

MINUTES

PLANNING COMMITTEE

September 12, 2007

A meeting of the Planning Committee of the Council of the County of Kaua'i, State of Hawai'i, was called to order by Councilmember JoAnn A. Yukimura, Chair, at the Historic County Building, Room 201, Līhu'e, Kaua'i, on Wednesday, September 12, 2007, at 8:35 p.m., after which the following members answered the call of the roll:

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

EXCUSED: Honorable Mel Rapozo

Minutes of the August 15, 2007 Planning Committee Meeting.

Upon motion duly made by Councilmember Iseri-Carvalho, seconded by Councilmember Furfaro, and unanimously carried, Minutes of the August 15, 2007 Planning Committee Meeting was approved.

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

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

JOANN A. YUKIMURA, PLANNING COMMITTEE CHAIR: It will be necessary to defer this bill because we have not yet received an opinion from the County Attorney regarding a memo and the questions from our last meeting when we had extensive discussions and amendments. That memo was sent out on August 20 and was received by their office on August 23. I will be meeting with Mr. Kawate on Monday to clear up any questions that they may have and I expect that we will have an opinion prior to our next meeting on the 25th. So before I entertain a motion to defer, I have a proposed amendment which I want to circulate and make available to the public for review, so that people will have adequate time to look at the measure and be able to submit testimony on it throughout the time between now and our next meeting. It is a proposal regarding vacation rentals on ag land, so I am not going to really go in too much detail right now. It is tied to the

ag rural study that is being done and for which we were supposed to have a report at our last Committee meeting and hopefully we will... it is on the agenda, so we will take that up soon. So with that, if I can have a motion to... unless there are any questions?

SHAYLENE ISERI-CARVALHO: Are these the only amendments that we have? You know, are the amendments that you are proposing as what was discussed at the last meeting?

Ms. Yukimura: The amendments that you introduced, Councilmember Rapozo introduced and Councilmember Kouchi introduced have gone to the County Attorney to ask for their input.

Ms. Iseri-Carvalho: Right. Your amendments. I think there was some discussion and especially recall about the 60 days. Is that going to be in your...

Ms. Yukimura: That has also gone to the County Attorney and if we remember on the 20th when I sent it to the County Attorney, I sent you all amendments that I had garnered from our discussion prior to the 20th.

Ms. Iseri-Carvalho: Right, so I just wanted to be assured that that had gone as well.

Ms. Yukimura: To the County Attorneys, they have.

Ms. Iseri-Carvalho: Okay, so all of the amendments have gone to the County Attorney?

Ms. Yukimura: Yes. Not this one though and we will send this one as well.

Ms. Iseri-Carvalho: Alright.

Ms. Yukimura: With that, 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. 2226, Draft 1 A BILL FOR AN ORDINANCE ESTABLISHING A NEW ARTICLE 27, CHAPTER 8, KAUA'I COUNTY CODE 1987, RELATING TO SHORELINE SETBACK AND COASTAL PROTECTION (Planning Commission recommendation)
[This item was deferred.]

Ms. Yukimura: This is the bill relating to shoreline setback and coastal protection. I had hoped to move this out of Committee today because I think we have really discussed most of the issues, but since Councilmember Rapozo is not here and had asked to be able to vote on this, out of deference to Councilmember Rapozo, I am going to ask for a deferral as well. I think Councilmember Kouchi...

RON KOUCHI: I just wanted to be marked as not participating on this item. I won't be able to resolve whether or not I have a conflict until next week, so the deferral will at least allow me to clear up my situation. There are just some logistical plans that no meeting could be held until some time next week to help clear up my situation. So I just want to indicate that I cast no vote on this.

Ms. Yukimura: Thank you. So with Councilmember Kouchi abstaining, the Chair would...

Upon motion duly made by Councilmember Furfaro, seconded by Councilmember Iseri-Carvalho, and carried by a vote of 3-1-0-1 [Councilmember Kouchi recused himself and Councilmember Rapozo absent], Bill No. 2226, Draft 1 was deferred.

PL 2007-2 Communication (8/3/2007) from JoAnn A. Yukimura, Planning Committee Chair, requesting that the Administration be present to give a status report on the Planning Department's progress in developing a plan to implement the identification of important agricultural lands pursuant to Act 183.
[This item was deferred.]

Ms. Yukimura: We have received a report from the Planning Director which we had requested and has that been passed out? So everybody has a copy of that? There were actually two (2) and did we take back the first... there was a second one to correct the first I think, but we had decided that we would not have any discussions on this bill today knowing... on this matter today knowing that we had a full agenda and that is verified by the fact that it is quarter to 9 right now in the evening. I would like to request that we set one 1:30 p.m. at our meeting on the 25th to have Mr. Costa come and make his report and answer questions and have a discussion on this matter. As it is related to the proposed ag moratorium and is also related to legislation that will be probably coming up in our next leg... with our 2008 Legislature. It is a matter of great importance and as you saw from the turnout at our last meeting, it is of great interest to citizens as well. So I think if we have a time specific and I know that Councilmembers will be leaving that evening for the Planning Officials Conference which starts the next day, so I would like to make sure that we carve out some time for this.

Mr. Furfaro: So you are suggesting 1:30?

Ms. Yukimura: Yes, I guess we have to say 1:30.

Ms. Iseri-Carvalho: And the concern that I have is that I do want to proceed with the Oceanit's report. I think that will be ready for our consideration in light of the emergency nature of that as well as the HSAC package. Of course, that has to be passed out that day, so if those items are finished, I don't have a problem with it, but we definitely need to vote on those items.

Ms. Yukimura: They will be on the morning agenda, so I trust that we can get those through. We will also have vacation rentals and shoreline setback. I would ask members of this Committee to review the shoreline setback bill, so that I think we can move that out. The vacation rentals may take time and may take another deferral, but, you know, I think we need to be prepared to grapple with that as well. I think... I am understanding that the flights are at 5:50?

Chair Asing: 5:15 about.

Ms. Iseri-Carvalho: 5:15. I think she was saying 5:50.

Mr. Kouchi: My mistake. I told her it was 5:50.

Ms. Yukimura: So that you have to be at the airport by 4:15. I would advise members to have your bags packed and ready to go.

Mr. Furfaro: You are prepared to defer the vacation rental bill?

Ms. Yukimura: If we need to, yes.

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

Mr. Furfaro: Just plan on 1:30 then.

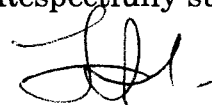
Ms. Iseri-Carvalho: That is fine.

Ms. Yukimura: Can I have a motion please?

Upon motion duly made by Councilmember Furfaro, seconded by Councilmember Iseri-Carvalho, and unanimously carried, PL 2007-2 was deferred (tentatively scheduled at 1:30 p.m. at the next Committee Meeting.).

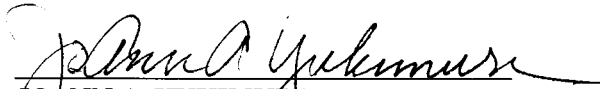
There being no further business, the meeting was adjourned at 8:45 p.m.

Respectfully submitted,



Lisa Ishibashi
Council Services Assistant

APPROVED at the Committee Meeting held on October 10, 2007:


JOANN A. YUKIMURA
Chair, Planning Committee Chair



(September 12, 2007)

P R O P O S A L

BILL NO. 2204 Relating to Transient Vacation Rentals and Bed and Breakfast Operations, as proposed to be amended in proposed Floor Amendment dated August 6, 2007

Introduced by JoAnn A. Yukimura

1) Proposed new 8-17.10(d) to read as follows:

(d) No nonconforming use certificate shall be issued where on the effective date of this ordinance a single-family transient vacation rental is located on land designated "Agricultural" by State law, unless:

(1) It was built prior to June 4, 1976, or

(2) The applicant has a special permit under Hawai'i Revised Statutes, Section 205-6-6, which specifically permits a vacation rental and the permit was secured prior to the enactment of this ordinance.

2) Proposed new 8-17.10(e) to read as follows:

(e) In cases in which a single family vacation rental located on land designated "Agricultural" by state law does not qualify for a nonconforming use certificate under 8-17.10(d), the following shall apply: upon a finding by the Planning Director that the applicant has met the requirements of Section 8-17.10(c) with the exception of the finding that the dwelling unit is a "farm dwelling" under HRS, Chapter 205-4.5, (thus establishing a prior use that has not violated any state or county planning and zoning laws, with the exception of the "farm dwelling" requirement), the Planning Department may enter into an enforcement agreement with applicant agreeing not to enforce this ordinance's prohibition against single family vacation rentals without nonconforming use certificates in non-VDA areas, provided that the enforcement agreement contains, at a minimum, provisions in which all parties agree that:

1) no rights existing at time of enactment of this ordinance will be extinguished or diminished during the non-enforcement period, nor shall new rights be created during this non-enforcement period; and

2) the suspension of enforcement shall last only until "agricultural lands of importance to the state" are identified on Kaua'i and ordinance(s) regulating said lands and the agricultural lands not so designated shall have been adopted or three years from enactment of this ordinance, whichever comes first, and

3) upon expiration of the enforcement agreement, if the subject dwelling unit is located on lands designated "agricultural" by state or county law, the applicant, owner, successor, or permitted assigns shall abide by the laws that apply to said lands, or if the subject dwelling unit is located on lands designated other than "agricultural" by state and county law, a nonconforming use certificate shall be issued therefor by the Planning Department.

ADDITIONS to Section 1 "Under Findings and Purpose"

The County is embarking on a process to designate "Agricultural Lands of Importance to the State" ("Ag-Rural planning process") and the mayor has proposed a moratorium on the subdivision of agricultural lands during this time. This process was mandated by Act 183, and had the process been completed by now, it is possible that certain units presently in "Agricultural" districted lands under state law would be eligible for grandfathering under this ordinance. To allow for the process to be completed and to recognize the nuances and ambiguities of State law regarding farm dwelling units, this ordinance allows an enforcement agreement to suspend enforcement as to vacation rentals illegal under this law by the requirement of a "farm dwelling" until the Ag-Rural Planning process is completed, but only as to vacation rentals existing legally (with the exception of the "farm dwelling" requirement) at time of enactment of this ordinance.