

MINUTES

PLANNING COMMITTEE

May 30, 2007

A meeting of the Planning Committee of the Council of the County of Kaua'i, State of Hawai'i, was called to order by Councilmember JoAnn A. Yukimura, Chair, at the Historic County Building, Room 201, Lihu'e, Kaua'i, on Wednesday, May 30, 2007, at 5:22 p.m., after which the following members answered the call of the roll:

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

The Committee proceeded on its agenda items as shown out of order in the following Committee Report which is incorporated herein by reference.

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

JOANN A. YUKIMURA, PLANNING COMMITTEE CHAIR: Again, I thank everyone for your patience both in terms of today and also in terms of waiting for amendments that were supposed to be ready last week. We experienced several delays including the fact that we have not gotten full, complete, legal opinion from the County Attorney... we did not get it completed last week Wednesday which we had hoped to do, but we have circulated a floor amendment. It incorporates the prior two (2) circulations. It is dated May 30, 2007. The main changes in this one came in pages 11, 12 and 13 and I will go over them shortly, but I also want to let you know that because we have these amendments without much time to look at them and also we have received proposed amendments from the Kaua'i Board of Realtors and we appreciate their efforts as well, the Chair will be recommending that we defer this bill one more time to our Committee meeting... after I take public input and explain these amendments and I don't know if the Board of Realtors is wanting to testify at all, but, anyway, after we do all of that, the intention is, at the end of this... the intention is on this issue to defer it to the Committee meeting on the 13th. I will be requesting that we take this item up at the beginning of our Committee meetings on the 13th. We will see if we can arrange for that. I don't know what else is on the agenda, but... so that everyone will have time to look at

these amendments and develop input, but it will be the Chair's intention. I had intended to move this out of Committee today considering the various delays, my intention is to move it out of Committee of the 13th. With that explanation, I think I am going to just briefly explain the changes made, so that... and then take public input in case people want to respond to the changes right now.

As I recall, again, we are looking at floor amendment introduced by myself dated May 30. Actually, beginning on page 11, the substantial changes from the amendment that was circulated previously, I am proposing now that in order to get a non-conforming use certificate, single family vacation rental use needed to have been in use for at least 180 days or six (6) months prior to the effective date of the ordinance. I am following the recommendations in this report done by consultants to the Planning Department who recommended six (6) months. I want to point out that the existing definition of transient vacation rental which we are amending to include single family vacation rentals because presently they only include multi-family vacation rentals and that is on page 3. Does say that the existing definition says that a transient vacation rental is a unit which is provided over the course of one year or more years to transient occupants which to me suggest that in order to really determine whether it is a vacation rental use, the existing law says that it has to be existing for about a year over the period. It has to be provided over the course of one or more years. I have chosen to follow the recommendation of the consultant and actually require that it would be over a period six (6) months. That is open to input from all of you, but that is the new proposal in this new amendment. I have paired down and streamlined the requirements to get a non-conforming use certificate. We are back on page 11, Section 8-17.10(c) and I tried to do it in a way that limits the discretion of the Planning Department and makes it as concrete as possible, so that hopefully it will be objec... hopefully, the requirements will be objectively applied that has required me to put in some numbers like at least 10 reservations over the last six (6) months and at least one transient occupant use per month for three (3) of the six (6) months and this is all, you know, in an effort to be as concrete as possible and as reasonable as possible.

In item number 4, requires that the ordinance... oh, that at the date of the ordinance, there be no outstanding violations of State or County land use or Planning laws and that is an attempt to address Jonathan Chun's opinion that we couldn't use tax payments or building code violations, but I believe State or County land use and Planning laws are within the ambit of the law, so that is fair.

Number 5 requires that a single family transient vacation rental is not located on land designated agriculture by State law. I have included the possibility that the applicant has obtained a special use permit which is allowed under State law which specifically permits a vacation rental. I don't know that any exist, but the potential exist under my reading of State law. And so... and then the burden of proof is on the applicant. There is a requirement to renew the non-conforming certificate that is on page 12 and it basically has two (2) requirements to renew. One is that there is in effect a... I think we have to change... the applicant should have a general excise tax and transient accommodated tax license and that the non-

conforming use is not ceased for a continuous period of 12 months. You will note that I took out the requirement that they would have to show that there was no transfer of the property of sale and I do that with great reluctance, but based on my current understanding of the law and that is open to input and suggestions.

I think there is a repetition between F and G and, if so, I apologize, we will have to correct that. And then, finally, there is a section on enforcement and I want to acknowledge and thank Councilmember Iseri-Carvalho who helped to develop that. It is mainly focused on non-conforming use certificates if the conditions are not being met or the applicant gave false or misleading information. We are allowing for the revocation of a permit and the details are there. Other than that, in terms of enforcement, we have an existing enforcement provision in the present CZO and that is mentioned in Section 8-17.11. This enforcement section that we are looking at on page 12, this section is... it says in paragraph A, in addition to any other penalties provided by law and it mentions the existing sections that is Section 8-17.6 and 8-24.1, so we are trying to synchronize with the existing provisions which don't address a non-conforming use certificate.

Okay, that is basically it and I am apologizing. I think, actually, I think on page 12, subsection (g) and (h) may be repetitive and I may have to take that out, I am sorry, I missed that, so that is the summary of the proposed amendments. The Board of Realtors has also proposed amendments and we didn't actually circulate copies of that, but we have... did everybody get that? Did the Council get that? We have three (3) extra copies and if we need more, we can make them. I better make sure I have my copy. With that, if there is no questions from the Council, I am going to... Councilmember Furfaro?

JAY FURFARO: Yes, I wanted some clarification here and I think I have asked this question in the past by a practice of business. Under Section 8-17.10, you are talking in terms of...

Ms. Yukimura: I am sorry, which section was that?

Mr. Furfaro: Section 8, page 11, item (c) and item (c)(2), you are talking in terms of proof of a transient reservation in exchange for compensation for a period going forward of 180 days, so we are establishing that someone entered into contract with a potential client in the future. Yet, we are saying, you need to show proof of business for one year, so my question is, you have to have actually 180 days of previous occupancy, plus this 180 days going forward as a business to qualify for your one year and I don't want the clarification right now, I just think it is something that it should bring to the attention, again, that I am concerned with when we determine one year of business because when you enter into contract going into the future and you have accepted a deposit for that business, you are actually exposing yourself to that liability.

Ms. Yukimura: And let me explain because it is important that I do. It is not requiring one year of operation, we are requiring six (6) months of operation.

Mr. Furfaro: Good.

Ms. Yukimura: And we are saying that during that six (6) months, they must have had... I mean, how do you show that they are in operation except by reservations and actual occupancy. So we are saying, during those six (6) months, they have to show at least 10 reservations which I feel is a very minimal number of reservations and at least one actual use or occupancy per month for at least three (3) of the six (6) months. You know, I really welcome any input you have on how we can best structure that, but it is just an effort to show that there was some use and actual use and actual activity leading to use and I am somewhat grasping for straws, so, you know, you can... I really appreciate any input we have on this.

Mr. Furfaro: Well, I will go revisit the narrative on page 3 to make sure that I didn't miss it, but, clearly, I see the point where you are not also talking in terms of these 10 reservations going forward, but you are also indicating that it is an exchange for compensation, so, in fact, someone would have to prove that they have an advanced deposit receipt because it was actually a financial transaction going forward and not just a made up reservation. I will go back and re-read on page 3 the period of time and I can see how the two (2) are connected now.

Ms. Yukimura: And your experience in reservations and occupancy and those of you who do have vacation rentals would be helpful.

Mr. Furfaro: Thank you very much Councilwoman.

Ms. Yukimura: Any other questions?

MEL RAPOZO: You know, I just asked to go see the original bill, but what is the change between (c)... your amendment (c) (2) and (3) and how it reads today?

Ms. Yukimura: The previous amendment require building codes, it required houses... that the house be built one year before...

Mr. Rapozo: But as far as the use requirement... you know, just (2) and (3) when you talk about the 180 days, 10 reservations...

Ms. Yukimura: There were none. There were no such requirements of that kind of specificity. It just said, you know, you shall submit tax returns and it was... well, let me see.

Mr. Furfaro: General excise, transient accommodation, etc.

Mr. Rapozo: But there was a requirement for use, right? In the original?

Ms. Yukimura: Not very concrete as I recall. It would be the amendment of May 8, is it? I am sorry. Do you have it there because I am having a hard time

finding mine? Here it is. It didn't have any clear use requirements. It said that the relevant building was completed with necessary permits at least one year. The use was in existence at least one year. There was no outstanding violation of building, zoning or State Land Use laws at time of application for a non-conforming use certificate... that all required permits relating to the establishment were secured in a timely manner. There were no after-the-fact permits... that all taxes were paid in a timely manner and that single family rentals were not located on ag land. So there were none of this kind of specific use requirements. Does that answer your question? Any other questions?

BILL "KAIPO" ASING, EX-OFFICIO MEMBER: On page 11, item 5. Was the rationale there because you feel that there may be someone who has a permit, is that the rationale behind it?

Ms. Yukimura: That is right. I mean, I think that is the rationale and it would only... it doesn't mean that after this bill passes, people can go and get a use permit, that wouldn't qualify for a use existing at the... prior to the passage of this bill.

Chair Asing: Someone may have an existing.

Ms. Yukimura: I am. I don't know for a fact whether anybody has one.

Chair Asing: Okay.

Ms. Yukimura: Okay, any other questions? If not, at this time, the Chair will suspend the rules and ask if there is anyone who wishes to testify? I see some hands and I want to also note before we call you up that we have written testimony from the Lecocq family in Hā'ena dated May 29, 2007 for the record. Was there any other written testimony that we know of? With that, Mr. Taylor and Mr. Abrams.

There being no objections, the rules were suspended.

KEN TAYLOR: Chair and members of the Commission. My name is Ken Taylor. I am very much in favor of Bill No. 2204, but I would like to raise an issue to you on page 11 which you were just looking at in 8-17.10(c)(2). It said, during the 180 days, the applicant has to have at least 10 reservations by transient guest in exchange for compensation for use of the subject property as a vacation rental. Then you go onto number 3... during that 180 days, the applicant has to have one transaction for each subject prior to... property per month for three (3) months and something is wrong there I think if I am reading it correctly. I would just like to say that if the people that have specified the importance of the income they generate from these activities, if they have been doing this legally, they should be required to show that they have had at least one rental each of the six (6) months, not skip three (3) months and then only come up with three (3) months of some activity. So I believe strongly that that should be changed to one activity at least each month of the six (6) months. Actually, number 3, should be reworded to match number 2.

Thank you.

Ms. Yukimura: Councilmember Bynum had his hand up and then Councilmember Furfaro.

TIM BYNUM, EX-OFFICIO MEMBER: Ken, I am just reading this for the first time and I kind of had the opposite reaction which was some people rent... you know, they live in these... they stay in these homes part of the time and then they rent them in other times, so what if this six (6) month period happened to be the four (4) or five (5) month stay and the owner was in occupancy, so I had a concern, so I just wanted to put that in the thinking that maybe 10 reservations is too many. Maybe, you know, I think demonstrating that there has been occupancy and it has being used is important, but finding a way that doesn't exclude an owner who may have been in residence that six (6) months. I don't know how to do it, but those are the thoughts that are going through my head right now.

Mr. Taylor: Well, maybe then to resolve that problem, the timeframe should be more than six (6) months and six (6) months minimum be required for rental activity.

Mr. Furfaro: Ken, item 2 is really dealing with a business transaction that is dealing with a reservation. Item number 3 is dealing with an issue as Mr. Bynum pointed out is actually occupancy and could fall in a period where someone is using their own facility for their own family use while on vacation and so forth, but one is actually dealing with advanced reservations and the other one is dealing with past occupancy, so they are very different.

Mr. Taylor: That is why I understand that. Like I said, maybe this six (6) months should be pulled out to a full year and then a full six (6) months minimum be considered for the actual transaction of rental activity.

Mr. Furfaro: I understood your comment. I just wanted to define reservation transaction which actually has a financial risk on it for somebody making advanced deposits.

Mr. Taylor: I appreciate that. Thank you.

Ms. Yukimura: Other questions of Mr. Taylor? I have a question. You say that you support the bill and I am assuming with the proposed amendments because they are quite different from the original bill. I just want to say what Councilmember Bynum stated is... was in the back of my mind knowing that... and I thought maybe at the most, people come for two (2) months, but maybe people who own the house come for two (2) months and stay there... maybe they stay for longer and hopefully we will get some input from some people, so we can get some reality check here and we will consider your thoughts. We may even be able to, you know, require six (6) months... well, we will see how we can work that. Thank you.
Mr. Abrams?

LOUIS ABRAMS: Good afternoon. I guess it is almost good evening in another 10 minutes. I am representing the Kaua'i Board of Realtors. Jonathan Chun is not here today because he has another engagement. But, basically, we had... after a couple of meetings ago, I guess, suggested that we would come forward with a draft and since we did not have an opportunity to see today's draft, we took the last draft that JoAnn had available which I have labeled KBR by it and we asked him to make changes. At the same time leaving in what JoAnn's original floor amendment... actually, it wasn't the original one. I think it was the second one, right?

Ms. Yukimura: Yes.

Mr. Abrams: Were in there at that time and made comments directly to it and he gave us a letter outlining those changes that he had proposed to that bill. There are basically five (5) changes that he suggested one of them which we did not agree with. So because of the way that he went about doing the changes which are in red and either struck through our changes, I think that you should be able to follow the previous draft. We will be taking a look at this particular one. I did have an opportunity to... while you were on the other matters, go through it and there is some substantial differences there. Our particular concern at that time was the non-conforming uses. Our CZO is still in conflict with this ordinance as you have it right now. Our CZO specifically says that in order to lose your non-conforming status, you have to discontinue your use for one year continuously. So I will ask the rental people who have rental units to double check their reservations of their owner's occupancy records to see whether or not... what I would consider legit vacation rentals and whether or not this would be able to fall under the guidelines that you have. I think that the intent is really there's to allow those who are legitimately in business to be grandfathered and those that are arising at the last minute even though the CZO does allow you to do that... they be able to grandfathered in. A couple other things. Relative to your changes to the agricultural land of which you have referred back to the State Land Use Commission for a use permit... a special permit. I am not quite sure... does that only apply to ag lands that are under 15 acres that are in your domain? I would like for you to go ahead and take a look at that.

Ms. Yukimura: Okay.

Mr. Abrams: I know that under 15 acres is exclusively in the County's domain. I am not sure about there. The other thing that I wasn't sure... I noticed that you have some changes where you originally had basically tied the permit and the 24/7 response to the owner. You have it just exclusively that in one section and then you also name contact person later on, so we will be providing you some input on that to make sure at least if that is the intent of this body wants to do that is consistent across the ordinance.

Ms. Yukimura: Your three (3) minutes are up, but I am going to play it pretty loose if I don't hear any objections from the Committee because we are kind of like family right here. The die hard people who are still (change side of tape).

Mr. Abrams: ... that length. You are the legislative body and you have a County Attorney's opinion or about to have one or at least have pretty good information about it. We think that that has got a whole bunch of issues aside to that, that we would be happy to discuss in the future or even right now. At that point, but if that is the call that you make, then we will just deal with it and then work on the (inaudible) after when you are working with those bills. Outside of that, our main concern has to do with non-conforming uses and making sure that those property rights of the owners are protected and are consistent with our CZO. Thank you.

Ms. Yukimura: Thank you. Questions of Mr. Abrams? Okay, I have a couple of comments. We really have to distinguish between eligible for grandfathering and keeping the grandfathering status.

Mr. Abrams: Yes.

Ms. Yukimura: And so to be eligible for grandfathering, the standard is that you show that you were a lawful use.

Mr. Abrams: Yes.

Ms. Yukimura: I am saying that the current CZO definition of transient rentals... if we amend it to include single family rentals is saying that the use is actually measured over a year's time and that over a period of one or more years. And that, therefore, we could require to be in operation as originally we required that it had to be in operation for one year in order to show that it was a legal use. Instead we are reducing it to six (6) months per the recommendation of the... saying, okay, well, we will be a little bit looser for grandfathering, but you still have to show you were a legal use, so that is the question and what is the use that you were actually using it for transient occupancy and for pay for compensation? How do you... If you do one night's use the night before the law becomes...

Mr. Abrams: That is the way the CZO is right now. If you change by ordinance right now any other use, let's just say, a Mom and Pop store that all of a sudden goes residential, that person is grandfathered as a non-conforming use... if it was in existence the day before the ordinance changed. It doesn't say one year. The one year application is that if you discontinue the use for one year, you would lose your non-conforming status. That is how we...

Ms. Yukimura: The loss of the use. First you have to establish the use and then you talk about how do you lose it, so that one day is about losing it, but you first have to get it. How do you establish that somebody is really not using it for vacation rental use? To put a store together takes a lot to actually make a

commercial use takes a lot of investment, a lot of time, you know, that is one thing. To shift from residential... either a long term rental or occupancy... to a vacation rental, theoretically you could claim it if you just take out a TAT license and loan it to a friend for one day who says that he paid money for it.

Mr. Abrams: I understand that, but, again, I guess if a court of law was looking at the situation, it would be depending on each case that is brought forward because some may be developed. We have property owners who are not in existence for six (6) months or a year as the ordinance, but fully intended and worked towards that, it is just that they have bought their property recently and that was what they intended to do. So, to me, that would be a fair grounds into be grandfathered even though it didn't fall under the timeframes that you are laying out. That generally is the call of the Planning Director and I realize that you want to provide some guidance to the Planning Director in regards to that, but it is fact based depending on the case. You are going to find yourself in situations where you will have some compelling cases that won't fall under and if you don't leave some recourse which the recourse is right now that they could appeal to the Planning Commission and then ultimately go to court if, in fact, they feel... the court as far as we can tell would evaluate it based on the facts and the intent where all of this information... if, in fact, they had a one day rental and that is all that they could prove, I think that it would be probably upheld that they were denied the right to be non-conforming, but I think it is a bit rigid at this point and so far it is inconsistent because you haven't defined it for all the uses, so this is the first use that you are going to now say what is pre-existing for the Mom and Pop store. It wasn't that you had to be in operation for a year or for six (6) months, it is just is when the ordinance changes, you are grandfathered. It is a tough one and I understand what you are struggling with and we certainly want to try and work with that, but probably the biggest concern we have relative to this is the non-conforming issue.

Ms. Yukimura: Thank you and I just want to say on the use permit on ag land, it doesn't matter whether it is secured by the County... whether it is granted by the County or the State if it is a legitimate use permit for vacation rental use and that is what I am considering legal.

Mr. Abrams: You are telling me that if someone went to the Land Use Commission next month after the ordinance is passed...

Ms. Yukimura: No, not after, it has to be legal at the time the ordinance is passed.

Mr. Abrams: But isn't that decision for a special permit at the Land Use Commission on ag lands over 15 acres in the domain of the Land Use Commission?

Ms. Yukimura: But not vacation rental is not in the domain of the...

Mr. Abrams: I believe that there are agricultural tourism rules that are

in the chapter that deals with agricultural land that may be a compelling case could be made to them.

Ms. Yukimura: In fact, the statute says that you can allow a use if it is permitted under an ag ordinance passed by the County. This County has not passed an ag tourism law, but even so, the authorizing statute of the State says that it prohibits explicitly overnight use as a permitted use under an ag tourism ordinance.

Mr. Abrams: Okay, and that would be welcomed. I know we can't get a copy of the County Attorney's opinion. It is our effort that we would love to be able to see it because we are afraid there is going to be some litigation and we want to try and keep it down and I think that a lot of times well thought out ideas and rationale are very, very helpful in trying to mitigate these issues.

Ms. Yukimura: Unless this is outdated somehow, it is pretty explicit, so (inaudible).

Mr. Abrams: I mean we have taken a look at what Maui does. They have some specific rules what they allow vacation rental use on ag land, but that, as you say, is through the use permit and basically is formulated by the County.

Ms. Yukimura: Right, and it may turn out that when we do our ag laws, that section 205-5... when we do do our ag laws, we might, you know, look at what... there are so many things and you know better than I what the issues are with respect to ag and rural lands. In that context, we may decide to allow them under very specific guidelines, but right now...

Mr. Abrams: We know at this point that that... the way the ordinance is written that the... that hopefully will be something that will be addressed in the future because it does say in the General Plan that that zoning is something that transient vacation rentals should be considered to be allowed upon. Now, at the strict interpretation of the General Plan, it would seem to me that what you are telling us right now is that the only time that you would consider that is if the ag land was in a VDA area.

Ms. Yukimura: That is sort of contra...

Mr. Abrams: Well, it doesn't sound right, but why would the General Plan go ahead and say that alternative forms of vacation rentals should be encouraged and it specifically mentions ag lands. If, in fact, you are now saying in this ordinance that, no, you are not going to consider that on anything, then the only conclusion that I can come to is that it would then only be allowed in ag land on VDA areas.

Ms. Yukimura: I just said that we would be open, but at least I personally, will be open to consider it in the context of an ag planning process which

may actually take certain lands out of ag into rural or country or some other category where that might be appropriate, but it is a hugely complex issue where you don't want the tourism tail to wag the ag dog, do you know what I mean?

Mr. Abrams: Yes.

Ms. Yukimura: So we can't do it here and, for now, given the prohibition of the State law, that is where we stand.

Mr. Abrams: Okay.

Ms. Yukimura: Councilmember Kouchi?

RON KOUCHI: And since you don't have your legal counsel with you here today Louie, I am not expecting an answer today. I think the kind of the question that was posed by all of the research that was done is that a lot of people in the ag district who came to testify were citing the State's ag tourism section. And through JoAnn's research, it indicates that the overnight stays are not a permitted use of the ag tourism plan. So if after Jonathan's review, you know, we all come to an agreement that, you know, that would then disallow transient vacation rental activity to occur, then I think you are back to that discussion about what is the suggestion of an appropriate way for it to occur, but the ag tourism plan is not a mechanism by which it would be permitted. I do know that it permits you in not just ag, but, you know, for agriculture and rural districts that you can apply for the special use permits, so it doesn't say that you have to be ag or that you need to be in a VDA, so if you are perhaps out of rural as JoAnn has said, then that may then permit some overnight use to occur.

Mr. Abrams: And that is Chapter 205.

Ms. Yukimura: Chapter 205-5 is the ag tourism and thank you Councilmember Kouchi. Actually, for units that are in rural land, that is residential and it is not ag. They are not bound by the restrictions on ag, but right now, represent only a small number of lands.

Mr. Abrams: Yes.

Ms. Yukimura: And they would still be prohibited by our law right now that says, no uses outside of the VDA.

Mr. Abrams: Well, I think that there are many questions still out on that particular issue and any sharing by this County government with the public in regards to this interpretation that we are taking will only help in the understanding and hopefully keep us away from litigation because we have a number of people who, as we all know, are on ag land and have vacation rentals whether they are legal or not.

Ms. Yukimura: Thank you. Any other questions of Mr. Abrams?

Chair Asing: I just had a comment to Louie when you made reference to the General Plan regarding the vacation rentals in different areas. My comment to that is perhaps the General Plan being approved in the 2000 did not contemplate the extent of today's impact on the communities and that would be my comment to that and I did recognize that in the General Plan that you are absolutely correct. That is what they looked at as one of the possible uses, but I think...

Mr. Abrams: I might suggest that you... in the purpose or the enabling language that you highlight this change from the guidance that was provided back in 2000 that caused you to want to do that. I think that would only help the County.

Chair Asing: That is an excellent comment because I like you did recognize that as one of the areas in the General Plan that we should be looking at, but I think your comment is an excellent one if we decide to sort of change direction from the General Plan that we should note that. Thank you.

Ms. Yukimura: Thank you. Councilmember Bynum?

Mr. Bynum: Louie, you said the six (6) months was a bit restrictive I think was the word you used and I think you said that was your position that one day would be sufficient under current law, is that correct?

Mr. Abrams: That is the way that I see it. The CZO as you read the non-conforming section in the CZO basically only addresses the fact that if you stop that use for a year, it doesn't have any specific language saying how long you had to have it in the existence prior to it. It just simply says that if you became non-conforming which this bill admits that there are vacation rentals on certainly residential land that are going to be non-conforming, then it becomes inconsistent with what the CZO has right now by placing the six (6) month requirement.

Mr. Bynum: So you are not suggesting that be two (2) months or three (3) months, you are suggesting it would be consistent with your interpretation of the law?

Mr. Abrams: Yes, our clients who are private property owners and we have said that we would like to be treated the same as any other use.

Mr. Bynum: So if you had your preference, it would say upon enactment?

Mr. Abrams: Upon enactment that you would apply for your non-conforming use that in effect the Director of the Planning Department would be the one who would make the determination on that. At that point, he would not be bound by these requirements here. We realize that may be a little loose as far as

you are concerned, but unless you go back to the CZO and change that, you are going to have a legal problem.

Mr. Bynum: Thank you.

Ms. Yukimura: We can change the CZO by a subsequent law, so we might look at that and I don't know if that is the issue, but let me go back to the ag General Plan thought. It is not my thought that there is no place for vacation rental on ag land. It is not my personal thought. We had a wonderful lady, Lisa Breen, come and testify about her operation. As long as I can secure and identify a genuine farming operation, there may be a role to have guests who want to observe or participate or even just stay on a real farm. The problem is, what is a real farm and until we define that to allow vacation rentals is very difficult because often times the farm will become ancillary to the vacation rental rather than the vacation rental be ancillary to a real farm.

Mr. Abrams: Yes.

Ms. Yukimura: That is the issue that I am concerned about and until we can do it... look at this issue in the context of our primary purpose of preserving ag land for ag and farming, I don't think we should allow or look to allow any vacation rentals. I just want to explain it that it is not really changing the directive of the General Plan in my mind, but it is finding out how to accomplish it without tiling agriculture on ag land.

Mr. Abrams: Well, it does make it impossible for someone on ag land outside of the VDA to continue or to get a permit.

Ms. Yukimura: For a vacation rental?

Mr. Abrams: Uh huh.

Ms. Yukimura: Yes, and that is our intention at the moment, but it doesn't...

Mr. Abrams: But it would be something... might I suggest that you maybe put something in to review it again in the future, so that we can have the opportunity? It is basically a moratorium is really what it is on that until you can figure that out.

Ms. Yukimura: And it does already say in the portion that is scratched out by your attorney.

Mr. Abrams: Yes.

Ms. Yukimura: Because existing State law requires all dwelling units to be farm dwelling units when located on lands within ag district and because the

County is in a planning process of identifying ag lands of importance to the State and revamping its laws with respect to ag zoned lands, single family vacation rentals such as ag zoned lands are not eligible for a non-conforming use permit. Maybe it is not stated clearly, but one of the intentions was that this is... until we finish the planning process, we are not going to allow any vacation rentals.

Mr. Abrams: I understand that. It is clear to me. I also believe that I heard earlier that farm dwelling agreements as far as that are only required on Class A and B soils. I believe our attorney had mentioned that.

Ms. Yukimura: I don't know about farm dwelling.

Mr. Abrams: I understand the intent. I am just saying that is going to be problematic for the County.

Ms. Yukimura: But we see nothing in the law that says that if you are C and D lands, you can have vacation rentals.

Mr. Abrams: True.

Ms. Yukimura: Or anything that says that just by virtue of C and D lands, you don't have to have... your dwelling units don't have to be farm dwelling units. I don't see that. I mean, there is a use permit provision, but, anyway, so we will look... I have already said that this... we are looking... you were part of the stakeholders group and we looked at allowing vacation rentals outside of VDA areas. We talked about 5% of the neighborhood, 10%, 25%, you know, we looked at that and we looked at the complication of defining what a neighborhood was and saying that even 10% of all of Wailua Houselots might be a large amount, so we decided that... I don't know if the group decided, but...

Mr. Abrams: It was closer to 10 to 15 range.

Ms. Yukimura: And because we had no idea how many vacation rental actually existed, at least my intention is to at least... to basically put a moratorium into the future and look at what we have, deal with bed and breakfast which are also vacation rental units, but not going to be in this bill probably given the fact that they are starting out from a different status that is illegal rather than legal, then we try to put it altogether and then look at, do we want to allow it and on what terms outside of VDA area.

Mr. Abrams: That is another good legal question. Why is it that B&B's which are illegal under this... without a use permit... all of a sudden can be addressed differently when it is roughly the same use. My understanding was because the owner occupant was in the house, that is the way the original ordinance was done. You actually had to reside on the house. This ordinance now disengages that saying that the owner just needs to be on the property.

Ms. Yukimura: But I changed it back.

Mr. Abrams: Did you change it back?

Ms. Yukimura: Yes.

Mr. Abrams: I am glad to see that because it makes it more consistent.

Ms. Yukimura: Let's see if I did change it back. Yes, so page 3 and everyone could look at the definition of bed and breakfast operation means use of a portion of a single family detached dwelling unit in which overnight accommodations are provided to guests for compensation. It is on the top third of page 3... for periods of less than 180 days within the same dwelling unit in which the owner or lessee resides.

Mr. Abrams: Good, that is consistent.

Ms. Yukimura: So all the stand alone single family vacation rentals whether they are on the same property as the owner or not are will be considered...

Mr. Abrams: Basically, you are leaving the B&B's that they still would be to get a use permit for the time being.

Ms. Yukimura: That is correct and we are going to try to deal with that after we pass this law, we are trying to walk before you run, so what I envision as a process is take care of single family vacation rentals, do B&B's, look at what we have through the non-conforming use permits and look at what we have as you know and that was a point of contention between the board and Mr. Chun, we are requiring all vacation rentals to register through a Class I zoning permit.

Mr. Abrams: Whether you are in or out of the VDA.

Ms. Yukimura: And I haven't gotten any input from the Planning Department, we are trying to work...

Mr. Abrams: I suggest you give them a copy of your bill.

Ms. Yukimura: We have given them all the copies and we have asked for their input and we have not received anything yet, but we are trying to do it... we were asking for their input because they are the ones who are going to administer and enforce this law and we want to make sure that it is as enforceable and implementable as possible, but we haven't gotten any feedback. I tried to tie it to a Class I zoning permit just so that I wouldn't create another permit or another process. I don't know if that is the best thing to do and I welcome any input, but we are doing that, so that we can track how many vacation rentals we have.

Mr. Abrams: Yes, I think that is very important because this will from time to time come up and you will have to deal with it and I think it is very important for you to have your own information. I know Caren had worked on the information for her in her area, we had hired Ken Stokes and we gave it our best shot to try and give you a number. Even that is somewhat contentious. We are not even sure exactly where we are on it. You are have a lot of owner operators who, in effect, aren't with any particular management company. Ken even tried... went through the Internet and all of the other sources that he could get to inventory that although I had hoped he would have done it by TMK because that would have been a helpful start. It wasn't done that way, but perhaps once people register whether in or out, you will have a clear idea of it and I think that being in the VDA and getting them to register is important simply because there are a lot of properties that are not on vacation rentals in a VDA that you may only be able to quantify just simply by looking at the density that is there thinking that they are all vacation rentals because they are in the VDA when many of them are not (inaudible) in Princeville, that is a VDA area, but yet I would bet that there is a large percentage that are rented out to residents and, in effect, you should know these numbers.

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

CAREN DIAMOND: Good evening. A lot of these revisions make me very sad and one that I really do not agree with at all is the taking out of the grandfathering provisions that end at the time of sale. I have asked before, where is it written where it says that these vacation rentals are legal? I am just so confused on how this opinion can be that it is legal because I still haven't seen in our laws where it says that. What I read is it says vacation rentals are prohibited except in hotel or timeshares... I read that multi-family vacation rentals are illegal. I don't see why all of a sudden everything should be grandfathered in forever and I want to take the opposite tact that if you do grandfather in all the vacation rentals that are operating today and up until the day you enact this bill, then Hā'ena, Wainiha, Hanalei, 'Anini, will be resort. We will not have residential lands there. Zoning and the purpose of residential uses and the purpose of residential lands is for residential use. This is a commercial use and I don't think this commercial use was ever guaranteed or ever legal in my residential neighborhood. So I don't know how you guys... not you personally, but how it is presented that this is legal and it should continue forever. Is it really true that everyone is so self absorbed and self interested that they don't want to look at the bigger picture. If these lands turn into resort forever, we are Waikīkī. We have lost so much and I can tell you that it is not right and I will ask again, please show me where in the law it says that vacation rentals in residential areas are legal. And short of that, I don't see why it has to be grandfathered in forever and ever up until the day this law is enacted. I think that is a really big miscarriage of justice. That is my main disagreement with the changes in this bill. I think if you look at what the use of residential neighborhoods are supposed to be consistent with that, you can amortize this in a legal or... this use of vacation rentals over time to restore residential areas and I would really ask this Council to do that instead of grandfathering in forever these

vacation rentals because really look at what will happen if that happens and that is not something I want to think about.

And then on page 2 where it talks about the purpose of the bill is to restore a balance between primary residences and single family vacation rentals. It talks about multi-family vacation rentals in there and then the last sentence goes back to single family vacation rentals, but it doesn't ever make it really clear that multi-family vacation rentals are illegal, that they are going to stay illegal, that nobody can come and ask to be grandfathered in for their illegal multi-family vacation rental and I think it is really, really sad for all the people who live on this island that we've lost our residential areas and that there is this extra layer of speculation and that everybody is doing business in what used to be a neighborhood, so I ask you to please restore our neighborhoods, have vacation rentals end... if it doesn't want to amortize it over a certain amount of period of time, do it at the end of sale or at the time of sale, but I think that allowing vacation rentals to go forever and forever and ever is a miscarriage of justice. Thank you.

Ms. Yukimura: Questions of Ms. Diamond? I think all of us on the Council wanted to end it at sale. Unfortunately, it is in Jonathon Chun's memo. He cites Hawai'i Revised Statute, Section 46-4 and that says that a zoning ordinance may provide for the elimination of non-conforming uses as the uses are discontinued or for the amortization or phasing out of non-conforming uses over a reasonable period of time in commercial, industrial, resort and apartment zoned areas only. In no event shall such amortization or phasing out of non-conforming uses apply to any existing building or premises used for residential or agricultural uses. Now, this is for me pretty unambiguous if there is a legal opinion that says otherwise, I would like to hear that because I would like to amortize vacation rental use, but I don't believe that the law allows it. The way to get it... to achieve your goal is to change the State statute that would allow counties to amortize in agricultural or residential areas.

Ms. Diamond: I guess I would say two (2) things. In that, it says that being used for residential uses and so...

Ms. Yukimura: I know, but it says only can you amortize or phase out in commercial, industrial, resort and apartment zoned areas only. So, I mean, if you can find a way around it...

Ms. Diamond: It says for residential uses.

Ms. Yukimura: No, the sentence after that says, in no event shall such amortization or phasing out of non-conforming uses apply to any building for residential or ag use.

Ms. Diamond: So the part that says, in no event shall such amortization or phasing out of non-conforming uses apply to any existing building or premises used for residential and these are not being used for residential. So what I am

saying is, these are being used for commercial purposes, so you can phase them out and if they were being used for residential single family uses, then I would agree with you.

Ms. Yukimura: However, these are on residential zoned lands and the bill says, in commercial, industrial, resort or apartment zoning is only is where you can amortize. So, okay...

Ms. Diamond: Arguably, I again would ask where in our bill... not this bill, but our old laws doesn't say that transient vacation rentals are legal because when I read it, it says that they are not legal except in hotels or resort districts. So how is that transformed into that there is nothing here. I understand the definition that defines it as multi-family vacation rentals, but if we are looking for consistency and intent, we can go with the intent of that and we can also go with the intent of the Hawai'i State Legislature which said that transient vacation rentals are essentially are the same as timeshare uses and they should be treated the same and that the County should put them in the same places and treat them the same. I don't see that you are doing that and I think that if we make resorts all over this island and allow them to be grandfathered in forever and ever, then we have miscarried justice for the regular people that live here or would have lived here.

Ms. Yukimura: Questions? If not, thank you.

Ms. Diamond: Thank you.

Ms. Yukimura: Anyone else wishes to testify? Ms. Elmore?

BARBARA ELMORE: My name is Barbara Elmore and I know that you don't like to hear what I have to say, but I did closely monitor the time that Louie Abrams was at the table. It was 32 minutes, but usually I get up here and talk too fast because I know I only have three (3) minutes and I am going to be interrupted in the middle of a sentence. I hope you will give me time to say what I want to say. You have shown us just now that money talks because these people can easily afford attorneys and you are saying to us average citizens, well, go hire an attorney and pay them thousands of dollars to show the opposite view. You are taking the word of Jonathan Chun and Board of Realtors and you are actually letting them, vacation rental owners and the Board of Realtors write this law. You know, everybody on this island knows that the enforcement is a huge problem. Is it so easy to forge a reservation. It is so easy to get your friend who has a vacation rental to give you a reservation and pretend that they paid you and, you know, it is not easy in other businesses where the tax officials keep pretty close watch, but these people have not had tax people come in and audit them or check up on them. Why do people assume that they are entitled to non-conforming use? Non-conforming use should be rare. It shouldn't be something you plan in advance... we are going to do these non-conforming uses and let you get away with it. This new law that you have written allows all these operations that are not legal under the CZO... it grandfathers in all these existing operations and it makes attempts to regulate them which is a joke.

One year is a joke, six (6) months is a joke because the meeting started over... I think they started in 2004 or 2005, so that has given people plenty of time and to say, oh well, you have to prove something for one month or one year is absolutely a joke. I would like for you to make clear... if you can, I know this is your baby and you love it and you work on it so hard... you are determined to do it, but just why not clarify the CZO language about unnamed uses being prohibited. Can't you pass an ordinance or bring up a bill that says, anything not named as permitted in the CZO is prohibited and make it clear and then remove that crazy 75% rule where 75% of the vacation rental owners can say, yes, we want this area to become resort. Ban all the vacation rentals in residential, ag and open land unless they were existing at the time the CZO was passed and I think it was in 1982. I may be wrong about the date, but until today, that is still the law and you are letting these people who disobeyed that law all these years just slip right in. I had planned to say something, but I have gotten so upset. I am skipping around. The General Plan which as we know is not the law, it is just guideline. It does say, existing land use regulation shall continue to regulate the use of land. That is 7-4.1(b), existing land use regulations and if you are still going by the General Plan today, why are we not using the existing land use regulations to regulate the use of our land no matter what people have been doing with it.

The General Plan says that it is a direction setting policy document. It is not intended to be regulatory. It is intended to be a guide. I don't think grandfathering should be allowed. That just means people who have acted inappropriately in the past want to continue doing so with the government's blessing and I have given the example before of an assault weapons ban. If today you passed a bill outlawing assault weapons, would you let people who already had those for one month or six (6) months or one year keep those or they just bought them yesterday, would you let them be grandfathered in. It doesn't make sense. This proposed compromise of allowing these businesses because they have been in operation for whatever period is not a compromise. It is a clever way for them to have what they want and to circumvent the CZO that exist today. With all due respect to you and the County Attorney... the County Attorney is not elected and I don't understand why the Council has to automatically vow to whatever opinion he issues, you are above the County Attorney... he is your employee or she and I don't know why you can't get an opinion from them. I know you do have to do it and if you see that it is in the best interest of the island and your conscious tells you that what is happening to the island is wrong, you can overrule that opinion from the attorney. We did not elect any County Attorneys to make these decisions for the island. If I go out and privately hire an attorney, I will listen to his advice, but if I don't like it or if I don't think it is in my best interest, I don't have to follow it just because I paid him to give me that opinion.

In a court of law, if a person lies one time, the court and jury cannot believe anything else they say and by the same token, what makes you think that you can trust these vacation rental owners who have broken the law once not to ignore the parts of a new law they don't like. In a trial, you look at the motive. What are the motives of these people? They can prove or document almost anything they want

especially with computers and you can just look at Honolulu when they passed a moratorium... I think it was 89 on vacation rentals in residential areas and that has been repeatedly violated. The law says there is a moratorium, but they still violate it. So according to my calculations, it has been 25 years since 1982 and yet you are going to only require six (6) months and somebody was talking about one day and Mr. Abrams said that six (6) months was restrictive. 25 years that CZO has been there and it is our law and you have to ask, who paid Jonathan Chun to tell you all these things. He is paid to say what he says to you and the rest of us can't afford to go out and spend that kind of money on an attorney. If you will bear with me, JoAnn, I want to talk about this organization, this organization called, Kaua'i Alternative Visitor Association.

Ms. Yukimura: As long as it is relevant to this issue and you have another two (2) minutes I think.

Ms. Elmore: Louie had 32 minutes.

Ms. Yukimura: We asked him questions and you will be allowed...

Ms. Elmore: People should be treated equally when they come up to testify.

Ms. Yukimura: You will be treated equally.

Ms. Elmore: The first website that this group promoted was sponsored by a (inaudible) Pacific Vacation Rentals which is in Park City, Utah and that was their first site until they set up with KAVA. On there they said, "join us to prevent potential loss of income." That is their purpose to prevent their potential loss of income and nothing about what is best for the island of Kaua'i. Then, they set up KAVA. Their membership... they don't give a date, but they say it is new and membership is open to all TVR and B&B owners located in residential, open, and agriculturally zoned areas on Kaua'i. It is a non-profit business league and the dues are calculated by how many bedrooms the vacation properties have. This is where I want to get back to the lying because they are supposed to be paying \$100 for each bedroom that they rent out. Under their member benefits or PR and advertising... this is their latest buzz word. Not just vacation rentals, but farm stays. This has suddenly become the buzz word and they are running around to, you know, plant their crops and part of their benefits or representation at County Council meetings. They are going to be asked to contribute to a legal fund to help protect our vested property and economic rights. Their mission statement says, we, the people... this is the new name of their site. we the people of kauai.org... they don't say, we the members of KAVA or we the vacation rental owners, instead they presume to speak for all of Kaua'i. We the people of Kaua'i and I want you to know that they do not speak for all of us. They say that they are against making existing vacation rentals and bed and breakfast illegal and they ask that the County provide an amnesty program. We propose that all existing vacation rentals and B&B's be granted permits to continue to operate essentially to be grandfathered in whether

they are located in a residential area or on ag land. Earlier, they said ag open. Membership shall be open to all owners located in residential and open and ag.

Ms. Yukimura: Can you please summarize?

Ms. Elmore: Well, yes. On their website, they boldly state, we were advised that anyone residing on ag land should start growing something and I ask the same question that Caren asked. Where exactly in the CZO did these rights that they are claiming, where do they exist in the CZO? I just don't find them. I will wrap up even though... They quote something from the Kaua'i Institute which is an organization that does work for the Board of Realtors all the time and landowners. Now, you have letters on their sites from residents and vacation rental owners.

Ms. Yukimura: Ms. Elmore, we can look at the website ourselves. I appreciate the information you have given.

Ms. Elmore: I want the public to know what is on the website, really, because it is shocking. They say, Kaua'i has been discovered and there has been an increase in speculation something that some of you may even have been financially fortunate enough to take advantage of. We who own the property in the area and don't live in the homes are so and so. They say that many locals have had to convert 'ohana units on their property to make more money. Now, you know, the 'ohana units were not meant for that purpose, but they boldly state on here. Many of us have had to convert these 'ohana units. What makes you think that they will obey any law that you write. They say... this is just aside, but the nice thing about vacationers is that they go home, but then they don't say, well, the next day or the same day that they are going home, new people are coming in.

Ms. Yukimura: Ms. Elmore, I have to ask you to please conclude.

Ms. Elmore: How many minutes have I talked?

Ms. Yukimura: At least 10.

Ms. Elmore: Well, Louie Abrams was here for 30 minutes. Can you ask me some questions?

Ms. Yukimura: If you let us allow questions, we may have you here for longer.

Ms. Elmore: I wish you would ask me questions. Are there any questions of Ms. Elmore?

Ms. Elmore: Of course not.

Mr. Rapozo: I just want to know that website address that you...

Ms. Elmore: wethepeopleofkauai.com or org. I wanted to show you some of their listings. As I said, they were charging \$100 per bedroom and the members that they show on their site, some of them claim to have one bedroom (change tape)... there is one member that they show. It is a new organization and they show 17 members, but one of them claims dues... paying for one bedroom and the website... they give the members name, their website, how many bedrooms they have. This one claims one bedroom and the website they give is kauaivacationrentals.com which has 243 vacation rental units listed. 243 and that is not counting the bedrooms, that is just the number of locations, vacation renters and they are paying \$100 which, you know, if that is the way that they want to do, that is fine, but these people cannot be trusted to tell the truth about anything.

Mr. Rapozo: Thank you.

Ms. Elmore: By the way, of the 17 members, most of them have out of state homeowners. Some of them...

Ms. Yukimura: Are there any other questions of Ms. Elmore? If not, I just want to tell you that in the amendments that I have proposed, we have removed the 75% requirement or even allowance.

Ms. Elmore: But you are still grandfathering in all these people that have been illegal since 1982.

Ms. Yukimura: Councilmember Iseri-Carvalho, do you have a question?

SHAYLENE ISERI-CARVALHO: Yes, was there anything else that you wanted to finish that you didn't get a chance to finish?

Ms. Elmore: I did. It is interesting that in one of the letters that they have on the site from one of their customers is really... she is supporting them, but she makes the mistake of saying, it will take all Kauaians working together to protect your magnificently unique island from falling (inaudible). Some of the letters that they put on their site are written by people who have testified before you and they have given you misleading information. I would like to say one more thing here. On their site, it says... one letter is from the secretary of the Maui vacation rental association and she says, we are off to see a high powered lawyer tomorrow as the Council here has informed us a couple of days ago that enforcement will be starting and we are all be expected to close down. So on Maui, they are getting high powered attorney which I can't afford which most of the people that want to take care of this island can afford. One person says, I have been operating a vacation rental for quite a few years in the 'Anini area. My zoning shows up as ag land on my tax assessment, but when contacting the Building Department, it shows up as open land. These are the kinds of people that you are bowing to and that same person talks about doing this to subsidize the ownership of my second home. You said something earlier about them using the house part of

the year, but they don't want to give up... maybe they might give up a week or two (2), but they have a second home that they live in or third or fourth. One person here has seven (7) homes. One asked, are we criminals? Has our rental activity for the past 12 years been illegal? And my answer is, yes, it has. It has been illegal and yet you are letting them and you are just handing it to them on a silver platter.

Ms. Yukimura: Is your question answered?

Ms. Iseri-Carvalho: I think so. Is there anything else that you wanted to finish up with Barbara?

Ms. Elmore: Well, they talk on the same site about having to prove the lawful use of a vacation rental for at least a year, but to me, that is a joke. Why don't they have to prove they have been lawful since 1978 or 82 or whenever the CZO was written. Why are we letting them just prove that they have been legal since way after these talks (inaudible) and the publicity starting. I don't understand. I am sorry that I took so much time.

Ms. Yukimura: Thank you. I just want to tell you that the amendments to ban all vacation rentals on ag land not because the County is wanting to do it necessarily, but because State law already prohibits it.

Ms. Elmore: But you are allowing these 243 people with one agency to continue doing what they have been doing since that law was passed. Why did we have a CZO if they can just ignore it.

Ms. Yukimura: Excuse me, we are not allowing it. I am just telling you that we are not allowing... we are actually not following Jonathan Chun's advice necessarily. We are choosing what we determine to be the law because we have sworn to follow the law.

Ms. Elmore: I understand you are not allowing them on ag land, but the...

Ms. Yukimura: Okay, so that is it. I also want to tell that the provision that you are suggesting that says that all uses that explicitly permitted are hereby prohibited if that language had been in the CZO that... Blaine Kobayashi's opinion would have been very different.

Ms. Elmore: Well, you could put it in now.

Ms. Yukimura: We could, but it doesn't apply to... because the law applies prospectively and not retroactively, that is the whole concept of grandfathering. It is not a choice that the Council has. Grandfathering is a requirement of law.

Ms. Elmore: Where is there a law that says that you are obligated to grandfather?

Ms. Yukimura: It is in the courts and in the common law.

Ms. Elmore: Can you tell us? Caren has asked you that many times.

Ms. Yukimura: I am sorry, you can ask the attorneys. That is the law, that is the opinion and that is the law the courts have upheld and you can do by State statute, you can modify the grandfathering power which the State statute has allowed 46-4, but they don't allow it on ag... they allow it only commercial, industrial uses zoned land... those lands not (inaudible).

Ms. Elmore: So the message is. The message that I take away. Come to Kaua'i and do whatever you please. Ignore the laws because you can get away with it if you do it long enough to be...

Ms. Yukimura: The message is, Ms. Elmore, that you don't agree with what we think the law says.

Ms. Elmore: Well, that is true. I thought I made that clear.

Ms. Yukimura: So thank you very much. Is there anyone else who wishes to testify? Mr. Taylor?

Mr. Taylor: Chair and members of the Council. Thank you for this second opportunity. I just wanted to say, first of all, that I do agree with the issues that Ms. Diamond raised... that all possible to get something in there that eventually allows us all to disappear. If we are going to go forward with this, what I was speaking of earlier on page 11, number 3, and then I went back and I was looking at the definitions on page 3 and you have definitions for single family and multi-family and maybe number 3 has to be divided and looked at in two (2) different timeframes or of working activity if that may solve some of that problem.

Ms. Yukimura: It is divided if you look just below the definition of transient vacation rental. It is divided into single family and into multi-family.

Mr. Taylor: I don't read it that way, but, anyway... when I raised the issue before that three (3) months, that maybe should be six (6) months and you say, well, maybe a homeowner was in the house for a period of time, so they couldn't be renting it out, well, that is true in a single family unit, but in a multi-family unit, that wouldn't necessarily be the case and that is all that I was trying to point out.

Ms. Yukimura: Okay, do you have something else to say?

Mr. Taylor: That is it.

Ms. Yukimura: Okay, any questions? Mr. Taylor, thank you very much. Is there anyone else who wishes to testify? Okay, if not, the meeting will come back

to order.

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

Ms. Yukimura: I want to remind you all that we still have an executive session with our County Attorney in the Committee of the Whole, but because we are deferring this, we will... we will have time to absorb the legal opinion and make any other amendments if necessary. Are there any... is there any other comments at this time? Councilmember Kouchi?

Mr. Kouchi: Yes, I just wanted to say, you know, what Barbara said is certainly true. If you have an opinion, I believe the other week, the Council Chair reminded us that opinions are simply that... the interpretation of the attorney at the time and if you don't agree with that particular opinion, then you have a right to legally challenge the opinion that has come forward. Unfortunately, as Ms. Diamond has asked where is the law, the only opinion to interpret the law that was on the books was the opinion that was written by Deputy County Attorney Blaine Kobayashi. After he wrote the opinion, we did not have the proliferation that exist. We did not amend the law right away to correct the deficiency that he pointed out and in absence of legally challenging his opinion, the only reliance that anyone had as they went forward in purchasing their property and choosing the manner in which to use that property was on that legal opinion. So if you want to charge a past Council or the current Council of having failed to challenge the Kobayashi opinion, you know, we can't argue with that because we didn't. If you want to charge us with not having amended the law before this bill has come before us, you know, unfortunately, that is a factual statement right now, but right now because of what has not happened, the only law to date is that particular opinion and that is the right that gives the ability in the residential area and I speak only in residential areas only for the time the vacation rental activity to, in fact, occur and under the takings issue of the Supreme Court. They have that vested right as it exist and as Councilmember Yukimura has said, you know, as difficult as it is to acknowledge what the facts of law are that our law can only be prospective. You know, it is on that basis that as it relates to the grandfathering issue. You know, when we finally get to vote on the bill, I don't see that there is any other way for myself despite whatever personal comments I have made earlier now that, you know, I have thoroughly researched it, but to vote in support of the language that has been drafted by Councilmember Yukimura as it relates to the residential area. You know, I just wanted to say that and whoever wants to testify in two (2) weeks and tell me why they did disagree with me and that is fine too. If they want to come back and scold me because unfortunately I was here during the Kobayashi opinion and, you know, would have had an opportunity to do something else as well. I will own up and be accountable for my actions, but it doesn't, again, take away from the fact as Councilmember Yukimura said now that we have taken the oath of office, our job is to uphold the laws as they exist and that is what I will be doing, but I just want to be on the record on this one specific issue since it drew the most discussion from the people who have been here for hours today waiting to have a chance to talk to us. Thank you.

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

Mr. Rapozo: I just want to make a comment and this is pertaining to the website. Our staff was so efficient that they printed out the website while Barbara was talking and interestingly, they raise... I don't know who this is, who started this website or who writes to it, but there is a segment that talks about the recent closings at Hā'ena, the conservation land that made the front page. It was interesting, the perspective of the author and let me just read it because I think it is so interesting. Several Hā'ena property owners were served papers by the State of Hawai'i to close down the vacation rental activity by June 30 of this year. All of these properties are located in conservation land which is regulated by the State of Hawai'i and not the County directly which is true. We have no... apparently, there are special regulations in place and some of them written into the (inaudible) that do not allow properties on conservation land... at any commercial activity and that is true. It is not apparently, it is the law. You cannot have a commercial operation on conservation property. What is interesting in the next sentence where it says that our hearts go out to those who are affected. I just thought that was kind of interesting because I think Barbara is right that the intention is not really to protect Kaua'i. It is to really preserve that industry and I want to thank Barbara for providing this website because I think it says a lot and it ends by saying, one thing for sure, it is not conducive to the spirit of aloha we've all come to love about the islands. If you own a vacation rental on conservation land or any of the Hawaiian islands, it is all mistyped as well. Please click here to contact the appropriate group that will be able to help you. (Inaudible) encouraging for people to go challenge the State law, the conservation land law. I just thought that was pretty interesting because I know what happens in these meetings. As the people watch, they will go to the website, but I want them to go to that recent closings in the Hā'ena section because I think it is really not conducive to the aloha spirit. Thank you.

Ms. Yukimura: Thank you. Any other comments? If not, before I ask for a motion to defer, I just want to say that the section (g) on page 12, we really should omit and I am going to... because it is repetitive of section (f) and conflicting as well, so I am going to make the change, so those of you who have the copies, you will have a different copy from the ones that are made available from tomorrow, but that is what I am going to be doing taking out (g) and subsequently renumbering.

Chair Asing: What page?

Ms. Yukimura: On page 12. Thankfully, this isn't an official amendment. Section (g) will be taken out because it is repetitive. So people will have two (2) weeks to take a look at it. I want to ask Councilmembers if you have other amendments that you are working on, could you please let me know by next Wednesday, so we have just some time to absorb it and prepare some amendments so as to (inaudible) instead of having to do amendments on the floor on that day.

Mr. Rapozo: JoAnn, can we also get the final copy of the amendments prior to the meeting, the Committee day? This is real tough to get it...

Ms. Yukimura: I know and that is the reason I am not asking us to act on it today. We are having two (2) more weeks, so, yes, I am thinking that this is going to be pretty much it although we do have the meeting with the County Attorney yet and I am going to make some changes based on some of the input that we got today and like maybe amend the findings and purpose to make it clearer based on what Mr. Abrams has suggested and then see if we have some other inconsistencies that we just missed in trying to do this quickly. Any other comments or questions? If not, the Chair would entertain a motion to defer.

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

Bill No. 2221 A BILL FOR AN ORDINANCE TO AMEND CHAPTER 9, KAUAI COUNTY CODE 1987, RELATING TO STREET REQUIREMENTS FOR SUBDIVISIONS (Traffic calming elements)
[This item was deferred.]

There being no objections, the rules were suspended.

Ms. Yukimura: Ms. Punohu, can you first state your name?

ANNE PUNOHU: Sure, my name is Anne Punohu and I really apologize. I will be as brief as I can. I waited all day to testify and it is 7 o'clock at night, so I just want to say briefly is that when I came up to this meeting before the first time when I read the ordinance, there was some things in there that I felt were major flaws. When I went home, I thought about it even more and the more I thought about, the more I realized that everybody gets (inaudible) this ordinance if it is sunsets in five (5) years. I also realize that all of the developers that have come before have also gotten out of the... out of it and I started thinking about that and I thought, well, wait a second, is it going to work because all the developer has to do is wait five (5) years and then resubmit an application and they won't have to do it either. I can't see that many more projects coming up in the next five (5) years that are that huge that would require that requirement, so the more I was thinking about it, the more I was thinking about that nobody would have to comply with this ordinance. It is a great ordinance and we need it and the community was screaming for it at one point. These meetings were packed and the people were saying, we have to have this and here it is and we've got it and nobody is going to have to do it, really, the way the ordinance is written. My other objection was in the ordinance itself where it had some parts about the native Hawaiian language which was really... (Inaudible) really didn't make any sense and I was hoping that in this time that somebody had looked at those issues that I raised and if nobody has, I

would like to raise them again. Again, I ask you guys to relook at them, but in general, though, I agree with the ordinance. I think it is a terrific idea.

Ms. Yukimura: Thank you. Any questions of Ms. Punohu? I apologize because I had thought that you had meant the vacation rental bill when I said it was next.

Ms. Punohu: That is okay, but I wanted to say that.

Ms. Yukimura: If there are no more questions, thank you very much.

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

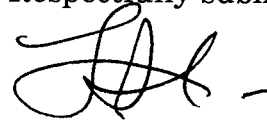
Upon motion duly made by Councilmember Rapozo, seconded by Councilmember Kouchi, and unanimously carried, Bill No. 2221 was deferred.

Minutes of the May 2, 2007 Planning Committee Meeting.

Upon motion duly made by Councilmember Kouchi, seconded by Councilmember Rapozo, and unanimously carried, Minutes of the May 2, 2007 Planning Committee meeting was approved.

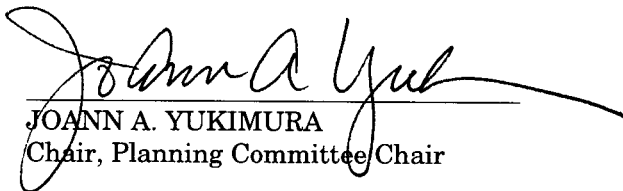
There being no further business, the meeting was adjourned at 7:02 p.m.

Respectfully submitted,



Lisa Ishibashi
Council Services Assistant

APPROVED at the Committee Meeting held on July 18, 2007:



JOANN A. YUKIMURA
Chair, Planning Committee Chair

(May 30, 2007)(7)

FLOOR AMENDMENT

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

Introduced by: JoAnn A. Yukimura

Amend Bill No. 2204 in its entirety as follows:

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

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

SECTION 1. Findings and Purpose.

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

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

"4.2.8.2 Alternative Visitor Accommodations

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

(b) The County shall enact clear standards and permit processes for regulating alternative visitor accommodation structures and operations in Residential, Agriculture, Open, and Resort zoning districts.

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

[. . .]

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

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

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

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

The purpose of this bill is to restore a balance between primary residences and single-family vacation rentals by: 1) requiring permits of all single-family and multi-family vacation rentals no matter where they are located, 2) prohibiting new single-family and multi-family vacation rentals outside of established visitor destination areas, and 3) allowing nonconforming uses where single-family vacation rentals have been operating legally and paying all taxes for a specified time prior to approval of this bill.

Because existing State law requires all dwelling units to be "farm dwelling" units when located on lands within the Agricultural District, and because the County is in a planning process of identifying "Ag Lands of Importance to the State" and revamping its laws with respect to Agricultural zoned lands, single-family vacation rentals on such Agricultural zoned lands are not eligible for a nonconforming use permit. Because the State has sole jurisdiction over Conservation lands, single family vacation rentals in Conservation lands are not addressed here.

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

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

SECTION 2. Section 8-1.5, Kaua'i County Code 1987, as amended, is hereby amended by adding [the definition for "Bed and Breakfast operation" and amending the definition for "Transient Vacation Rentals"] or amending the following definitions to read as follows:

"Bed and Breakfast Operation (B&B)" means a use of a portion of a single-family detached dwelling unit in which overnight accommodations are provided to guests for compensation, for periods of less than one hundred eighty (180) days, within the same dwelling unit in which the owner or lessee resides.

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

"Transient or Transients" means any person who owns, rents or uses a dwelling unit or a portion thereof, for less than one hundred eighty (180) days and which dwelling unit is not the person's primary residence under the Internal Revenue Code. This definition shall not apply to nonpaying guests of the family occupying the unit, patients or clients in health care facilities, full-time students, employees who receive room and/or board as part of their salary or compensation, military personnel, low-income renters receiving rental subsistence from state or federal governments, or overnight accommodations provided by nonprofit corporations or associations for religious, charitable, or educational purposes where no rental income is transacted.

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

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

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

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

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

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

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

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

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

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

- (1) Single-family detached dwellings;
- (2) Accessory structures and uses, including one (1) guest house on a lot or parcel 9,000 square feet or larger;
- (3) Two (2) multiple-family dwelling units or two (2) single-family attached dwelling units upon a parcel of record as of June 30, 1980; and
- (4) Notwithstanding subsection (3) above, multiple family and single family attached dwellings developed pursuant to a Federal, State or County housing program.

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

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

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

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

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

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

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

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

- (9) Museums, libraries and public services and facilities.
- (10) Private and public utilities and facilities, other than maintenance and storage of equipment, materials, and vehicles.
- (11) Project developments in accordance with Article 18 of this Chapter.
- (12) Retail shops and stores.
- (13) School and day-care centers.
- (14) Transportation terminals and docks.
- (15) Three (3) or more -family dwelling units upon a parcel of record as of June 30, 1980, in the R-1, R-2, R-4, or the R-6 District.
- (16) Three (3) or more single-family attached dwelling units upon a parcel of record as of June 30, 1980, in the R-1, R-2, R-4 or the R-6 District.
- (17) Residential care homes.
- (18) Adult Family Group Living Home.
- (19) Any other use or structure which the Planning Director finds to be similar in nature to those listed in this Section and appropriate to the District.”]

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

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

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

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

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

“Sec. 8-4.5 Development Standards.

(a) Residential. Subject to the density and acreage limitations in the particular Resort District as provided in Sec. 8-4.2, the standards

for the development of single family detached residential structures shall be the same as those provided in Sec. 8-3.1.

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

(1) there is no maximum distance requirement from buildings containing dwelling units to parking areas;

(2) only one (1) parking space must be provided for each three (3) hotel rooms;

(3) the maximum allowable land coverage shall be fifty percent (50%);

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

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

(1) parking spaces must be within one hundred fifty (150) feet of the dwelling unit or motel room served;

(2) at least one (1) parking space shall be provided for each motel room.

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

(1) only one sign no larger than three (3) square feet shall be permitted.

(2) no direct illumination of the sign.

(3) sign shall include the permit number for the operation.

(4) the applicant shall designate and provide the Planning Department and the public with the name and number of the owner's representative who shall be available on a 24-hour/7 days-a-week basis.

(5) The applicant shall provide a list of requirements and information entitled "For the Safety and Comfort of You and Your Neighbors" to provide essential information to the visitor and to reduce negative impacts on the community. This shall be provided to the Planning Department at time of application and shall be posted in a conspicuous location in the transient vacation rental. This list shall include suggested curfews, guidance with respect to gatherings and noise, and what to do in cases of emergency and natural disasters.

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

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

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

(2) The Planning Commission may require the dedication of adequate public access ways not less than six (6) feet

in width to publicly-owned land or waters and may require the preservation of all historic and archaeological sites, known or discovered on the parcel subject to development.”

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

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

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

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

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

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

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

- (1) Accessory uses and structures
- (2) Automobile services
- (3) Churches, temples and monasteries
- (4) Clubs, lodges and community centers
- (5) Household services
- (6) Museums, libraries and public services
- (7) Personal services, such as barber shops, laundromats, and shoe repair shops
- (8) Professional offices
- (9) Public parks and monuments
- (10) Retail shops and stores
- (11) Restaurants and food services
- (12) Single family detached dwellings on lots or parcels of no less than six thousand (6,000) square feet, and to a density not to exceed six (6) units per acre.

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

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

- (1) Accessory uses and structures
- (2) Automobile sales, repair and storage
- (3) Automobile services
- (4) Churches, temples and monasteries
- (5) Clubs, lodges and community centers
- (6) Commercial indoor amusement and parks
- (7) Department stores
- (8) Hotels and motels
- (9) Household services
- (10) Light manufacturing, such as handicrafts and garment fabrication

- (11) Minor food processing, such as cracked seeds, jellies, candies and ice cream
- (12) Museums, libraries and public services
- (13) Offices and professional buildings
- (14) Parking garages
- (15) Personal services
- (16) Public offices and buildings
- (17) Public parks and monuments
- (18) Research and development
- (19) Restaurants and food services
- (20) Retail sales
- (21) Supermarkets and shopping centers
- (22) Transient Vacation Rentals, provided they are located within the designated Visitor Destination Areas established in Article 17 of this Chapter.
- ~~[(22)]~~(23) Transportation terminals and docks
- ~~[(23)]~~(24) Warehouses
- ~~[(24)]~~(25) Wholesale outlets”

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

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

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

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

Director finds to be similar in nature to those listed in this section and appropriate to the District.

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

- (1) Animal hospitals
- (2) Bars
- ~~[(3) Botanic and zoologic gardens]~~
- (3) Botanical and zoological gardens
- (4) Commercial outdoor amusement
- (5) Communications facilities
- (6) Construction materials storage
- (7) Diversified agriculture

- (8) Food processing and packaging
- (9) Nightclubs and cabarets
- (10) Private and public utilities and facilities
- (11) Project development in accordance with Article 18 of this Chapter.
- (12) Residential dwellings, detached, attached or multi-family
- (13) Schools and day care centers
- (14) Warehouses
- (15) Any other use or structure which the Planning Director finds to be similar in nature to those listed in this section and appropriate to the Planning Director."

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

"Sec. 8-17.1 Limitations On Location.

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

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

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

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

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

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

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

"Sec. 8-17.5 Existing Uses.

- (a) "Existing" shall mean existing as of September 22, 1982.

- [a] (b) Existing Time Share Units, Time Share Plans and multi-family Transient Vacation Rentals in Projects Not Located in Visitor Destination Areas. Nothing in this Article shall impair the use in a project of an existing time share unit, an existing time share plan, or an existing transient vacation rental when such project is not located within the visitor destination areas described in Section 8-17.2. All such existing time share units, time share plans and multi-family transient vacation rentals in such a project shall be regulated according to the terms, if any, of the project instruments. However, no additional time share units, time share plans, or transient vacation rentals shall be created in such a project after [the effective date of this section,] September 22, 1982, nor shall the terms of the project instrument be

amended or modified after [the effective date of this section] September 22, 1982 in any manner that will allow an increase in the number of time share units, time share plans, or transient vacation rentals within the project. The uses left unimpaired by this subsection shall not be lost by the failure to exercise the use unless it clearly appears that the use has been abandoned for a period in excess of two years. This subsection shall not apply to hotels in Resort or Commercial Districts.

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

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

“Section 8-17.8 Single Family Transient Vacation Rentals.

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

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

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

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

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

(4) The applicant shall provide a list of requirements and information entitled "For the Safety and Comfort of You and Your Neighbors" to provide essential information to the visitor and to reduce negative impacts on the community. This shall be provided to the Planning Department at time of application and shall be posted in a conspicuous location in the transient vacation rental. This list shall include suggested curfews, guidance with respect to gatherings and noise, and what to do in cases of emergency and natural disasters.

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

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

date of this law shall apply for and secure a Class I Zoning Permit prior to the operation of said rental.

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

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

(a) The purpose of this section is to provide a process for identifying those single-family transient vacation rentals as nonconforming uses which have been in lawful use for at least one hundred eighty (180) calendar days prior to the effective date of this ordinance and to allow them to continue subject to obtaining a nonconforming use certificate as provided by this section.

(b) The owner, operator, or proprietor of any single-family transient vacation rental which is operating outside of a Visitor Destination Area shall, by March 31, 2008, obtain a nonconforming use certificate for single-family vacation rentals.

(c) No nonconforming use certificate shall be issued by the Director unless the applicant demonstrates to the satisfaction of the Director that:

(1) The applicant had a State of Hawai'i general excise tax license and transient accommodations tax license necessary for the lawful operation of single-family vacation rentals for at least one hundred eighty (180) calendar days prior to the effective date of this ordinance.

(2) That during the one hundred eighty (180) days, applicant had at least ten (10) reservations by transient guests in exchange for compensation for use of subject property as a vacation rental.

(3) That during the one hundred eighty (180) days, applicant had at least one (1) transient occupant use subject property per month for three (3) of the six (6) months in exchange for compensation.

(4) That on the effective date of this ordinance there were no outstanding violations of State or County land use or planning laws, including the Comprehensive Zoning Ordinance, and Shoreline Setback laws, and

(5) That the single-family transient vacation rental is not located on land designated "Agriculture" by State law, or that the applicant has a special use permit under HRS Section 205 on the effective date of this ordinance which specifically permits a vacation rental.

(d) The owner, operator, or proprietor shall have the burden of proof in establishing that the use is properly nonconforming. Documentation such as, but not limited to, the following may be provided to the Director as evidence of a nonconforming use: records of occupancy and tax documents, including all relevant State of Hawai'i general excise tax filings, all relevant transient accommodations tax filings, federal and/or State or Hawai'i income tax returns for the relevant time period, reservation lists, receipts showing payment. Upon a preponderance of the evidence, the planning director shall determine whether to issue a nonconforming use certificate for the single-family transient vacation rental.

(e) Failure to obtain a nonconforming use certificate by March 31, 2008 shall mean that the alleged nonconforming use is not a bona fide nonconforming use, and it shall be treated as an illegal use.

(f) The owner, operator, or proprietor who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate by March 31 of every year.

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

(i) there is in effect a State of Hawai'i general excise tax license and transient accommodations tax license for the nonconforming use, and

(ii) that the nonconforming use has not ceased for a continuous period of 12 months.

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

(1) No nonconforming use certificate shall be renewed unless:

(i) there was in effect a State of Hawai'i general excise tax license and a transient accommodations tax license for the nonconforming use during the previous calendar year, and that such licenses are current at time of application, and

(ii) there was no period of twelve (12) consecutive months during the period covered by the nonconforming use certificate being renewed without a transient occupancy.

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

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

Section 8-17.11 Enforcement Against Illegal Single-Family and Multi-Family Transient Vacation Rentals.

(a) In addition to any other penalties provided by law, including but not limited to Section 8-17.6, Section 8-24.1, and the Planning Commission Rules, as amended, the Director or any member of the public may initiate proceedings to revoke a nonconforming use certificate upon a presentation of a signed and notarized statement(s) that either the requirements of this Chapter or the conditions of approval of the certificate have not been met, or that the applicant gave false or misleading information on the application or any attachments thereto or at any time during the application process.

(b) The Director or his/her agent shall serve written notice of the proposed revocation to the applicant in person, by certified mail with return receipt, or by registered mail sent to the last known address of record as provided in the application. The notice shall afford the applicant an opportunity for a hearing.

(c) No more than thirty (30) calendar days after receipt of the proposed revocation notice, the applicant may request a hearing before the Director per rules promulgated by the Planning Commission. The

burden of establishing that a hearing is requested in a timely fashion rests on the applicant. If the applicant does not file a timely request for a hearing, the Director shall immediately revoke the nonconforming use certificate. If a hearing is requested in a timely manner, it shall be set no more than thirty (30) calendar days after the request. If after the revocation hearing, the Director determines that the statement(s) in the notice of the proposed revocation has/have been proven by a preponderance of evidence, the applicant has thirty (30) days from the Director's decision to file an appeal requesting a hearing before the Planning Commission. During the period that the appeal is pending, the Director's decision shall be stayed.

(d) Any person aggrieved by the decision of the Director in the issuance, denial, or revocation of a nonconforming use certificate may file an appeal within thirty (30) calendar days of receipt of said decision with the Planning Commission. The Planning Commission may set a hearing on the appeal only if the aggrieved party is proposing to present new evidence that did not exist prior to the decision by the Director, or it may concur with the decision of the Director without an appellate hearing. If the Commission decides to hear the appeal, the hearing shall be held within thirty (30) calendar days of the filing of the appeal. If after a hearing the Planning Commission concurs with the Director's decision, or if the applicant fails to appeal in a timely manner, the Director's decision is final. If after a hearing the Planning Commission overturns the Director's decision, the Planning Commission's decision is final.

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

Section 8-17.12 Historic Properties Exemption. Single-Family Dwelling Units on the National or State Register of Historic Places may be allowed to operate as a transient vacation rental through a use permit and by abiding by the standards of conduct specified herein."

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

SECTION 13. If any provision of this ordinance or the application thereof to any person, persons, or circumstances is held invalid, the invalidity does not affect the other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are severable.

SECTION [15.] 14. This ordinance shall take effect upon its approval."

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

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