

## MINUTES

### **PLANNING COMMITTEE**

**March 21, 2007**

A meeting of the Planning Committee of the Council of the County of Kaua'i, State of Hawai'i, was called to order by Councilmember Jay Furfaro, Vice-Chair, at the Historic County Building, Room 201, Lihu'e, Kaua'i, on Wednesday, March 21, 2007, at 2:30 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 Ron Kouchi  
Honorable Mel Rapozo (left at 6:00 p.m.)  
Honorable Bill "Kaipo" Asing, Ex-Officio Member  
Honorable Tim Bynum, Ex-Officio Member

Minutes of the February 21, 2007 Planning Committee Meeting.

Upon motion duly made by Councilmember Kouchi, seconded by Councilmember Iseri-Carvalho, and unanimously carried, Minutes of the February 21, 2007 Planning Committee Meeting was approved.

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

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

JAY FURFARO, PLANNING COMMITTEE VICE-CHAIR: I am going to ask if there are people to sign up if the Deputy Clerk could, in fact, have forms available for you to sign up. I want to give a quick recap for those of you in the audience relating to this bill. First, and foremost, there was a public hearing on this bill. Certain materials including documentation as well as analytical information that was made presented from a workshop was discussed. There was a bill draft in 2204 on the Committee meeting of March 9. Subsequently, I have received a number of e-mails as a member of this Committee regarding the floor amendment draft that was introduced by Councilmember Yukimura that is probably going to be led by her discussion when she returns. Also, for your general information, the Kaua'i Board of Realtors submitted through their representation and Karen Ono to the County Clerk's Office an evaluation of the bill from Mr. Jonathan Chun. This piece is being reviewed by our County Attorney. We will have comments on that for the Council

sometime later. I do not have all the slips for those individuals that are willing to and wanting to give testimony. Mr. Pasion, can you give me a name for the first speaker, so we could move forward? Thank you everyone and Mr. Pasion is, in fact, circulating the room with the sign up slips and we have Jacqueline Roberts. You signed up and you may be the first one to speak. I want to share the rules of our Committee that you have three (3) minutes to make your presentation. You will be allowed a second three (3) minutes after we have gone around the room once. If you have written correspondence that you want to submit, we will gladly take it and make the copies for the Councilmembers.

There being no objections, the rules were suspended.

JACQUELINE ROBERTS: Thank you. My name is Jacqueline Roberts and I am here representing my vacation rental business here on Kaua'i. I have vacation rental on agricultural zone. I have about 3.3 acres altogether which I am farming currently and I have been farming for the past 20 years. The size and scope of my farm isn't large enough for me to be able to totally subsist in this economy and I use the vacation rental money that I get from my vacation rental to assist me in maintenance and pay bills for my farm. It has always been a struggle to stay on the land. It is something that I feel is really worthwhile. I have an organic farm and I advertise as such that it is a farm in progress and the people who come are people who are more interested in listening to birds sing and watch flowers grow than maybe be in the surf at the Hyatt. It is a whole different type of person that comes to stay at a farming bed and breakfast or vacation rental and I think it is a valuable Kaua'i visitor and I think there are really quite a lot of these kinds of visitors that do come and stay at these kinds of units (small family run units). I think it is a really important thing to maintain this through our rural type of community and I know that the people who have come and stayed at my place have been very grateful to have the experience that they have had there. We welcome them and we try and show them what it is like to maintain and run a small farm here on Kaua'i. We have a lot of vegetables and for five (5) years, we did market gardening at the farmer's markets here on Kaua'i selling salad mix and we had to give that up because both my husband and I developed bad backs, but we do still maintain a large garden and we share the produce with our neighbors and we have a large orchard too, so we are able to show people how avocados grow and this sort of thing.

I would like to read to you something that was in the newspaper just this last week. In fact, yesterday, and there was a letter to the editor that says, we think vacation rental issue through. We would like to add our perspective to the debate dealing with the vacation rental on land zoned agriculture. Our family has stayed on Kaua'i several times (inaudible) and we don't wish to stay in a traditional hotel. In fact, we would probably not opt to travel any holiday destination if (inaudible) combination option. It occurs to me that the income that a vacation rental provides, allows an owner to actually maintain their property as an agricultural pursuit. We hear much today about the economic difficulty of farming. Surely allowing a farmer to augment his income with rental income is in everyone's best interest. The perception that vacation rentals compromise the status of agricultural zoned land is

erroneous. I think those who are scheduled to vote on this issue should think through a bit more. So, you know...

Mr. Furfaro: If you could summarize Jackie, your three (3) minutes are up.

Ms. Roberts: To sum up, I'd just like to say that I'd like the amendment to be changed to also include agricultural lands to be included in being able to apply for a use permit. I think we need that first, maintaining the rural community spirit that we have here on Kaua'i.

Mr. Furfaro: Jacqueline, if you can hold on, I will see if there are any questions for you. Again, I just want to point out that the process is, the amendments are still up for discussion and they are not part of the original public hearing that was held on February 28 and so forth. Council Chairwoman for the Committee... Madam Yukimura, I will give this back to you after I ask if there are any questions. Any questions from any Councilmembers? Yes, Councilwoman Iseri-Carvalho?

Ms. Iseri-Carvalho: Question. I know that at the Planning Commission, there was a proposal by a developer to develop agricultural lots over up in Keālia and I guess my question would be, do you think all and it is... I don't know how much acres, I mean, hundreds of acres that they intend to develop up there into agricultural lots, but do you think that all of those properties should also be allowed to do vacation rentals?

Ms. Roberts: Well, no. I mean, I think we have a bill on the table now that is going to, you know, you have to be already be an existing vacation rental (inaudible) transient accommodations tax as of a year prior to the bill going through and I think probably that is a good idea. Because, I mean, you just can't just keep getting more and more, it saturates the market. Also, I don't really agree with it for this, sort of this multi-million dollar process. I am a small business person. The amount that someone pays to stay on my farm is under \$150 a night and, you know, there is a lot that we do to accommodate them there and I think that it is not like a money making project for me. It is a subsistence project, it is why I am doing it is to be able to stay on the land.

Ms. Iseri-Carvalho: Uh huh. And I guess it is so hard to try to maintain a balance as to... because we won't be able to regulate and say, well, you can only charge \$200 a night, you know, versus people who charge \$5,000. I mean, the rules would have to apply broadly to that category or property, so how would you suggest that we would be able to do that?

Ms. Roberts: Well, I think you are asking about a subdivision that hasn't been...

Ms. Iseri-Carvalho: I guess not only that subdivision. Let's assume that there is other ag properties at this point... ag estates... you are saying, currently, right now, I believe that they are not allowed. Is that right Councilmember Yukimura, on ag lots? Vacation rentals on ag lots? That was her scenario.

JOANN A. YUKIMURA, PLANNING COMMITTEE CHAIR: State law requires that any dwelling units be farm dwelling units or farm... so the question is whether vacation rentals are farm dwelling units. If they are not, they are not presently legal even without this bill. Actually, that is a huge white elephant that has been in this State for many, many years that should be addressed, but has not been addressed. So that is the threshold question for grandfathering... grandfathering is done to something that is legal and existing when the law goes into affect, it makes new units illegal. So, I think that is the question that... that is the assumption that actually we were making with the amendments that vacation rentals on ag lands would not be legal... would not be qualified for a non-conforming use permit because they are not legal right now under State law. I know that makes everybody catch their stomach who has vacation rental or even has a residence that is not related to a farming operation and there is a whole discussion about what is a farming operation. But that is the issue right now, this huge elephant in the room, in the State, about all these houses that are not related to ag that are supposed to (under State law) be farm dwelling units.

Ms. Roberts: Well, and also anything that is considered a guest house I guess too would be under that too. Like a guest house... if somebody has a vacation rental and guest house, then... which I am sure a lot... that there are a lot of those on this island also.

Ms. Yukimura: Well, a guest house is not even supposed to have a kitchen.

Ms. Roberts: Exactly, so...

Mr. Furfaro: Well, I am going to pull this meeting back since I am still chairing it rather than have the individual discussion. I will clarify your point. This Council has moved recently to come to a process about the additional dwelling units in agricultural areas, non-residentials... we have set up some procedures to let that sunset, but at the same time, allow people to look for facility permanently process within the next six (6) months. That does not eliminate, just for clarification, that does not eliminate the fact that ag parcels could, in fact, have a guest house under 500 square feet and without a kitchen. That is the current rules. Now, I just want to bring the meeting back to order. I have one question for you and then I will turn the Committee back over to Councilmember Yukimura as Chair. Is your property an ADU unit currently or is it a guest cottage of 500 or less square feet on your property?

Ms. Roberts: It is guest cottage.

Mr. Furfaro: Thank you very much Jacqueline and, again, Councilwoman Yukimura, I touched base on the kind of sequence of events for everyone, that we had a public hearing on February 28, that we had a Committee meeting on March 9 of which the amendments that are on the table right now came out of and on that note, I will turn the meeting back to you.

Ms. Yukimura: Thank you Vice-Chair and thank you for taking over while I was handling an emergency. My apologies for not being here at the beginning. I believe Councilmember Bynum has another question of Ms. Roberts.

TIM BYNUM: Jackie, right?

Ms. Roberts: Yes.

Mr. Bynum: Hi Jackie, you said 3.3 acres and you do organic farming and where is your farm located?

Ms. Roberts: It is in Kapahi. It is an agricultural subdivision called the Bettencourt Estates or the (inaudible). I would like to add that we are the only people in the whole estates doing any kind of farming.

Mr. Bynum: And how long have you been farming?

Ms. Roberts: 20 years.

Mr. Bynum: And how long have you had a vacation rental?

Ms. Roberts: Just a few years now.

Mr. Bynum: So your testimony is...

Ms. Roberts: We were in... we had it in long term before that, but given the age of our property and the amount of cost of upkeep every time we did the turnover, it was economically unfeasible for us. I mean, we do have this as a means to support ourselves on the farm.

Mr. Bynum: So part of the way your family has structured your economic survival includes this vacation rental?

Ms. Roberts: Absolutely, because we are very, very strongly trying to stay on the land and that takes a lot of time and effort.

Mr. Bynum: Thank you Jackie.

Ms. Roberts: Thank you very much for your...

Ms. Yukimura: I have a question. If others have a question.

BILL "KAIPO" ASING, EX-OFFICIO MEMBER: I just have a follow up question. You have one unit and one guest unit, so you live in the main unit and the guest unit is the vacation rental?

Ms. Roberts: Yes.

Mr. Furfaro: As the cottage type.

Ms. Roberts: Cottage, yes.

Chair Asing: Thank you.

Ms. Yukimura: Any other questions? Do you sell your organic products?

Ms. Roberts: We sometimes just don't have enough, you know, but we mostly give it away to our neighbors and friends and eat it and we share it with people who come and stay with us.

Ms. Yukimura: So your household income is mainly from your vacation rental?

Ms. Roberts: Yes.

Ms. Yukimura: So there is no other...

Ms. Roberts: That... I am also a jeweler. I make jewelry for various stores. I am an artist and that is how I've always maintained it (inaudible).

Ms. Yukimura: Okay.

Ms. Roberts: A very small business person.

Ms. Yukimura: Okay, thank you very much.

Ms. Roberts: Thank you for listening to me.

Ms. Yukimura: Thank you for coming today. Before we take the other speakers, I just want to say two (2) things. One, we will be deferring this bill today because we will be making a request for an opinion from the County Attorney on some of the issues that have been raised and the County Attorney is newly sworn in today as a matter of fact (Judge Pyun), so we need to give him some time to look at the issue. And then also, there has been... I guess I will call it a rumor that the grandfathering in is of only those that... units that were in existence as of 1982 and that is not true. Presently as structured, the bill would require anything up to, that has been in existence up to one year prior to passage of the bill. So whenever the

bill passed, one year prior to that, that may change and it may get slower or larger, but that is the amendment that is presently before the Council. I just wanted to clear up those two (2) things. Also, well, let me just also clear up the fact that conservation lands are not within County jurisdiction, so any vacation rentals and conservation land are not covered by Bill 2204. On the premise that grandfathering is only appropriate for units that have been operating legally at the time that the law changes and on the assumption that vacation rentals are not legal farm dwelling units under State law. The Bill 2204 and the proposed amendments would not allow vacation rentals on ag land to apply for a non-conforming use permit. I know many of you here in the room today have a lot to say about that and welcome the input, but that is the framework under which we have been operating that we would grandfather in legally existing operations. Well, operations that are legally existing at the time of the law passage, therefore, anything that wasn't legal wouldn't be eligible for grandfathering. Like I said, many of you have something to say about this, so we will entertain your testimony.

RONALD KOUCHI: I guess if, in fact, the State law states that regarding farm dwelling units on ag lands, then they would be (my understanding) that the Council has no legal authority to adopt any law that is contrary to State law and the heirarchy of, you know, law making or writing of laws. So, if in fact, your testimony would be to us to amend the law to make it possible, it would not appear legally that that could be done by the Council would be in violation of State law and you probably need to now be in touch with Senator Hooser or Representative Tokioka, Morita, or Sagum and would need to have an amendment to State law if, in fact, the legal opinion comes back that that is the case. We will see what the legal opinion says, but based on what that comes out, it may immediately restrict or prohibit action by the Council because of State law taking precedent over any County action.

Ms. Yukimura: Thank you. Just to give some background with respect to this issue. Two (2) or three (3) years ago, the Legislature... well, actually, in 1978, the Constitutional Convention of Hawai'i passed a mandate to the directive to the Legislature to identify ag lands of importance to the State and to find ways to preserve and protect those ag lands, so they don't become fragmented and they are available for intensive ag use for food and fuel security. From 1978 until about 2003, nothing happened. Nothing was done and then the Legislature finally passed an act directing the counties to develop a planning process to identify important ag lands to identify lands that are not important ag lands, but may be zoned as ag right now or districted in ag and to develop possibly different ways of regulating those two (2)... at least two (2) different categories of land, there may be more. I, as Planning Committee Chair, have asked the Planning Department which is really the main body to do this work to give us a plan for how we will have a community based well designed comprehensive process to address this issue that I would like all of you to participate in. Out of that, it seems that we would then be able to craft laws at the Council level and also propose laws to the State about how we would provide amnesty, create different regulations, all of the issues that surround ag land. I personally believe that that is the best way rather than have the State just

change the definition of farm dwelling which will apply to all prime ag lands and vacant lands right now as well as the lands you live on rather than have the State just single purposely change the definition of farm dwelling that we would have a really good planning process and address it at that time. But that is not happening and if you want that to happen, I advise you to see the Mayor and the Planning Department and Planning Commission to ask that that process occur. There are many discussions about all kinds of possible uses that could benefit the economy on ag lands or rural lands that we need to look at and there are issues about employee housing for farm operations. There are all kinds of issues that are not being addressed that don't give us a good framework either for food and fuel security or for rural type of living, but that has to come out of a planning process. So with that background which may be more than you really want to hear, we will go back to taking testimony.

Mr. Furfaro: Councilwoman, may I add one item to that?

Ms. Yukimura: Yes, certainly.

Mr. Furfaro: That particular goal that you outlined that has come through the legislation is referred to as Act 183. I don't know if we had shared that with the group, but, also, one of the inquiries that also needs to be made is the County's authority to actually manage parcels, agricultural parcels or anything for zoning that is currently under 15 acres. That authority does rest with us at the present and I just wanted to surface that as equal commentary.

Ms. Yukimura: Thank you. That is important information. Okay, so do we have people signed up?

Mr. Furfaro: Yes, we do. I am sorry and we had taken just the one speaker.

Ms. Yukimura: The next speaker please.

PETER BILBO: Well, with the information that you just gave us Ms. Yukimura, I would request that you guys defer any actions on the Council's part until after the State has come up with a plan or... it seems like your action would be premature to start changing things that could be circumvented by any State actions later on. I have a question. I have a vacation rental and a guest house and it does not have a kitchen, so it is not an ADU. Would that be covered in this? Would that be an illegal action as well. I mean...

Ms. Yukimura: Are you on ag land?

Mr. Bilbo: I am, yes.

Mr. Furfaro: The recent action that the Council took referencing ADU process for units larger than 500 square feet and/or including a kitchen. Previously, it gave

you a choice, but you were able to either have a guest house of 500 square feet or less without a kitchen or an ADU, not both and those were attached to your primary dwelling on the parcel. If you are telling me, do you have three (3) dwellings on a parcel?

Mr. Bilbo: I have... the original piece of property was just over four (4) acres. It qualified for two (2) farm dwellings and a guest house. The property was CPR'd and on the portion that I own is just over two (2) acres. It has a guest house and a farm dwelling. There is a guest house and we offer it as a vacation rental and we have been paying our TAT taxes or General Excise Taxes all along and we do not have a kitchen in it. Where does that fall?

Mr. Furfaro: The ADU law was basically that you had to be the owner of the record of property by December 31 if you had not yet built.

Mr. Bilbo: I don't have an ADU on my property.

Ms. Yukimura: So a guest house, I believe, is not a dwelling unit because it doesn't have a kitchen.

Mr. Bilbo: It is not a permanent dwelling unit, that is correct. I can't rent that out as a long term rental.

Mr. Furfaro: If the Councilwoman would have let me finish my thought.

Ms. Yukimura: I am sorry.

Mr. Furfaro: The fact of the matter is that the ADU larger than 500 square feet which would have had a kitchen in a new application, you had to fill out a form for this ADU by July of this year and then you would have had to exercise your right within the next three (3) years to build that facility, but the cottage, the 500 square foot cottage was not addressed in that bill.

Ms. Yukimura: So I think Mr. Bilbo's question is, as it is presently existing, a guest house without... not a dwelling unit, but legal under County law, you know, it is probably okay as a guest house, I don't know if it is okay as a vacation rental.

Mr. Bilbo: Well, aren't my... the folks that stay in home or in my guest house, aren't they guest of mine? Would that qualify?

Ms. Yukimura: Then it will come into play whether you take compensation which then make it a vacation rental.

Mr. Bilbo: I also pay commercial rates on my property. I mean, my tax rate are commercial rates. I don't pay an ag rate. Once I built that vacation rental or that guest house, now I am paying commercial rates.

Mr. Furfaro: You are paying the transient accommodations tax?

Mr. Bilbo: No, I pay 7% on every hundred thousand dollars of property tax.

Mr. Furfaro: I would be glad to look at your piece. This sounds like there is something specifically wrong with that because if it is ag, there are these eight (8) categories that you fall into with a land rate and with a building rate. Once you have a transient accommodation unit, you are supposed to pay an additional general excise tax and a transient accommodation tax, so I would be glad to look at your piece individually with you.

Mr. Bilbo: Okay, how do I... do you want me to contact you directly?

Mr. Furfaro: You can contact me right here, no problem, they have my cell phone number and I would be glad to look at it for you.

Mr. Bilbo: With that said, I would like to strongly voice my opposition on any action by the County Council until the State has taken some action because I feel like yours would be premature if it is going to have to be changed or amended in anyway after the State has done what... if I am understanding what you are just saying...

Ms. Yukimura: Mr. Bilbo, theoretically, the Bill 2204 won't change your status at all because it is presently... If it is not a farm dwelling, it is not legal and it is not going to change that.

Mr. Bilbo: Is our County Attorney looking into that interpretation now? Is that part of what you've asked him to address?

Ms. Yukimura: No, because I don't think the County is the one to interpret State law. I mean maybe an Attorney General's opinion as to whether a unit... whether a vacation rental falls within the definition of farm dwelling would be the question and it seems to me that the Attorney General or the courts would be the more likely one to address that.

Mr. Bilbo: Well, it makes me very sad to hear that. Okay, any questions for me?

Ms. Yukimura: Any other questions for Mr. Bilbo? We have to change tape, so let's all hold our place and wait. Are there anymore questions for Mr. Bilbo?

BILL "KAIPO" ASING, EX-OFFICIO MEMBER: How long you've been there now?

Mr. Bilbo: On this property?

Chair Asing: Yes.

Mr. Bilbo: About 10 years and 21 on Kaua'i.

Chair Asing: Thank you.

Ms. Yukimura: Any other questions? If not, thank you very much. Next speaker please.

JAMES BRAY: My name is James Bray. I have a vacation rental myself on ag land. I have a three (3) acre parcel. I have attended meetings before when Jay was Chair, but I didn't speak because I hadn't read the bill and now I have read all the stuff and the CZO and the General Plan and still...

Ms. Yukimura: Mr. Bray, can you pull the mike up closer?

Mr. Bray: And I still don't understand all the things involved with it. To me, it is going to have to go to the attorneys and all be ironed out. What I would like to say, the premise that I would like to go by is, why don't you embrace the vacation rental industry as diverse as it is and accept the tax money from it. I mean, you are missing out. I mean, all the people that are paying their taxes, a few, and you have determined that already and you say that there is huge block of people that aren't paying. Well, the stats are available on how much that tax is that is income to the State and County. It is quite significant, so it seems to me that that could be doubled or possibly tripled by recognizing the vacation rental (change side of tape).

Mr. Furfaro: ...filling in as the Vice-Chair for JoAnn.

Ms. Yukimura: And I think it was the public hearing, right?

Mr. Bray: Yes.

Mr. Furfaro: I also want to make sure that everybody understands that the general excise tax and the TAT tax that is collected is actually going to the State and not to the County and I just want to share with you. There is a formula where all of this transient accommodations tax is collected by the State probably amounts to... through the whole State, through hotels, vacation rentals, bed and breakfast, it probably adds up to about \$160 million.

Mr. Bray: Each year?

Mr. Furfaro: Yes. From that, the State takes out money for marketing and the Convention Center and so forth and then each year through the legislative process, what is left by legislative policy, we get back a certain percentage. So we

probably collect, oh, \$20 million potentially in transient accommodations tax, but the County gets back, I think, less than 11.4. That is pretty much how the formula and the 11.4 represents our portion of what is left in the pot of about 14%. So that, too, is determined with the Senators, with the House of Representatives and so forth. I just want to make sure we are clear. It is not money that is coming directly into our coffers. It comes back to us later after other State expenses are deducted.

Mr. Bray: Like the advertising for the...

Mr. Furfaro: The Kaua'i Visitor's Bureau, the Hawai'i Visitor's Bureau, the operation of the Convention Center and it is a very unique situation. Most cities run a convention center (San Diego Convention Center, Chicago Convention Center), but here it is the State Convention Center, so it comes out of State money.

Mr. Bray: So the \$11.4 million would be the take after the advertising is done?

Mr. Furfaro: Yes, the net.

Mr. Bray: So I am saying, maybe that could be tripled.

Ms. Yukimura: Any other questions?

Mr. Furfaro: I just want to say, but that is not the (inaudible)... that is determined by the legislative policy who decides how much we get.

Ms. Yukimura: Any other questions? Council Chair?

Chair Asing: Yes, I have a question. You have a three (3) acre ag piece and how many units you have on that three (3) acres?

Mr. Bray: I just have one farm dwelling. By the CZO, I read the CZO and how I fall in the CZO would be defined like a home stay. People stay in rooms of our house that we occupy.

Ms. Yukimura: So you are a bed and breakfast by definition.

Mr. Bray: Home stay. There is a definition for bed and breakfast and we don't fit that, but we fit the definition of home stay.

Ms. Yukimura: I don't think there is any definition of bed and breakfast in existing law. There is one that is proposed for this bill in a way of distinguishing between bed and breakfast and single family vacation rentals. On that one, it says, where the owner lives on the property where visitors are welc... are hosted, that is a bed and breakfast. So, I mean, and it... you know, and under the interpretation of existing law, bed and breakfast are not legal anywhere outside... anywhere on this island without a use permit. You know, and we have said that we are going to

address that as the next step after this bill on single family vacation rentals, but it is an area of very confused, muddled unclear law right now.

Mr. Bray: That is why I am having trouble understanding any of it. I read a lot of stuff, but, still, it is really gray to me.

Ms. Yukimura: Yes, but I will let the Chair ask his other questions.

Chair Asing: No, I haven't received an answer for the first question. It is just got confused. It is just simple. How many units do you have on the property? One house only?

Mr. Bray: One house only.

Chair Asing: Okay, and you use that house and you call it vacation rental?

Mr. Bray: Yes.

Chair Asing: Okay, thank you.

Ms. Yukimura: Other questions? Councilmember Rapozo?

MEL RAPOZO: I guess I am confused as well, so you live in that house and you rent out individual rooms, is that what you said?

Mr. Bray: Yes.

Mr. Rapozo: And you describe it or define it as a homestead?

Mr. Bray: Home stay.

Mr. Rapozo: Home stay, okay, okay.

Mr. Bray: And that is what I pulled from the CZO.

Mr. Rapozo: I thought you said homestead and I... thank you.

Mr. Bray: I appreciate all you guys work and your diligence and the questions you've answered on the previous stuff that you have gone through. I can't believe you guys do it for so little money.

Mr. Rapozo: I don't either. I wake up every morning asking myself why, but it is what it is.

Mr. Bray: Well, if you guys do your homework, I know it takes homework, but to educate yourselves on all the different things going on, it seems almost like a volunteer position.

Mr. Rapozo: We make about 82 cents an hour when you figure out the...

Ms. Yukimura: It is probably less.

Mr. Bray: But I thank you guys for being here and doing the job.

Ms. Iseri-Carvalho: You can make a lot more than we do.

Mr. Furfaro: I have one question for Jim.

Ms. Yukimura: Go ahead.

Mr. Furfaro: So may I ask, in the home stay use, the units include a shared bath?

Mr. Bray: We have separate baths.

Mr. Furfaro: Okay, thanks James.

Ms. Yukimura: How long have you been doing this?

Mr. Bray: Just since last July is when we got all of our paperwork together. I built the home myself. I bought and built and cleared the property and built the home myself and I am trying to survive by supplemental income.

Ms. Yukimura: Well, I mean, I...

Mr. Bray: I am a carpenter.

Ms. Yukimura: I think home stays or B&B's have a wonderful potential for interstate, cross cultural friendships and visitor stays. One of the... where is your ag land?

Mr. Bray: Northshore, Kalihiwai.

Ms. Yukimura: Okay, one reason it is probably a nice place is that maybe it is not citified.

Mr. Bray: It is not, it is very rural.

Ms. Yukimura: And, I mean, we could create a lot of cities and a lot more taxes, but in answer to your question about, why don't we just allow a lot more is because we have other goals as a community and some of it is to keep open space

and some of it is to keep integrity of neighborhoods, so that, you know, people, kind of know their neighbors and we just have a lot of other goals that have to be integrated into the decisions that we make.

Mr. Bray: It seems to me like the infrastructure is already here for what is happening now, but you are not benefiting from it. I mean, all the vacation rentals that are operating now are operating with the existing infrastructure (the water, the sewage, the stuff is in there already).

Ms. Yukimura: Right.

Mr. Bray: But the County is now participating in the income that it could potentially be.

Ms. Yukimura: And some of that infrastructure could be used for primary residential housing and it is not. It could be used for people who live here as residents, but it is not because there is a competition for the resource to use it for a higher value.

Mr. Bray: I disagree.

Ms. Yukimura: I think it is not always true, but I think there is a factor that probably on the cost, it is not, people are rich enough, so they can buy a house and not have any vacation rental in, but in other places of this island, the vacation rentals give additional income, sometimes bigger income, and that is the factor that decides whether it is affordable, primary residence, or not.

Mr. Bray: Well, could you quantify what is affordable is on this island?

Chair Asing: Councilmember Yukimura, could we kind of move on. We have lots of people here and we would like to hear from everyone.

Ms. Yukimura: Right, thank you Mr. Chair.

Mr. Bray: So you are through with me?

Ms. Yukimura: Yes.

Mr. Bray: Thank you.

Ms. Yukimura: Thank you very much.

Chair Asing: Thank you.

Ms. Yukimura: Next speaker please.

REVEREND MIKE HOUGH: Good afternoon Honorable Councilmembers. My name is Reverend Mike Hough and I represent an organization that is new to the island. It has been put together over the... less than a week. Within the last four (4) days, we have gathered 600 residential petitions and... no, 700 visitor petitions that are in favor of alternative accommodation rather than hotel stays. And I... all of those here which I am sure you don't want to make copies of, so I will donate them to the County Council. All of them have names, States, addresses, e-mail addresses and they all echo the position that we placed on the website less than a week ago. The position that we have is that it is a confusing situation and we understand that you are trying your best to sort out this situation and it is an old situation that you have inherited with all of the problems that goes with it. But what we see and what we are concerned about is the change in the language of the bill as it gets closer to becoming law that makes us all feel or look like criminals. We hear words like amnesty which are normally here when people are asking for stay of execution. I hear words like grandfathering in. Those terms make everyone in the community that has vacation rental, a B&B, scared to come forward. I think this is unique on Kaua'i that 500 residents who... some of whom, two-thirds roughly, and they have spelled out whether they are residents with vacation rental or just residents to have those people come forward and put their neck on the block along with everybody else here who is going to speak today. It is quite unusual because, normally, it is my experience to say that these people stay in the background that is why normally this room only has 20 or 30 people. You don't hear much return from them. I know that many of the people that are visitors have communicated directly with you or at least with JoAnn I am told. So the general feeling is one of confusion. The website that we put up has information that comes from the Council. That is the only information on the website. It also has opinion and the opinion is that opinion that is shared by a group of interested stakeholders some of whom own vacation rental, some of whom are visitors, some of whom are residents, some of whom are local Hawaiians. It is an organization that what we would like to see being used for is to actually get the information out to the public, so that you, the city Council, could know what the general population really feels about this very difficult issue.

Ms. Yukimura: Thank you. Any questions of Mr. Hough. Thank you Mr. Hough.

Mr. Hough: Should I leave these here?

Mr. Furfaro: You can give that to the County Clerk.

Ms. Yukimura: Next speaker please.

MARTINA HOUGH: I would like my husband to be able to speak on my behalf if that is possible. Thank you. I am from Germany, so my German and my English gets a little confused when I am a little nervous, so I think he will do a better job. Thank you.

Mr. Hough: The other points that I was concerned about don't touch on the legal issues because they are very complex and I am sure that you are going to be dealing with the legal issues for quite a while. They involve State issues, they involved County issues, but they impact a large number of people. Of these 600 records that are residents and stakeholders (people who live on the island), each of those small businesses employs a window cleaner or a couple of maids, a gardener, maybe a repair man. If you total the impacts of the legislation that you are looking at, you are probably looking at 10 people per property and with 600 properties, that is 6,000 people. That is 10% of the population on the island. That is a small recession if your bill was to enforce the illegality of all of the properties that are on ag land for example. The second issue is obviously one of money. It always comes down to money. If you look at the 600 properties that are just the people who have responded in four (4) days and I want you to understand the importance of that. We received another hundred before I left this morning that I didn't bring with me because I can't. These are people who have attended or have been to visit a website, that is all. We haven't put any ads in newspapers, we have sent out e-mails to our existing guests who have stayed at different properties of people that are in the room now, that cumulative total have... total of the money that we are looking at for those properties could be in excess of half a billion dollars. I can't imagine that those stakeholders on the island that have invested heavily in this island will walk away easily from that (inaudible). I think that was my three (3) minutes.

Ms. Yukimura: Thank you Councilmember Rapozo.

Mr. Rapozo: Are you an owner of a vacation rental? How many do you have? You just have one?

Mr. Hough: I just have one.

Mr. Rapozo: And you mention 6,000 people could be affected.

Mr. Hough: Well, I am saying if the 600 units and we have agreed in previous testimony, I've heard numbers of up to 1,200. Let's say that there are 1,200 units, each unit hires a cleaner, a gardener, maybe a landscape guy, repair guy, they are all in addition to...

Mr. Rapozo: You said 10 per...

Mr. Hough: In addition to the owners that you would impact by putting that small business out of business. If you add all of those up, it could easily come to 10 people. The 10 people, some of those people would be shared. If you bring in a repairman, it is quite likely that repairman would work for maybe five (5) or 10 rental properties.

Mr. Rapozo: And that is my point because the people that watch this, when they watch this show, they take away the number of 6,000 jobs will be affected.

Mr. Hough: It could be more than that.

Mr. Rapozo: It could be less. My point is this and I am asking what was your basis for the number and if it is just a bunch of assumptions...

Mr. Hough: No.

Mr. Rapozo: Because I can tell you from the testimony and believe me, your website is not the only place that people go to voice their concerns. They have our e-mails as well, so I want you to understand that we hear it all.

Mr. Hough: That is good.

Mr. Rapozo: We get the phone calls as well. So your website, I don't know where it is, I haven't seen it. But my point is this, the people that watch this, the general public that has not been to your website and the next thing we hear is, you know, you guys are going to kill 6,000 jobs Council and I am just asking you, how do you base that number because the testimony that I have heard and received, you have a landscaper that may have 10 accounts, may have 12 accounts, so if you lose one vacation rental, we are not going to lose 10 or 20 people as you are suggesting.

Mr. Hough: Well, let's do the math now. Let's say that there are 1,200 units and we assume that there is far more than that.

Ms. Yukimura: No, we don't.

Mr. Hough: Well, the...

Ms. Yukimura: If you want to use statistics that are the closest that we can possibly get, Mr. Stokes... you've quoted it and he doesn't say 1,200.

Mr. Hough: What is the total number that he says?

Mr. Furfaro: He estimates about 930.

Mr. Hough: Okay, so let's round it off to 1,000 because it makes the math easier.

Ms. Yukimura: And not counting bed and breakfast because they are not addressed in this bill.

Mr. Hough: But they will be targeted after.

Ms. Yukimura: You don't, you can't say that.

Mr. Rapozo: Madam Chair, all I ask was that I wanted to know the basis of the numbers that is all.

Ms. Yukimura: And I think you have a very legitimate question.

Mr. Rapozo: And if it is just pure assumptions, then we need to make that clear because we are not affecting 6,000 jobs, that is just not the case.

Mr. Hough: We have agreed to...

Mr. Rapozo: You said 6,000 people and that, I have to tell you is not accurate.

Mr. Hough: If we say that there is a thousand units, let's agree on a thousand units and we have two (2) owners, at least two (2) owners. Maybe more people, maybe children or elderly people that are employed in various functions within those units. At least two (2) people if there is a... most people have one or two (2) cleaners that work full time for them, so that could well be that there is already four (4). You then have a yards man who may share multiple units, I agree. You might have a repairman, you have the stores they buy groceries from, those are stretching the point I acknowledge. However, the thousand times those four (4) that we have agreed on initially is already 4,000 people.

Ms. Yukimura: And Mr. Hough, how many are going to be made illegal by this bill? Can you tell me that?

Mr. Hough: That is a very good question. I don't know.

Ms. Yukimura: Then you are assuming that a thousand will be and half the e-mails that I have received that I have responded to are those who would qualify for a non-conforming use permit.

Mr. Hough: I would like to know the number...

Ms. Yukimura: I would like to know the number also and one of the reasons we are passing this bill is so that we can establish a baseline, we can require registration and get a baseline of how many are out there. Can you tell me how many are on ag land? Can you tell me how many are in residential land?

Mr. Hough: No.

Ms. Yukimura: Then how do you project the impact of the bill without knowing that. You have told people that most of the vacation rentals are going to be made illegal and that is not true. We don't know, but you don't know either.

Mr. Hough: Let me ask you a question then. How many of these vacation units are on ag land? I would say the majority.

Ms. Yukimura: Well, what basis do you have to say that?

Mr. Hough: On the feedback that I have had from people...

Ms. Yukimura: Well, it takes more than that.

Mr. Hough: On the e-mails that I received.

Ms. Yukimura: It takes more than that.

Mr. Hough: I agree.

Ms. Yukimura: So that is the kinds of assumptions that have been, I believe, harmful to the process because they are not accurate. But, besides that, are there any other questions for Mr. Hough?

Mr. Hough: I'd like to respond to your last...

Ms. Yukimura: Mr. Bynum please.

Mr. Bynum: Mr. Hough, you mentioned that the website has been up four (4) days and you've received a large number of responses.

Mr. Hough: 1,300.

Mr. Bynum: What motivated you to put the website?

Mr. Hough: The last amendments that I e-mailed JoAnn for, that she sent to me very kindly which we read through in detail and realized that there were some areas that were of great concern to us specifically things that we have found out this morning or during this meeting are now out of your hands. They are (inaudible) State rather than County Council, but they are still of concern because these are small businesses that rely upon this income almost exclusively.

Mr. Bynum: So you have been following this bill as it progressed through public hearing and...

Mr. Hough: Actually no. I have been following this bill for maybe two (2) months because I wasn't aware that it even existed.

Mr. Bynum: You saw what came over from Planning and you've seen the amendments that were proposed and those amendments or proposals, what you are saying is...

Mr. Hough: They scare the hell out of us.

Mr. Bynum: You saw things in those that mobilized this response?

Mr. Hough: Yes.

Mr. Bynum: And, basically, if I understand correctly, primarily, the realization or was it a realization that... regarding ag land, TVR's on ag land.

Mr. Hough: Yes.

Mr. Bynum: So I don't know at what point (inaudible), but I want to make some comments Madam Chair.

Ms. Yukimura: It will be appropriate later. I mean, you can ask questions.

Mr. Bynum: So it was those amendments primarily, so this idea that ag land and the impact in ag was kind of new thing.

Mr. Hough: Yes.

Mr. Bynum: I will leave...

Mr. Hough: The feeling that I had and I think was shared by many other individuals that (inaudible) or spoke to me which was the reason this got started in the first point was that the language of the bill through the amendments had changed significantly. It felt as though it was now more punitive, a little more scary and it felt as though it directly attacked a large part of the visitor industry. Here are words that I am saying, it felt as though. We didn't know specifically because we are not lawyers. We read the information on the bill, it feels as though it directly impacts us and the response is to band together and present you with information that says, there are this number of people who feel that this is dangerous, detrimental to the industry.

Mr. Bynum: So what I really wanted to get and I think I have the answer is that the amendments that came... were proposed two (2) weeks ago that seemed to solidify the concern. You know, I agree with you about the law. We heard it characterized a minute ago as confused and muddled and I think that, in the long run, is our responsibility is to... and that is part of... I know my effort is to try to rectify that situation where things are confused and muddled and come up with a clear, you know, policy or law from the area that the County has (inaudible) to try to end this long period of confused and muddled and it is particularly in my opinion confused and muddled when it comes to ag land. I will have other comments that I would like to make later.

Ms. Yukimura: Thank you. Any other questions? I think we need to take a caption break. I think we have to take a 10 minute break and come back.

There being no objections, the Committee recessed at 3:32 p.m.

The meeting was called back to order at 3:50 p.m., and proceeded as follows:

Ms. Yukimura: I believe the Council Chair had questions of Mr. Hough. That is where we left off and the rules are suspended while we proceed.

There being no objections, the rules were suspended.

Chair Asing: Let's see now. So you are on ag land?

Mr. Hough: It is up for discussion because I think I am on ag land. My tax bill says that I am on ag land, but one of neighbors tells me that everybody on my road is zoned to allow vacation rental properties.

Chair Asing: Oh, you are not sure.

Mr. Hough: I would say that I am on ag land, but that is an example of the confusion.

Chair Asing: Hang on. I don't want to go all over the place. I just want to stay on track, so where is your property?

Mr. Hough: It is on Olohena Road.

Chair Asing: Approximately where?

Mr. Hough: Right up at the top end.

Chair Asing: Above Kamalu?

Mr. Hough: Just a little.

Chair Asing: Just above Kamalu. Between Kamalu and Pu'u'ōpae?

Mr. Hough: You know, it is just as you go around that bend just past...

Chair Asing: On the right side?

Mr. Hough: On the right side.

Chair Asing: Okay, then I have an idea. You are in ag land.

Mr. Hough: Yes, that is what I believe.

Chair Asing: So how large is your parcel?

Mr. Hough: The parcel is just over two (2) acres.

Chair Asing: And you have...

Mr. Hough: Two (2) homes. The main house and an ADU.

Chair Asing: Okay.

Mr. Hough: We have been on the island for 10 years and we have been forced into this business not voluntarily, but because at present employment when we moved to the island was an international advertising agency which generated more than enough wealth until the beginning of the war. In 2001, within six (6) months, we lost all of our clients. We then tried several other small businesses and none of them works. We spent all of our savings and we had to decide, do we leave the island or do we stay at our new home?

Chair Asing: Okay, you have one unit and the other unit, you use as a vacation rental.

Mr. Hough: That is correct.

Chair Asing: Okay, thank you.

Ms. Iseri-Carvalho: Councilmember Furfaro?

Mr. Furfaro: You know, I think it is really important that we all deal with good information. People make a lot of bad decisions because they got bad information and you should know. For example, you know, you just answered a question saying, well, I think I am in ag, but my neighbor said around us that we are all entitled to vacation rentals. Well, there is no such thing. You are entitled to a VDA zoning to have a vacation rental. If you do not have VDA zoning, currently, you are trying to be addressed in this bill. The other thing, we had a gentleman who was obviously commissioned by the bed and breakfast operators to do a survey, but he did a very good thing in monitoring marketing areas, Internet, brochures, racks, reservation systems and he basically came out and said, there is about 855 units on the island that are not really classified as hotel or rental condos that are in the vacation rental inventory on the island. And that makes up part of the 7,200 total vacation inventory on the island. So that was really good information and he says, it is plus or minus a hundred because it is two (2) years old. We have to deal with the right number. We have people come and testify that they are a small business, they clean yards, they do maintenance for rooms and they all average between six (6) or seven (7) clients that they handled in their business. So, you know, we have this in this packet and I will be glad to make a copy of this available.

Mr. Hough: I have it.

Mr. Furfaro: I am glad that you do.

Mr. Hough: I have everything that is on your website.

Mr. Furfaro: But what I am saying is, we can't come to the mike and say, there are 1,300 units out there and so forth. I don't think there is a member on this Council that understands the visitor industry quite as well as I do because I have been in it all my life. And I understand the delicate parts of marketing and so forth, but a week ago, we were very close to having an understanding where we are at. Now, because we have a lot of bad information out there again, we are starting all over. That is how I am feeling Councilwoman right now. I mean, a week ago, I was basically ready to look at something that said, here is our starting point and we are obligated, almost mandated by the General Plan to put some regulations in place as it was seen by the community. But I do want to make sure that, you know, that we fall back on good information and not guesstimates.

Mr. Hough: Can I comment on that? Some of the things that we put on the websites which JoAnn and I have been talking about, I am accused of misinformation. All the information on the website is your information. Well, gathered from various things like the Mayor statement or by Governor Lingle's statement which is very strong.

Mr. Furfaro: You know what, I am entitled to ask the questions and I just want to say that I wanted to reference this particular article as the piece and I don't want to reference the Governor's philosophy, the Mayor's statement and so forth. We need to arrive at an understanding for our community based on having good information and do the best possible job that we can. So I will often reference this piece, this document. You know, I went through it with Ken, I understand the questions, I understand the impacts of average daily rates, I understand the impacts of average length of stay. This is the best information we have to make the best possible decisions and I would appreciate it if we could reference this piece. Thank you Councilwoman.

Ms. Yukimura: Thank you Councilmember Furfaro. Mr. Hough, I need to respond to your point that it is our information. If so, you would have just put the amendments on the web, but, in fact, you interpreted the information that we gave you. You said that it was going to outlaw most vacation rentals, but you can't even tell me how many are on ag or how many are, you know, residential land and so forth. I don't want to belabor the point, but I believe there was interpretation that was not informed in terms of the law, so we are trying to cover that. You know, it actually lessens the credibility of those petitions because they were made based on that information which wasn't all accurate. But, in the interest of continuing our dialogue as a community, let's just go forward with the information hopefully that we have presented and we can keep... some information is factual and some information is opinion and just thinking of my daughter's third grade class where they learned that distinction and then let's try to make those distinctions and move ahead.

Mr. Hough: Can I respond to that? May I suggest then that this website would be a resource for the Council that I am prepared to put any of the information that you give me or tell me should be on that website free of charge to you.

Ms. Yukimura: Well, that is very generous of you. The main thing is not to put inaccurate information that makes extra work for us to try retract or correct. So I think our request is before you put something on that is an interpretation that you check it out first whether it is with us or others and I think we need to let others speak now, so thank you very much. Next speaker please?

LEILANI JOSSELIN: Good afternoon. I would just like to thank you Council people for following this for the past couple years. It has been really long.

Ms. Yukimura: Can you give us your name?

Ms. Josselin: Oh, Leilani Josselin.

Ms. Yukimura: Thank you Leilani.

Ms. Josselin: And I would just like to thank all the locals who showed up in support of this bill and that have been following this for the past couple of years too and have been working hard getting information from the Hanalei side and stuff like that. I am here in support of the Bill No. 2204. I support that TVR's should be in visitor destination areas and not in residential areas. I feel that residential areas are for local people and I feel that agricultural land should be used for growing taro, for growing native plants and not for growing houses (multi-million dollar houses) that aren't even dealing with agriculture. I am speaking upon my generation because obviously there is not much of those people here today. There is only two (2) of us and I really don't want to be working as a maid or yard service and working still three (3) more jobs for the rest of my life doing stuff like that. Yes, I might be supporting a lot of people, but it is either like quick cash money or it is something that is not even on the books and if it is on the books... it is not... visitor industry is our number 1 industry and yet it is the least paying, you know what I am saying? Like, it is not the greatest thing. I think you should be looking towards other industry like, I don't know, other things besides always visitor industry. Also, I think... that's about it. I just want to tell you guys that it is really important that you guys listen and I really don't know... even if this bill doesn't get passed what is going to happen because you are telling me things like, oh, then they are all going to have to register and all this kinds of stuff and I don't know. There are so much people saying different things and we don't really know what is going to happen and I don't even think you guys know what you want to do yet, so it is like really confusing because it has been going on for a couple years now. Agriculture lands and residential lands, vacation destination areas like Princeville and Po'ipū should be staying that way and they shouldn't be coming down into Hā'ena and into Houselots and into all the places where the locals are trying to keep their areas. Like Coco Palms is... now I am getting into this, sorry, sorry, sorry. So that is all and I have to get to work. Mahalo for listening to me. Okay, bye.

Ms. Yukimura: Just a minute. There might be some questions. Thank you for coming. Councilmember Furfaro?

Mr. Furfaro: What you are referencing is the amendments. I want to make sure you understand that the original bill intended that any new vacation rental applications would, in fact, be limited to vacation destination areas. The bill basically said, those that have been in the vacation rental business, have been paying their TAT, are employing people from landscapers to housekeepers and, in fact, are current with all of their taxes including the general tax may apply for a permit, so that they could continue to operate and then there would be a process of attrition as people fell out, but any new pieces going forward would have to be...

Ms. Josselin: So like all the like, 80% down in Hanalei right now would stay like that as vacation rentals?

Mr. Furfaro: No, it is really for you to summarize that and I know Hanalei very well and I know that there are only 28 original families still left in Hanalei.

Ms. Josselin: Yes.

Mr. Furfaro: But the reality is, this bill, was a starting point. What the amendments are that are introduced by a separate document would even be more critical of that, but the bill that we were at as of March 9, basically said, there would be a recognition of those pieces right now... that was what was being considered, but no...

Ms. Josselin: If they are all legal or not illegally runned and all that stuff.

Mr. Furfaro: In other words, if they didn't pay their taxes, they couldn't show records for general excise, transient accommodation tax and so forth, it wouldn't even be considered for a new permit. They wouldn't have that right because, you know, they hadn't paid their current taxes, but I want to make sure you understood that there was a difference. There is that bill and then there are amendments that have been risen today.

Ms. Josselin: So this amendment is all the whole thing that is going on with...

Mr. Furfaro: The amendment is talking about things that deal with the ag specific where the original bill would have...

Ms. Josselin: That is the problem that we are having with agriculture land. They are trying to like open up all these developments and saying so much acreage is going to be developed as agriculture land and they are going to open so much hundreds of acres of taro patches and all kinds of stuff. But then, like, are they really going to do that and like all these houses that have agriculture land that are like five (5) acre parcels, what can you really grow on the agricultural lands that are going to pay off your mortgage and stuff like that and half the houses, the

people aren't really growing anything. They just have a huge house and huge land and a nice driveway up to their land.

Mr. Furfaro: I just wanted to make sure I clarified you and nobody on this Council disagrees that there are other agricultural issues and nobody disagrees that the perpetuation of kalo and other native crops is extremely important as it relates to water and everything. I wanted to make sure we are talking about this bill and we are talking clearly about what the amendment is and what the bill is. The bill would have said, any new vacation rentals must be in vacation destination areas.

Ms. Josselin: That would be pretty good, yes.

Mr. Furfaro: Thank you for staying. I know that you are off to work.

Ms. Yukimura: I think we have one more question.

Mr. Bynum: I just want to thank you for coming Leilani and paying attention because you did talk about a couple of different issues that it illustrates how much work we have to do to find this balance that you are talking about and, you know, I agree with many things that you said and I really appreciate you paying attention to what these issues are, so thank you for coming.

Ms. Josselin: Thank you.

Mr. Furfaro: Thank you Leilani.

Mr. Rapozo: I have a question Leilani.

Ms. Josselin: Sorry.

Mr. Rapozo: Are you okay?

Ms. Josselin: Yes.

Mr. Rapozo: I hope it is not me.

Ms. Josselin: I just getting all worked up.

Mr. Rapozo: And I appreciate you coming because that says a lot. It really does and I appreciate that. I am just going to ask you a real straight up question as far as the bill is concerned is, do you support the vacation rentals and bed and breakfast?

Ms. Josselin: In VDA areas, yes I do.

Mr. Rapozo: Okay, but not on ag lands?

Ms. Josselin: Not in ag and residential.

Mr. Rapozo: You want it confined to the VDA?

Ms. Josselin: Yes.

Mr. Rapozo: And any existing... do you feel the same way with even existing vacation rentals that are in that have been paying their taxes and have been... general excise tax and vacation...

Ms. Josselin: If it is one house and like the family still lives in it and they have to pay their taxes because it is like \$12,000 a year just to pay the taxes on their property and they have to rent out like a room or something, okay, they have to do what they have to, but then when people start owning like 2, 3, 4 different houses and then they start renting them out and they start doing this, then it starts getting like little crazy, you know, and those ones, I don't think they should...

Mr. Rapozo: Leilani, do you live out in Hanalei?

Ms. Josselin: No, I live in Wailua.

Mr. Rapozo: Okay, thank you again for coming.

Ms. Josselin: Is that all? Anymore questions?

Ms. Yukimura: You are popular here Leilani. Question real quick.

Ms. Iseri-Carvalho: Just a comment actually. I know you feel like you may be out numbered here, that you feel that there are just two (2) of you, but, actually, there has been a lot of people actually that have written and sent e-mails to the Council.

Ms. Josselin: Thank you for that.

Ms. Iseri-Carvalho: That are not here that supports your position, so whether we hear you being here, of course, that is very important for us, but we also have many, many other e-mails that support your position.

Ms. Josselin: Thank you because it feels like sometimes you are the only one.

Ms. Iseri-Carvalho: It seems like you felt kind of alone there, but, believe me, there are a lot of people who were not able to be here like yourself that work.

Ms. Josselin: I have been going to school. I have been coming in and out. I had two (2) classes today and came in the morning, went back school, came back, checked lunch time, you guys had lunch break, went back school, just came back and my Aunty called me up and said, okay, they are coming up... I have to go before I go work, so I came here real quick.

Ms. Iseri-Carvalho: Your commitment is just so impressive. We really appreciate your time in being here as well, so thank you a lot and we will consider the comments that you have made.

Ms. Josselin: Thank you. Mahalo.

Ms. Yukimura: Thank you Leilani. We will let you go to work. It is special that a young person like you came. Thank you. Next speaker? Another young one.

LEAH SAUSEN: Aloha, my name is Leah Sausen and I support Bill 2204. I believe we need balance on Kaua'i. I feel that we should keep TVR's in visitor destination areas, residents in residential areas, keep agriculture land for agriculture use. I was just wondering, how do TVR's perpetuate our Hawaiian culture that keeps Kaua'i, Kaua'i? How do TVR's support the true local Kaua'i people besides being cleaning maids or yard service people. The gentleman that spoke before us said that there is like four (4) people per unit that will be affected or 10. Honestly, being the next generation, I really don't really feel the need to be a maid or a yard service person. I honestly would rather grow kalo to perpetuate my culture. I would rather work on agriculture land for the right use. I don't know. Just, please, think about our future, this is about the affects that the vacation rentals will have for us, for the children of Kaua'i, the children that were born and raised here... some people feel that it is just a piece of land, but we are connected to it. It is a part of us, it is part of our culture and I just hope that you take me into consideration also want to thank all of the locals that came today and to support this bill. It is very hard to come up here, it is very intimidating. You do sometimes feel like you are alone and I don't know, I just want to thank you County Councilmembers for taking this issue into consideration. I just want to comment also that we regulate the multi-vacation rentals that are illegal of today. That is all. Just mahalo.

Ms. Yukimura: Thank you Leah. Any questions of Ms. Sausen? Yes, Councilman Furfaro.

Mr. Furfaro: Nice to see you in the water surfing sometimes too. You know, you asked a question about sustainability with the lifestyle and so forth and we have had testimony here from families like the Kobayashis in Hanalei who have 30 years of vacation activity with their property and, you know, they are very active in taro and the history of Hanalei and really perpetuating the history that people have good history. You said you had some interest in the kalo activity, taro and so forth?

Ms. Sausen: Yes.

Mr. Furfaro: Are you and have you been connected with the Waipa Foundation and their efforts in Hanalei to perpetuate that ahupua'a and get some young people back on the land? Have you been able to take advantage of any of that opportunity?

Ms. Sausen: I have just been involved with Limahuli Gardens.

Mr. Furfaro: Good, good.

Ms. Sausen: And at Kaua'i Community College, I took a class, Mahiaikalo with Dennis Trend. I also want to thank him for offering those classes of Hawaiian studies for us.

Mr. Furfaro: I just want to mention that because I just wrote a letter in support of their most recent grant on the expansion of kalo and Waipa and just want to let you know that that is something on the horizon.

Ms. Sausen: Thank you.

Mr. Furfaro: Thank you Councilwoman Yukimura.

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

Mr. Rapozo: I just want to say thank you. We are not that intimidating, right? We made the last girl cry and now you...

Ms. Sausen: I guess it is the cameras and...

Mr. Rapozo: Well, you know, it takes a lot to come up there and speak in front of us knowing that there is a bunch of people behind you as well. I just want you to understand that we appreciate that and, you know, your input is valuable. I often say that before I make a vote yes or no, I always think about my son and say, hey, is this vote... if I vote, yes, will he benefit? If I vote, no, will he benefit and that is what it is about. It is very refreshing to hear from you, local young adult, that will be here and your families will be here. So it does mean a lot and I have to agree with you that I think agriculture lots should be agriculture and that is... I don't know how else to explain that, so I appreciate hearing it from you and thank you for being involved.

Ms. Sausen: Thank you.

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

Ms. Iseri-Carvalho: Thank you also, again, and you did excellent in speaking, so it may have been your first time, but it sure felt like you had been here many, many times before and we are very proud that you were able to come forward.

Ms. Sausen: Thank you.

Ms. Iseri-Carvalho: And get your thoughts out in such a concise and clear manner.

Ms. Sausen: Thank you. I also have a few petitions for the restoration of our neighborhood.

Ms. Yukimura: Thank you Leah. Leah was part of the... actually, the vacation rental stakeholders group, so she has been involved quite a bit representing the young generation.

Ms. Iseri-Carvalho: Great.

Ms. Yukimura: Next speaker please?

WILLIAM MAY: Good afternoon.

Ms. Yukimura: Good afternoon.

Mr. May: I have been here since 9:00 a.m. and I am actually enjoying all the rest of it too.

Ms. Yukimura: That is great. Please state your name.

Mr. May: (change tape)... but I have feelings about it. I am a former director of the vacation rental owners association which is a national trade group that (inaudible). I think that has happened because over the last 5 to 25 years in particular and really more recently, mostly, is that the (inaudible) had made a collective choice. It has been offered, of course, but also they have chosen that for some reason, they decide that staying a week or two (2) in a private condo or home seems like more fun to them than spending a week or two (2) in a hotel room. We don't know who made that happen and why it happened, but it seems to happen. And it is a relatively new thing here. It is not new like Europe where holiday (inaudible) cottage rentals have been the norm and really been a preferred lodging accommodation alternative in Europe for over a century. So when we look at these issues that come up in various places, they kind of boil down to a couple of different things. I think yours is probably about the third one that I am going to mention real quick here. The first one is, is there a basic property right to the use of your property? Do you have a quiet use of your own property for yourself, your family and your guests, whether those guests are paying guests or not. They have that right in the U.S. Constitution, State law and Bill of Right and those are the things

that all the lawyers enjoy dealing with later and get lots of billable hours out of them.

The second one is really (inaudible) of guests. Are those guests well behaved. They have noise and parking and various issues that can come up. We believe that those things are easily regulated and controlled and, in fact, in most jurisdictions have laws about noise control and so forth, so we really don't think those are really probably the major complaint in most areas. The third thing that really comes up is that it comes down to economics over and over again and the balancing of the needs of various constituents at sometimes the balance or I will say the expense of other constituents that are there. We believe that limiting or prohibiting vacation rentals that are licensed, controlled and well run provides more economic harm to the community than licensing and letting them to exist. Someone here mentioned housekeepers, gardeners, maintenance people are involved, but the fact is, that entire process goes much farther than is evident.

March 7, 2005, Chelam County Washington revisited this issue (inaudible)... base population is similar to here. They have a major recreational area and I think their decision hinged upon the testimony of the Chamber of Commerce Director who got up and said, here is what I know for sure. Every shop, restaurant and many businesses that seem indirectly related are directly affected by the number of beds that are given to visitors in this community. If we cut out a thousand beds, we are going to make a major impact on this community in a very rippling affect. Nobody likes a slippery slope analogy, but, in fact, is for every gardener that gets paid, they buy things. You can take furniture stores, restaurant, retailers and it goes really quite wide.

Ms. Yukimura: Mr. May, you may not be familiar with our rules and I should have perhaps stated it up front, but we have a three (3) minute time limit, so I...

Mr. May: I am ready to end and I was watching closely and I thought it was okay.

Ms. Yukimura: You can have a minute or two (2) to summarize.

Mr. May: I will do that for you right now.

Ms. Yukimura: Or you can come back and have another three (3) minutes after everyone else is through.

Mr. May: Thank you. His conclusion which is really the basis of understanding the economics of this was that he said to the Councilmembers, if you are going to limit and prohibit, grandfathering will eventually run out vacation rentals in this community and that I want you all to come to my office on Monday, we will go down every main street in the County and we will tell every merchant that they need to lower their sales by 10% to 20% forever, cutback and staff and cut

back on wages. It has a very, very direct impact there and that is only because... one last point is that when people want to come to vacation rental and if there isn't one available, they don't go to a hotel, they go someplace else. So if, indeed, that is the Council's intention is to limit and eventually wind down through grandfathering, the (inaudible) effect that it will have and it has a big economic impact bigger than you might think, so that is enough for me.

Ms. Yukimura: Thank you very much. Any questions? Councilmember Iseri-Carvalho?

Ms. Iseri-Carvalho: Yes, I do. I believe it was Councilmember Furfaro that said that good information is very important and I guess I would like to know how did you arrive at that loss in revenue.

Mr. May: This was his comment, but they had about 900 vacation rentals throughout the entire County. It was a little more seasonal than here, but, in fact, they have a good Summer and Winter season.

Ms. Iseri-Carvalho: I am sorry. That was in where?

Mr. May: This was in Chelam County Washington which is in eastern Washington recreational area and it was his conclusion that they had not said that the economic impact is not related to hotels, motels, inns, bed and breakfast or vacation rentals. It is related to the number of beds and if you do something that curtails or begins to cut back the number of beds, it has a very, very direct impact on the economic income. If they can't come and find a place to sleep, they are not going to spend money on anything else.

Ms. Iseri-Carvalho: And I think the point to be made is that we are not excluding all vacation rentals and we are not excluding all bed and breakfast, there is just more of a regulatory scheme that we are trying to set up. So there still will be that opportunity for those visitors who desire those kinds of accommodations.

Mr. May: Oh, I agree and if they can be moved to the expanding areas like Po'ipū, then you will be able to maintain some of that income, but the fact is, what is (inaudible) misconception is, well, if they don't have vacation rentals to go to, they will pick a hotel. Unfortunately, the market has just changed dramatically in all the markets that we follow. They want a condo, they want a private home and they don't always want to be stacked in a private home on a tall building someplace. They want to...

Ms. Iseri-Carvalho: And I think the island as it is does provide a variety of accommodations including vacation rentals which is part of that variety of choice that we would like to offer to our visitors... to have the most pleasant experience that they can on Kaua'i.

Mr. May: Because, they, in effect, they as the consumers tell us what they want and we can tell them all day, sorry, we are giving you something else, but that is just a way to turn down these visitors.

Ms. Yukimura: Thank you. Councilmember Rapozo?

Mr. Rapozo: Thank you. This area in Washington, what kind of area is that? You said that it is a recreational community?

Mr. May: Yes, there is a... believe it or not, 50 years ago, one of the towns converted itself to a replica (inaudible) village that has about 2 million visitors a year. There is a 60 mile long recreational lake that has a lot of activity and business there and the (inaudible) river flows through and there are a lot of homes and vacation rentals.

Mr. Rapozo: So that would be like a visitor destination area here on Kaua'i?

Mr. May: In fact, their issue was not about those that are within a zoned town, but the fact is, those that were outside those areas in the County areas and their rules were that there were... they didn't have a rule. They were dressing the issue saying, will... are they allowed or not allowed and they revisited the whole issue from scratch.

Mr. Rapozo: And the difference is that we have rules and I would assume that these rentals that you are talking about on this lake or pond or whatever it is, is not sitting on agricultural land.

Mr. May: Some is... actually, they are big on ag tourism there and they have a huge movement to reject...

Mr. Rapozo: So your vacation rentals sit on agricultural land?

Mr. May: Lot of the... out of the...

Mr. Rapozo: I am talking about the area that you talked about, that 900 units or whatever you said, along a lake, so they are ag property...

Mr. May: They have orchards that grow right down to the lakes. The biggest delicious apple producing region of the world actually.

Mr. Rapozo: So what you are saying is that vacation rentals are an acceptable use on ag property?

Mr. May: Their final decision by their Council unanimous was that they would rather have vacation rentals than more smelters on the Columbia River. The guy said that in his final remarks and they had to provide jobs and they didn't want to harm the economy.

Mr. Rapozo: Can you spell that city?

Mr. May: Chelam and that is the County and there is a town of Chelam as well, town of Levenworth... you probably can see them on the web and see their activities and their conclusion was that... they considered licensing, they considered permitting and the end result was, they concluded that statistically from a compartment standpoint, there had been no... the problem area was non-existent on the extremely small percentage basis, so they said we don't need more licensing to control perhaps in the (inaudible) parking because we don't really have a problem. So that was their final decision kind of surprisingly.

Mr. Rapozo: And I guess here, we do have a problem and that is, I think, what separates Chelam and Kaua'i.

Mr. May: And as a group, we recommend and support licensing, controls, rules and regulations because my personal goals, I want the guest to come and go and the neighbors to never know they have been there. I want that kind of careful considerate person to be at the home, so we are not opposed to things at all.

Mr. Rapozo: Thank you.

Ms. Yukimura: Councilmember Bynum?

Mr. Bynum: Well, I kind of got an answer, but your description also includes condominiums and that. I think Councilman Rapozo made that point that we do have visitor destination areas. We have a lot of new condos coming online more than some of us would like. And then we have areas that we intended to be residential and this Council did expand the VDA significantly in Po'ipū last year or the year before.

Mr. May: The comparison is other than seasonality is really apt though because probably, I don't think we knew the breakdown at the time, but it could have been as heavy as 75% private homes as opposed to the condominiums. They don't have big high rises and these were areas that were essentially, the law was silent as to what was supposed to go on there and they decided to go through this whole review which started as a negative. People were saying, we don't want them and it came all the way around and they said when we balance everything, is this a good or bad visitor, is it a good or bad economic thing, is it good or bad for the constituents that are here and you never know how people are going to make their decision, but that one came on that direction.

Mr. Bynum: You've used my favorite word since I have been on Council, balance, and that is what we are seeking.

Mr. May: And I am less directly affected, but I realize that it is a hard thing to do. Thanks.

Ms. Yukimura: Mr. May, the intention, at least, my intention in passing this bill is not to kill vacation rentals. That is, stop them and then attrition them out. I think our intention and you will see in the introduction that we actually list some of the benefits of vacation rentals is to first get a baseline about what is out there and to get some experience with regulating them partly because if they become a source of resentment in this community, it could affect the entire visitor industry. As we know, the welcomingness of the... that is not a word, but the aloha of residents is key to a successful visitor industry and if we don't find this balance, it could be bad for everyone. I just want to make that very clear. This is a bill so that we can get a handle on something that to-date has been totally uncontrolled, totally unmonitored and has been causing in neighborhoods where the numbers are out of balance problem.

Mr. May: Yes, and there are other ways to handle... I don't mean to tell you which one is right because I don't think I know each community, but in one of the coastal communities of Oregon which they have a rather significant visitor influxes there, they said, well, we like vacation rentals, but we don't want 10,000 of them. So they put a quota on the number of license that would be issued. I think they did the same with the hotel rooms and instead of just the grandfathering who got here first, when they sold or left their property, they left the same quota, so someone else could apply for one of the licenses. That was another way of controlling it.

Ms. Yukimura: And that was an issue that was discussed by the vacation rental stakeholders group in terms of if we decide to allow new ones, how would we do it and we talked about 10% in a community, but then what is the boundary of a community. Would it be 50%, how would you... there were all kinds of issues that we explored. Would we do it by lottery or would we do it by application, would there be a... there are many, many complications then and I think the approach was to first get a handle and then decide where we are going to go. Also, in the context of the total number of visitors on this island which has to, at some point, be looked at.

Mr. May: Another control that seems to be helpful in a lot of communities... usually, the biggest item is compartment and they will find that they have a very small incident problem, but they have problem on occasions and they will control that by saying, well great, you can only have three (3) people per bedroom. So we just don't want somebody with a four (4) bedroom house renting it to 20 people. (Inaudible) cause problems with parking and elsewhere, so those things all seem pretty reasonable and that is why from my perspective personally as well as our little group, we say, yes, there are legitimate issues that can be addressed through mechanical ways as opposed to simply throwing out a whole segment of the visitor industry (inaudible) accommodation industry. There are a lot of ways to look at it.

Ms. Yukimura: Right. Thank you very much for your input. Oh, I think the Chair has a question.

Chair Asing: Are you opposed to the bill?

Mr. May: I am opposed... I am in fav... actually, I have been through it. I have been trying to follow it and I am only here every other month and I am in... I would say, generally, that I am in favor probably more so than most owners. Of licensure as opposed to permitting which creates a rather big mess, but licensure, I am not opposed necessarily to some kind of controls on any kind of economic growth in the community and certainly rules and regulations for the comportment of the guests. As written, it looks to me like you mostly have a... that you are saying that the grandfathering will come in and if that sets a reasonable level of number of homes, that may or may not be the right number, I don't really know. I didn't get the exact... I think 860 was the last number.

Ms. Yukimura: Well, until we have a registration process, we don't really know what is out there.

Mr. May: And I might tell you that we are also selfish. We like licensures because it protects those of us that are trying to be good landlords from those who aren't and might not be paying taxes or something like that and that would be true of any business I suppose of any segment. We think that if you are going to be in the community and you pay your taxes and you pay for the use that you get those services direct and indirect and that... whether constituents like it or not, governmental authorities get to control things and there are all kinds of things that you have to control including these that are pretty benign compared to crime and things, but nonetheless, you can put your hands around. So on behalf of the bill, I guess I would have to tell you that I am not in favor as it is written, but I think the process that you are going through is the correct one to try to come to that darn balance word. This is okay, do we want them at all and that is the question you get to ask and if we do want them, how many do we want? What locations, of course and VDA's start to solve a lot of that, but do we want them in these other areas. But you also can't ignore the consumers that if you don't give them what they want, pretty soon it has an impact on the economy and this is not a trend just here, it is in every market that I am familiar with... move toward private homes and condominiums.

Chair Asing: Okay, with that answer, I would say that you are in the same place that we are in. We are trying to do the same things that you are trying to explain on what you would like to have, so we are not different.

Mr. May: Oh, I agree, I agree with you because I have talked to so many people around the country go through this, some property owners, their first reaction is, it is my property and I will do what I want with it. You have to say to people, you know, that is not true anymore. Your neighbor owns your house whether you like it or not because if you do certain things at the house, pretty soon, you might not own the house anymore. So you have to have those controls and that is all reasonable and good. The exact balance, the number of homes and the

methodology used to make it acceptable to yourself and the rest of the constituents in the community is necessary I think. It gives it... it gives also if you don't do anything, it is going to continue to grow and you don't... how many do you want and how many do you not want. How big are they? How little are they and that sort of thing?

Chair Asing: Thank you.

Mr. May: Thanks.

Ms. Yukimura: There is another question.

Ms. Iseri-Carvalho: I do. I know you mentioned that you are opposed to permitting, but you want licensing and just an explanation as to what the definition of each is and, you know, the pros and cons of either of them.

Mr. May: Yes, and I also want to apologize that I generally... other than this issue, I have not been... (inaudible) and things to talk to. Licensing says, that there are a set a rules and if you can meet those rules and abide by the rules, you are entitled to a license, a driver's license is a great example. Permitting is, well, yes, you've met the rules, but everybody in the neighborhood in the world gets to vote and decide and offer testimony about we don't like the vacation rental. So there is the difference between licensure and permitting in my thinking.

Ms. Iseri-Carvalho: In your review, okay.

Mr. May: And I think the licensing is pretty manageable. I think permitting and the conditional use permits (inaudible) start becoming... creating a pretty big time and delay and cost for both the County and the people that are applying. Those licensure could be a little more straight forward.

Ms. Iseri-Carvalho: Okay.

Ms. Yukimura: Thank you very much. Next speaker please? Just state your name please.

MICHAELLE EDWARDS: Okay, my name is Michaelle Edwards and I have I guess what would be called a B&B because it is in my home and I do have... I bought the property like in 1987 and now all of my neighbors are like billionaires and they don't need to do vacation rentals. So, you know, they don't seem to mind what I am doing. I keep it very low key and whatever, but, you know, aside from my own personal feelings about, you know, that I would like to continue having my vacation rental is I am really glad that we are all doing this because I think the bigger overall perspective is that we are all really concerned about what is happening to our ag lands and that we really do need to get, you know, really comprehensive plan on what is going to happen to this ag land because, you know, us running... a few of us running or how many... even 900 people running vacation

rentals is nothing compared to a big corporation getting to take over, you know, 5,000 acres of ag land and developing a huge resort. You know, so I am not saying that this isn't important, but what is going to happen to our ag lands. We really need to take a look at it, so I am hoping... in support of what JoAnn said is that we need to come up with comprehensive idea about, okay, how many visitors are adequate for Kaua'i. How many visitors... you know, like I heard in Bermuda, they limited or (inaudible). How many people need to come here? How many plastic bottles should we let in? I recently heard that as many helicopter companies that want to can start up a company here because there are no limit, so I urge you to set these limits and it is a good idea. But I just hope that there are some... you know, there are some reason and there is some science behind it because, you know, we are a tiny island and then we are all seeking the balance. So, anyway, I just appreciate that everyone is here and discussing this and I know that people like Caren and... Caren has worked really hard because she has seen these neighborhoods turn into solely vacation rentals. People can't afford to buy homes anymore and it is a huge complex problem. You know, we are all hoping to figure out solutions to it, but I think one of the big solutions is to hire some experts in, you know, projected planning like how big of an island with this much infrastructure? How many visitors can we really have? How many cars even? It is like, you know, should we be building bike lanes all over the island, so that people can come here and not have to rent a car? I mean, there are just all these issues that I hope the Council can somehow use that as an umbrella and then, you know, it is not how many people are staying at vacation rentals on ag lands, it is how many visitors are coming to the island period. And it is like, how many do we really... how many can we really accommodate without spoiling the very reason why people come here.

Ms. Yukimura: Thank you.

Ms. Edwards: Anyway, I know I kind of touched on almost... kind of went around the block, but I mean, I was just down at Po'ipū this morning and you can't even get in the water. You know, I know that they are going to build another 3,500 units, so I know this is beside the fact, but I think we are correct that we need to come to some sort of limits on things.

Ms. Yukimura: Thank you Ms. Edwards. I really appreciate your ability to look at the large picture and I agree that we have to do that. I think you also told me that your B&B is a really important part of your own personal financial economy and I would invite you to... I am going to open it up for questions, but just invite you to tell us about that too because that is part of the data that we need to know.

Ms. Edwards: Well, I have a five (5) acre ag parcel that a lot of it can't be using for farming because it is too steep, it is swampy or whatever and I did put in a lot of trees which Hurricane Iniki ripped them up by the roots, so I have like a diversified ag. I sell some produce and I grow all my own food and I do like what Jacqueline does and I share it with my neighbors. But, you know, it is difficult farming as anyone knows, it is very difficult. You know, and I understand that, you

know, as far as perpetuating, you know, what the girls were talking about, perpetuating Hawaiian culture. It is like how am I doing that, you know, I am trying to grow some native plants, I play Hawaiian music, you know, I am trying to add something to that, but I would urge the Council to try to... I mean, they have the Polynesian Cultural Center on O'ahu, why don't we have a cultural center here on Kaua'i, so that the locals... I mean, a 100 years ago, Hawaiians couldn't even speak their own language and now people are throwing... throw money at them and they are not doing it like the hotels. The hotels are making money off Hawaiians and Hawaiians themselves are not actua... they are sitting on a, you know, the ways to... they could create an income to build their schools, keep their language going and, yet, they are not doing it. So I don't understand a lot of this stuff because it is like they could, you know, I don't understand that because I know on O'ahu, the Polynesian Cultural Center, it all goes to the Mormon Church.

Ms. Yukimura: Naturally, there was discussion of that just recently for one on Kaua'i.

Ms. Edwards: That would be awesome.

Ms. Yukimura: But I think we need to stay on the subject.

Ms. Edwards: Anyway, I am going around the block here.

Ms. Yukimura: So I am going to ask if there are any questions of Ms. Edwards? If not, thank you very much.

Ms. Edwards: Thanks you guys.

Ms. Yukimura: The next speaker please.

CHARLIE HOERNER: Hi, my name is Charlie Hoerner. I have been a resident of Kaua'i for about 10 years. I lived on O'ahu previously and my younger daughter was born there several years ago. We moved to Fuji Beach and bought what had previously been a vacation rental that had been put out of business by Iniki. We had to rebuild it and a lot of termite damage and wood rot and painting and replacing windows and all that sort of stuff and turned it into a pretty successful vacation rental business. We vacation rent the house when we are not on island and it is a supplemental income that has allowed me to retire early which I had to do largely because I lost my hearing and am on disability and can't do the consulting and the training business that I used to do. So I was a little surprised when I heard about this initiative. I am relieved to hear that it sounds like we can apply for a permit and, you know, and get an exemption to it even though we are not in a VDA. We are in between two (2) large condominiums. I would like to say, though, that I would encourage you to consider the popularity of vacation rentals. The reaction that we get from the people who stay in our property is astounding. It is just over the top. The e-mails that we get, the notes in the visitor's guest book, people just love staying and they don't want to go to a hotel. They love the fact that

they are more part of the island. They love the experience of being low key and it reminds my wife and I of traveling in Europe which I think Bill May mentioned before. I (inaudible) buy books of all the farm houses and the places that you could visit and stay with and get to know the people and all that and it is a wonderful experience that you look in Napa and Sonoma counties in California, there are guest houses scattered all throughout the vineyards interspersed with agriculture and I think it is a very positive thing.

I do agree with the idea of limiting the impact on the island and I think that anything could be done like... Yosemite has done this for example where they limited the number of users who can come into the valley and they limited it even more than the number of users who can drive into the valley. I think that Kaua'i is not going to be the same place that we fell in love with 10 years ago if something isn't done, but I don't think that limiting vacation rentals is the way to do it because I think that is part of what makes this island special and rural and people enjoying the local culture. I would very much like to have the County Council, in fact, stress things like energy use and (inaudible) global warming, of pollution, recycling, solid waste disposal... we live on Fuji Beach and we cannot get sewer even though we are two (2) blocks off Kūhiō Highway. I called the sewer... they said, oh no, we can't do that, it is not technically feasible. Nonsense. We can't get sewer and we have to have septic tanks and that is crazy. You know, you go anyplace in California and if you are anywhere near a coast, you have to be on a sewer system and they (inaudible) to building sewer systems to keep from polluting the water. I am sorry my time is up.

Ms. Yukimura: Yes, your time is up.

Mr. Hoerner: One more thing, I would support additional taxes on top of the TAT if they went into infrastructure in building roads and stuff like that.

Ms. Yukimura: Thank you. I believe Councilmember Bynum has a question.

Mr. Bynum: Thank you for your testimony and I am glad you brought up Yosemite because I think it is a model that we need to look at. Yosemite is a national treasure and Kaua'i is a national treasure and they found that they needed to do... well, I guess not everybody can drive into Yosemite anymore. I guess not everybody can... we can't go above a certain capacity or we are going to lose our national treasure and I think that particularly applies to the Northshore because we made a determination not to put a big highway in there and to have one lane bridges. I know it is another issue, but I am glad you brought Yosemite as a model because I think it is one that we need to look at in terms of saying, geez, not maybe every car that wants to attend drive everywhere they want and we need to find, like Yosemite, shuttles or other ways to do it.

Mr. Hoerner: People want all that, they can go to Honolulu.

Mr. Bynum: Right on.

Ms. Yukimura: Any other questions? Councilmember Furfaro?

Mr. Furfaro: You know, I just want to make clear that this is the second time I heard the statement about caps and so forth. If you are familiar with our General Plan, the General Plan recommends a certain number of visitors per day. The General Plan has a recommendation for the number of people that arrive by the cruise line per day. So our General Plan isn't too far off of at least making some of those statements and you will see something to that effect soon from myself in the form of a resolution reminding the Harbor Division that we have such a general guideline in our General Plan. Also, regarding the comments you made on the taxes. Thank you very much, but it can be one that is evaluated when there are assessments on new subdivisions and so forth that they are referenced as a impact fee, so thank you very much. Thank you Councilwoman.

Ms. Yukimura: Thank you. Any other questions? Mr. Hoerner, in the neighborhood where you are at which is a very lovely neighborhood, it has been mainly a residential place for local families. In fact, I believe the Planning...

Mr. Hoerner: A lot of long term rentals too with deteriorating properties.

Ms. Yukimura: Perhaps. People here live on pretty narrow margins and if we don't have controls... in fact, that is one of the areas that I cited which could turn into 'Anini Beach which is a majority of homes being vacation rentals which becomes kind of like a horizontal hotel. I mean, it does change the neighborhood. Maybe the very things that your guests like about it may change. So wouldn't you say that there is some rationale for controlling the numbers otherwise, I mean, that whole area could turn into a vacation rental area over time. Don't you think it has that potential?

Mr. Hoerner: Yes, for the past 30 years, my wife and I have had a home in Petaluma California which is the southern (inaudible) Sonoma County and Petaluma attempted to do the same thing. Slam the door on progress and not let anything happen. Well, they were in a corridor from San Francisco through Marin County up to Santa Rosa through Healdsburg on highway 101.

Ms. Yukimura: Okay, but we are not talking about controlling all growth. We are talking about limiting vacation rentals.

Mr. Hoerner: But when you are talking about a three (3) block area between two (2) condo units, it is really hard to imagine that you are going to maintain a rural... a residential neighborhood in that area when you got one block facing Kūhiō Highway that is all commercial and putting in dive shops and stuff like that and then (inaudible) to the beach. I look at that and I say, that is really shoveling sand against the tide in my view. Now, there are a lot of other areas...

Ms. Yukimura: I mean, Kapa'a Town, if you think smart growth, it is a wonderful place to have a residence not close to the Hongwanji, the Big Save, I mean, why should it just be all for tourists?

Mr. Hoerner: Well, fine. There are still people in that neighborhood who like to live there.

Ms. Yukimura: We will see for how long as property taxes rise, but...

Mr. Hoerner: But that gets through a contention that you made earlier that I would have to dispute. And that is that if you took vacation rentals out of (inaudible) the property values will drop and the people could suddenly afford the houses that they couldn't afford before. I don't think it works in that direction.

Ms. Yukimura: Okay. I respect that. Any other questions? If not, thank you very much. Next speaker?

Mr. Hoerner: I would like to make one more comment and that is that I would assume that any members of the Council who work or have plans in the hospitality industry would recuse themselves from this vote on the basis of potential conflict of interest.

Mr. Furfaro: May I make a comment to that? I have been in the hospitality business for 33 years. I will be retiring a second time on the 30<sup>th</sup> of this month. Quite frankly, the Charter amendment that was passed would require me to do so, but at the same time when this bill started, it is now almost three (3) years when we started this. It was pointed out that my resort background may have been a conflict in shaping this bill and I want you to know, 2 ½ years ago, as it was first introduced by myself and Councilwoman Yukimura, I recused myself from that Committee to develop it and design it. But a week from this Friday, I will no longer be associated directly in the employ of such. So I take it your comment might have been directed at me.

Mr. Hoerner: No, not at all. In fact...

Mr. Furfaro: I am the only one that really has been 33 years in the resort business, but at the same time, I do want to point out that having that kind of experience not only here on Kaua'i, but also in the South Pacific also adds as a valuable contribution as to what needs to be in the bill. So thank you, but I wanted to share that with you.

Mr. Hoerner: I apologize if there was any implication of conflict of interest or impropriety. It was not intended and...

Mr. Furfaro: It was taken as a reasonable question of which I gave you a reasonable position. Thank you.

Ms. Yukimura: Thank you. Next speaker please.

CARL IMPARATO: With your indulgence, Louise Sausen has to leave and (inaudible).

Ms. Yukimura: Okay.

LOUISE SAUSEN: Aloha, for the record, my name is Louise Sausen. It kind of sounds like the symphony in here with a lot of strings... I guess I am for this bill since there is so much opposition, but I guess it must be good for the people. I really want to thank you guys for at least getting this together to move forward already. You know, since 1981, I have been saying, you know, we have to keep an eye on what is going on as far as for housing, the balance and everything. Tourism is the impact on my Hawaiian. I live in a resident that is surrounded by tourist houses, taxes are up there... we had a house in Kīlauea and we had a chance to buy a house in Hā'ena which is supposed to be our dream, Hawaiians, to be able to climb up the ladder... self sufficient without government, without Hawaiian Homestead lands. In order for me to keep my house in Hā'ena, I have to sell my... I sold my Kīlauea house. Now, I am going backwards because now I had a nice big house in Kīlauea, but I love where I live in Hā'ena and I am going backwards. I have a smaller house, I still have the same amount of kids, but we have one less home. You know, tourism is an impact. It shouldn't... we shouldn't be so stuck on this is our income because before tourism, we were self sufficient. We lived off the land and a lot of us choose to live that way, simple life. Not only in vacation rentals is it an impact, but helicopters, that last one that fell, last Sunday or whenever that was, spiraled over my home and landed two (2) doors down where the kids are always playing. As they pulled that helicopter off that spot, the kids resumed to play right behind that area in the hao tree that they were playing in, that morning. Tourism is an impact on us. Lands far and between. The first three (3) or four (4) speakers, they are already in violation. You know, so what action is taken with that. You know, maybe the people going to hear it in the news and stuff or whatever. Another thing they say, who made this tourism thing happen with the vacation rentals? Realtors made this happen back in like (don't quote me on the year), but I believe it was after Iwa. They started the ball going on this. I know because I was there. I have been to these meetings since 1981. They sent out notices stating that if they become management, then they can get more income for them, less depreciation, so the people jumped on it. We have rules and regulations that haven't been followed, haven't been enforced, but, no, we are making amendments and stuff to accommodate all these other people.

Ms. Yukimura: Ms. Sausen, your time is up. You can come back or you can summarize.

Ms. Louise Sausen: I just want to summarize that, you know, vacation rentals should be in the VDA area because the island area is so small that we need to keep areas residential areas, ag areas and not these people with big money that can come

in and just, you know, build their big houses, do whatever and be gentleman farmers. They have to work it. There are so many people that want to get on the farm, but they can't afford it. They can't get on the farm, so whatever the bill is, I am for VDA in VDA, tourism in VDA areas.

Ms. Yukimura: Okay, thank you.

Ms. Sausen: I am sorry, I have to rush and stuff.

Ms. Yukimura: Any questions of Ms. Sausen? No, thank you very much.

Ms. Sausen: Thank you (Ms. Sausen chanting in Hawaiian). With this, I believe that you guys will pick the right decision, make the right moves for the people, not only the people of Kaua'i, but the blood of Kaua'i. Mahalo and aloha.

Ms. Yukimura: Mahalo. Thank you. Next speaker please.

CARL IMPARATO: Good afternoon. My name is Carl Imparato and I live in Hanalei. I would like to say that I support the existing bill. It represents a reasonable balance and compromise by prohibiting new TVR's outside the VDA's, but allowing existing lawful ones to continue to operate. I have submitted written testimony, but there are four (4) concerns that I really wanted to touch on here. Number 1 and these are implementation details about the current draft. First of all, the currently proposed definitions of B&B and TVR are inconsistent and they create big loopholes because the way that it reads now... on any parcel of land that has more than one unit, all but one of those units could classify themselves as B&B's even though they are really TVR's and then as B&B's they would escape a lot of the requirements of the bill, so I think we need to eliminate the overlap and ambiguity. Basically, TVR is a short term rental of space that is not occupied by an owner or operator and B&B's are short term rentals of space in dwellings that is occupied by owners. But then, of course, then you have other short term rentals that are hotels, motels, boarding houses and guest houses. That brings me to point number 2. All of these uses are commercial uses. They are not residential uses. It is absurd to claim that TVR's are residences and that TVR's uses are residential uses. I gave you a number of definitions that I extracted from the dictionaries in my written testimony, but basically, tourist who rent rooms in a hotel for a week are no different than tourists who rent rooms in B&B's or TVR's. Neither of them are residents and neither of the uses is residential uses. Hotels are commercial uses and so are TVR rentals. They are commercial uses. They smell like a duck, they look like a duck, they quack like a duck, they are ducks. So it is important, I think, to make this distinction though because when this bill has to pass constitutional muster, if we are regulating commercial uses, it is much, much clearer and cleaner than talking about pre-existing residential uses. So it is important that we make this statement clearly that TVR uses are residential, excuse me, commercial uses.

Third, the standard for lawful, pre-existing uses should be more explicitly stated in the bill. Jonathan Chun, in the last meeting, cautioned against a broad brush approach towards determining what is a lawful pre-existing uses. He said that the courts have said that one must focus on lawful use with respect to land use laws. Now, assuming for the moment that he is correct, we should be playing it very safely and I think what we need to do in the ordinance, we should unambiguously state that no NUC may be granted to any TVR that has not been and is not currently in compliance with "all land use related ordinances and specifically the CZO and the SMA rules and regulations"... the two (2) most important land use ordinances that we have.

The last set of points was basically that NUC permits should not be renewed and should be subject to revocation if the TVR operation violates community standards. There is a hole in the bill there that once you have an NUC, it is two (2) years before you come up for renewal. If you act inappropriately... if your guest act inappropriately during that time, there should be some way to basically prevent the continued operation of that kind of use. I thank you for considering all these comments.

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

Mr. Furfaro: Thank you Carl. I do want to point out that these two (2) items were discussed earlier in our February 28 meeting where, you know, within the two (2) year period of any licensing or permitting, the fact that there needs to be a way to self regulate and manage that could trigger violations of anybody who is licensed and depending on the seriousness, it could eventually lead up to a withdrawal of their license or permit; however, we have come to... so there was some dialogue on that and we will continue to look at it. Also, as it relates to the tax burden of, you know, some commercial activities, I think we have said that as we review the tax bill coming up here, that is one of the things that we would look at as well, so I just want to let you know that they did catch the attention of the Council and maybe looked at it in other opportunities.

Ms. Yukimura: Other questions? If not... oh, Councilmember Bynum?

Mr. Bynum: Carl, I just wanted to thank you for your testimony here and also other testimony that you have given in the community recently. Although we may not always agree on the content, you know, your attention to detail and helping us sort out some of that, I find really helpful. This last written communication, I found helpful in terms of things that I want to follow up to make sure that we are clean and clear and articulate in our language, so I just wanted to thank you kind of generally for that attention to detail.

Mr. Imparato: I appreciate that very much.

Ms. Yukimura: Questions? (change side of tape).

CYNTHIA BLOOM: Hi, I am Cynthia Bloom and I want to reiterate that I am against this bill and I request that the bill be withdrawn at this time. I think the, you know, there are many different issues that are being brought up here. Many different ways of looking at things and one way of looking at it is that vacation rentals may allow people to stay on their property that they may not have been able to stay on elsewhere. As an example, I live in this area of Fujii Beach and I am in the situation where because I have a child in school and I am pretty much here full-time, I have chosen not to vacation rent my house part of the time. So if this bill passes, I will be precluded from that, but the situation is, is that someone like myself or other people in that neighborhood... if they had the opportunity to vacation rent their property maybe three (3) months out of the year, that could allow them to stay in that home. Whereas, you know, what could happen is like... in an example someone used today, is that if we outlaw vacation rental, it gives people... people who live here, residents, no longer have a source of money in which to stay in their home. It is not like we have an industry here. It is not like we have a lot of jobs where people have other ways of generating income, so that they can pay their taxes. The reality is, Kaua'i is a very desirable people place. People with a great deal of money can come in and buy here and that drives up property taxes. So what avenue do our people, the people who live here have, so that they can stay in their homes. As JoAnn said, keep the integrity of neighborhoods.

Well, one avenue is, they vacation rent their house part of the time, so I would ask the Council to seriously look at tabling the bill as it is written right now because it is so strong and it takes away so much. I mean, one thing, the economic impact to this island could be tremendous. I am not really (inaudible) what the numbers are, but people's ability to keep a property otherwise... in terms of ag land, I am not an expert and I am an engineer by training, I am not a lawyer, but as we know, farming is really a hard way to go. On the other hand, if that farm land can be subsidized by a vacation rental on that property, that is a possibility where you can maintain agriculture, so it could be a good thing. So there are two (2) sides to, you know, all these things. One point that was brought up is, I think the idea of licensing vacation rentals is a great one and that could increase revenue, so the real draw backs to tourism at this point... our traffic is horrible and if we do reduce the amount of vacation rental over time, it could become less desirable to visitors. In this current bill, it phases out jobs because you say, okay, you know, if we (inaudible) agriculture, you are going to lose some jobs, but not all vacation rentals are in agriculture. Well, the way the bill is written now, any vacation rental that is not in the VDA... when that property gets sold, that gets phased out. You are talking about hundreds and hundreds of jobs being impacted as well as income and livelihood for the people of Kaua'i, so thank you for listening.

Ms. Yukimura: Thank you. Questions?

Mr. Furfaro: I want to make clear. Again, we have some confusion here. In the bill, there is the possibility of this grandfathering and this 35 day rental minimum and so forth. And then the amendments, there is the agriculture

issue, the 180 days and so forth, so are you talking about the bill or are you talking about the amendment?

Ms. Bloom: You know, think part of it is the amendment, but the bill itself because as Mr. Costa spoke at the last meeting, the grandfather penalizes those families that exist now for whatever reason. In my case, it has been school and I haven't vacation rented my property. So I am saying, allow new vacation rentals in non-VDA. What I would like to see at some point, you guys have a lot of huge issues. The agriculture one... One is table this, go back to the drawing board, look at your zoning, look at your VDA areas and I think Fujii Beach should be in the VDA area. But I think don't take away a viable livelihood for the people who live here. You don't have that many opportunities for people to make money and these local families can make money through being the one vacation renting plus in the support industry. And God bless the girls who spoke who don't want to be maids. We don't want them to be maids, but on the other hand, there has to be some way... we don't have a big economic base here, so let's not undercut that economic base and make the families that live here. Like this last woman who spoke, had to sell her property because she can't afford to pay for it, but maybe had she vacation rented it part of the year, she would have been able to keep that house in Kīlauea.

I am totally for licensing. I mean, you can't have people running wild and the noise and all that and people should be paying their GET, their TAT... being legal operations. Bring that income into...

Mr. Furfaro: I am not being rude, my question was...

Ms. Bloom: I am talking about both, but in my case because I want new ones.

Mr. Furfaro: Excuse me, what you are really talking about is, you think this should be addressed through revisiting the zoning and that is what you are really saying.

Ms. Bloom: I am saying table the whole thing.

Mr. Furfaro: We heard that.

Ms. Bloom: That is my position.

Mr. Furfaro: And the other point that you want to make out if I could. You know, on an island that has 1.4% unemployment, it is very difficult to justify the fact that, you know, there isn't a lot of employment available, and, quite frankly, there is a lot of employment available and it starts to cycle all over again about importing workers and so forth which adds to our housing issue and so on. So I just wanted to make that comment that there is quite a demand for our workforce right now, so thank you.

Ms. Yukimura: Councilmember Rapozo?

Mr. Rapozo: Thank you. What would your rationale be to make Fujii Beach a VDA?

Ms. Bloom: Um, there are already vacation rental properties in that area.

Mr. Rapozo: Well, I mean, there are vacation rentals everywhere. Are you saying that everywhere we have a vacation rental today, should be a VDA?

Ms. Bloom: Basically, what I believe, this is my stance is anywhere on the island, vacation rentals should be allowed and it should not be restricted to VDA's. I am saying, worst case scenario, if you guys are going to pass something that ties it to a VDA, I would say seriously consider expanding the VDA. I think every family on this island should have the opportunity regardless of where they live to be able to supplement their income through vacation rentals.

Mr. Rapozo: Well, I don't know how many families on the island... I own a home or the bank does, but how would I vacation rental my home if I am living in my home?

Ms. Bloom: One possibility is, if you went away for a month, for example, you could, for that month, vacation rent your house and that could conceivably help pay for your property tax.

Mr. Rapozo: The property tax and you said earlier, your property tax goes up, but, you know, our property tax are capped... the taxes are capped at 2% a year, so it doesn't go up more than 2%, so it doesn't matter whether your neighbors home is worth a billion dollars and your assessment could be a billion dollars, but your property tax bill will not go up more than 2%, so I just want to clarify some of these things because that is the reality.

Ms. Bloom: Yes.

Mr. Rapozo: It doesn't matter whether you vacation rent your home or not. If you are a resident, then you pay 2%, that is the cap.

Ms. Bloom: Yes.

Ms. Yukimura: You might also lose your owner occupant status if you make it commercial use on it too.

Mr. Rapozo: I just want to say, I don't know of too many local families that have the ability to vacation rent. Number 1, most of us don't own more than one property.

Ms. Bloom: Right.

Mr. Rapozo: We don't and we can't and, you know, unfortunately, throughout the years, people purchased properties and I am... ag properties or open properties or whatever it may be without the intention to ever farm because they were told by realtors that, hey, plant a couple of trees, vacation rent the property and I think that is what has happened. The abuses have been so great, now we are in a position where we have to do something. I cannot imagine just letting it go and I am hearing that is what you are saying. Whoever wants to vacation rent, let it rip and it doesn't matter where you are at. That is what you are saying, right? And is that your testimony because I am... I cannot imagine that is what it, but that is what I heard.

Ms. Bloom: That is my testimony. I think any family on this island regardless of where they live should be allowed... following, I think, licensing and making sure that they pay their taxes and they follow rules and regulations should be allowed to supplement their income by vacation renting their home, yes.

Mr. Rapozo: Well, I got your testimony and thank you and I know that you said to go back to the drawing board, but that is where we are at right now. This is the drawing board and that is what we are doing.

Ms. Bloom: I mean, the amendments scared...

Mr. Rapozo: And it was an amendment and I don't think this will pass this today and I think it will have a lot of discussion. My point is, this is the drawing the board and this is where it is. This is the workshop and that is what we are doing.

Ms. Bloom: Good, good, and the phasing out of vacation rentals is going to cost a great deal of jobs on this island.

Mr. Kouchi: I've got a question.

Ms. Yukimura: Yes, go ahead.

Mr. Kouchi: You do realize that if we follow your advice, table this bill and let anybody vacation rent if they have a license and as long as they comply with the rules and regulations we'd prohibit by State law, vacation rentals in ag land. Because that is the current rules and regulation for State land by State law.

Ms. Bloom: I understand that, so let me say ag land less than 15 acres.

Mr. Kouchi: That is not what the State law says. The State law says, farm dwelling units on ag land and it is a State law and not the County law.

Ms. Bloom: I can't argue. I am not going to argue law with you in terms of that, but if the County has the providence to control what happens on ag land less

than 15 acres, I would ask that you look at the possibility that by subsidizing the cost of farming on ag land, you actually may be helping preserve ag land and that is a thought that I wanted to share with you. I am not an expert on ag land. It is just thought that I wanted to put out there.

Ms. Yukimura: Any other questions? Thank you very much.

Ms. Bloom: Great, thanks a lot guys.

Ms. Yukimura: Next speaker please?

TITO CASTILLO: First of all, I wanted to thank...

Ms. Yukimura: Please state your name.

Mr. Castillo: Tito Castillo. I wanted to thank you all for working on this bill and I know that there has been a number of people working very hard on putting this bill together. Unfortunately, I think it is not ready yet and for that reason I am not supporting it in its present form. Specifically, I think I have a problem with the 180 days. That is an issue that if... from what I understand, if you are renting out a property for less than 180 days, you are considered a transient and that could be a problem. Just a minor thing and it is just my opinion. I think the zoning should be all inclusive. I've heard a lot of people today talk about the, sort of, unconforming uses that they have on ag land and my interpretation of reading the CZO tells me or would suggest that anyone who decided to run an eco-tourism business out of their ag land could get around this law because if they are deriving income from an ag use on their property, they are allowed to do just about anything on it. So I mean, I think I would look at that as well. If they are renting a property out and it is supporting the ag use, then they would not be subject to this law.

Chair Asing: That is not my interpretation, so I happen to disagree with you, but that is okay.

Mr. Castillo: That is just my opinion from what I saw. I support licensing. I think you could license. There is definitely a need to regulate these types of properties. I think you should also look at possibly taxing them higher, so that the surrounding properties do not have to suffer the increase of the property values. If families have been living on this property for 25 to 30 years, they shouldn't be paying the higher tax rates which I understand the mechanism is already in place to address that, but it doesn't do anything about the valuation. Let's see, and then another question is... as these become... as some of these get taken off, properties transfer, I would suggest that... I don't think I saw anything in here that would allow the non-conforming use to transfer with the property and that could be a problem as well because eventually, we will start to lose some of these sources of revenue and income. That is about all I have. I'd like to see you work on the bill a little bit more before we get it to pass.

Ms. Yukimura: Yes, we would be working on the bill more. Thank you for your input and Councilmember Furfaro?

Mr. Furfaro: I want to point out the same question I pointed out to... are you referencing the bill or are you referencing the amendment? The amendment is the 180 days.

Mr. Castillo: I am referencing the amendment.

Mr. Furfaro: The original bill was 30 days, so your comments were referencing the work on the amendment. On the March 9 date, the bill was 30 days and the amendments in front of us now are 180. The other thing is, could you share with me your feelings why... see, we are seeing this as somebody having an opportunity to grandfather the business. They are doing it right now, but you are coming from a standpoint... if it is a vacation rental, the fact of the matter is and we establish all these things about taxes and so on. What you are saying, it should be with the land as an entitlement versus being given as a license and/or whatever we finally determine the determination is that either it goes with the family which is the primary owner or in a family trust or something like that as long as they keep the property for the use. What you are saying, if they sell the property, you want to see that entitlement with the property.

Mr. Castillo: I don't necessarily think that it should be transferred with the property as (inaudible).

Mr. Furfaro: Okay.

Mr. Castillo: But I think that the right of the new property owner to continue and reapply for the permit should be made available.

Mr. Furfaro: Thank you for clarifying the reapplying because we don't know what that outcome will be, but at this point, there is no intent to say that it is an entitlement with that or deeded...

Mr. Castillo: That is not what I was alluding to.

Mr. Furfaro: Thank you for the clarification. Thank you Councilwoman.

Ms. Yukimura: Thank you. Other questions. No questions? I have a question. On the 180 days, if a unit is rented for 35 days, you don't think it is a transient vacation rental and what would it be? It is not a long term and the reason why we use 180 days is because that is the definition I believe of the transient accommodation tax, so we were trying to keep it consistent, so we wouldn't have so many definitions for the same thing. So I am trying to understand your thought that 180 da... I mean because it is less than 180 days and it can be one day, two (2) days, one week, three (3) weeks, five (5) weeks, six (6) weeks... is there a problem... aren't they all in the nature of transient rentals?

Mr. Castillo: Well, you know, then it would mean that any family who is living on a month to month basis would be considered transients. I mean, if I lease a property after six (6) months...

Ms. Yukimura: Then a less than 30 days... okay, so you are saying 30 days equals one month, alright. Okay, that is a point, but go ahead.

Mr. Castillo: Oh no, that is just my point is that if you are saying that any rentals that are taking place for less than 180 days are considered transient, then anyone who is renting a property month to month would be considered a transient tenant and then, therefore, the property owner would have to comply with these rules.

Ms. Yukimura: I don't think many are paying TAT on month to month rentals.

Mr. Castillo: But they are paying excise tax, but they are not paying TAT. So then is the mechanism then, if they are paying the TAT, then they would be considered TVR? There are a lot that are. I mean, most of them are, but there are some that aren't. I mean, it is just something to think.

Ms. Yukimura: No, you definitely have raised some good questions that maybe we can investigate. Thank you.

Mr. Castillo: Okay, thank you.

Ms. Yukimura: Next speaker?

BARBARA ROBESON: Thank you. Barbara Robeson for the record. Thank you again Councilmembers for allowing us all to testify. You have my testimony I think which I passed out earlier, so I am just going to summarize some of my remarks. My first item there is number 1 and I had some comments about H.R.S. 46-4 and I am wondering if this section really does relate to the bill itself because what we are talking about is transient vacation rentals that are commercial uses, not residential uses. I would just like to add to another section, out of context on 46-4 that says, the powers granted herein 46-4 shall be liberally construed in favor of the County exercising them and in such a manner as to promote the orderly development of each County or City and County and in accord with a long range comprehensive general plan and to ensure the greatest benefit for the State as a whole. I will skip to the second page of my testimony.

Number 2, I had a suggested amendment there and I think that it is self explanatory. And then at one of the last meetings, there was some discussion about historic preservation and whether or not that should be in the bill. I just wanted to note that the County has acknowledged their interest and the public's interest in the importance of preservation by forming the Kaua'i Historic Preservation Review

Commission and offering tax breaks for properties that are on the State and National Register of Historic places. I checked the State website just to get a sense of how many structures there were currently that might qualify for applying for a use permit under the currently proposed amended bill and there were less than a dozen, so that is not too many properties that would be affected. And the owners of these properties would always have the option of seeking a use permit and showing that they were compatible with their neighborhood and their surrounding area.

Number 4, you just talked about this 180 days and then I attached copies on the bill itself of what are mostly technical and some formatting corrections that I thought might be useful, but particularly on page 13 of the bill, I had some personal edits that I hope you will consider and that is my three (3) minute testimony.

Ms. Yukimura: Thank you. Any questions for Ms. Robeson?

Mr. Furfaro: Barbara, thank you on the research. Do I assume then that about a dozen of those buildings that you are referenced are probably things like historic plantation manager's homes?

Ms. Robeson: Yes.

Mr. Furfaro: Which are probably identified to the island.

Ms. Robeson: Right, there are quite a number in Hanalei, probably maybe half are in Hanalei. Hanalei and Kilauea I should say, yes.

Mr. Furfaro: And also I want to thank you for clarifying that your comments are related to the amendment bill. Thank you.

Ms. Robeson: Councilmember Bynum?

Mr. Bynum: Thank you again for your testimony. Again, I appreciate the attention (inaudible) because whenever we end up with... I am hoping for clarity and I (inaudible) interest... you quoted the definition of a transient accommodation from a State law and I think the underlined is yours?

Ms. Robeson: Right, I underlined it.

Mr. Bynum: The underline, you know, says, a room, apartment, suite that is customarily occupied by a transient for less than 180 consecutive days.

Ms. Robeson: Correct.

Mr. Bynum: So if you had somebody who lived on Kaua'i, they were renting, you know, they had a month by month and then after three (3) months ended up moving, they are not really transient.

Ms. Robeson: They are a resident and the definition on that is on the first page of my testimony, so you are talking about two (2) different things.

Mr. Bynum: Again, Councilmember Furfaro has usefully explained several times the difference between the bill, the proposed amendments and because I think I have questions also about 180 days. I have questions about 90 days that are in the proposed amendments and I have questions about ag land in particular that are in the proposed amendments all of which were kind of different than I have been thinking about the bill and I will make comments about that later. But, you know, we are mandating by the General Plan to get through this process, so I was going to say this with the previous testimony person is that the worst case scenario would be us table this. Let's swab through it.

Ms. Robeson: Please do.

Mr. Bynum: And maybe it is going to take longer than I thought because I really thought we might pass it out of Committee today or the Committee might pass it out and it will go to Council sooner, but we have to get it right, so thank you for your testimony in helping us get it right.

Ms. Yukimura: Thank you. I am going to call a 10 minute caption break now at a personal request of our operator. Caption break, 10 minutes.

There being no objections, the Committee recessed at 5:28 p.m.

The meeting was called back to order at 5:45 p.m., and proceeded as follows:

Ms. Yukimura: Was it Ms. Robeson?

Mr. Kouchi: She was done.

Ms. Yukimura: I am just wondering. Are there any questions?

There being no objections, the rules were suspended.

Ms. Yukimura: You have one question, so can you please come back?

Mr. Furfaro: Thank you Barbara. I just want to double check. When we talked about the commercial reference as it deals within transient accommodations specifically I guess for hotel condominium types, was there any relationship between the fact that these businesses do not generate revenue solely from the accommodation, but they have commercial activities that deal with shops, vendors, garages... was there any reference to...

Ms. Robeson: You mean, did I find any?

Mr. Furfaro: Yes.

Ms. Robeson: No, I didn't. I wasn't actually looking for that.

Mr. Furfaro: But you didn't come across anything?

Ms. Robeson: No, not yet.

Mr. Furfaro: That was the only question that I had Councilwoman.

Ms. Yukimura: Thank you. Any other questions of Ms. Robeson? If not, thank you very much. Next speaker please?

CAREN DIAMOND: Hi, good evening.

Ms. Yukimura: Good evening.

Ms. Diamond: A few comments. First, with over a million visitors a year, it is really crucial to address our residential areas and I really support the amendments to this bill and I really want to thank you for taking up with issue. What I hear from a lot of people here today is that you are going to hurt their businesses, but I really want you to understand... what has really been hurt here is our residential areas. People who live here, our neighborhoods, just the regular people, so with that in mind, I will read my testimony. I know that you know that this is crucially important to the people of Kaua'i and it has ramifications for the future for all our residential areas. I do, however, have serious questions about the validity of the Kobayashi opinion. It does not seem consistent with the legislative intent of the CZO. Please cite the specific current law that says that transient vacation rental units are legal. What section of the CZO is it located in? The legal opinion by Blaine Kobayashi stated that single family vacation rental units are not illegal, but does not say, Kauai's existing TVR's are a lawful use. Please distinguish between not illegal and legal. With this ambiguity, it seems more than fair to grandfather in the existing units for a time period and to require the termination at some point in the future to restore traditional residential areas. We will be commercially use right now for resort purposes rather than the residential uses as outlined in the CZO.

At the time of sale is a reasonable time to require the non-conforming use to cease otherwise these non-conforming commercial uses may have a permanent monopoly position that would be unfair to the rest of the neighborhood restricted to residential use of their property. It is reasonable and a valid government objective to amortize this use over a period of time to balance the burden on the landowners with the public good. The harm to the public interest is too large to let this commercial use of our neighborhood to continue forever. That would mean that the defacto conversion to resort of the Hanalei to Hā'ena and 'Anini areas as Princeville which is the dedicated VDA on the Northshore is a very, very large resort district. It is paramount to the ordinary people of the Northshore that we have residential areas in which to raise our families because of the very nature of this commercial

use, these non-conforming uses must terminate at the time of sale for the public good. Industry has represented for many years that this problem of increasing transient vacation rentals would balance naturally as new people bought their existing units and converted them back to residential, so we maintain that ending the transient use at the time of sale is a reasonable way to restore areas to our residential uses set forth in the CZO.

Commercial activities that are located in residential areas are required to have a use permit grandfathering those transient vacation rental units that have a valid use permit. Residential areas were never ever supposed to have been used for commercial purposes without a use permit.

It is not acceptable that the proliferation of transient vacation rentals be permanent commercial uses in residential areas. Without question, multi-family vacation rental units are illegal in the CZO and they are not allowed outside the visitor destination area. So please clarify in this bill that no multi-family vacation rental units are going to get grandfathered in.

Ms. Yukimura: Your three (3) minutes are up, but I just see you have a couple paragraphs.

Ms. Diamond: It is also important to include a compliance inspection by the Planning Department which should be required as a condition. 'Ohana houses were granted with the intent of creating much needed housing for family members. Our island residents are in more need of houses than ever before. Thus, in residential areas, we support the restriction on ADU or 'Ohana units being used for transient vacation rental purposes. On page 15, the word intentionally should be deleted as it is impossible to know someone's intentions. Lastly, the ordinance should include a severability clause. I really thank you for your hard work on this issue. I know that it hasn't been fun. My only other comment is just the definition which comes from the tax booklet on a Hawai'i resident. And it is every individual domiciled in Hawai'i and every other individual whether domiciled in Hawai'i or not who resides in Hawai'i for other than a temporary or transitory purpose. And then they describe non-resident. As a Hawai'i non-resident is an individual who is in Hawai'i for a temporary, for transient purpose and his permanent domicile is not Hawai'i. So if somebody were renting a place on a month to month lease, Hawai'i is their permanent domicile and they are not required to pay TAT and they are not transient vacation rentals.

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

Mr. Furfaro: Yes, just as a clarification. Kobayashi made a legal opinion early on at the request of the County of Kaua'i and I just want to make sure you understand. What his opinion said was, basically, we had to be very specific about prohibition on an item; if it wasn't clear that it was unpermitted then, in fact, he is saying it was permitted. That was his legal opinion which was given to the

County. It doesn't necessarily mean that we all concur, but that was a legal opinion and I thank you for your point that if we do grandfather this, the real piece is about letting there be some attrition as people move on, look at different use for their property... there might be other tax incentives that they decide not to continue on, so there would be some natural attrition. Thank you for pointing that out.

Ms. Yukimura: Questions? Other questions? I have a question. So is it your vision that there should be no vacation rental in residential areas ultimately?

Ms. Diamond: Ultimately, if every single person who had a vacation rental sold their place, that might end up being, but I don't think that is realistic. Hopefully every property in our area doesn't turn over, but I am in favor of our residential areas being returned to residential use.

Ms. Yukimura: So you don't think it would be compatible to say, like have 10% of a residential area be used for vacation rental?

Ms. Diamond: I am not against that. I think coming from a neighborhood where I do where the numbers are so high, that seems quite...

Ms. Yukimura: You know, I think the Kobayashi's... I mean, I mentioned to you that my family has vacation rented in Hā'ena. Having been residing in Līhu'e, since I was a child, we used to rent a week or two (2) and the only place we rent now is Camp Naue because that is pretty much the only one that is affordable to us. But I know the Kobayashi's have, during the taro festival, they have people staying at their units. In fact, I've looked at the possible requirement that maybe every vacation rental would be obligated to rent 30 days a year to local families at discounted rates because I see value in families being able to vacation like the visitors. But, anyway...

Ms. Diamond: I just want to make a distinction between... a lot of times, you hear that Hā'ena was always used as a resort area and while families have always vacationed there?

Ms. Yukimura: I don't remember it predominantly being vacation rentals. There were few here and there.

Ms. Diamond: And a lot of it was being rented or not rented, but it was friends and family, so people stayed as guest and I imagine that will continue to happen which is different from monetary payment.

Ms. Yukimura: I think we paid something. Okay, thank you. I just wanted to clarify what your vision was of how residential neighborhoods would be.

Ms. Diamond: I am fine with the grandfathering in of legal units, but I do believe that attrition should occur and the best way for that to happen is at the sale. I think that is the fairest way.

Ms. Yukimura: Thank you. Any other questions? If not, thank you very much.

Ms. Diamond: Thank you.

Ms. Yukimura: Next speaker please? We have no more registered speakers. Are there others who wish to testify? Mr. Taylor?

KEN TAYLOR: Chair and members of the Commission, my name is Ken Taylor. I sit this evening in support of the amendments that are before you. I have said in the past that it is so important that residential neighborhoods stay residential. One of the problems that I see with some of the older families having problems with taxes and so on, I hear batted around frequently that, well, we have a cap on taxes and it is only 2%. What does that mean? It means that in 35 years, our taxes will double every 35 years. That is horrendous. That is...

Mr. Kouchi: 36.

Mr. Taylor: But that is a big hit and I really believe that what you need to be addressing is people that have been in their homes for a long period of time that there is no way that they can continue to pay 2% a year. That has to be addressed at some point in time and I realize that this isn't the time, but I would like to go one step further and say, in reference to what you are talking about. If you look at how do you come about a value on an apartment house for instance. It is usually multiplied 10 times the gross to establish a value. Now I told you before that when I looked at properties to buy and I asked the question, why is this property so much more than this property. They said, well, because you have this potential income, so those ADU units are driving the prices up which makes it impossible for the local people to buy unless they get into this kind of a business and that is not right. The residential neighborhoods should be for residents and put these units in the areas where they belong that is why you have different kinds of zonings. So you can look at the house the same way. It has a potential rental unit, so what is its value, 10 times what you think you can rent it for or what the established rent has been for 10 years. Okay, you add that to some value that is overall in the neighborhood and there the price and there goes the driver that runs these prices up and it just continues because once you get into that rat race, you can't stop and that is the problem and this bill, I believe, is the first big step in putting a stop to that turn. Thank you.

Ms. Yukimura: Thank you. Any questions of Mr. Taylor? If not, thank you very much. Is there anyone else who wishes to testify today? Mr. Chun?

JONATHAN CHUN: Good afternoon Madam Chair and members of the Council. I wasn't planning originally to offer any testimony. In listening to the testimony, though, I would like to add one thing and that is the issue of whether or not agriculture use is... TVR's in agricultural is allowed. I've heard statements

saying that it is all illegal because it has to be a farm dwelling or (inaudible). I urge the Council to consider to really look carefully what 205 states regarding agriculture use and farm dwelling. First point, is farm dwelling unit... on a farm dwelling are only required in Class A and Class B agriculture districts. So by outlying all agriculture use... all TVR's in all agriculture districts, you are going beyond even what the State law says. The second point also is, there is a specific exemption under the State law for units that were, I think, built in 1976, somewhere around there. There is a specific section in there in 205A which states that the restrictions on farm dwellings don't apply to basically older lots and dwelling units on older lots. And there is set certain class of agricultural lots that fall within that classification. We checked with Planning and they will agree in general that for certain classes of ag lots, they don't require farm dwelling agreements under that law. The last part, I would urge the Council to consider is, if you are going to be setting up a definition of whether or not a person who has a single family dwelling is not having enough ag use to qualify so they can have a TVR, you have to consider that that application of that definition has to be applied straight (inaudible). So if they don't have enough ag use as a farm dwelling to support a TVR that means that they don't even have enough ag use to even support a single family dwelling because the restriction says, you have to have... your farm dwelling has to have some kind of ag use connected with either part of a farm or an operation. And I agree with Councilmember Yukimura that is you are in an ag district in Class A and Class B, you have to be able to say that your TVR is in relation to an operation of farm or farm operation and they are a little bit two (2) different things, but that was statute kind of clarifies that. But the statute does not say how much money you have to take out... get from the farm operations. So the problem that you are going to be faced with is that you might have and then you can ask the person to verify that when they come in for their non-conforming permit. They might have income from there, but it might be \$100, \$200, even \$1,000, but there is no definition in the statute on how much money you have to earn from the ag uses. So you need to address that in terms of your agricultural uses and saying that they are illegal to begin with. That is all that I would like to add.

Ms. Yukimura: Thank you. Councilmember Kouchi?

Mr. Kouchi: The first question comes to mind hearing that Jonathan, are you aware that at the end of the month that the First Deputy County Attorney position is open? Seriously Jonathan, all that I wanted to say is thank you and I think that you underscore why I will be supporting the Chair's request for a deferral because, you know, I thought we had more ability to regulate in the ag area. Apparently, there is some limitation or scoping as to what exactly we are permitted to do. Certain things we're not permitted to do, but before we touch this particular area, it is clear that we need to get better legal advice than what we have had to date as far as certain assumptions we've all made whether it is Councilmembers here or members of the general public. So I just thank you for taking the time to come.

Mr. Chun: I was made aware that that position is open last week. I am sad to see that the Deputy leave because she was a very good asset and I think she had

a great promise for the office if she decided to stay, but I am aware. On that note, I don't want to prolong these proceedings, but on that note, my client has offered to provide whatever assistance the Council needs in regards to drafting a bill that would meet all the concerns that were raised by them.

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

Mr. Furfaro: Yes, and you are representing the Kaua'i Board of Realtors?

Mr. Chun: It is the Kaua'i Board of Realtors and the Hawai'i Association of Realtors, the statewide board and the local board here.

Mr. Furfaro: And one more question Jonathan. As it relates to the date 1976, was there something that actually triggered that?

Mr. Chun: It is in the statute and I left it back there because I didn't want to bring too many things, but my... I won't even guess. I think I read about it a long time ago, but I forgot what the date had... maybe the Planning Department might have a better idea why that date was put in there.

Mr. Furfaro: It just seems... the Chair has just handed me something. It just seems that it might tie into kind of a sequence of several plantations closing as well.

Mr. Chun: It could have because if you know, the idea was single family residences on lots created or in place by that certain date.

Mr. Furfaro: Right.

Mr. Chun: But I just don't know why that date was selected by the Legislature.

Mr. Furfaro: Well, I think that Kīlauea closed in August of 1971, but then there was a period of subdividing for the workers that might have actually encroached onto some of these agricultural lands.

Mr. Chun: That is true.

Mr. Furfaro: But the Chair just handed me something, so I've got my answer. Thank you.

Ms. Yukimura: Other questions? Councilmember Bynum?

Mr. Bynum: Unfortunately, I wasn't here at the last meeting when you testified, but I did watch it on television. So I guess the first question is because I think I am going to have several. The first one is, the opinion that you are giving

would be the same if you were here testifying as an individual as opposed to testifying on behalf of the realtor board... it is just your professional opinion, is that correct?

Mr. Chun: I will say yes. Everything I've said in both my letters to the Council and also to my clients is what I call... it has to be supportable especially to the last one. I intentionally cited to a lot of leading real property treatises which basically say the same thing. It is generally what some lawyers call what we call black leather law. It is something that has been accepted by the majority of jurisdiction. If I stop doing that, you would probably know for sure because that is when I don't cite to anything in general and I just kind of use it by argument, but I try in my opinions especially to the Council because... and especially on public matters, I try to be very clear and indicate what direction the courts go both for and against. If you notice, I think I might have mentioned in the Duke's case in terms of what went on with that one. I think in regards to the licenses that were issued in the Duke's case, that was proper and I would have to agree with the Supreme Court in that kind of situation.

Mr. Bynum: As a lawyer answer, I expect you to say yes.

Mr. Chun: Okay. Yes, it would have been the same if (change tape).

Mr. Bynum: ...what I thought was close to a consensus. I really thought we might pass... this might get passed out of Committee today. And that consensus because of the public testimony and the statements of my colleagues and my own statements was that... I will speak for myself, you know, I think it was clear the intent of the VDA was that was where transient accommodations should occur. I think there was a lot of wisdom in that decision in terms of, you know, controlling the issues and keeping Kaua'i the place that it is. We would have residential neighborhoods and that is where residents would live and the definition that Ms. Diamond just gave as people who live here on an ongoing basis and that we were going to have vacation... you know, the visitor industry was going to be part economic (inaudible), but we would keep it in VDA's. For whatever reasons, it didn't turn out that way and what it turned out was what we have now before us. The status quo was vacation rentals were allowed all over the place, right? Is that accurate?

Mr. Chun: Let me make this clear on that. The position of my clients is that the Council can regulate that and definitely they can regulate the future location... any future TVR that somebody wants to open up, from the day that bill passes, you have the authority to say where they can be, how many they can be and so on and so forth and that is not a bone of contention by my clients. The only bone of contention from our client... from my client's perspective is people who are existing, legal, non-conforming TVR operators and there is an issue in terms of how we define legal in terms of ag land, I would grant that and I would also, I think, as granted in conservation districts, I would also say and I think I said the same thing last week and I believe that they should not be in the conservation district because

they definitely needed a conservation use permit in those situations. But for other than those situations, existing TVR's, because of the fact that they have some kind of rights, they should be allowed to continue. Now, that is not a large portion of the... I don't believe... if you are asking for numbers, I can't, but it doesn't take away from the fact that the Council can start setting down, start the whole ball rolling by saying, from this day forward, this is where you are going to be. Everybody in the past, that was the past. You can... under the law, maybe you can... I believe we should be allowed to go and continue, but anybody in the future, this is where we are going to be going. That is fair and that is straight forward.

Mr. Bynum: And I understood that from your testimony and I thought that where we were moving to was, as our community struggles with this issue, that we were getting more and more resigned to what I thought was a consensus was, okay, perhaps it shouldn't have gone this way, but it did. And because of your testimony and others, we are going to allow the continued use for those people who structured economic reality around this status quo, that it is going to continue. You know, we are going to like take a side and say, that is, you know, but we are going to end new vacation rentals outside of the VDA.

Mr. Chun: Yes, and you are saying that we have a right to do that.

Mr. Bynum: And so I thought that the community kind of resigned to that point and then, for me, when proposed amendments that addressed ag land, all of a sudden, there is whole group of folks who suddenly are going to be deemed illegal and that their use will be curtailed. That, to me, was a surprise and as Mr. Hough mentioned (if I got your name correctly) as Mike mentioned earlier, that has created 600 people writing in and that was the big change that inspired this heightened concern.

Ms. Yukimura: Do you have a question?

Mr. Bynum: Maybe... it will get to a question.

Ms. Yukimura: Okay.

Mr. Bynum: And I have a real concern about that because in terms of working this out, I know that we have to work it out legally. I am not an attorney, okay, but I think the spirit of what we were trying to do as a community is that if we are going to grandfather in this existing use, but we are going to set these regulations going forward. I am concerned about those individuals, again, who ordered their economic life around this status quo. I also heard you say, if I am correct, that if the TVR's in ag land are illegal, so are all the residences.

Mr. Chun: Yes, the law is single family dwellings in A and B ag lands have to be used in conjunction with farm operations. These have to be located on or derive income from farm operations. And if there are no farm operations, none at all, that is a problem.

Mr. Bynum: So we have lots of residences that don't have TVR's, right? That are on ag land that are not doing ag.

Mr. Chun: Yes.

Mr. Bynum: We all know that, right?

Mr. Chun: Yes, I would say that is and...

Mr. Bynum: You know, I don't want to scare people, but that doesn't mean that they have to go move out tomorrow or they are breaking the law.

Ms. Yukimura: Wait, and our Bill No. 2204 doesn't address residences on ag lands, so it is raising the awareness or the question about it, but Bill No. 2204 doesn't do anything about that.

Mr. Bynum: I understand that. You know, I live on an ag CPR. I want to make that disclosure. I didn't know anything 10 years ago about ag CPR. All that I knew is when I had an opportunity to purchase a piece of property, this property was available, but in the process of doing that, I hired an attorney because this was the major decision of my life. And, you know, when I read... started reading farm dwelling, CPR, I didn't understand it, so I asked my attorney. What is this farm dwelling? I don't get this and the answer was, it is just the way that we do things in Hawai'i, no worries.

Mr. Chun: I hope it wasn't me.

Mr. Bynum: No, it wasn't. I won't say who it was.

Mr. Chun: I was still First Deputy.

Mr. Bynum: So, you know, let me turn this into a question. I mean, that is a lot of people's reality, that they went out there, they are good people, they like to follow the law, they are going to do things the right way and it maybe didn't make sense to them or maybe they didn't ask as many questions as I do because if you have been through escrow, you sign a whole bunch of papers. But, you know, the whole spirit of this was, hey, we are going to expect that this was the status quo on Kaua'i. People have ordered their lives this way, but it is changing. It is unnoticed, it is changing and going forward is going to be different. So can the County give a non-conforming use permit to someone whose TVR is on ag land?

Mr. Chun: If that person submits sufficient evidence to show that they were deriving... they had some ag use on that land, I believe the County can do that, yes. I think a procedure needs to be done to allow that to recognize that or not to recognize that, but to just wrap everybody up and one say, I am assuming that you are illegal now, so you never can apply, I don't believe that is a proper use of the

zoning authority.

Mr. Bynum: I have learned today for the first time that the State Land Use Commission can offer... help me with the language. A permit or a use?

Ms. Yukimura: Special use permit.

Mr. Chun: For use... everything that is under 15 acres, the County has the authority to issue a State Special Use Permit without going through the State Land Use Commission.

Mr. Bynum: And that happens at the Planning Commission, is that correct?

Mr. Chun: Yes.

Mr. Bynum: What about, Jonathan, in your opinion, those folks who bought their ag parcel, they are not doing ag, okay, but they have a TVR?

Mr. Chun: I would encourage them to start growing something right away. I mean...

Mr. Bynum: You know, and that is the problem I had 10 years ago when... it is a somewhat separate issue, but it is like, you know, the other advice that I got was plant some bananas, get GET license, show some activity and you might even pay less property taxes. I know that changed.

Mr. Chun: Yes, that changed.

Mr. Bynum: But it is like this didn't work for me in terms of justice. So I never... in my instance, I lease some of the land for horses to be on it. Is that ag?

Mr. Chun: Good question.

Mr. Furfaro: Ranching is seen as the lowest end of the agriculture spectrum.

Ms. Yukimura: A horse might not be ranching.

Mr. Chun: That is a really good question on the ag, on the grazing. I am going to have to say that is real gray area and I really couldn't tell you that much on it. I would really...

Mr. Bynum: I don't have a vacation rental and I don't intend to, but, you know, I have been concerned ever since I bought the property that this doesn't make sense. The way that we have these ag things doesn't make sense and it has to get resolved. It is germane to this issue JoAnn because we have to find...

Ms. Yukimura: We are not going to resolve this issue with this bill. I agree with you that it needs to be resolved. It is, indeed, the Emperor has no clothes issue for this island. I mean, you know, here we are saying, everything is supposed to be a farm dwelling and everybody ignores it except that when we are talking about grandfathering legal uses, they are not legal in most cases. I don't believe we should...

Mr. Furfaro: I think we need to get to a question here rather than philosophical pieces.

Mr. Bynum: I think I have asked a lot of questions.

Ms. Yukimura: I don't mind as long as they are related to TVR's I actually have a follow up question if you don't mind. Is it... is a TVR a farm dwelling just because there is farming on the land or doesn't the TVR have to be shown to be related to support a farming in order to be called a farm dwelling?

Mr. Chun: Yes.

Ms. Yukimura: So, I mean, just the fact that there is farming going on the lot doesn't mean that the TVR is a farm dwelling.

Mr. Chun: It would be difficult for a pure TVR to come in and show and prove that the farm... that the TVR is part of a farming operation. It is not impossible, but I say it is difficult. If you recall, I think last year, there was an ordinance... a statute passed which recognized agricultural tourism and it encouraged the counties to look at adopting ordinance to allow agriculture (inaudible) in certain areas. In that statute, the Legislature did recognize that ag tourism and tourism related matters on ag land could help each other out and work together. I am not saying that it is impossible, but it is just that you have to put the facts in there enough to see what it is.

Ms. Yukimura: And there are examples around the world of how it works, but I am saying, we need to do this... if we are going to do ag tourism, we better know how it impacts our overall ag goals and it needs to be part of an ag rural land planning process. You can't just put an overlay of ag tourism without knowing where... what your main goals are and whether it is going to promote it or detract from it.

Mr. Chun: And I don't disagree with that at all. That is true.

Ms. Yukimura: That is what I am saying over and over again. We can't do this through a vacation rental bill. We need to do this as an overall community planning process.

Mr. Chun: But it begs the question...

Ms. Yukimura: I have just gotten requests like yoga retreats on an ag lot and that is a wonderful economic opportunity and it happens everywhere and may be something that we want to allow in certain places, but I tell you, where you allow that and the value of that operation can overshadow any farming that is going to happen because it may bring in more revenue and, therefore, real farmers are not going to be able to afford the land. So there are a lot of issues and we have to deal with it as a planning issue.

Mr. Chun: I agree. The question, though, is while you are dealing with it, are you going to allow existing uses to continue or not? I agree that you need to look at it and I agree that you need to look at (inaudible).

Ms. Yukimura: We are not changing a single thing by, I mean, they are presently... Theoretically, presently, the transient vacation rentals are illegal and we are not changing that by the law that doesn't allow them to get a non-conforming use.

Mr. Chun: That is where we disagree. I don't think I could make a statement that all transient vacation rental, I guess on ag land is illegal.

Ms. Yukimura: And I agree with you, so we need to... based on your input and I agree... I appreciate very much your input where there are other classes of lands other than A and B, so I guess that is C and D lands, you are saying that the farm dwelling requirement is not a requirement.

Mr. Chun: It is not applicable.

Ms. Yukimura: Therefore, they may be legal and I am not sure how, but we need to look at that and if they are legal, we have always been premise that if they are legal, they should be qualified for a non-conforming use.

Mr. Chun: Your analysis was goo... the first person that testified this morning or this afternoon, when she said that she is on ag land, but she has a TVR and she uses it in the guest house. One, it was a guest house, I think you were correct, if it was a guest house, it is not a dwelling unit, so that is okay. The other thing is, even if it wasn't a guest house, it sounded like her land was not A and B land, so the farm dwelling agreement wouldn't apply to her. So even if she was using a dwelling unit as a TVR, it would have been okay.

Ms. Yukimura: It might be okay.

Mr. Chun: The bottom line is when you look at it and I have heard discussions that residential use doesn't include TVR. It doesn't include transient vacation rentals, that is not a residential use, but, you know, the Council should be aware that that was the same argument that was made in the County of Maui in that Puamana case. The County of Maui came down and they tried to get an injunction against... I guess there was this operator the planned development and

they were operating like a hotel. They had all these single family dwellings and there is no question that the design of the building was single family, but they got them altogether and they started having maid services and so on and so forth and the County of Maui came in and tried to stop that. They got half of what they wanted, but not the whole half and they appealed to the Supreme Court and asked for the full injunction saying, basically, they wanted an injunction saying, stop transient vacation rentals in this planned unit development which is only restricted to residential. The Supreme Court, in that decision, said, "no," I am not doing that because the transient vacation rentals seems to be also part of a residential and if you want to change it, County of Maui, you change the ordinance. You are going to have to be faced with that kind of distinction.

Ms. Yukimura: And that, I think, is the essence of the Kobayashi opinion.

Mr. Chun: I think (inaudible).

Ms. Yukimura: And this bill would allow non-conforming uses of vacation rentals in residential areas. But to repeat, that is why we are allowing transient vacation rentals in residential areas to apply for non-conforming uses assuming that everything else is legal and, you know, your opinion has raised a lot of issues about what we are allowed to consider in terms of legality or not. So, yes, like Councilmember Kouchi, I am appreciative of the information you've submitted because it gives us some ideas of how to better craft the issues regarding ag land. And, you know, like Councilmember Kouchi, I would love to have you be our First Deputy having had you when I was Mayor as the First Deputy. But if you go back to Class A and B lands where the farm dwelling requirement is a requirement, then it comes back to, is it a farm dwelling and I just wanted to clarify that just because there is farming operations doesn't mean that that transient vacation rental is a farm dwelling?

Mr. Chun: It will be difficult. A B&B person... a person doing a B&B will have an easier time because some of the definitions or the opinions in that even though they are non-binding kind of make reference that the income is derived by the person that is living in the dwelling. So if they are living in the dwelling and doing the bed and breakfast, you can see how that could be worked out.

Ms. Yukimura: Oh, yes, that is right.

Mr. Chun: But a TVR, the owner isn't there. I mean, he is renting the whole house. If a TVR and if he has just one unit, yes, it will be difficult because he is not living in there, he is not deriving inc... that person living in there...

Ms. Yukimura: The farmer is not living in the house in other words.

Mr. Chun: But just to... I have heard this talk before not that I have any clients that were going to be doing it, but I have heard talks that what some people were looking at doing is renting it out, but requiring as part of the rental that the

person actually has to work on some of the agricultural uses on that property and that is a gray area. I have to be totally honest with you that that is a gray area. I don't know whether it will work because nobody has ever done that before, but that is how confusing it is.

Ms. Yukimura: But there are some farms that are actually doing it. They have people cycle through who want to learn about farming and then...

Mr. Chun: Right, I have heard things like that in Napa Valley they do that.

Ms. Yukimura: I think right here in Kilauea somewhere.

Mr. Chun: But those are all the little issues that get involved in farm dwelling.

Ms. Yukimura: And one of the things I hope we don't have to get involved in is what is a farm operation because that is a can of worms and I am hoping that we can actually address that more clearly when we do ag planning.

Mr. Chun: That is a tough question too.

Mr. Furfaro: Councilwoman, would we ask Mr. Chun if his client is going to be putting something in writing to us making the offer to help us on the verbiage.

Ms. Yukimura: I think... I don't think a written offer is necessary. We've heard Mr. Chun offer it.

Mr. Chun: We also said the same thing at the Planning Department level also.

Mr. Furfaro: Well, I think making an offer to help us with some verbiage would be nice to have in writing versus just, this is what I said I can do and this is what we are accepting.

Mr. Chun: I will check with my clients to see whether I just got fired or not. My understanding is that they were willing to do that.

Mr. Kouchi: Madam Chair, I have tremendous respect for Mr. Chun and his integrity, so this is said as a matter of process and not about Jonathan. We have accepted testimony from numerous members of the public. Some heartfelt and simple, some in great detail such as Barbara, Caren, Carl have submitted and I think that if your client would like you to do a thorough in depth analysis and suggested draft of material or have cites to help give the Council information to make an excellent decision, that we should accept your testimony as we have from everybody else. I have some serious ethical issues about asking him to ask his client for permission to now help us write policy and to imply that he has the

opportunity to be at the table in the decision making that is not being granted to anyone else and that is not what I heard Mr. Chun offer. What I heard him offer is the ability to draft up materials, cites on his research and I think if we take it in that context will be very good. I would appreciate reading it and, you know, having our County Attorney's review it, but more than that, I do have some concerns.

Mr. Chun: Right.

Ms. Yukimura: And that is all... so I don't... it is past practice that people from the public can suggest wording, propose different ways of writing things and that is open to Mr. Chun.

Mr. Furfaro: I want to make sure that we all understand. Mr. Chun did not say that he would. He said he thought he had his clients approval to say...

Ms. Yukimura: Well, if he finds out that he doesn't have his client's approval, he won't do it.

Mr. Chun: That is correct.

Mr. Furfaro: Thank you Mr. Chun for us going around the long way.

Chair Asing: (Inaudible)... I think it is just unethical. I mean, he has a responsibility here to draft all legislation. That is our responsibility. Our responsibility cannot be passed on to someone else. This table here is the table that is responsible for getting the legislation out and if we need assistance from our Attorney's Office, then that is where we go. We can accept any and all testimony in any form, any form at all, and we welcome that. But the final decision making and legislation in crafting of the ordinance comes from this table here together with our County Attorney's Office.

Ms. Yukimura: Thank you for the very clear distinction. I think we are all clear. Councilmember Bynum?

Mr. Bynum: I just want to take a step back again because we are all members of the community, we are neighbors, right? And what I said earlier is that people acted in good faith and ordered their life around this status quo. Most of the folks out there aren't attorneys. They don't understand this, but they acted in good faith, so I know that we have to do things legally and appropriately, but the law should serve us, so I appreciate your assistance and your answers to these questions and, you know, I will ask the County Attorney, but we... I don't want to criminalize people who acted in good faith and, you know, changed their economic and reality in a way that, you know, it is a devastation for their families. I do want to... as you said, we have the right to go back to the original intent and do good planning to preserve our island and to preserve residents because I am very moved by the testimony and I don't think it is accurate that there is no problem. There is a problem and I want to put a lid on it and move forward, but I don't want to do that

in a way that hurts people that acted in good faith and I hope the law can serve us in that endeavor. Thank you.

Ms. Yukimura: Alright? Any other questions? If not, thank you very much Mr. Chun. Is there anyone who wishes to testify? If not, it looks like we have come to the end of this session. I am going to call the meeting back to order and ask for any comments and then ask for a motion to defer.

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

Ms. Yukimura: Councilmember Kouchi?

Mr. Kouchi: Madam Chair, I have not been reluctant to share my views on this matter, but I am going to take what I believe is a prudent course and I do want to have that information as it relates to the ag area and I don't want to now insert my foot in my mouth and saying something that may not be legally defensible, may not be supportable, so I am going to choose to wait until we get more information before I offer comment. I say that as an apology to the people who have been here since 9:00 a.m. Usually, I feel that it is my duty as a Councilmember to share my thoughts or feelings on the matter because you have taken time out of your schedule and made the kind of commitment to be here. I, in turn, should honor that by letting you know how I feel, but I just don't feel comfortable doing that today and I don't feel like I am prepared to offer a statement. Thank you.

Ms. Yukimura: Alright, that is fair. Thank you. Any other comments? Councilmember Iseri-Carvalho?

Ms. Iseri-Carvalho: Yes, is it the Chair's intent to request that the County Attorney provide an opinion regarding the discussion that you had with Mr. Jonathan Chun as well as I think there were some concerns that were raised by members regarding the constitutionality of setting limits on the amount of vacation rentals that will be permitted. It even went so far as the amount of... I think you mentioned this before... the amount of tourist of putting a cap on tourism out on the island and possibly even a request to review if there has been any case law subsequent to the opinion that has been provided by Mr. Kobayashi. I believe that opinion was done some time ago. There might have been other land use treatises that have come up subsequent to his interpretation of the law and I would ask that with the Judge now on board that there be a second look to see if there has been updated material.

Ms. Yukimura: In fact, I had mentioned to the Deputy County Attorney that I will be fashioning a memo requesting the County Attorney's opinions on various issues raised today. So I am hoping to draft that tonight, circulate it tomorrow for any really quick input because I don't want to delay sending it to the County Attorney, so that we will have it before the next meeting which I think is on the 4<sup>th</sup> or 5<sup>th</sup> of April. When is our next Committee meeting?

Ms. Iseri-Carvalho: I think based on what I said, I would be requesting as I have indicated those four (4) questions and if you could incorporate that in your memo, I would truly appreciate that. Thank you. And until we get an opinion, I would also reserve my thoughts on the types of amendments that I will be submitting.

Ms. Yukimura: Alright, thank you very much. Any other comments?  
Councilmember Furfaro?

Mr. Furfaro: Yes, I want to make sure that everybody is clear on me raising the question with Mr. Chun's offer. I think that offer was made on behalf of his client and, therefore, I think something of that nature is probably not appropriate just to take verbatim and then a week from now, we forgot what the offer was. I, too, raise that question for the purpose of... in the past, we have taken, in the way of testimony from very professional people such as the past Director of Planning, Mr. Avery Youn who offered some suggestions in the form of actually verbiage, but he did it in a way of offering testimony and not offering an item from his client. Though the question was raised in that method, that was really what I was trying to make clear to the group that it is outstanding that we have great citizens in the community that offer testimony, testimony with research such as Barbara did as well, but that it was not intended as getting a yes answer from his client, but rather to reconfirm the fact that people can bring those skills to the table and offer their framework in the way of personal testimony. Thank you.

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

Mr. Bynum: I guess I got impatient and gave a lot of comments in my questioning of Mr. Chun, but, you know, I want to clarify that I think it is critical that we do things properly and appropriately and legally in a legally defensible way and, you know, we have this wealth of resources to do that. It is going to take some time, but I stand by what I said earlier that as friends and neighbors, we need to find a way through this. My strong desire is that we move forward in a way that vacation rentals are restricted to the visitor destination areas as they were, I think, intended and I think that there was a lot of wisdom in that intent, but also that we recognize the realities of individuals who are good citizens to this community that acted in good faith and not penalize them in a way that becomes a crisis of their lifetime. You know, I think that is what it is for some people that they... this is the way I made choices and I did it with the best of intentions and so we have to... but I do not suggest... agree with testimony earlier that we should table the bill, move back from it. We have done too much tabling and moving back in my opinion in the past. We have to move forward and this... as I got a little far field earlier, illustrates very complex issues for particularly ag land and we are going to have to... I think it is our responsibility to move forward and try to get clarity on those issues as well in the future.

Ms. Yukimura: Councilmember Kouchi?

Mr. Kouchi: I guess because the motion to defer is without discussion, but the only thing that I did want to say for people who have stayed with us for all this time... they would not have seen a Special Council Meeting that started at 9:00 o'clock where we were discussing the County's losing the lawsuit with Mandalay Bay and access to Pāpa'a Bay. In that discussion as we try to make an assessment of how to go forward, we do have a time certain deadline that is coming up at the end of the month and we've asked the attorneys to prioritize getting some legal advice for us, so that we hopefully don't lose that appeal. So I just want to say that I will support the motion to defer to the next meeting. I hope with everybody else's life who has held in abeyance with this matter that we could bring timely responses to them, but I realize realistically that may not be possible and I still want to reiterate that my first priority is for us to address the issue as it relates to Mandalay Bay.

Ms. Yukimura: Okay, thank you. Anymore discussion before a motion to... Councilmember Furfaro? Oh yes, I forgot that we have to change the tape.

Mr. Furfaro: I will not add any piece there because I have a deadline. I circulated a memo. I have a deadline to leave the meeting.

Ms. Yukimura: I know, I am sorry.

Mr. Furfaro: I think Councilman Rapozo also had one.

Ms. Yukimura: We are going to have to just sit in place to change the tape. Sorry.

Mr. Furfaro: Do you have a quorum for the Committee of the Whole? Okay, great. I thought today also we made a good point...

Ms. Yukimura: If you could wait until the tape is changed. The tapes have been changed, so we are back in Planning. Is there anymore discussion before the Chair asks for a motion to defer? If not, thank you to all of you who have stayed the whole time through and for those who came even before and had to leave and for everyone who has been part of this process. The Chair would entertain a motion to defer.

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

**PL 2007-1** Communication (2/26/2007) from JoAnn A. Yukimura, Planning Committee Chair, requesting that the Administration be present to give a progress report on the Planning Department's efforts to process and certify as complete ADU Facilities Clearance Forms by June 15, 2007 as required by Ordinance No. 843.  
**[This item was deferred.]**

Ms. Yukimura: Is Mr. Costa here? I think the Chair is going to recommend a deferral on this next item.

Upon motion duly made by Councilmember Kouchi, seconded by Councilmember Iseri-Carvalho, and unanimously carried, PL 2007-1 was deferred.

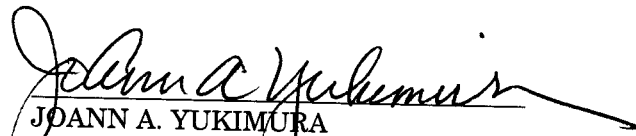
There being no further business, the meeting was adjourned at 6:45 p.m.

Respectfully submitted,



Lisa Ishibashi  
Council Services Assistant

APPROVED at the Committee Meeting held on May 2, 2007:



JOANN A. YUKIMURA  
Chair, Planning Committee Chair

Deferred at the May 2, 2007 and approved at the May 16, 2007 Planning Committee Mtg.