starting line: obtain Class 4, build.

Ms. Yukimura: Okay, but to measure from a Class 4 zoning approval is different than measuring from a zoning.

Mr. Aiu: Yeah, but even if you started with that one. If you started with that very project from the day they came in for their Class 4, it was...

Ms. Yukimura: Well, let me see that. If that's a standard or if that's an exception.

Mr. Aiu: So, no.

Ms. Yukimura: Is that a standard or an exception?

Mr. Aiu: But it says, it says it can be done. It can be done if you're serious about...

Ms. Yukimura: We're not, we're not setting like a race, so that you gonna be the first to do it. We're trying to set a reasonable course so that we're not. Why are you penalizing a developer if you have said we want this development, that's why you gave them the approval?

Mr. Aiu: Well, I'll say I didn't think of it as penalizing. I thought of it as through reasonable time in which you can make...

Ms. Yukimura: Okay, but that's why I'm saying it's not a race. It's not the fastest that you can do it.

Mr. Aiu: I'm saying it can be done when I say that.

Ms. Yukimura: That's the fastest.

Mr. Aiu: So, it can be done.

Ms. Yukimura: But that's assuming no problems, no issues. That's not a standard development. You're wanting to give as much time as is reasonable, I mean, because you know that not everything just goes like clock...

Mr. Aiu: No, nothing goes like that, but I mean they also had, you know, when we talk about 5 years. They were easily within 5 years and that was completion.

Ms. Yukimura: They were within 5 years of a zoning permit approval.

Mr. Aiu: Probably even just from...I mean, well, it's hard to say what they were doing before zoning permit approval.

Ms. Yukimura: They weren't even zoning the property...

Mr. Aiu: 'Cause yeah, 'cause they weren't zoning. But if you start that as the zero line, 'cause we're still starting in this timeline after zoning. So.

Ms. Yukimura: Okay, well, I have asked for that information and I presume you are going to respond to the request for that data.

Mr. Aiu: We can respond. Honestly, that one may take a little more time because that's some, that's some big digging back into the...

Ms. Yukimura: Well, I would like to see something that backs up what you think is reasonable.

Mr. Aiu: So, okay. Well, we can get that. I just...what I'm asking for is more time to complete that...

Ms. Yukimura: Okay.

Mr. Aiu: ...than the 2 weeks.

Ms. Yukimura: That's fine.

Mr. Aiu: So.

Ms. Yukimura: Okay. How much time do you want?

Mr. Aiu: At least a month.

Ms. Yukimura: Okay. All right. Other questions?

Mr. Asing: I have.

Ms. Yukimura: Go ahead.

Mr. Asing: You know the extensions? Is it...we not talking about 5 and 5? Is that what we talking about?

Mr. Aiu: Yes, I believe so. You mean 5 years they come back in for another 5 years, right?

Mr. Asing: So, could be...

Mr. Aiu: Could be 10.

Mr. Asing: 10, 10 years.

Mr. Aiu: Mm-hm.

Mr. Asing: And you're kind of putting the breaks there or could you go further?

Mr. Aiu: You know, I mean since it is ordinance, I see nothing to stop you folks from going further. So.

Mr. Asing: Okay, I just wondered what your thoughts were when you put it together.

Mr. Aiu: No, I...pretty much it was we believe as long as we see, you know, reasonable progress in these times of checks, then yes, the development should continue.

Mr. Asing: Okay. Yeah and the reason I said that was I just put down here I took a 200-unit project and I said 100 units 4 years, and then the intent was 5 years. He put 50 more units and then he put 50 more maybe the 7th year. So, I'm just trying to work some time schedules and what your intentions were when you put the ordinance together.

Mr. Aiu: The intentions are more to give us checks.

Mr. Asing: Okay, thank you.

Ms. Yukimura: Okay. Any other questions?

Mr. Rapozo: Let me do this. This is a follow-up.

Ms. Yukimura: Sure.

Mr. Rapozo: So, Imai, you're saying that it could go to 15 years, it could go to 20 years?

Mr. Aiu: Yeah.

Mr. Rapozo:
and the current system?

So, what, why, what's the difference between this

Mr. Aiu:

The current system...

Mr. Rapozo: Yeah, if somebody, if a zoning amendment or a zoning ordinance, you know, because we normally put a condition in there about substantial completion...

Mr. Aiu:

About substantial completion in 5 years.

Mr. Rapozo:
really. I mean it just allows...

Right, so what, what this in fact is. It does nothing,

Mr. Aiu:
basically.

Mandates...mandates a standard practice,

Mr. Rapozo:

Okay, well.

Mr. Aiu: I mean if it is the standard practice, then good. I mean I'm glad that that is the standard practice because, you know, we all realize we can't have the zoning sitting there forever.

Mr. Rapozo:

Right and I think...

Mr. Aiu:
us, right? So.

But, I mean, that, that may not live on past any of

Mr. Rapozo:

But as it's written...

(Inaudible – Mr. Rapozo and Mr. Aiu speaking simultaneously.)

Mr. Aiu:

...to memorialize it.

Mr. Rapozo:

This is really, there is no real end.

Mr. Aiu: So, well, I would think that's true of anything. I mean, a developer can always come in and ask, right? I mean, they'll always have that right to come in, and even at 10 years come in and say look, I've gotten this far. I do need another 5. I believe my case is reasonable to go that long.

Mr. Rapozo:

And they can do that now?

Mr. Aiu: Yeah, and they can do that now and, you know, but if you didn't put in the 5 years, if you didn't as a standard practice put in 5 years,

you can't ask. You know, then you can't do the repeal. They're not beholding to come to you. So, it's to keep...

Mr. Rapozo: Yeah, well, I guess the question is if we have a project that comes up for zoning and we know that it's not going to be able to be done in 5 years,...

Mr. Aiu: Yeah.

Mr. Rapozo: ...then we violate the ordinance going in?

Mr. Aiu: Well, correct me if I'm wrong, though, but can't you write an exception to that?

Mr. Rapozo: Not if the ordinance...

Mr. Aiu: ...in the rezoning ordinance.

Mr. Rapozo: Not if this ordinance says 5 years and you gotta wait for 6 months prior to the expiration of the date to get the extension. I mean, you're saying 5 years. So if the applicant comes up and says, you know, we're going to have this development project and we're anticipating, you know, probably 7 years because of permitting, EIS, whatever...

Mr. Aiu: Yeah.

Mr. Rapozo: ...the case may be, maybe an SMA project, I don't know. How do we say okay? No, no we going give you 5 years, sir and then 6 months before 5 years you come up and ask for an extension. They're coming in telling us it's going to be more than 5 years.

Mr. Aiu: Five years and whatnot. I see your point, but, I mean, and, you know, correct me if I'm wrong and if this is really a sticking point, then it's something we gotta work on. But each individual zoning ordinance, I was under the impression, could...

Mr. Rapozo: Right now we can.

Mr. Aiu: ...circle round, yeah.

Mr. Rapozo: Right now we can do whatever we want. But what I'm saying, the flexibility gets taken out with this ordinance.

Ms. Yukimura: Well, actually, this ordinance says or within a time period as otherwise specified by the Council. So, it does have that.

Mr. Aiu: Mm-hm.

Ms. Yukimura: But then, you know, how do you...how do you keep it from becoming...I mean, so with every project we're going to have to figure out what their build out time is?

Mr. Rapozo: Yeah, it's...

Mr. Aiu: Well, I mean, like you said, you gotta do that now, right? I mean, isn't that part of the equation right now?

Ms. Yukimura: I don't know. I mean, I think it's pretty ad hoc whether there's any timeline or not. Go ahead.

Ms. Iseri-Carvalho: (inaudible - not speaking into microphone)...you know developments that are done in phases?

Ms. Yukimura: Right.

Mr. Aiu: So...

Ms. Iseri-Carvalho: You know, like we get Kukui'ula, you know, 2,000 acres, you know, they doing. Is that the project phase 1 or is the project phase 1 to phase 4. You know, we even have...

Mr. Aiu: If they're done in phases, I would think you could actually say then phase 1 completed by...

Ms. Iseri-Carvalho: Well, that's...

Mr. Aiu: ...5 years, whatever you...

Ms. Iseri-Carvalho: Well, that's what we're trying to clarify, the intent of what the Administration is in putting forth this bill. Is it, was the intent to do each, for example you are going to do it in 50, you know, unit increments, for example, that would be spread across, you know, five time periods? You know, where we're going 25 years then? Or are we actually wanting to limit the development to a certain period of time, the entire development?

Mr. Aiu: You probably want to do that because, I mean, look at how Kiahuna phased and what happened in those phasings.

Ms. Iseri-Carvalho: And we're trying to get the expertise on the data on the types of projects from you guys because, I mean, I don't know, I've only been here three years. So, I'm trying to figure out what is the intent of the Administration because this is the Administration's bill.

Mr. Aiu: Mm-hm.

Ms. Iseri-Carvalho: Right? This was by request, okay.

Mr. Aiu: Yeah.

Ms. Iseri-Carvalho: So, you know, what was your intent to limit the phases, to not limit the phases, to look at each project as an entire project site to be completed in 5 years? Is there a limit depending upon how much acres your site is?

Mr. Aiu: Yeah, well with this, since you...

Ms. Iseri-Carvalho: Or what type...

Mr. Aiu: Yeah.

Ms. Iseri-Carvalho: ...of project that you're developing? Whether it be retail or a...

Mr. Aiu: Since you can grant extensions, I would say the intent is yes, to get the entire project out or at least to be able to judge that entire project. If someone is going to do it in phases, then a good benchmark may be to give an extension you've completed phase 1 and now can move on to phase 2 for the next 5 years. But if they, in 5 years they have not even put phase 1 in, does that not call into question...

Ms. Iseri-Carvalho: What, that's, that's what we're trying. I mean, I'm trying...

Mr. Aiu: So.

Ms. Iseri-Carvalho: ...to figure out.

Mr. Aiu: So.

Ms. Iseri-Carvalho: Is that what your intent is? Is that, you know?

Mr. Aiu: Mm-hm.

Ms. Iseri-Carvalho: I mean, it just seems like it hasn't had a lot of substantive thought...

Mr. Aiu: So.

Ms. Iseri-Carvalho: ...behind it.

Mr. Aiu: Well, it, that's where it comes down to, you know, so many cases are going to be so different, which is why they have to come before you and prove themselves that they've...

Ms. Iseri-Carvalho: But...

Mr. Aiu: ...made the progress.

Ms. Iseri-Carvalho: But we do that now.

Mr. Aiu: I mean, I can't lay out every case. That's the thing.

Ms. Iseri-Carvalho: We do that now anyway.

Mr. Aiu: Yeah. So and then in this case...

Ms. Iseri-Carvalho: I mean,...

Mr. Aiu: We're still...

Ms. Iseri-Carvalho: ...it may actually hinder our...

Mr. Aiu: ...putting this into...

Ms. Iseri-Carvalho: ...ability to be flexible.

Mr. Aiu: ...standard practice. So. That will go on beyond, beyond you guys sitting here, beyond me sitting here, so.

Ms. Iseri-Carvalho: I'm, I guess just based on the language, you know, it's hard to see the justification for it in light of the practice that we've currently been implementing. I think we have actually a stricter policy in place than what we could end up here. But I think, I mean, we need to look at all the various types of projects when we do legislation, you know, and I think, you know, an important one is about the phases and the amount of acreage, you know. I mean, we're giving the same amount of time whether a person has a project that's, you know, 5 acres versus one that has a project of 2,000 acres? You know, what about, you know, time that is not the fault of the applicant.

Mr. Aiu: Well, that's why I go back to the extensions. If they can prove to you that that is a reasonable case for extensions, then they should be granted one.

Ms. Iseri-Carvalho: Well, I'm thinking but they would have to go through all that time and expense and it might be the fault of the Planning Department or not their fault.

Mr. Aiu:

So.

Ms. Iseri-Carvalho: And so you are going to expect them to hire all these lawyers or consultants to come here to argue their case and getting an extension when, you know, it wasn't even their fault to begin with. The delay was not caused by the applicant. 'Cause I think there's some instances, right, where that happens, right?

Mr. Aiu:
everything, so...

Um, you know, there probably is an instance of

Ms. Yukimura:

Well, look at Kapalawai, right? They...

Ms. Iseri-Carvalho:

Mm-hm.

Ms. Yukimura: They couldn't meet their deadline because they revised their plans due to the shoreline, the erosion that they discovered was happening. I mean, that wasn't...some, well, I mean now because we have the shoreline setback law, every developer has to do that up front, but...

Ms. Iseri-Carvalho:

At that time...

Ms. Yukimura: You know, at that time it wasn't incorporated into the process as well, so that's what happened. It wasn't, they were dawdling or trying to delay things, but that was a kind of unexpected issue that came up that...

Mr. Aiu:

Mm-hm.

Ms. Yukimura: ...they addressed actually in a way that I think was, seemed to be better planning.

Mr. Aiu:

So, yeah, and so in that case then, they have a reasonable case for an extension.

Ms. Iseri-Carvalho: Right, but, I mean, is there a process where, you know, it seems like everybody would be treated the same. Whether somebody was, you know, wasting time and then just wanted an extension or whether somebody was actually utilizing good faith efforts, they still would have to, you know, come back in and go through this entire process...

Mr. Aiu:

Mm-hm.

Ms Iseri-Carvalho:

...for what? Couple months.

Mr. Aiu:

Yeah.

Ms. Iseri-Carvalho: And when it hits the Council floor and meanwhile...

Mr. Aiu: So.

Ms. Iseri-Carvalho: ...you know, time is money. And so I'm trying to see how you're going to balance the interest of the applicant that actually does exercise due diligence, but because of the Planning Department, because of Water Department, because of Sewer Department, they aren't able to fulfill the time requirements imposed in the ordinance versus somebody who does not do anything. So that's the easy case when you have...

Mr. Aiu: Hm.

Ms. Iseri-Carvalho: ...the person who doesn't do anything. But what about the person who does utilize due diligence, utilize good faith efforts to get their project underway, but they're hindered, you know, by, you know, persons, you know, having their permit sitting on their desk for 3 or 4 months and not looking at it, by having it being held in one department and not being reviewed. Because I think what you guys do now is the process is such that you guys review it consecutively, that it goes from one department to the next, and it's not that... You know, what we had, I believe it was on the Big Island, where they have that, you know, once there's a permit application, every party that is, has a say in that permit immediately gets it from the time the application is submitted. So they get an email of this application so they can look at it at any time as opposed to waiting till Planning finish, I mean, Sewer finishes their review, and then it goes to Water and then Water finishes their review, and then it sits on another person's desk and, you know, it takes another 3 or 4 months. So, you know, there's a different process in place on the Big Island because they actually get to see it all at the same time. Whereas here, I think there is a consecutive type of process, right? So, sometimes, it may be the case that the applicant is and is it the intent of the Administration to just say this is the deadline whether you're acting in good faith and utilizing due diligence and getting your project underway, you still are subjected to the same rules as one who just doesn't do anything and then in 6 months saying hey, you know, now's the right time for me to develop so I'm going to go in and get an extension.

Mr. Aiu: You know, I can see the sympathy for the case you're talking about, but I, you know, I don't see how you can make it different for that person. I mean, 'cause how are you going to know whether they were under the due diligence case or not, you know?

Ms. Iseri-Carvalho: Well, by, you know, when they're submitting their plans.

Mr. Aiu: So.

Ms. Iseri-Carvalho: I mean, if there's a, I mean, they're going to be submitting their plans all along is what I've seen...

Mr. Aiu: Mm-hm.

Ms. Iseri-Carvalho: ...is what I've seen in the housing projects. I mean, we kind of know which developers haven't done anything...

Mr. Aiu: So.

Ms. Iseri-Carvalho: ...and which developers have been because there's, you know, they got their bonding for, you know, their project. You know, they've got, they hired their consultants. I mean, we know which projects...

(Inaudible – Mr. Aiu and Ms. Iseri-Carvalho speaking simultaneously.)

Mr. Aiu: And then, so then in that case it should be easy to give them the extension. It should be, you know, not a problem. If this is known, then it should not be a problem because you will have seen it tracked through. It should not be...

Ms. Iseri-Carvalho: But, but, it's not just that. It's the time and expense that these people are going to come, have to come back to Council to request an extension, which these costs are going to be passed down onto, and let's say this is an affordable housing project. That's what I'm looking at.

Mr. Aiu: Mm-hm.

Ms. Iseri-Carvalho: Because this doesn't exempt anybody. It's every project.

Mr. Aiu: Yeah.

Ms. Iseri-Carvalho: Right.

Mr. Aiu: Mm-hm.

Ms. Iseri-Carvalho: So you have an affordable housing project. There's delays from the County because for whatever reason it's stuck on somebody's desk, reviewing, you know, different types of conditions that need to be fulfilled, whether you gotta make your sidewalk larger or not larger, you know, whatever, some condition sometimes can be manini and some can be large. And so, it's, all this time is ticking and now they gotta come back into Council and wait for another couple of months to see if they're going to get the extension or not.

Mr. Aiu: Mm-hm.

Ms. Iseri-Carvalho: Even though they were exercising due diligence and even though this is a low-income, well...

Mr. Aiu: Yeah.

Ms. Iseri-Carvalho: ...it's targeted for low-income families. And so now that time and expense is going to be passed on to the eventual consumer. So, that's why I'm saying, I mean, you know, and you're saying, you know, well, too bad 5 years is the 5 years, you know, they all have to come through this process even if it wasn't their fault that the delay was caused by them.

Mr. Aiu: Well, specifically for fault, specifically for fault. I can understand exemptions for certain projects are another matter and, you know, there's probably a list of 'em we can come up with that, you know, maybe should not be subject to this. Indeed, you know, affordable housing projects probably shouldn't. So...

Ms. Iseri-Carvalho: And I'm just looking...

Mr. Aiu: Right.

Ms. Iseri-Carvalho: ...at you know, that there are...

Mr. Aiu: Yeah.

Ms. Iseri-Carvalho: ...other scenarios.

Mr. Aiu: But, you know,...

Ms. Iseri-Carvalho: I don't know if you guys have...

Mr. Aiu: ...fault you're not going to be able...

Ms. Iseri-Carvalho: ...looked at that.

Mr. Aiu: ...to determine before hand. You're not going to be able to determine how that thing is going to play out before hand. You know, you can only look at the record of what they've done after they've done it, right? And that's the only time that you, that they can come up and make their case.

Ms. Iseri-Carvalho: Have you guys considered exempting certain people or like I say...

Mr. Aiu: So...

Ms. Iseri-Carvalho: ...and that's why we were looking at whether you're developing a project of 5 acres or developing a project of 1,000 acres...

Mr. Aiu: Yeah.

Ms. Iseri-Carvalho: ...you still have the same deadline.

Mr. Aiu: So, you still do have the same deadline, but you should be able to prove with that 1,000-acre project that you've moved.

Ms. Yukimura: You, I think you, I mean, the thing that developers need, they need certainty. I mean once you give them approval, you want to allow them to do whatever they need to do to...

Mr. Aiu: Mm-hm.

Ms. Yukimura: ...achieve their build out.

Mr. Aiu: Yeah.

Ms. Yukimura: Right? And when you, I mean, if, when you put another time where they have to come before the, because they don't know if they can proceed or not?

Mr. Aiu: Yeah.

Ms. Yukimura: That's a terrible uncertainty. It will add additional cost and so forth.

Mr. Aiu: So.

Ms. Yukimura: So, I mean, why not just add another 3 years for them so that they have really adequate time...

Mr. Aiu: Yeah.

Ms. Yukimura: ...to finish a project and then, and then draw the line, you know.

Mr. Aiu: You know what, if you want to add 3, I'm, I'm, then let's go ahead and add 3 years. If that'll make it,...

Ms. Yukimura: Well...

Mr. Aiu: ...then,

Ms. Yukimura: ...but, I mean, we're entering..

Mr. Aiu: ...then that's...

Ms. Yukimura: ...this dialogue because...

Mr. Aiu: ...then that's fine.

Ms. Yukimura: ...you guys presented it.

Mr. Aiu: So.

Ms. Yukimura: So, yeah. I mean, we'll...

Mr. Aiu: I mean...

Ms. Yukimura: We'll consider that we want you guys...

Mr. Aiu: 'Cause the big intent of the bill really is to not have the zoning just sit there. That is really the big intent.

Ms. Yukimura: You, you...

Mr. Aiu: I'm not so concerned about, you know, 5. I can tell you where it came from, but, you know, if it was, if it, if you guys feel it should be 8, I'm...

Ms. Yukimura: Where did it come from?

Mr. Aiu: Cool. Let's see, it's come out of the standard practice and that's basically looking at, okay, it takes a year to do x, x, and y and whatnot, so. But it hasn't come like you asked, out of, you know, huge research down to how long did every single one take.

Ms. Yukimura: Well, I don't know.

Mr. Aiu: So. So, and then as to certainty, I mean, I feel that the community too deserves some certainty on what's going to happen with zoning...

Mr. Furfaro: I don't think...

Mr. Aiu: ...and what's going to happen...

Ms. Iseri-Carvalho: That's not it.

Mr. Furfaro: I don't think anybody here...

Mr. Aiu: Yeah.

Mr. Furfaro: ...disagrees with that, but I think what we're saying is maybe you can go back and look at these questions that the Council is raising.

Mr. Aiu: Mm-hm.

Mr. Furfaro: You know, maybe, is it 8 years. Some of the things we talked about earlier...

Ms. Yukimura: Phases.

Mr. Aiu: Mm-hm.

Mr. Furfaro: You know...

Ms. Iseri-Carvalho: Project size.

Mr. Furfaro: Maybe it's tied to some of the infrastructure that they need to do. Maybe it's tied to fulfilling their affordable housing.

Mr. Aiu: Mm-hm.

Mr. Furfaro: You know, I mean, if people are looking for water, there has to be a period of time where they actually invest in a well...

Mr. Aiu: Mm-hm.

Mr. Furfaro: ...a transmission system and when you talk in those terms, think of the County where the Water Department just told us that potentially on our own projects...

Ms. Iseri-Carvalho: We don't have water...

Mr. Aiu: Yeah.

Mr. Furfaro: ...it will be 5 years out before there's water. I think that's all we're asking is to go back and think through some of these particulars that were raised today...

Mr. Aiu: Mm-hm.

Mr. Furfaro: ...and I don't think anybody here disagrees with the fact that one of the benefit is that the community has some certainty.

Mr. Aiu: Mm-hm.

Mr. Furfaro: But, you know, we're not the standard practice in this small rural community and some of the things that are important on zoning amendments are the housing portion, the infrastructure that the County often depends on to handle their own water expansions, their own sewer expansions. So, I think that's what we're asking, Imai. If you can think in those terms.

Mr. Aiu: Thank you, Chair.

Mr. Furfaro: I'm sorry if I interrupted, Councilwoman Yukimura.

Ms. Yukimura: No, that's fine. I think it...

Mr. Aiu: Thanks, Councilmember Furfaro.

Ms. Yukimura: Yeah. Councilmember Rapozo.

Mr. Rapozo: How difficult would it be to go back, let's say 10 years, and get an average or a breakdown of the projects...

Mr. Aiu: Yeah. Oh.

Mr. Rapozo: ...and what their time-frame was? I talking about real time projects that are in existence today, not hypotheticals, not projected, but actually projects that had started and how long did it take them. How difficult would that be?

Mr. Aiu: It would take a good amount of digging into the files 'cause, you know, I'd have to start here with the rezonings, right? From that point in time, then to the Class 4's.

Mr. Rapozo: Well, I can tell you we haven't rezoned...

Mr. Aiu: Yeah.

Mr. Rapozo: ...anything here...

Mr. Aiu: So.

Mr. Rapozo: ...in five years. (1) We downzoned Kukui'ula. That's the only zoning we ever did in five years.

Mr. Aiu: So, it can be done, but just process-wise, it's going to take a lot of digging into the files.

Ms. Yukimura: We did Kaua'i Lagoons.

Mr. Aiu: So.

Mr. Rapozo: Okay. And I guess the other question is this bill really doesn't do anything that we can't already do now.

Mr. Aiu: No, it doesn't do that. You can always do that through your...Again, our intent is to make it live on beyond.

Ms. Yukimura: Well.

Mr. Rapozo: But, it's, there's no meat.

Ms. Yukimura: Well, I think the intention was to set a standard practice...

Mr. Aiu: Mm-hm.

Ms. Yukimura: ...because we have been...

Mr. Rapozo: But, what, so, but what's...

Ms. Yukimura: ...kind of ad hoc. We haven't always...

Mr. Rapozo: What's the standard practice that is being done? Five years or whatever the Council determines. That's what we have today. It's no different. If you need an extension, you come back, we'll give you one. If you need another one, we'll give you one. If you got another, it's the, it's what we're doing today.

Ms. Yukimura: Mm-hm.

Mr. Rapozo: It's a feel good bill that makes the public think all right we're doing something about it, but there's no meat. There's no substance. There's none. There's nothing in there that we're not already doing today. I think that is a concern of mine. I mean, there is nothing in here that gives us, that does anything that we're not doing already. Like I said, yeah, a lot of people out there think that we rezone all the time...

Mr. Aiu: Yeah.

Mr. Rapozo: ...and we haven't done it.

Mr. Aiu: I've...

Mr. Rapozo: We haven't done it.

Mr. Aiu: ...had similar complaints. Yeah.

Mr. Rapozo: We have done no rezonings, no new zonings in resort. We did Kukui'ula which was a downzoning.

Mr. Furfaro: It was a downzoning and we still extracted conditions.

Mr. Rapozo: Exactly. So, you know, it's the issue. The problem is what happened 20 years ago, 30 years ago, whatever it was...

Mr. Aiu: Yeah.

Mr. Rapozo: ...when we zoned all that property.

Mr. Aiu: Mm-hm.

Mr. Rapozo: But what's the, what's, I guess, and we'll go back to that word the nexus. What's the nexus for this one today? As I read the purpose, that's already the power granted to this Council and the Planning Commission today.

Mr. Aiu: It is already the pow... You're right about that. I don't...

Mr. Rapozo: Right. So, now, I mean, I guess the perception, you know, in the public is...

Mr. Aiu: Mm-hm.

Mr. Rapozo: All right, you know, the Administration wants to cap it. If you don't...use it or lose it. Well, there is nothing in here use it or lose it because they just come back and get an extension.

Mr. Aiu: So, well, I mean, that's the half and half on this one on the argument that they need that leeway or don't they? Now, I mean, like I said, this is planning for the time when, you know, when there may be a lot of rezonings going on. We find that we have to start rezoning land and we don't want to leave it there forever. When that time come? I don't know. Like you said, it might be past all of our, you know, it might be 10 years from now depending on how...

Mr. Rapozo: But whether it's this Council or another Council, Imai, what I'm saying is that Council, whoever is sitting here, based on this ordinance is not required to put a 5-year time limit.

Mr. Imai: They are not right now, yeah.

Mr. Rapozo: No. I mean on this bill.

Mr. Aiu: So, yeah, by this bill they would.

Mr. Rapozo: No, they're not.

Mr. Aiu: So...

Mr. Rapozo: Or...

Mr. Aiu: Well, okay, yeah, but it makes it a standard practice. I see what you're saying.

Mr. Rapozo: What's the standard practice is what I'm saying. What is the standard practice that this bill is accomplishing?

Mr. Aiu: To cap every one of 'em.

Ms. Yukimura: Well, when you have a word...

Mr. Rapozo: But this doesn't do that.

Ms. Yukimura: ...within or as otherwise specified by the Council, then it's not...

Mr. Rapozo: It's not a standard...

Mr. Aiu: So...

Ms. Yukimura: ...it just allows...

Mr. Rapozo: Then, it's a case by case.

Mr. Aiu: Mm-hm.

Ms. Yukimura: So, you may want to propose those words be removed. You may want to look at whether 5 years is a reasonable time.

Mr. Aiu: Mm-hm.

Ms. Yukimura: And come back to us with some suggestions that might make it, might achieve what you're saying you want to achieve, which is a more standard practice that's not so changeable but gives enough time for developers to actually build out and doesn't saddle the Planning Commission and

the Council with constant requests for extension. So, I think we've had some dialogue and I think maybe you can take that back and talk to your staff and see what you want to propose as some alterations to this present wording. Councilmember Bynum.

Mr. Bynum: Just when I read this time frame, I saw it as the Council shall impose no longer than 5 years and that this language at the end allowed it to be a shorter period of time. That's the way I read it.

Ms. Yukimura: It's doesn't...

Mr. Bynum: It says shall.

Ms. Yukimura: But or within a time period as otherwise specified. It doesn't say less than the 5 years.

Mr. Bynum: It says no longer than 5 years or at a time otherwise specified.

Ms. Yukimura: Otherwise specified, could be longer...

Mr. Rapozo: No, no longer than five already takes care of the less. No longer than 5 already tells you or less and then the additional sentence tells you or more. Yeah, that's what that says.

Mr. Bynum: I read it different. I read it as...

Ms. Yukimura: Well, and...

Mr. Bynum: ...no longer than 5...

Ms. Yukimura: ...if you want to propose something...

Mr. Bynum: ...or less.

Ms. Yukimura: Well, and if that was the intention of the Planning Department, the Council could only provide something less, then you need to clarify that language. But then there's the question again, you make it less and they, it's like impossible for them to meet anyway. It's a guaranteed extension request and that's now how we're wanting to (inaudible). That's not a good way to plan or develop. Go ahead.

Ms. Iseri-Carvalho: (inaudible - microphone off)...the development of the language for the ordinance. Is that done from within the Planning Department or is that done with the assistance of the County Attorney's Office? How is the drafting of these bills occurring?

Mr. Aiu: General? Generally how we do our bills?

Ms. Iseri-Carvalho: Yeah.

Mr. Aiu: Yeah. Well, various departments get to author the legislation that's say, like housing will author their own legislation and we all route it through the County Attorney.

Ms. Iseri-Carvalho: Okay, so the County Attorney has seen this language?

Mr. Aiu: Yes.

Ms. Iseri-Carvalho: And so he's interpreted it the way that you, I mean, I guess that's what we'll find out. I don't know what their interpretation of the language, but I can tell you with language like that it'll go to it being more broader than being more specific. So, it just concerns me 'cause it appears that the bills that are coming over from the Administration beginning with the Ag Moratorium Bill and both of these, I mean, there were just numerous flaws in the bill, in the statutory construction of the bill, and, you know, it's real difficult for me to pass these kinds of legislation. The concept or the theory is good, I think, but when you actually read the substance part of the bill, it doesn't do what the title of the bill or the intent section of the bill proposes that it's supposed to do. And that is what I've been saying in the three most recent bills that have come over. I mean, it's really even hard to see what is the intent based on the language that has been provided to execute that particular intent. So if, you know, if we could send over some questions addressing directly to the County Attorney as far as interpret, statutory interpretation of the language that is currently contained in the bill, I would hope that the next meeting will have the amendments or any type of amendments based on our discussion. I think, you know, it'll be hard for me to pass something like that if I can see down the line that, you know, there's going to be these affordable housing projects that are going to be affected. That's there no way they're going to be able to be completed in, you know, those time frames and what is a reasonable time frame. I don't have enough data in order to determine that, so. It seems like there's a lot of questions and hopefully we'll have more answers to those questions.

Ms. Yukimura: You know, I think I heard a request for one month on this bill.

Mr. Aiu: Yeah.

Ms. Yukimura: And because of the research you want to do, but also I think we should hold off on questions to the County Attorney until we get wording from the, because the wording in this present bill could change, and hopefully, you'll even consult with the County Attorney on your new wording.

Mr. Aiu: We have been, so.

Ms. Yukimura: On new wording that you're going to propose which, hopefully, will be clearer and tighter, and then, if we have questions because I think it's a moving target right now. The wording's going to change, I think.

Ms. Iseri-Carvalho: I think the questions that we brought up can be brought through, Imai, when you discuss because there may be portions of the language that we're raising that the County Attorney may feel like there isn't any problem and you guys aren't going to address that. But then there may be additional language that you guys want to propose and, I think, with respect to the additional language, you'll definitely want to get the County Attorney's opinion.

Ms. Yukimura: So, whatever wording you end up with, and you may keep some of the wording and change some of the wording, we would like that you have consulted with the County Attorney and that they will be able to answer questions about that wording, so that, you know, we can feel assured that it's going to achieve what the purpose of the Planning Department is. Okay? Other questions?

Mr. Rapozo: I get one real quick...(inaudible-two voices at once)...the Chair probably going close it down, but, I mean, close out the day. So, when a bill comes across, is it reviewed by your attorney?

Mr. Aiu: Yes.

Mr. Rapozo: And this was approved?

Mr. Aiu: This was reviewed. I haven't gotten an official opinion from them yet.

Ms. Yukimura: Oh, you mean it was sent to them...

Mr. Aiu: It was sent to them, yeah.

Ms. Yukimura: ...but you haven't gotten a response from them.

Mr. Aiu: Yeah, yeah.

Mr. Rapozo: When was it sent?

Mr. Aiu: I forget. I cannot tell you just at the top of my head.

Mr. Rapozo: Maybe you should come across after...

Mr. Aiu:

So.

Mr. Rapozo: Because really, you know, and this is again, that's why some of the bills take years because it comes here, we have a question, we send it across, County Attorney reviews it, does an opinion, it comes back, then it's got to be redone. Wouldn't it just make sense that before it comes on our agenda that it gets some checkmark from the County Attorney. You know, in Honolulu, they have a legislative, I forget what it's called, Legislative Bureau and they draft and it's a legal draft of the bill. So by the time it gets to the legislators, we can be assured that it has passed the legal muster. Now, I can tell you off the top of my head the question that the legal community will ask is why 5 and not 6. We've seen that enough times in the last six months to a year. Why not 7? Why not 4? And are we prepared to defend that? And why is it 5? If the average time for this County to process or for an applicant to put the cement in the ground is 7 years, then why in the world will we be setting them up to fail, I guess, is what I'm trying to say. So, there needs to be some kind of legal support for the 5-year, and I am assuming as it comes across that it has already gone through that process, so that we're not spinning our wheels now and then we come back with the County Attorney opinion that says hey, you know, you need to clarify some certain thing. So, I guess, Madam Chair, what I'm saying is if in fact the County Attorney has not even looked at this bill, or has not rendered or approved or signed off on it, then it should not even be on the agenda. It really should not be on the agenda because it's just a waste of everyone's time for that to be. So, I would just suggest if it's going to be deferred, you know, let's defer it pending the County Attorney's, you know, what do they say?

(Inaudible – two people speaking at once)

Mr. Rapozo: What do they put approval to form? Yeah, get that and then we can start doing the work.

Ms. Yukimura: Okay, we'll (inaudible) the deferral motion accordingly and we'll leave it to Planning Department to look at, consider the discussion and the questions that have come forth and, you know, get set on the wording that you want to propose, and then have it reviewed as to form and legality by the County Attorney and then come back. Okay? And if there are questions other than questions for the County Attorney, I'd like to have them to staff by Monday, so we can send over any questions we may have. Chair, you want to, you have something you want to...

Mr. Asing: Why don't you go a little while, then I'll do it.

Ms. Yukimura: Okay, so while you're doing it, I think I'll ask for input from the public. So the rules are still suspended and the Chair will ask if there is anybody from the public who wishes to testify on 2253? Mr. Imperato.

Mr. Imparato: Aloha, Councilmembers. Once again, I'm Carl Imparato speaking today on behalf of the Kaua'i group of the Sierra Club. We support the intent of this bill and I just want to talk to the concept, not to the detailed language. The problem we're trying to address here is allowing tomorrow's development to be constructed using yesterday's standards and yesterday's mitigation requirements. We believe that all rezonings, all subdivision approvals, all use permits, all zoning permits, all building permits should automatically expire if construction hasn't been substantially initiated within 5 years. I'm talking about initiation, not completion, because when you talk about, as this bill is talking about, reversion of the zoning back, it doesn't make sense to say well, you've only built half your project, now we're going to take the zoning back. So we really need to look at the substantial initiation. So, in any event, and it also seems that it's not unreasonable that development be given 5 years to substantially initiate work. Anything beyond that, you're begging the question is that party really serious about going forward and is that really then trying to build in the future using yesterday's standards, which is the problem we're trying to address, here. So, again, we believe that all of these types of permits and rezonings and subdivision approvals should automatically expire if construction hasn't been substantially initiated within 5 years and even though this bill only addresses zoning amendments, it's at least a good step in the right direction. One thing we do ask is that the 5-year time extension that's contemplated in Section 8-22.7(b) be deleted from the bill. The bill has no standards for why you should give a 5-year extension. For example, it's one thing to say there's extreme hardship due to a hurricane or tsunami or declare an emergency. It's a very other thing to say well, there's a change in economic condition, the developer didn't want to build for 5 years and now wants more time. The developer didn't build in 5 years, then it's time to basically start the whole thing over again using the standards that are applicable at that time. So, unless better standards are put into the bill regarding the cause for giving a 5-year extension, we believe taking that 5-year extension should be taken out of the bill because otherwise this will quickly become a bill saying that you have 10 years to start construction and that's basically going to perpetuate the very problem that the bill seeks to address in the first place. So, with those types of amendments, we believe, though, that this concept in this bill really needs to be brought forward and we hope that you'll work with the Administration and pass something that supports and achieves the intent of the bill. Thank you.

Ms. Yukimura: Questions? Councilmember Iseri-Carvalho?

Ms. Iseri-Carvalho: Yes, Carl,...(inaudible - microphone off)...other projects that we have had. I think maybe Kaua'i Lagoons was one of them. We had, in fact, the County Council, put in substantial construction time period and we also put an end time period and that's why when we look at this bill, there isn't any initiation time period, there's just an end time period. And so that was something that we had, I think in the past three years at least since I've been here, been putting those kind of parameters in the ordinances, the zoning amendments itself.

So, I was curious as to why we were only doing the back end with this bill as opposed as to addressing the initiation of construction.

Mr. Imparato: Yeah, I'm taking the bill as it started out, which is basically it's looking at reversion of...

Ms. Iseri-Carvalho: Yeah.

Mr. Imparato: ...of zoning. So, if you're talking about reverting something back to the original case, well, you don't revert the zoning after the zoning...

Ms. Iseri-Carvalho: But there won't be after...

Mr. Imparato: ...after someone's put 2/3 of it into place because then you'd say what, we're only going to let you build 50 units, and you've built 30 of them, so now we're going to take you back to 20? Well, no. So, I'm working from the basic premise of this bill which is saying we're going to take back a permit that hasn't been used. We're going to take back a zoning that hasn't been used.

Ms. Iseri-Carvalho: Mm-hm.

Mr. Imparato: And so you would take that back if they haven't substantially started construction. Now, there may be other things where you want to look at requirements for completing construction.

Ms. Iseri-Carvalho: Mm-hm.

Mr. Imparato: But reverting the zoning isn't something that ties to...

Ms. Iseri-Carvalho: You can do...

Mr. Imparato: ...completion.

Ms. Iseri-Carvalho: ...when you already had, yeah, and, you know, we, also that maybe is a way to address the issue of smaller developments, you know, 5, 10, 15 acres versus 1,000 or 2,000 acres, you know, if we're addressing 'em up at the front end. Because at the end, how can? I mean, I can tell you those 2,000 acres, they aren't going to be able to complete their development, and then a lot of these projects are based upon strategic plans on what will be implemented, for example water.

Mr. Imparato: Mm-hm.

Ms. Iseri-Carvalho: And if water is back on their plan in implementing their, you know, whether it be source or storage or transmission issues, whether they're addressing those, and they're back on that plan, then it will put all these other projects that had been dependent on that being developed for their project behind as well. So there is that domino effect too. Even the sewer, you know. I mean, you know, we've got in all \$140 million request for sewer upgrades. Projects are being dependent on that coming to be, but we haven't, you know, actually (inaudible). It's not really funded and if that, you know, we don't get the funding in order to do that, then these projects are not going to be able to fulfill their time requirements, whereas, you know, whether it had been 10 years, if they hadn't, oh whatever, 5 years, I guess, that they have to at least start, they may not be able to finish because their infrastructure requirement is not done. For example, I know, especially with the Kaua'i Lagoons Project, they're not going to be able to do all of their housing projects in one phase because it's expected that their water well isn't going to be built for another two or three more years. So, you know, that's why we're talking about these phased developments because there's a certain amount that is allocated for certain infrastructure that is already in place and there are certain amounts that are allocated for infrastructure that has been planned but hasn't been constructed yet.

Mr. Imparato: I think the basic issues that the councilmembers have raised in the discussion earlier are all very important ones and for example if it's a question of the County not performing by putting in the sewage...

Ms. Iseri-Carvalho: Mm-hm.

Mr. Imparato: ...or being able to provide the water, those are probably reasonable standards for granting an extension. But those are the kinds of standards that need to be in here if you're talking about extension.

Ms. Iseri-Carvalho: Mm-hm.

Mr. Imparato: And then, of course, I think there's always going to be projects that don't meet the general, fit the general template and I would say that, you know, it's better to act and have something that works 9 times out of 10 and then the 1 time out of 10 we come in for an exception or something as opposed to having nothing in place and having all 10 horses run out of the barn, nix the metaphors.

Ms. Yukimura: Other questions? Councilmember Rapozo:

Mr. Rapozo: I have one for Imai, if I can.

Ms. Yukimura: Okay. Well, all right. Let's see if there's any more questions for Mr. Imparato.

Ms. Iseri-Carvalho: Thank you, Carl.

Ms. Yukimura: Do you know of any other place where they have this kind of law in effect?

Mr. Imparato: No, I really don't.

Ms. Yukimura: Okay. I'm interested in how it's working if they had one. But thank you very much. Other questions? If not, thank you.

Mr. Imparato: Thank you.

Ms. Yukimura: Mr. Aiu, could you come back to the mike?

Mr. Rapozo: I'll ask my question as you're walking up. Existing, current zoning ordinances that we have on the books today give the County the authority to revoke zoning if, in fact, certain conditions are met. I mean, I've seen some of them come across here. Has this County ever reversed a zoning designation?

Mr. Aiu: Not that I know of.

Mr. Rapozo: Because of failing to fulfill a condition in a zoning amendment or a zoning ordinance?

Mr. Aiu: Not that I know of.

Mr. Rapozo: But it is the Administration's position, today, that if this bill passes we plan on doing that?

Ms. Iseri-Carvalho: But, you have the authority now to do it. You just don't do it.

Mr. Aiu: So.

Mr. Rapozo: Yeah, I mean, I, that was my question. Currently...

Ms. Iseri-Carvalho: You've always had that authority.

Mr. Rapozo: Well, yeah, in the existing ordinances, as I have seen several ...

Mr. Aiu: Mm-hm.

Mr. Rapozo: ...in my time here that clearly states if, in fact, the conditions aren't met, if your subdivision isn't done, blah, blah, blah, your zoning will revert to its original zoning. And my question is has this County ever revoked somebody's zoning?

Mr. Aiu: I, the first part of it is no, I don't know that we've ever revoked somebody's zoning. To break the question down a little more is, have we revoked it when we've had a case of conditions unfulfilled and the project still went on anyway or condition of where the project itself just didn't move...

Mr. Rapozo: Right.

Mr. Aiu: ...period, at all.

Mr. Rapozo: Any one.

Mr. Aiu: So.

Mr. Rapozo: A or B. Did we, have we ever revoked or re...

Mr. Aiu: Well, in neither case...

Ms. Iseri-Carvalho: Neither.

Mr. Aiu: ...has it happened. But it's, I think the importance of breaking the question down is because one is clearly a violation type of thing. The other thing is, you know, if I put all your conditions to be on the time of building permitting, you just don't even build. Then, it's not really a violation, right? You know, it's just...

Mr. Rapozo: No, what I, what I...

Mr. Aiu: I didn't do...

Mr. Rapozo: Maybe I didn't make my question clear. In the zoning ordinance...

Mr. Aiu: Mm-hm.

Mr. Rapozo: ...I've seen a few zoning ordinance that clearly said that if, in fact, the conditions are not met, that the zoning will revert back to whatever it was, Ag or whatever it may have been. Are you aware of those ordinances, of those zoning ordinances?

Mr. Aiu: I can't think of a specific one, but I'm sure they exist, yeah.

Mr. Rapozo: Well, they do.

Mr. Aiu: ...the types, yeah.

Mr. Rapozo: Now, my question is as of today, do you know of any situations where this County has basically took back the zoning?

Mr. Aiu: No.

Mr. Rapozo: Right, okay. So now, why is it, what makes this ordinance different, now, that we're going to do it all of a sudden? When you already have that authority now, but we've never used it, utilized that authority.

Mr. Aiu: Well, I think this is again a condition where we are now basing it on time and not moving, not so much time and violation. So.

Mr. Rapozo: I don't, maybe, I don't know. That's okay.

Ms. Yukimura: Well, there's, right now...

Mr. Aiu: But for the other one, no, I don't have a good answer for you.

Mr. Rapozo: No, no, I just know it hasn't been done and that's my point, but now we come up with this ordinance and we got the big body now. But if we haven't done it before, why or what makes us think or make, convince me that you guys going to enforce.

Mr. Aiu: So, I don't think. I don't know how I can convince you other than just saying we're going to do 'em, right. I don't know that there's any other convincing to...

(Inaudible - people talking at the same time)

Mr. Rapozo: And that's why I go back to my original statement about this being a feel good ordinance so that the public thinks that we're doing something, but in essence the intent is not really to do anything just by the language of this bill. I think Mr. Imperato hit a very powerful point that it gives the Council the latitude to do whatever they want and, in fact, allows a person to come back for as many, many extensions as they need. So, it's like I say, it's a nice thing, but it really has no meat or substance. So. And for me, 'cause I've seen ordinances come up that actually have gone back to the Planning Commission because they needed time extensions. Simply, the people didn't act on it and they are allowed to keep the zoning even though the ordinance said that you would lose your zoning. So, it's the same what this is trying to accomplish, but again, you

know, no matter what laws we have, no matter how many laws we keep pumping out, if the enforcement is not there, we hear from you folks, you know, short-handed, no enough planners, no more enough inspectors, no more, but we keep pumping more laws. We running backwards.

Mr. Aiu: So.

Mr. Rapozo: That's just my point.

Mr. Aiu: Fair enough point. So.

Mr. Rapozo: Okay, thank you.

Mr. Aiu: So, yeah, we'd love more staff.

Mr. Rapozo: Let's just pass more laws, so we can be even farther and farther behind. I think that's, you know, we should enforce what we got now and solve a lot of problems.

Ms. Yukimura: Okay, any other questions of Mr. Aiu? If not, thank you and Chair Asing, you want to... We'll come back to our committee.

Mr. Asing: I guess this is food for thought. As an example, these are not accurate, up-to-date figures, okay? Waimea today, what do we have there? We have, oh, when I added that on, I threw everything off. Maybe I should take that off. Okay. Let me just do it this way. Anyway, Waimea we have 250 units, okay?

Ms. Yukimura: That are not yet developed.

Mr. Asing: Okay, not developed.

Ms. Yukimura: Okay.

Mr. Asing: Okay. Po'ipū, let's look at it this way, developed, existing units: Po'ipū 1200, okay; Līhu'e, this is down at Nāwiliwili, that whole area, yes, 1,000 units; Hanamā'ulu that's at Nukoli'i Project 300 units.

Ms. Yukimura: Actually, there's 500.

Mr. Asing: Okay, well, I'm just sticking figures because I needed to put some figures there. Wailua-Kapa'a, the entire area 1500. Princeville, we have 1200. So you add all of those up, you come out to say 5250 units. We have this existing today. So, we saying what do we have existing today? This is what we have, here. Okay. Now we go through and look at approved units today, zoned lands, okay. In the Po'ipū area, yeah, you can put, because the zoning is already

there, approval granted already, you can put 1,000 units more, okay. Līhu'e, we can put 200 units more; I don't know what the exact figure is, okay. Wailua-Kapa'a area, you can put 800 more. Princeville, approved again, you can put 1200. You take all of these figures here with the asterisk, yeah, and you come out to 3200 units. So, what I'm saying is that the approved units, you have 3200. The question that you ask yourself now is we have today existing, we have 5250. If we have approved units zoned lands already of 3200, the question is do we need more and that was one of the reasons this Council passed that resolution on no more resort zoning any more. Stop, because of these kinds of figures. So, I think the first thing you need to do, the first thing is find out how many existing units you have, how many approved units you have. That's the first thing you need to do. Come back and give us that figure. Let's see what we look like today. Before you do anything else because I am going to doubt that this Council is going to pass any more. So, I think you should do that. Anyway, this is food for thought.

Ms. Yukimura: Thank you. Any questions of the Chair?

Mr. Asing: Thank you.

Ms. Yukimura: I just want to say it's, it ties in to what Councilmember Furfaro said about the General Plan update, that actually maybe that should be the appropriate vehicle for taking a look. You see, we missed in 2000. We didn't look at build out analysis and that's what you have to look at. Where are you now before you talk about where do you want to go, and then, if you want to go to less than what you are now, you have to look at some kind of a downzoning and the General Plan process allows that because it's a comprehensive plan, it's a community-based plan, and if the community says that is not what we want, then you begin to move to change the plan. So, anyway, thank you, Chair.

Mr. Asing: And, by the way, that was the reason that I was totally against it. Councilmember Yukimura and I were in the same boat against the Nukoli'i Project. The Nukoli'i Project is this project right here, this 300.

Ms. Yukimura: It's actually 500.

Mr. Asing: Well, 500, right, if you include the villas.

Ms. Yukimura: And the first proposal was 1500, three 500-room hotels.

Mr. Asing: Yes, and the reason why I opposed it, is because the numbers at that time were 5,000 and 5,000. This number here was 5,000 and this number here was also 5,000 and then we go ahead and approve this one.

Ms. Yukimura: And it was spot zoning, not part of any resort area.

Mr. Asing: It's crazy. And this was not a resort area. We made it resort. When I say we, I wasn't on the Council at that time. So, there was no need for this. But if you use this kind of analysis, at least you know where you are and what you want to accomplish and try to do. Thank you.

Ms. Yukimura: Thank you. I guess we're, Mr. Imparato you want to say something. Go ahead.

Mr. Imparato: If I can just add.

Ms. Yukimura: Sure.

Mr. Imparato: Carl Imparato. If I can just add something to what the Chairman just said because I just read the General Plan actually two days ago and I had the numbers, and in 1998 there was something over 7,000 visitor units on the island. In the General Plan, they talked of 6,340 potential visitor units. But it's interesting that of those 6,340, only 26% of them had all of their permits. The 6,340 were either in areas that were zoned or might potentially be zoned. And so 74% of those units, even though they were in areas that might conceivably have zoning, did not have permits and to get those permits, you have to prove certain things to get an SMA unit that you don't harm the island to get a Class 4 permit. You have to show that you provide benefits, all of the standards are there. So, I just wanted to add those numbers since I know Kaipō said they weren't accurate and these are the ones from the General Plan.

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

Ms. Yukimura: Thank you. Okay, we're back in committee now and the Chair will recommend a deferral pending review by the County Attorney as to form and legality of any language that the Planning Department is going to present to us for amending or for the final form of the bill. But first, is there any...

Mr. Asing: I don't have any problem with that. I think that's fine, but I'd also like to add that the Planning Department give us an updated figure on the existing units today and the approved zoning...

Ms. Yukimura: But not yet built.

Mr. Asing: ...built out.

Ms. Yukimura: Okay, we will send a...

Mr. Rapozo: What was the motion on the first...

Ms. Yukimura: We deferred the bill to the next meeting.

Ms. Iseri-Carvalho: A month, a month.

Ms. Yukimura: No, no no. The 2252 was just to the next meeting.

Mr. Rapozo: And that bill hasn't been reviewed either, right? I would assume.

Ms. Yukimura: Yeah, I don't know that it has.

Mr. Rapozo: Can we reconsider that thing?

Ms. Yukimura: We can. We should finish...

Mr. Rapozo: And these are companion bills, so I would assume that they...

Ms. Yukimura: We should finish the 2253 first and then we can go back and reconsider, if that is the desire of the committee.

Mr. Rapozo: Is there any more discussion? If not, I'll make the motion.

Ms. Yukimura: Councilmember Bynum.

Mr. Bynum: As an ex-officio member of this committee, I think what the Chair has pointed out is something that's obvious to many of us and I concur that it's unlikely that this Council would approve new resort zoning and the deferral seems appropriate in discussion because clearly this is a bill looking at the future and trying, as you've said, Imai, trying to keep us from getting into this boat again in the future. So, I appreciate that initiative and we need to work it out, but we have time and thank you, very much.

Ms. Yukimura: Okay, thank you. Any other discussion?

Mr. Furfaro: Yes, I just want to point out that, so that we don't have misunderstandings and I only point this out, and I would prefer that it was pointed out by the Planning Department, when we talk in terms of the SMA, the fact of the matter is you have to demonstrate, if there is issues, that you have a way for mitigation. That is extremely important. And as we look at both of these bills, I want to make sure that the Planning Department realizes that with our need for housing and certainly in this environment, we may find ourselves addressing affordable housing from a standpoint that it's actually a County project, you know. Let's make sure we understand what we are committing ourselves to as well for infrastructure and those types of improvements, especially on a timing schedule. So, I just wanted to point those out.

Ms. Yukimura: Thank you. Any other discussion? If not, then we're ready for a motion to defer pending County Attorney review as to legality and form.

Upon motion duly made by Councilmember Rapozo, seconded by Councilmember Iseri-Carvalho, and unanimously carried, Bill No. 2253 was deferred pending County Attorney review as to form and legality.

Ms. Yukimura: I believe there's a, yes, a desire, so I'll entertain a motion to reconsider.

Councilmember Rapozo moved to reconsider Bill No. 2252, seconded by Councilmember Iseri-Carvalho, and unanimously carried.

Ms. Yukimura: So now we have 2252 before us.

Ms. Iseri-Carvalho: (Inaudible)...a motion to defer until we receive a letter from the County Attorney's Office (inaudible)...legality and form.

Mr. Rapozo: Second.

Upon motion duly made by Councilmember Iseri-Carvalho, seconded by Councilmember Rapozo, and unanimously carried, Bill No. 2252 was deferred pending County Attorney review as to form and legality.

Ms. Yukimura: Okay, so, and that's assuming that there'll be some new language coming and that will be reviewed, okay, yes.

Ms. Iseri-Carvalho: (inaudible)...the final language.

Ms. Yukimura: The wording that is presented by Planning is going to be reviewed by the County as to legality and form. All right.


There being no further business, the meeting was adjourned at 4:46 p.m.

Respectfully submitted,

Wilma Akiona

Wilma Akiona
Secretary

APPROVED at the Committee Meeting held on April 16, 2008:


JOANN A. YUKIMURA
Chair, Planning Committee Chair

