

MINUTES

PLANNING COMMITTEE

November 28, 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, Lihue, Kaua'i, on Wednesday, November 28, 2007, at 5:28 p.m., after which the following members answered the call of the roll:

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

Minutes of the November 14, 2007 Planning Committee Meeting.

Upon motion duly made by Councilmember Iseri-Carvalho, seconded by Councilmember Furfaro, and unanimously carried, Minutes of the November 14, 2007 Planning Committee Meetings was approved.

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: We've passed out because we haven't really dealt with this issue for quite a while now. We have passed out the documents that were before us the last time we worked on the bill and you should have the original Bill 2204 in your folder under Planning and then also a memo dated August 20 which had something that says proposal also dated August 20. The cover letter or cover memo explains the proposal that is attached with one exception. We just penciled in a change based on my discussion with Councilmember Rapozo today. And then there is a floor amendment that was offered by Councilmember Iseri-Carvalho and also something that we will pass out right now. It is proposal dated in pencil and I think it is November 28 and it has draft on it. Does everybody have the documents? It is the Chair's intention to do what actually Chair Asing did with the housing bill. I'd like to have a discussion

conceptually on these issues and then ask for proposed amendments by next Wednesday and any amendments that are proposed will be given to members by next Thursday, so that we can vote on the matter at our Committee meeting on the 12th. Councilmember Iseri-Carvalho?

SHAYLENE ISERI-CARVALHO: Yes, are you expecting to take public testimony first?

Ms. Yukimura: Thank you and that is a good thing to do too. I can do that.

Ms. Iseri-Carvalho: Alright.

Ms. Yukimura: Any questions right now before I suspend the rules? Councilmember Rapozo? No, okay. So I will suspend the rules and ask if there is anyone who wishes to testify right now. If not, I think actually we are all wanting to absorb what we get and then there may be testimony afterwards.

Ms. Iseri-Carvalho: And then I have then a motion to make if we are going to call the meeting back to order. At this time, I will be making a motion to defer this matter until all the amendments have been prepared and circulated to the Councilmembers and a date subsequent to that to be set by yourself as time to reconvene the Planning Committee matter (vacation rental), so that the public will have the opportunity at that time to have the Councilmembers fully prepared and ready to discuss all of the amendments.

Councilmember Iseri-Carvalho moved to defer Bill No. 2204.

Ms. Yukimura: If we can have some discussion about that first I would appreciate that.

Mr. Rapozo: Before I second that, I just want to say that as I read through this, these are items that we have discussed in the past and I know Mr. Furfaro had some correspondence a while back regarding amendments as well that I was quite interested in seeing. Again, the information that is in this set of amendments have been discussed, I believe, in quite a lot of detail. And if, in fact, it is the desire of the Committee Chair to defer then, I would second that motion to defer just in the interest of time because I would agree with Councilmember Iseri-Carvalho that once we get all the amendments, it just makes better sense to discuss all the amendments at one time as opposed to having the discussion today and then having the same discussion again in two (2) weeks as we have done so many times. So with that, I will second that motion.

Councilmember Rapozo moved to second the motion to defer.

Ms. Yukimura: Um, there was no motion.

Ms. Iseri-Carvalho: I made the motion to defer.

Ms. Yukimura: I would like to have a discussion before... the courtesy of a discussion before we have a motion to defer.

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

Ms. Yukimura: We usually discuss it first out of courtesy.

Ms. Iseri-Carvalho: Can I say something? You said there wasn't a motion to defer, but there was. I made a motion to defer to...

Ms. Yukimura: I did not hear a motion to defer.

Ms. Iseri-Carvalho: Can we play back the record because I am very clear that I made a motion to defer.

Ms. Yukimura: I heard that you were going to...

Ms. Iseri-Carvalho: Can I finish please? Because I did make a motion to defer and Councilmember Rapozo said that he was not going to second it yet and he proposed to explain why he was not going to second it yet. So it hasn't been seconded yet, so there is still an opportunity for discussion.

Ms. Yukimura: I heard Mr. Rapozo second it.

Ms. Iseri-Carvalho: Well, if it is seconded, then we just vote.

Ms. Yukimura: No, it has to be recognized. The motion first has to be recognized by the Chair and I would like to ask the courtesy of the Committee to have a discussion because you are cutting off debate on this meeting and I haven't even had a time to explain. Actually, what I am trying to achieve is what you all are asking for. It is much easier to put together amendments in their final form after we have had some discussion and different Chairs have different styles in terms of how to do business. Council Chair Asing did take a different way which I am trying to do right now and I would like the courtesy of the Committee to do this. We have not discussed the ag proposal that is pending before you and that... dated September 12 and it helps to draft the amendments if we have had some discussion. So I...

JAY FURFARO: Chairwoman, may I be recognized?

Ms. Yukimura: Yes.

Mr. Furfaro: I would like to say that I understand your point, but I will circulate my comments from July 17. My comments are available to those members in the audience. I would also like to say if we can take commentary from them first

and it is in a reasonable amount of time, then I can support that. I want the audience to know... quite frankly, we have had several workshops on this and that if we are going to engage dialogue in each and every amendment that is proposed in front of us, I think that is quite contrary to what we want to accomplish tonight. We want them to testify in particular on the bill. I would like to circulate my July 17 comments again, and take testimony for say not more than an hour and then give us time to evaluate the amendments that you are circulating.

Ms. Yukimura: May I ask... are you talking about doing that tonight?

Mr. Furfaro: I would support...

Ms. Yukimura: I have no objections for your July memo.

Mr. Furfaro: This is an e-mail that I circulated amongst all members and I would like to distribute that again, but I would like to limit the kind of testimony and the engagement we have today until we all have any opportunity to look at what is being put at the table. So I could take testimony, but I don't want to be here until 9 o'clock at night and still not work on the other items in the Planning Committee.

Ms. Yukimura: That is fine. I don't anticipate more than an hour's worth of discussion, but I think it is important to have... I don't think we have had a discussion on the ag proposal to my recollection and it will help develop amendments that will make us able to move faster on the amendments when we are done. This is a very complex bill. We actually... I don't know that we have had any workshop per say, but we have had a lot of discussions and I think they have been useful in helping us (inaudible) into what the final bill will be.

Mr. Furfaro: Councilwoman, if I may have the floor again and finish up. I recall being on a committee of which the Chairman allowed us some special funding to have workshops. I was once part of that ad hoc committee and there are members in the group that is here. So I want to make very clear that I am supporting your ability to take some testimony from the group, but I would like to somehow limit it until I have a full opportunity to digest what is being circulated and ask people to revisit my July 17 e-mail to all the Councilmembers.

Ms. Yukimura: Thank you.

Mr. Furfaro: And that e-mail is available to members in the audience.

Ms. Yukimura: And so what I am hearing is just to clarify and then we will go to Councilmember Iseri-Carvalho. Taking testimony from the audience, but also from amongst ourselves in a discussion, that is fine.

Mr. Furfaro: Amongst ourselves in a discussion. I don't want to be engaging every item with the audience tonight because I haven't had the time to

fully digest it.

Ms. Yukimura: No, that is correct. Thank you.

Mr. Furfaro: And if you could give me that concession, I can support what your request is to take testimony.

Ms. Yukimura: Thank you. Councilmember Iseri-Carvalho?

Ms. Iseri-Carvalho: ...make my motion to defer and the reason is because I have here a five (5) page chronological summary from when this bill started from January 2004 when the vacation rental study came out that an update to vacation rentals studies by Ken Stokes in 2005. We had this in a workshop type stakeholders group on April 8, 2005 (an agenda item from 1 to 7 p.m.). We went from May 12 to May 18 on a public comment period. This was in 2005. It went from May 19 to May 20, 2005, the public comment was received, it went back with the stakeholders group on May 21, 2005. The agenda item was from 2 to 5 p.m. which is another three (3) hours. On May 23, 2005, there was another three (3) hours. From May 24 to May 31, 2005, it was time to receive public comment. They also opened it up again for public comment period from June 1 to June 5, 2005. We then opened it up again for public comment from June 6 to July 5, 2005. We went onto July 6, 2005 and it was on the agenda from 9 to 4 p.m. July 7 to July 11, 2005, it was open for public comment period. July 16, 2005, there was another agenda item from 2 to 7 p.m. On June 13, 2007, we are here, so there... where there was extensive presentation and it was words quoted by Councilmember Yukimura. It is the intention of the Chair to move this out of Committee today. This was back on June 13, 2007 and it is now six (6) months later and we haven't moved out anything. There was executive session held and the meetings were adjourned late at night. And then there is some discussion and the executive session and it looks like we will be deferring this for one more time.

June 27, we come up and there is another presentation. There is some discussion of ag lands, it is another executive session. On July 18, 2007, we have another executive session. There is another announcement by Councilmember Yukimura that we won't be taking any vote today because we are awaiting other County Attorney responses. On August 1, 2007, there are new amendments that are circulated. On August 15, there is another executive session that is held and that item is then received. There is new floor amendments then again circulated. I think we are on floor amendment number 11. There is also amendments that were proposed by Councilmember Rapozo, myself, and Councilmember Kouchi. There is discussions of State Land Use Commission which is Anthony Ching's e-mail. There is also discussions of conflicting enforcement provisions. There are questions that relate to amortization. Those questions are sent over. We received an opinion by the County Attorney's Office on September 12, 2007. Councilmember Yukimura, the Chair of the Committee says that it is now necessary to defer this item again. We go back to September 25, the meeting goes until 5:30 at night, it conflicts with the plane reservations that we have for the Planning Conference that had been

scheduled months in advance. The matter is deferred again. On October 10, there is another response asking for County Attorney's opinion. On October 15, another response for the County Attorney's opinion on different questions and some of them the same. On October 24, we finally receive all of the answers to the County Attorney's opinions and it gets deferred again. On November 14, we come up on the same matter and it is deferred again.

We are now two (2) years from January 2004. It is three (3) years later and we are still here in Committee. I will not sit here and go through all of these amendments all over again. It is now almost 6 o'clock and we need to take a dinner break at 6:30 for the staff. We have done this time and time again and it is just very insensitive to the staff and to the people who continually have to come here every time this thing is on the agenda. Every time it is on here, I get 50 e-mails about each position... some of them, a lot of them don't change, but because it is on the agenda week after week after week, we get all these e-mails and all these hard copies of e-mails and testimony. I think it is only fair for the public that we allow them the opportunity to see all of the amendments and they have an opportunity to absorb all of the amendments instead of trying to absorb them all tonight instead of us trying to utilize our time in trying to absorb all the amendments that are finally passed out today right before the meeting. And, you know, it gives us a time, but it is just, I think, a lot of wasteful resources for our staff and for the community when we continually defer these matters especially from 2004 on this matter and we are not... it is not... you are not prepared, so I would like to, again, have you recognize that I am making a motion to defer. It takes precedence over all motions and that it be deferred until all amendments have been prepared and circulated to the Councilmembers and then there is a subsequent date that appears on the agenda for discussion. And at that time, we would be prepared on all of the amendments. Is there a second?

Ms. Yukimura: Councilmember Iseri-Carvalho, many of the deferrals were done because there weren't... your amendments were not ready. I think I asked for two (2) amendments...

Ms. Iseri-Carvalho: Let's take a vote today.

Ms. Yukimura: No, I am just saying...

Ms. Iseri-Carvalho: That is not true also.

Ms. Yukimura: You are correct in saying that I have been wanting to get this...

Ms. Iseri-Carvalho: Now we spent 20 minutes discussing the deferral.

Ms. Yukimura: And you were talking most of the time, but I have wanted to get this bill out many times, but we have deferred them because you weren't around, because you...

Ms. Iseri-Carvalho: That is not true Councilmember Yukimura that we were not here. You deferred it from 2004 because I was not here?

Ms. Yukimura: Excuse me, it was passed on first reading on 12/13/2006.

Ms. Iseri-Carvalho: And tell me, how many meetings of those were I not present? That is totally an untrue statement.

Ms. Yukimura: I am sorry Madam. What I said is, you were at various conferences, WIR, HSAC or NACo and out of courtesy, we did defer it. When Councilmember Rapozo was sick, we again deferred it. I was waiting for several meetings for amendments that both of you said you would have. I tried to write them and you... some of them you wanted to write by yourself, so this is not... and it is a very complex subject. Often times I think you requested that we go to the County Attorney for opinions and we waited long time for them. We have still not gotten all of the Planning Department's comments, so there... I don't think... I am trying to have the kinds of discussions that we perhaps should have had on the affordable housing bill, but...

Ms. Iseri-Carvalho: Councilmember Yukimura, I believe you are violating the Robert's Rules of Orders. There was a motion, there was second and there is no discussion.

Ms. Yukimura: There is no discussion until the Chair recognizes a motion.

Ms. Iseri-Carvalho: Then point of order because I do not believe you have that authority to not recognize when there is a second.

Ms. Yukimura: That is right. I am going to recognize a motion as soon as we finish our discussion. So Councilmember Kouchi?

RON KOUCHI: Well, the only thing that I have to add is that this process and I agree that everybody has their own way of working, but this is not the process like the housing bill that the Chair allowed. On the housing bill, we went through each amendment that was submitted in the morning and we worked through the process until we voted on each and every item and what the Chair then permitted was amendments to be offered at the full Council. So if you are lobbying me to support that process, I stand ready to support that particular process. But the process I hear you actually wanting to go forward with is a process where we have some of the amendments and some of the comments from some of the agencies were going to go through that limited information. We are going to ask for more amendments and then we are still waiting for agency comments and then we are going to re-engage in another discussion that may or may not arise in eventually making a decision. I, for one, also would prefer to have the information available

before I go down the road of starting to discuss it, but as we each have our own way of how we would like to work, that happens to be the way that I would prefer to work.

Ms. Yukimura: Well, Mr. Kouchi, I want to point out that every piece of paper before you right now has been... was given to you prior to this and...

Mr. Kouchi: And, again, if you are asking for me to vote tonight and work through this bill like we did on the housing bill, all I am saying is that if you want to suggest that process, that is a process that I support and that is a process that I am ready to engage in. Should that not be the particular direction, then I would happen to have another opinion. If you are waiting for reports from the Planning Department and if you are giving a deadline of next week Wednesday for further amendments to come forward, I would prefer to have all of that information before I begin the discussion, but that is my particular personal preference.

Ms. Yukimura: I want you to remember that prior to the deadline for amendments that the Council Chair set, he asked for a conceptual discussion the meeting before and that is what I am feeling we need now because we haven't been working with this material for many months and we need to all refresh our memories about what the issues are and then ask for the last set of amendments and then act on it. I have set out a schedule which I think is very reasonable and I would like some deference to the Chair's methodology of going through this process. I would give you the same in your Committee and we also, you know, Councilmember Iseri-Carvalho set her style for her Committee.

Mr. Rapozo: I am ready to vote on the bill.

Ms. Yukimura: Alright.

Mr. Rapozo: I am ready to vote on the bill.

Ms. Yukimura: Okay, then we will vote on the bill and we will start right now. The Chair entertains a motion to approve the bill.

Mr. Rapozo: Let me just ask, are you intending to pass this out tonight JoAnn because I don't want to debate this and get it deferred. If that is the intent like Mr. Kouchi said, then let's move.

Ms. Yukimura: If we are not going to give me the privilege of going through this process which I think is a reasonable one, yes. And we will go as far as we can with it. I don't think it is the best process and I am really disappointed that you cannot allow just three (3) more meetings to get this bill done.

Mr. Rapozo: What I am saying is, I have received enough information on this item in the last two (2) years to make the vote tonight based on the amendments that I have seen.

Ms. Yukimura: Well, we just changed your amendment tonight in discussion.

Mr. Rapozo: Correct.

Ms. Yukimura: So that is the kind of things that we still need to finish.

Mr. Kouchi: And, again, I want to be clear that I am not calling for the vote or forcing you to take a vote tonight.

Ms. Yukimura: Well, you are if you are not allowing the discussion and the process.

Mr. Kouchi: I am certainly happy to have the discussion, but I would prefer to have the discussion with all of the material and it would allow me to better do my job and it would allow for what I believe to be a much better process, again, only in my personal opinion. But I need to carry out my vote as I see fit and I would prefer to have all of the information, but...

Ms. Yukimura: Councilmember Kouchi?

Mr. Kouchi: To call the vote. I come every week to vote on every item on the agenda.

Ms. Yukimura: Councilmember Kouchi, I am saying that I can better prepare all of the amendments if we can go through this process. And I have outlined a process where you will get all the amendments ahead of time.

Mr. Kouchi: And I needed to apologize. I heard I was being called for... I am good to go forever. I apologize for being late, but I was calling my wife to tell her to cancel the dinner reservations for our 20th wedding anniversary because I expected to be here all night, so, you know, I am ready.

Ms. Yukimura: Alright, then I will entertain a motion to...

Ms. Iseri-Carvalho: Excuse me, can I get the County Clerk or the County Attorney present here because I would like to have some advice regarding the Robert's Rules of Order. The County Clerk is here.

Mr. Furfaro: Can I be recognized Madam Chair?

Ms. Yukimura: Yes.

Mr. Furfaro: I think when the County Clerk or the County Attorney comes to the podium, they will acknowledge that there was a motion and a second and the rules require us to vote on that. I am very concerned and, quite frankly, I

feel very uncomfortable that we have had this kind of dialogue amongst some very influential citizens that sit on this board. Now, I wanted to reiterate and unfortunately, the motion has been made and there has been a second and I think the interpretation was to me that you have to call on that vote, but I was hoping that we could have about an hour's worth of dialogue and move on so that we can all fully digest the information that we have which I think was the message that I heard from Mr. Kouchi.

Ms. Yukimura: Well, if Mr. Kouchi is willing to do that, I was willing to have an hour's discussion. I think we could get through it and then proceed as...

Mr. Furfaro: But Madam Chair, by the rules, we have a motion and we have a second so let's get an interpretation before we call for that vote.

Ms. Yukimura: Go ahead.

PETER A. NAKAMURA, COUNTY CLERK: My apologies Committee Chair. The question was, I am sorry, if you could restate the question.

Mr. Furfaro: The question came from Councilwoman Iseri-Carvalho.

Mr. Nakamura: Oh, I am sorry.

Ms. Yukimura: Is the motion in order before it is acknowledged by the Chair?

Mr. Nakamura: My understanding is there is a motion to defer and it was seconded.

Ms. Yukimura: The question is what puts a motion in order?

Mr. Nakamura: I believe that a properly made motion is in order.

Ms. Yukimura: Can you show that from Robert's Rules please?

Mr. Nakamura: No, I just needed to kind of finish. I think what happens at that point and if the Chair doesn't recognize the motion, there is a point of order that can be made by any member of the Committee and at that point, the Chair rules on the point of order. If there is a disagreement on the point of order, then it goes to the Committee of the Whole to vote on that point of order.

Mr. Kouchi: I believe should there be a disagreement on the ruling of the Chair on the point of order, then you can call for an appeal to the decision of the Chair, and a majority vote of the Committee can overturn the decision of the Chair if you appeal the decision and meet this agreement.

Ms. Yukimura: I think that is correct. Thank you.

Ms. Iseri-Carvalho: So there has been... are you saying that you did not recognize the motion?

Ms. Yukimura: May I have that Robert's Rules please?

Mr. Furfaro: Maybe it would be appropriate Madam Chair to take a five (5) minute break.

Ms. Yukimura: Yes, we will take a five (5) minute recess. Thank you.

There being no objections, the Committee recessed at 5:55 p.m.

The meeting was called back to order at 6:09 p.m., and proceeded as follows:

Ms. Yukimura: Before I take any discussion, I just want to read Robert's Rules of Order (the handling of a motion, Section 4). How a motion is brought before the assembly, the three (3) steps by which a motion is normally brought before the assembly are as follows: a member makes the motion, another member seconds the motion, the Chair states the question on the motion, neither the making or the seconding of a motion places it before the assembly, only the Chair can do that by the third step. When the Chair has stated the question, the motion is pending. Um, of course the Chair cannot forever not recognize it, so I believe the procedure stated about point of order would be correct and if, you know, I didn't follow the point of the order, you could challenge the decision of the Chair. Okay, so Councilmember Kouchi?

Mr. Kouchi: And all I was going to say if you would like to use the time up to dinner break, I certainly would not object to that and that is why I was trying to get in early to allow you to use the most time available to you to your best advantage and would support you and Councilmember Furfaro to have some discussion and we will think about the rest of it through the dinner break or if more time is even needed by the time we hit the dinner break.

Ms. Iseri-Carvalho: It is my understanding that the dinner break is at 6:30, so I think it is important that we start moving now. I am willing to go for the 15 minutes up until the dinner break.

Ms. Yukimura: Well, let the Chair just say that if we had been willing to do that when we started this, we would have been able to finish certainly with a lot less trouble and that was about an hour ago that I said that I was willing to do an hours worth of discussion and end it there.

Mr. Furfaro: So let us begin.

Ms. Yukimura: Let us begin. So you have before you the original Bill 2204 and the memo... I spoke with Councilmember Rapozo about his definition and

his proposed amendment which was made, I can't remember, but it was made a while back and we sent it to the County Attorney for discussion or opinion, but he agreed that if we call it homestay instead of bed and breakfast, that we would not need to include meal in it. So you will on page 3 of the August 20 proposal that we are suggesting that we can do that and I want you to note that we can do this because we are not discussing a formal amendment and that is what I mean in terms of being able to have a informal discussion and then craft the amendments. I think it will save a lot of time and effort. So that would mean that home stay means an owner occupied dwelling unit in which overnight accommodations are provided to transient guest for compensation for 180 days or less with the same dwelling unit in which the owner or lessee resides. And then I want to point out that we had required registration that was one thing. The stakeholder's group all agreed on that we should require registration of all single family vacation rentals or actually all vacation rentals and that we would... we had originally proposed to do it by registration through a special permit with the Planning Department, but that is a very odd thing that the Planning Department would monitor registration of units that are built and already occupied. So instead, there is an amendment that I proposed and I believe it is incorporated in this August 20 proposal, but it would basically require registration with the Finance Director because that is a normal duty of the Real Property Tax Division to monitor use. So that is one of the suggestions. We also... let's see, the ag issue has been the most problematic I believe and I tried to explore ways to address in a balanced form all the concerns of the various stakeholders on this issue and if you would look at November 28 (it is in pencil) draft proposal. This is a system which would have single family vacation rentals located on lands designated as agriculture where they make request or application for nonconforming use certificate and the Planning Director finds that they are not a farm dwelling, then the Planning Department may enter into an enforcement agreement with... agree not to enforce the ordinance's prohibition under certain conditions and the most important of which... it allows... it is a suspension of enforcement until the ag lands of importance to the State are identified on Kaua'i. This would prevent people who are on ag lands presently from being penalized just because the County has not yet identified important ag lands and because they may be identified as not ag anymore and in which case they wouldn't be bound by the State law prohibiting ag vacation rentals. So that is an alternative proposal for vacation rentals on ag lands and I commend that to your consideration over the time between now and our next Committee meeting. Other than that, you know, this proposal was passed on August... was passed out on August 20 to Councilmembers. I don't think we passed it out to the public, so if you have any questions about that, we can cover them now. Go ahead Councilmember Iseri-Carvalho.

Ms. Iseri-Carvalho: Yes, I will be asking the Committee to release all the... I am making a motion to release all of the County Attorney's opinions on this vacation rentals. I think that these proposals have been forwarded to the County Attorney and I think there has been specific responses that call into question, the illegality of some of the proposals that are forward and I would be asking that those opinions be released. You know, it is interesting to me how we submit proposals

and we ask the County Attorney to respond to those proposals and when there is a question as to the legality, we ignore them and we still submit the proposal. So I think it is important that the public knows that the proposals... that some of these proposals may be submitted contrary to decisions that have been provided by the County Attorney's Office and I think it is only fair that they understand what kinds of opinions we have been receiving and yet we have waited for the last several months for opinions from the County Attorney's Office and then when we finally get them, you know, a lot of those may not be considered.

Ms. Yukimura: Well, I would support that and...

Ms. Iseri-Carvalho: Alright.

Ms. Yukimura: And so we can put that on the agenda so that we can act on it.

Ms. Iseri-Carvalho: We can just do it. I don't see anything that prohibits us from not doing it.

Ms. Yukimura: Well, I don't think it is... those opinions are on the agenda right now.

Ms. Iseri-Carvalho: It says about consultation regarding privileges, immunities and...

Ms. Yukimura: We are not on that item right now. We are not even in that Committee.

Ms. Iseri-Carvalho: Well, I am just telling you what my intention is going to be. I have some concerns about this myself that we are making a special exception just for ag. Why don't we make a special exception for people who are not in the VDA areas? Why don't we make a special exception for anyone else and also the problem that I have here is that it says that the Planning Department may enter into an enforcement agreement, but it is not really an enforcement agreement, it is actually a non-enforcement agreement because it says, it will enter into a enforcement agreement with the applicant agreeing not to enforce this ordinance as law. Why pass the law if we are telling the Planning Director not to enforce it? That is a concern of mine. I don't think, number 1, if it is the law, I don't think that the Planning Director is the only person who is capable of enforcing that law. The Prosecuting Attorney's Office is responsible for enforcing all of the laws whether it is a County law, a State law, so that would not prohibit the County Prosecutor from enforcing this law should it pass. I believe there is a lot of legal issues with respect to this proposal and, again, I will not be, of course, supporting it simply because we cannot do selective enforcement on one group and not another and that is what this proposal purports to do.

Ms. Yukimura: Well, that is very good input and that is one of the

reasons I wanted to have the discussion tonight because we may not even propose the amendment, but we never had time to discuss it and so it is really good to hear your thoughts on it. Any other discussion? Councilmember Bynum?

Mr. Bynum: I want to support the motion that we would release the County Attorney's opinions... all of them regarding the vacation rental agreement. Many of you know that I proposed that several months ago and the Council chose to defer that and not even allow discussion. I think that County Attorney opinions as to law are released routinely all over the State and I think that adds to the public discussion and understanding of this process to have County Attorney opinions as to law released. I have prepared a presentation regarding that and I was never allowed to do it because Councilmembers deferred and shut the discussion down. So I am surprised to hear that and I am supportive and we have an agenda item later on the agenda tonight that would allow that to be discussed and I am ready to discuss it.

Ms. Iseri-Carvalho: I just wanted to clarify. It was not only the attorney's opinions, but all of the executive session minutes and the discussions that went with vacation rentals.

Ms. Yukimura: Yes, okay, Councilmember Bynum?

Mr. Bynum: I am sorry. Councilmember Iseri-Carvalho, you are saying that would be your motion?

Ms. Iseri-Carvalho: There is no motion now, I am just clarifying because you indicated that you only were supportive as I had initially stated was about releasing the County Attorney's opinion on all vacation rental request by the Council, but that would be not only the County Attorney's opinions, but all of the discussions that were contained in all of the executive sessions.

Ms. Yukimura: So I think that is a discussion really for the next Committee of the Whole... I mean the next Committee which is the Committee of the Whole, so if we can continue and we have very little time to finish up our discussion on the other vacation rental matters. I want to invite Councilmember Iseri-Carvalho to discuss her amendment if she wants to at all.

Ms. Iseri-Carvalho: No, I think everybody is fine. It speaks for itself. I will give you your five (5) minutes.

Ms. Yukimura: Thank you. Councilmember Furfaro, would you like to discuss...

Mr. Furfaro: No, I just had an opportunity to circulate it again. Those were my comments on what I thought was necessary to be in the bill. My e-mail referenced the statistical information that we got after Mr. Ken Stoke's presentation and I think many of those items are being discussed. I do want to point

out though because of a posting of this item, I think earlier Councilwoman Iseri-Carvalho indicated that we should take public testimony and maybe we should be asking that question in case there are individuals that want to share something before the dinner break because they won't be present when we return.

Ms. Yukimura: Thank you. I appreciate the suggestion and I was going to go to that after your talk.

Mr. Furfaro: I sensed you would. Thank you.

Ms. Yukimura: The Chair would suspend the rules at this time and see if anyone would like to testify.

There being no objections, the rules were suspended.

Ms. Yukimura: Is there anyone who wishes to testify at this time? I see a possibility, but we don't have much time, so if you do want to speak, please come forth now. Yes, no? No, alright. Thank you. Then we are back to order in Committee. Is there any further discussion? If not, the Chair would like to request that any proposals for anymore amendments be submitted to Jade Tanigawa by next week Wednesday which is the 5th of December and we will try to get all the amendments circulated to you by the following day.

Ms. Iseri-Carvalho: Okay.

Ms. Yukimura: Okay, any other questions about process? If not, Councilmember Iseri-Carvalho?

Ms. Iseri-Carvalho: Yes, I will again make my motion to defer to a date until all amendments have been prepared and circulated and a time certain when everybody is prepared to have discussion and then it will reappear. So I will be asking if either this matter can be received or deferred until all of the amendments, again, have been prepared. It appears that proposals are going to be submitted by Wednesday. I don't know how much time Councilmembers will need based on that additional time for proposals. But I do not believe that in two (2) weeks, everyone will have the necessary time to go through all of the amendments including the community groups, so that would be the motion that I would make either to receive this item and then when the Planning Chair has received all of the comments from the Committee members and everybody is prepared to vote on all of their amendments that we put this back on the agenda. So at that time, the members of the public will come in force as they will know that we will be prepared to hear their testimony, go over all the amendments and will be prepared to take a vote on that date.

Ms. Yukimura: The Chair has to clarify as to... the motion can't be an "or", so it needs to be...

Ms. Iseri-Carvalho: So I am asking assistance from the other members what they would prefer.

Ms. Yukimura: The Chair would request a motion to defer period, so that this matter is deferred to the next Committee meeting. I gave outlined a timetable and I expect that we will have all the amendments to you by then.

Mr. Furfaro: The next Committee meeting, if I understand, are Council agenda. It will be the 12th.

Ms. Yukimura: December 12.

Mr. Furfaro: December 12, so I am not sure. I concur with Councilwoman Iseri-Carvalho that we could defer date specific December 12.

Ms. Yukimura: Yea, you can just defer it and it will go to the December 12 agenda. I mean I think I heard people saying that they are ready to votes, so I am not assuming that there are going to be many more amendments.

Mr. Furfaro: Well, my compliments to you that you have been very specific about the dates and the agenda schedule to circulate everything, so I would think that I could support the deferral date specific of December 12.

Ms. Yukimura: Well, would you make a motion then?

Mr. Furfaro: I shall make a motion.

Ms. Iseri-Carvalho: Well, maybe... I don't know if Councilmember Rapozo has any comments.

Mr. Rapozo: I am hoping that at the next Committee meeting, the amendments will be prepared. I think you've set out the schedule. I believe you have. You are asking for your amendments... all amendments by Thursday.

Ms. Iseri-Carvalho: By Wednesday.

Mr. Rapozo: Wednesday and we will get it by Thursday, is that correct?

Ms. Yukimura: That is correct.

Mr. Rapozo: And I don't anticipate any additional amendments after that, so I don't see a problem.

Ms. Yukimura: There could very well be as they were on the housing amendments as we enter final discussion.

Mr. Rapozo: Correct.

Ms. Yukimura: And I don't think we ever prohibit that. I don't think it is a good idea to prohibit that, but we are trying to do our best to narrow it down, so that we can get to a final vote on this matter.

Mr. Furfaro: I think it is important... I am sorry Mr. Rapozo, I didn't have the floor.

Mr. Rapozo: No, I am just saying that, like I said earlier, I have reviewed the amendments that have been circulated although not formally adopted or introduced, but there is not much more that I think can be discussed in this matter. I think we've heard from the public, we continuously get testimony via e-mail. It is surprising how many e-mails that I get from non-resident homeowners on this matter that are... we are affecting their livli... (change tape to 5B). To me, it is quite insulting to tell me that I am affecting their lively... they don't even live here and the bottom line is that this matter has been on the floor for quite a while. I have done extensive research, I have spoken to many people, I have seen the amendments... like I said earlier, you know, I thought today we were going to come up and introduce the amendments, pass it out of Committee and get it done. Last night, I was at a function and an honest critique from a citizen came up and said, you guys remind me of Congress. You guys defer everything every week, every time. You guys defer, defer, defer and what else you guys get to discuss? And, you know, this is an honest critique and I thought about it and I sat down and I said you are right. We defer things, so that we can discuss it again next week hoping that we will find the magic bullet, the silver bullet. You know, there comes a point in time where, as elected officials, we just have to make the call and if it means us losing the election, so be it. But we cannot sit here for years and years waiting for something to... the light go on, so we can say, okay, now I got the answer because I can honestly say in this matter, there is really not much more that I need to make my decision. So Madam Chair, I have no problem deferring it to the next Council meeting, but I just hope that we can make a commitment that maybe we can get it out.

Ms. Yukimura: It is going to be deferred to the next Committee meeting.

Mr. Rapozo: Committee, I am sorry, Committee meeting and that will give everybody a couple of weeks to digest amendments and like we did in the housing, I think the Chair handled it well. You cut off the point, no more amendments and we got two (2) weeks, go down the amendments, take the vote, if you win, you win, if you lose, you lose and we move on. We got a ton of stuff that we have to get rid of and I kind of want to see some of these things passed before the end of the year.

Mr. Furfaro: I, again, want to offer my motion. I think I have heard from Councilman Rapozo his intent and support as well to be very date specific, but

also for those in the audience and others. The Chairwoman has set for this Council a deadline of December 5. I want to make certain that we all understand that. If we are going to look at amendments up until the 5th of December, that request and compliance is for anybody who wants to suggest anything. We need to take action and I think Councilwoman Yukimura has set up a clear calendar for us, so I will make that motion again and if I can get a second to defer until date specific December 12.

Councilmember Furfaro moved to defer Bill No. 2204.

Ms. Iseri-Carvalho: Well...

Mr. Furfaro: I heard you wishing to defer if you have a date specific.

Ms. Iseri-Carvalho: Right, and I would support that with the understanding that we are prepared to vote. With the affordable housing policy despite the schedule, an aggressive schedule as that, that was set on the night of... we went until midnight from 9 o'clock in the morning until midnight... after midnight, in fact, the night before Thanksgiving on a bill when the amendments were supposed to have been done two (2) weeks before. So we can set all the deadlines and we think deadlines means that is the drop dead deadline and, yet, when it comes on the day of vote, there are amendments that are circulated and it is not one amendment, it is not two (2) amendments, it is five (5) new amendments that are circulated on the day of the vote. I would hope that this... if that is going to be the case, then I do not... if I do not get a promise from this Chair that that is not going to be the case and I am not going to support a deferral to December 12, I am going to support a deferral to get this off of the agenda until everybody is ready and not that we come here in two (2) weeks and we are having the staff run around until midnight preparing amendments and amendments and amendments and amendments. So if that is the course of action that the Committee Chair is going to take that all proposals and amendments by every person needs to be submitted by December 5, I can support that and that we vote on September 12 (meant December 12)

Ms. Yukimura: I am committed to vote on December 12. I am not committed to prohibiting amendments because I believe it is an important part of the process up to the end. Often times it is a sign that there hasn't been enough discussion prior to the amendments. At least that is the way I view it, so I think we need to have always the opportunity to amend and we have to work on the bill until we come to... Robert's Rules of Order allow for cutting off debate and all kinds of things based on rules that we will follow. Okay, so the Chair would entertain a motion to defer. It is coming to dinner time.

Mr. Rapozo: And I understand that it is your intention to pass it out at the next meeting?

Ms. Yukimura: Yes on the 12th.

Mr. Rapozo: On the next Committee meeting?

Ms. Yukimura: Yes.

Mr. Rapozo: Correct, and if, in fact, things change and that more amendments are proposed, then it would be deferred?

Ms. Yukimura: No, not necessarily. If we just stick and work on it, we will pass it out. We will do what it takes to pass it out and it takes all of us to pass it out. It is not totally under my control.

Mr. Rapozo: Well, I understand that, but I just don't want to... what I don't want to see is what has happened in the past if you go... we go through the late evening hours and then we defer after all the discussion.

Ms. Yukimura: We deferred it because they said go see the County Attorney or... we haven't deferred it because we have been all finished and we just wanted to defer. We have never been there.

Mr. Furfaro: Chairwoman, I think what we heard at the table is a commitment from members of your Committee to kind of commit to getting information circulated through our Committee members by the 5th. We are sharing that goal and it is a goal and with other members here in the audience and we have clearly heard your intention to pass this out of Committee by the 12th of December.

Ms. Yukimura: And I have had many intentions to pass it out of Committee before and for reasons beyond my actions, it has been deferred.

Mr. Furfaro: I...

Ms. Yukimura: And so it does take a Committee to actually get it out. Alright...

Mr. Furfaro: There is an old saying about happiness and, you know, happiness deals with, you know, the pursuit of happiness is not a singular activity, it is a collaborative effort, so let's shoot for happiness on the 12th of December.

Ms. Yukimura: The motion will die for a lack of a second.

Mr. Rapozo: I will second the motion to defer.

Councilmember Rapozo seconded the motion to defer.

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

Ms. Yukimura: Since we are past the time for a dinner break, we will take a dinner break now as well as a caption break and we will be back by 7:40.

Mr. Furfaro: Thank you Chairwoman.

There being no objections, the Committee recessed at 6:36 p.m.

The meeting was called back to order at 7:51 p.m., and proceeded as follows:

Ms. Yukimura: We are now on PL 2007-2.

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 did request the presence of the Planning Director, but I understand that he is not present. I want to also state that we asked... we sent a communication with some follow up questions and asked that they be sent to us in writing prior to the meeting and we have not received that either. Because the Planning Department is not present, the Chair would ask that Mr. Costa be called and asked to come while we go onto the next item. So we will put that at the end of the agenda and proceed to the next three (3) items which we will take all together.

THE COMMITTEE MOVED TO BILL NO. 2243.

CR-PL 2007-9: on Bill No. 2243 A BILL FOR AN ORDINANCE AMENDING ZONING CONDITIONS IN ORDINANCE NO. PM-2002-362, RELATING TO ZONING DESIGNATION IN LĪHU'E, KAUA'I (Kaua'i County Council, Applicant) (Recommendation from the Planning Commission)
[Received for the record.]

Bill No. 2210 A BILL FOR AN ORDINANCE AMENDING ZONING CONDITIONS IN ORDINANCE NO. PM-2002-362, RELATING TO ZONING DESIGNATION IN LĪHU'E, KAUA'I (Kaua'i County Council, Applicant)
[This item was deferred.]

Ms. Yukimura: It is the Chair's intention to have these issues... we haven't seen these issues for a while since they were before the Planning Commission and came back to actually have a discussion on the proposed suggestions for Bill No. 2210 and then later for Bill 2177, Draft 1, but I thought it

would be helpful to have time to consider this. If the Committee would prefer to vote on them tonight, then I would like to hear it. I want to say that I think we need to deal with both bills simultaneously. That is, I don't think we should approve one without the other. Yes, Councilmember Iseri-Carvalho?

Ms. Iseri-Carvalho: It would be my preference for us to, again, make a decision today. There were terms that actually reflect back from 1990 with respect to these two (2) bills. We have had traffic impact analysis studies done back in '02, we have had the zoning amendment for the 16 family lots which was back in '05. We have had Planning Commission public hearings back on October 25, 2005 which is two (2) years ago. We had input from the Director of State... of Transportation at that time back on December 23 of '05. We have also had the opportunity to review the Kaua'i Long Range Transportation Plan. We have had the various bills and they have gone back to Planning Commission where they voted for the amendment on February 14, 2006. We had Council public hearing on May 24, 2006. We had the testimonies of the Planning... at that time, Deputy Planning Director Keith Nitta. We also have the County Engineer. We also have the Civil Defense Agency's plan. We have the Harbor Division 2001 master harbor's plan. We also have the traffic impact analysis for the Costco area that was done on February 23, 2005 which was revised on June 28, 2005. We also have the benefit of the expert witness that held a workshop back on December 2006 which was by Jim Charlier that provided a lot of input and a lot of hours. We also had the Council amendment back on February 14 of '07 (almost a year ago) that went back over to Planning. I think we have had a lot of extensive discussions. We have all the evidence that we need. We've had the testimony by the community, by the various groups, community groups articulating their position (by the Stop Light group as well as the Ulu Ko II groups as well as Grove Farm). I think we are well prepared today. I would expect to vote and get this matter out of Committee and that would be my recommendation that we take all the testimony that we evaluate all of the amendments and that we make a decision.

Ms. Yukimura: Thank you. May I hear from other members of the Committee?

Mr. Furfaro: Are we, at this point, circulating potential and deserved amendments? I do have one that I am introducing by request which really references the, you know, the amended dialogue that we had that was sent down on Nuhou Street to follow the original alignment in the form of an amendment. I do want to reiterate that there are major parts of this that I support, but it is by request that I do it and if we have dialogue, I will be happy to express couple areas of concern. Do we have that to be circulated?

Ms. Yukimura: Yes.

Mr. Rapozo: Do you want to entertain a motion to approve the bill?

Ms. Yukimura: No, I first wanted to just get input about how we proceed.

Mr. Rapozo: Okay.

Ms. Yukimura: And in answer to Councilmember Furfaro's question, there are three (3) amendments that are going to be on the table and we can move into, you know, actually amending the bill if we wish, but that is... so if there is other input about what we should do, I'd like to get that first before we proceed on moving.

Mr. Rapozo: I know you mentioned three (3) amendments and was one of them mine?

Ms. Yukimura: Yes.

Mr. Rapozo: Okay. One of yours is on 2210 and...

Ms. Yukimura: You are taking both items right?

Ms. Iseri-Carvalho: Can we ask the staff because I think it would be difficult for them as far as preparing the minutes and the Committee reports for those two (2) items.

Ms. Yukimura: We are on 2210.

Mr. Rapozo: Okay, so for 2210, I do have... they are working on finalizing the amendment, my amendment (basically attaching a map).

Ms. Yukimura: Okay, we can start with discussion on the one that Councilmember Furfaro has introduced by request. It is coming around right now.

Ms. Iseri-Carvalho: Oh, okay.

Ms. Yukimura: So... alright, is there anymore discussion on process?

Mr. Bynum: So there are two (2) amendments to 2210?

Ms. Yukimura: Yes.

Mr. Bynum: One introduced by Furfaro by request and one introduced by Councilmember Rapozo.

Ms. Yukimura: Yes.

Ms. Bynum: Thank you.

Mr. Kouchi: And you are not introducing yours?

Ms. Yukimura: The one Councilmember Furfaro by request is the same as mine. I cannot introduce a bill (meant floor amendment) as the Chair. So those are the two (2). I would actually like to have some discussion on both before we go into amending them because we may be able to merge them depending on the discussion and otherwise we have the problem of having to change the amendments to be an amendment to an amendment. So I would like to be able to discuss both amendments first. Yes, Councilmember Iseri-Carvalho?

Ms. Iseri-Carvalho: I think that we have been advised that pursuant to Robert's Rules that that is not proper to discuss two (2) amendments at the same time. In fact, we need to have discussion on a motion and a second on that motion before we can have discussion.

Ms. Yukimura: That is true, but as you recall, the Chair did have a conceptual discussion even when we had a bill before us, the housing bill and we had several amendments. So I think it is easier that way because then we are both familiar... we are familiar with both amendments and if we find a consensus, all we need to do is one amendment and that amendment may have to be modified by us coming to that discussion.

Ms. Iseri-Carvalho: I guess my position would be that we cannot dispense of the rules just for the matter of simplicity on a case by case basis. We need to follow the rules and be consistent. We have been advised of that...

Ms. Yukimura: Well, I would like to see that rule in writing.

Ms. Iseri-Carvalho: Can I finish please? We have been advised by the County Attorney. We can pull the minutes and we can get his advice.

Ms. Yukimura: No, let's just see the rule in writing.

Ms. Iseri-Carvalho: So if you want to, that is the same rule we have articulated and we can go back to having Robert's Rules stated on the record and that would be fine.

Ms. Yukimura: Alright.

Mr. Kouchi: Have you offered the amendment Mr. Furfaro?

Mr. Furfaro: I just acknowledged that it was being circulated. I have not offered it at this particular time.

Ms. Yukimura: Let's go with the main motion then.

Councilmember Rapozo moved to approve Bill No. 2210, seconded by Councilmember Kouchi.

Mr. Furfaro: Yes, now there is by request a circulation of amendments as I pointed out in a brief dialogue that the first one in area 6 references...

Ms. Yukimura: Councilmember Furfaro, could you just make a motion to approve as circulated and we will get a second and then you can explain the amendments or your concerns.

Councilmember Furfaro moved to amend Bill No. 2210 (by request) as shown in the floor amendment which is attached hereto, seconded by Councilmember Kouchi.

Ms. Yukimura: There is a motion and a second. Discussion? Councilmember Furfaro, would you like to start?

Mr. Furfaro: Yes, I will start by basically saying again that this was by request. There are some particular areas that are there for the purpose of discussion, but basically it addresses the original Kaua'i general plan amendment of 2000 providing that it should be a two (2) lane road from its intersection with the extension of Ahehe Street to Niimalu Road. Also, there is in 7, an expansion of the multi use path (a minimum of 10 feet) that, you know, if, in fact, we should have an intersection at Ulu Ko, that it should be a straight "t" intersection. Also, in there are question about signalization with the State Department of Transportation... an improvement fee of \$350 primarily for the passive park and also the one that I have some challenges with is the permitting power for the traffic flow not necessarily being tied directly to approval of subdivisions.

Ms. Yukimura: Okay.

Mr. Furfaro: And that is the highlights.

Ms. Yukimura: Thank you. Any other discussion?

Mr. Furfaro: Oh, and I would like to say that there is an exhibit attached to that (exhibit A).

Ms. Yukimura: Councilmember Kouchi?

Mr. Kouchi: I would just say that I do support the two (2) lanes. I don't support based on the testimony that I have received to date the Ahehe extension. As I understand it, that would be cutting through the park, so I would support leaving the park open. I don't have objections on the multi use path. I certainly support and have heard that a straight "t" intersection would be more desirable. I like that we have specified a fee because it was an open ended issue when we last discussed this at the Council, but I would want to hear from the applicant, you know, their feelings on this because, obviously, this is something in excess of the park dedication fee and would need to be something that we would need to work out and then certainly I would like to hear the clarification on the 80

feet. Although I know it is clear in here, I just want to know that, you know, from the applicant, that this is consistent with their representation and for the representatives of the community who have been continuing to come forward that this consistent with theirs. So those are my comments on this particular amendment.

Ms. Yukimura: And we will allow for public testimony. I just wanted to have some vetting of the issues before.

Mr. Kouchi: Oh, no, but that is why I am just saying my sentiments at this time.

Ms. Yukimura: Any other comments or thoughts? Councilmember Rapozo?

Mr. Rapozo: Yea, again, I will... my amendment will reflect my comments, but I would agree that the cutting through the park is... I never supported that. I did concede to it once the community appeared to be okay with it, but, again, recently we see quite a bit of testimony from the residents of that area wishing for us to preserve and save that park. I know Council Chair (a while back) asked the applicants to stake out the park and it was quite graphic to see how much park we were going to lose on the frontage area. So that would be reflected in my amendment as well that we would do away with the Aheahe Road extension. The other issue and I appreciate Mr. Kouchi bringing it up as the 80 foot, the buffer zone. In my amendment, it reflects the road to be built within the existing 80 foot easement simply because of... I have some concerns (the legal concerns) that we may go beyond the... or it become a takings issue. I haven't had response yet or confirmation from the attorney one way or the other. But, apparently, as you review the land deeds, the easement that was turned over to the County actually shows 60 feet and not even 80 feet and I am not sure where the 80 feet came from. I am assuming that the applicant extended the easement to 80 feet, but the actual deeded easement is showing only 60 feet. So I am trying to figure out a way that we can make this work. The existing easement as I am told is 80 feet that includes the roadway, the buffer, the bikepath and all of that. I am not sure that the... some of the members of the public is happy with that, but unless I hear otherwise from the County Attorney, it is real difficult to go beyond that fearing the potential lawsuit or increase in liability would occur. So, again, I think we will have more discussion when my amendment is introduced, but those are my comments at this point.

Ms. Yukimura: Yes, Councilmember Kouchi.

Mr. Kouchi: Real quick. I did forget that while my desire is not to have the road connect through Aheahe, my second alternative would be if it has to that it would be two (2) lanes and not four (4) lanes as has been suggested at (inaudible).

Ms. Yukimura: Thank you. Councilmember Iseri-Carvalho?

Ms. Iseri-Carvalho: (Inaudible-mike off)... to speak verbally with the County Attorney. Just from a lawyer's perspective, general discussions surrounded whether there was, you know, detrimental reliance in the fact that the State Land Use map show a 60 feet easement and then, you know, we have the 80 feet and then we are now as a County body... I think in this amendment, increasing it to 104 feet, what I would like again with respect to this is to discuss more thoroughly that aspect of takings issue and a detrimental reliance. I mean if... and I look at all the bills that we have had because I really want to try to address the Ulu Ko II group in trying to give them as much as we possibly could without resulting in any litigation. I look at the PM-206-80 (meant PM 206-90), you know, PM-2002-362... you know, all of the bills that reference this area of Nuhou Road, the most that it references is 80 feet that goes even back from 1990. So now to expect Grove Farm to give an additional 24 feet is concern and if they would do it, that would be fine without any objections to it. I don't know if that is something that Grove Farm is able to do, but I think from a perspective of a legal interpretation, it would be difficult for the County to now impose the landowner to give an additional 24 feet when... from 1990, it has always been, at the most, 80 feet. So I would like to get the County Attorney's opinion. I am willing to vote for the matter today. I do want a County Attorney's opinion and do want that County Attorney's opinion to be released to the public on the kind of litigation issues that we face should we decide to go with one amendment versus the other because it is issues that I believe the attorneys have raised previously should this occur that we do take this additional 24 feet from Grove Farm without getting nothing in exchange, without condemning the property or utilizing eminent domain or any of those opportunities that the County has. It would be extremely difficult for us as much as I would love to do it to impose on the developer, yep, just because we want it, you have to give us 24 feet. So that would be something I would be requesting of the County Attorney to give that opinion so that the public is aware that should we decide to vote for either amendment, that we are voting to in reliance or not in reliance of a County Attorney opinion. And just having done my own legal research of this matter, I have done extensive research with respect to trying to impose additional conditions which they... persons who we are imposing the conditions had absolutely no knowledge of, could not prepare for, and I keep coming up with these issues of reliance which we have raised in other areas as well and also is this a taking when we take away 24 feet extended over I don't know how much hundreds of feet without any compensation to the developer.

Ms. Yukimura: Thank you. Just a point of clarification. You want a written request to the County Attorney or do you want him up right now?

Ms. Iseri-Carvalho: Yes, I would like him up right now.

Ms. Yukimura: Okay. The Chair will suspend the rules. We will hear from the County Attorney, hear from any other Councilmember. I will make a little presentation and then we will go to the public for comment.

Ms. Iseri-Carvalho: Alright, thank you.

Ms. Yukimura: Thank you. The County Attorney is gone for the day.

Ms. Iseri-Carvalho: I think those are important questions and...

Ms. Yukimura: So how would you like to handle it?

Ms. Iseri-Carvalho: I would think that, you know, I have my own legal research, but I am not the person to advise the rest of the community with the legal research that I have done, so I would like to have that opinion. I guess we can pass out... if people are comfortable with passing out the bill without that opinion, that is fine, but before we actually vote on the final passage of the bill, I would like to see the County Attorney's opinion in writing and that it be released to the public.

Ms. Yukimura: Well, you won't be here, both of you, for the next Council meeting, so, I mean, it is possible that we can just defer to the meeting on the 12th, get the County Attorney's opinion, finalize it in Committee and then vote on the 19th in Council.

Ms. Iseri-Carvalho: Okay, thank you.

Ms. Yukimura: Okay, let's see. Any other comments? In the meantime, staff, can you bring in the bulletin board and have we called Mr. Costa too? I want to make sure that we have done that.

Mr. Rapozo: While we are waiting for the bulletin board, may I make a request?

Ms. Yukimura: Sure.

Mr. Rapozo: It is a general request that we have a County Attorney available on Wednesdays.

Ms. Yukimura: That is always my expectation.

Mr. Rapozo: I am tired of attorneys having to catch a plane, attorneys having to leave the room. I have made this concern known a while ago and it frustrates me that our staff has to stay here until we are done, the public has to stay here until we are done and our County Attorney's Office has consistently done this to us and I will not tolerate it another meeting. If, in fact, they continue to do this, I will ask for the removal of the County Attorney. I am really sick and tired. One day a week is all that we ask and as you can tell in my tone, I am frustrated. Staff, please draft a memo to the County Attorney's Office by myself that I expect a County Attorney... I don't care which one to be here that... for the duration of the Council meeting on Wednesdays only because that is what was assured to us in the County Attorney's job interview. It was assured to me and that was my concern

and to sit here again with one more “no attorney available” really upsets me. So please make a note, send that memo across, send a “cc” to the Mayor. Thank you.

Ms. Yukimura: Thank you Councilmember Rapozo.

Ms. Iseri-Carvalho: I am sorry, Councilmember Yukimura, were you aware that the County Attorney was not going to be present?

Ms. Yukimura: I was not and I would actually, as Committee Chair, appreciate being informed when they are leaving. This has been an issue before as well.

Ms. Iseri-Carvalho: I think you have raised that at another meeting.

Ms. Yukimura: I have and I am going to piggyback on Councilmember Rapozo’s statement. I feel the same way about the Planning Director. He is an appointed official. We are not talking about overtime. We are asking that they be on-call, not present all the time, but on-call when the issues come up. It is extremely difficult to do our work when we don’t have them present (have him present or other Department Heads present). Okay, let’s see. Are there any other comments that Councilmembers want to make on the amendment that is before us? Councilmember Bynum?

Mr. Bynum: The amendment that is before us, to me really reflects kind of where... pretty much where the Council was at before this went back to the Planning Commission. I, too, would like to see an opinion regarding whether the additional buffer zone that was requested by Ulu Ko II is appropriate and I am delighted to hear that we are discussing releasing County Attorney’s opinions as to law as the State of Hawai’i has done since the 60’s. You know, hopefully we will discuss that further. On the other hand, my memory of when we had this discussion was that there was an attempt to kind of come to an agreement and be collaborative and that Grove Farm... Senior member of Grove Farm agreed to widening the roadway there, so, you know, that was surprised at the time and that is my memory that Grove Farm agreed to an additional buffer zone in that area and I think that would be really nice for us to come to compromise similar to the one that we were, I thought, close to earlier in the year.

Ms. Iseri-Carvalho: Councilmember Yukimura, and maybe that can be resolved. I am not sure as Councilmember Bynum said. He recalls the position of Grove Farm that it was... I don’t know how much was the actual amount when they finally decided on what they were going to give or not give, but if that stands, then we don’t need to discuss that. I mean because if they are voluntarily willing to do this, then we would not be in a situation of detrimental reliance or takings and compensation and liability to County imposing conditions. So if that is resolved, then that helps us to move forward.

Ms. Yukimura: And we will help Grove Farm for their comments on this.

Before we do that, I am actually going to ask Councilmember Furfaro... I am going to yield the Chair's gavel to you if you would assist me.

Mr. Furfaro: That is appropriate. I will act as the Chair while you are making your presentation.

Ms. Yukimura: Thank you.

Mr. Furfaro: Thank you. I am sorry that I walked in front of the camera on my way back.

Ms. Yukimura: No problem, so if you will take the Chair, I want to ask to make a brief presentation.

Mr. Furfaro: Councilwoman, you would like to get the mike and pointer and you have the floor.

Ms. Yukimura: First I want to say that this has been a really long journey for everyone of us involved in this and I appreciate everyone's perseverance and participation. This amendment that was kindly introduced by request by Councilmember Furfaro is something that I put together as a starting point for tonight to bring us back to where we were before we sent it the Planning Commission. This is the map that Mr. Charlier, you know, brought forth before us all. If we start with condition number 6 on the floor amendment that Councilmember Furfaro is introducing by request, you will see that it addresses the issue of Nuhou Road. You know, there seems to be a consensus now that we do need to continue this and part of that came out of Mr. Charlier's education about connectivity and he showed how... if you just make a single road, have everything flow onto it and it being the only way to get around, you really cause traffic problems and, you know, only one way to get out and only one way to get to anywhere. He showed us this grid system which he said helps us to understand connectivity.

Mr. Furfaro: Mr. Itamura, thank you for being there to assist with the props.

Ms. Yukimura: Thank you, that helps a lot. So you will see that... here is Nāwiliwili Road and here is Nuhou Road and you see that it forms this grid area... it helps to form a grid that allows not just one path, but two (2) paths to get from one point to the other. And then you will see right here is Nokekula, right here is Aheahe and right here is Pikake and because we are doing a retrofit so to speak, we are not starting on a blank page, we are having to deal with what is already here. We approximate cross lines which means then somebody trying to get to here can come this way, come this way, come this way, or vice versa, somebody trying to get down here can cross over here, here, here. That is what he explained really helps in transportation planning, so I would love not to put anything by the park. I put that

in the amendment because I was remembering my lessons in transportation planning and I think it is totally ridiculous to do a four (4) lane and I also am against a swerving stub out, but I thought a good compromise might be a "T" intersection. Now, the other thing that I noticed last night as I was looking at the map is, you know, this effect of having a swerve, but was done in 2000 (inaudible) actually could be accomplished if we did a swerve at Pikake, you know. And actually when I drive, I am always backtracking because my intention is to go to Nāwiliwili Road, but because the road... excuse... this Pikake, I am sorry. Because it is a "T" intersection with Pikake, I am always going down... I am sorry, I am going down the Nuhou Road instead of turning onto Pikake like I want to. And, actually, it makes a nice path to just go this way, and then that would lessen the tendency to go down Nuhou Road. Again, it starts to just divide up the traffic. I mean one of the reasons for connectivity is that... then you don't put the load on one road, so Nokekula instead of just on all Nokekula and Pikake you would have three (3) ways and then it gets split more and by having Nuhou besides Nāwiliwili, you also split up the burden. I mean that was kind of one of the frame works we were made aware of and that is part of the reason for these amendments. I do put them forward for discussion because we could choose to go other ways. But coming back to number 6, okay. There shall be a buffer of 80... so the proposal is, Nuhou continues down its original alignment, but instead of a four (4) lane road, it is a two (2) lane road. I think it is far more appropriate and I think as we do more of a transportation planning in networks and connectivity, four (4) lane roads will become less and less a necessity. So I think that too was a good compromise. Now the buffer zone is one of the bigger contentions and we will hear from Grove Farm. One of the reasons I proposed it is because I do recall too that Grove Farm, at one point, said it's possible, so we need to hear from them. The other part of this proposal is a berm and, you know, I thought that the berm idea had some merit to consider and we need to hear Grove Farm's input on that too, but I think that would lessen the impacts. Let's see, and then of course, I think we are pretty much in agreement that there be an extension of Nokekula to Nuhou to give us that cross connectivity. And then I did put in... following the alignment specified here, the applicant shall construct and extend the existing Nuhou Road to its intersection with Nokekula at the same time that Aheaha Street is extended to Nuhou Road, but no later than seven (7) years from the effective date of this ordinance. I thought we needed some timeframe and I thought surely if you are going to build Aheaha, you should also build the Nuhou at least down to Nokekula. The rest of Nuhou, I said should be built... completed prior to final subdivision approval of any subdivision rezoned in the original... rezoned for in the original ordinance (that was back in 1990) and before final subdivision approval of any subdivision down here. My thought being that at final subdivision approval, they are selling lots and I need to be corrected if my assumption is wrong. But they are going to need a roadway down here, so that would be a logical timeframe to require the building of it, but we should hear from Grove Farm about that. Okay, and then Nuhou Street shall connect to Niumalu Road in an intersection designed that shall be approved by the Department of Public Works to facilitate access to Nuhou Road from Niumalu Road. I mean I... there could be a tendency to try to make it really difficult. I think it needs to be a really workable intersection here although I think the tendency will be

for truck traffic to go along Nawiliwili, but we want to facilitate a lot of... not a lot, but car traffic, you know, along Nuhou Road and I don't think we can have too many traffic calmings or... well, we need to do appropriate traffic calmings, but we don't want to make it so convoluted that you are discouraging car traffic. So I didn't address all of that in that detail and I am going to hope that, you know, our Public Works and Planning is going to address that because it will serve as a collector road and you can't have... I mean a collector road is not like a neighborhood street.

Going onto number 7, the applicant shall use a multi-use path along Nuhou and that is part of the diagram. I said because there is so much land, we should make it 12 feet. You know, there is so much buffer land, we should make it 12 feet because that is the best practice. I am becoming more and more concerned about, you know, pedestrian bicycle conflicts on the shoreline path and I think we need to have adequate space for a growing population into the future. Really, you know, my thought is, if we have safe bikeways, young kids can just drive from their bike from their neighborhoods down the bikeway pretty much to the harbor (to Kalapaki Beach and to the park). I mean even pedestrians could walk that way. I mean all of a sudden, it is such a wonderful recreation and exercise possibility. So I am saying 12 feet wide all the way down, but up above (change to tape 6A)... input from those who are going to be affected or who feel like they need to give input here. And then, okay, so the other big issue is Aheahe Street and, like I said, I would love not to put any street there, but I think we do have to think about connectivity and it should just be two (2) lanes and it should be a "T" intersection that will, you know, reduce the impacts along that place. I know the Chair may have something to say about this. I have signalization of Aheahe according to threshold criteria of the State Department of Transportation. If you do signalize it, it will probably move more of the traffic toward the signal because it theoretically will be easier to make a left turn then at Nokekula, but I don't know for sure. And then for the park, the applicant shall construct a chain link fence with gates around the perimeter and shall provide improvements worth up to \$350,000 for a primarily passive park subject to approval by the County and an advisory committee established by the County. And then subject to an agreement with the County, the applicant shall provide for lawn and landscape maintenance of the park in perpetuity. Those are pretty big requests, so we need to discuss it. You will notice that I just said lawn and landscape maintenance, not facilities or improvement maintenance because I thought that was a bit too much to ask and I thought maybe their golf course crews wouldn't have a hard time just going across the street. I see Mike shaking... Mr. Tresler shaking his head and I think they need to tell us what...

Mr. Furfaro: They will be given that opportunity.

Ms. Yukimura: Right, so... and then finally, actually my... if I agree to put a two (2) lane extension of Aheahe, it would be only on condition that we limit access to the commercial district, Grove Farm's commercial district because if you put a lot of ins and outs on Nāwiliwili Street, it will back up traffic, you know, south of Nāwiliwili. So for me, that is a condition. I think it is really important to restrict access and I don't know what uses of the Case house that Grove Farm is

anticipating, but if it is big parties and stuff, you will have a lineup to try to get in there unless there is really good access off of Pikake using... and I don't know what the nature of commercial is that Grove Farm is thinking about. It is not supposed to be... you will notice that it is gas stations, 24-hour retail convenient stores and major anchor type retail outlets are prohibited and that is from the... that is legislation in, I think, 2002 or maybe 1990 and that is not something that we are proposing. It is already in there, but it somehow makes sense to me to come off of Pikake, have some parking there that can be shared for the Case house and prefer to see access that way. And the DOT is not mentioned because I didn't think we had jurisdiction over them, but I thought the County could, through its permitting powers, implement our restriction of access. So that is the proposal and if any of you have any questions, I am happy to answer them.

Mr. Furfaro: Before you give up the mike, I will ask members, are there any questions of Councilwoman Yukimura's presentation? Did you have one?

Ms. Iseri-Carvalho: I had a question. If the Aheaha connection doesn't occur and there is the Nokekula, are you suggesting that maybe that would require signalization?

Ms. Yukimura: I wasn't suggesting that, but, you know, the traffic will be greater on Nokekula than if Aheaha were also extended. I mean that I think is Charlier's point that, you know, you can have it spread out if you have more access ways, but...

Ms. Iseri-Carvalho: And I think it would be kind of like the same language that you used here like signalization shall be implemented when the threshold criteria for signalization used by the State department are met.

Ms. Yukimura: You could do that. Now, see, there are other ways to address it which could be addressed when the... because I believe Nāwiliwili Road is the State highway. When the State does its long range land transportation plan, there were suggestions of left turn lanes, you know, like doing it in Kapa'a where you have a middle section to do turns that may help Grove Farm Homestead. I haven't forgotten Grove Farm Homestead, it is just that we don't have a lot of jurisdiction through this bill over Nāwiliwili Road. But you could... if you have three (3) lanes and then you have the middle lane being a turn lane, you could turn in a lot of different places and that might help or you have left turn... what do they call them?

Mr. Furfaro: Stacking lanes.

Ms. Yukimura: Stacking lanes, I mean, or median strips that creates that, you know, I am not a traffic engineer and that is the kind of thing that we would have to consult with a traffic engineer for.

Ms. Iseri-Carvalho: And the other thing that wasn't brought up is a lot of construction going on on Nāwiliwili Road, so when we inquired as to what kind of

construction was going on, they are, from my understanding and we can get that from the public who's actually inquired as well with the State Department of Transportation that they are building a bikeway along Nāwiliwili Road currently.

Ms. Yukimura: I think it is just widening the shoulders which is not a bike lane, but a bike route I guess and wider shoulders do help.

Ms. Iseri-Carvalho: So that would also, I would think, increase some traffic flow and hopefully people will be using the bike lane or bike route there as well. So, you know, I am trying to figure out what would be the easiest way to allow traffic to flow smoother.

Ms. Yukimura: Well, with all of the expansion of the harbor and the harbor uses, I think we can be pretty clear that there is going to be a lot of traffic on Nāwiliwili Road. In fact, I think the intention is to actually reduce the traffic going through Līhu'e Town to make it go around and that means more traffic along those alignments.

Mr. Furfaro: Thank you ladies for the very constructive narrative that just went on there after the Councilwoman's presentation. Are there any other members who have questions of Councilwoman before I give her back the floor?

Chair Asing: Yes, I have.

Mr. Furfaro: Go ahead Mr. Chair.

Chair Asing: As a non-member, I hear the word passive park. Now what happened to the park? The original plan for the park was not a passive park, so how come we are going to a passive park now? I mean has the community changed their mind and don't want a park that was originally planned as park with park facilities.

Ms. Yukimura: Um...

Chair Asing: So I am not sure where the passive park came from.

Ms. Yukimura: I am not sure either. I think we've had some mixed messages from the neighbors in the area, but it really would take a community planning effort and I know there was one and that needs to just be, I think, re-confirmed, so that they can go ahead. We can take out passive park. I think part of the reason for putting it in was Grove Farm's fear that they would be saddled because, you know, the other provision or the previous provision regarding this park was that they would take care of all improvements and maintenance in perpetuity. So, you know, a passive park kind of lessens that burden than if you have a lot improvements. So we could take out passive park and not require them to do perpetual maintenance or we can limit it like I have to lawn and landscape, so they wouldn't be responsible for the facilities. There are kind of many ways to configure

this which is why I wanted a discussion before we had a formal amendment, but we can still configure this amendment.

Mr. Furfaro: Thank you. If there are anymore questions of the presentation, specifically the presentation, I will entertain them before I turn the floor back to Councilwoman Yukimura. Mr. Bynum, go right ahead.

Mr. Bynum: So Councilmember Yukimura, your intent with the bikepath was to have it 12 feet in width which is the standard from the Ulu Ko II down to Niumalu Road, and then 10 feet from Ulu Ko II to Pikake?

Ms. Yukimura: Actually, I think I said from, let's see, I am sorry.

Chair Asing: I don't think you can say through Pikake because if you go to Pikake, Pikake has an existing sidewalk area and I don't know if you can call it a bikepath, but I do not believe that it is 10 feet in width. If I am wrong, you correct me, but I do not believe it is 10 feet, so is it the intent to take an existing area and do a 10 feet?

Ms. Yukimura: I actually got that from Councilmember Bynum who I think has been in discussion with Grove Farm and we can get confirmation from them too tonight. But I understand there would be somewhat of a retrofit job done from Aheahe north. But, anyway, the way that this is written in answer to Councilmember Bynum's question to me, if you look at condition 7, the second sentence. It says that the multi-use path shall also connect from Nuhou Street to the Ulu Ko park side and except for the section that shall run along the Ulu Ko subdivision to Niumalu Road, the multi-use path shall be a minimum of 10 feet. So I don't know if that is clear. We might have to clarify it. I mean I used along Ulu Ko subdivision because I knew we were going to have that big buffer and it made sense and all the way down to Niumalu. And then above that is mainly a retrofit, but you can take it from here, but I not...

Mr. Furfaro: Well, actually, he can take it from me to go there, but I would recommend that we defer that question until we actually have the applicant maybe give us some clarity onto what can be retrofitted and so forth. That would be my suggestion, but I will recognize Mr. Bynum and anxious to turn the meeting back over to Ms. Yukimura.

Mr. Bynum: I am fine to defer that question because there is some history to it and discussion with the applicant and then... and that is the only question that I have regarding the presentation.

Mr. Furfaro: Thank you. Councilwoman Yukimura, I want to thank you for an excellent presentation. I will turn the chairmanship of the Committee back over to you.

Ms. Yukimura: Thank you for able substituting. Okay, so anymore

questions. If not, the Chair is going to suspend the rules and I would like to hear from the community as well as from Grove Farm.

There being no objections, the rules were suspended.

Ms. Yukimura: Grove Farm, do you want to start? Mr. Tresler?

LORNA NISHIMITSU, COUNSEL FOR GROVE FARM: For the record, Lorna Nishimitsu, counsel for Grove Farm accompanied by Michael Tresler and I guess we are here to address Councilmember Furfaro's proposed amendments.

Mr. Furfaro: Thank you, but those amendments were introduced as a...

Ms. Nishimitsu: By request?

Mr. Furfaro: By request.

Ms. Nishimitsu: Yes, I understand that.

Mr. Furfaro: They are Councilwoman Yukimura's concepts.

Ms. Nishimitsu: The most critical, I believe, would be the expansion of a reserve area into the Grove Farm... the existing golf course. I know there are some concern that our consultant, Robin Nelson after being questioned by Councilmember Yukimura about a year ago said that the golf course could be pushed into the... the roadway could be pushed into the golf course by 30 feet and absolutely no more. But subsequently, Mr. Nelson sent a letter to Grove Farm saying that, basically, you can design anything. The issue is whether it is going to be a safe design, a prudent design, and whether it is right for the course. In his letter dated December 12 to Grove Farm, there was a (inaudible) retraction of the prudence of doing that realignment and I think the issue as has been pointed out by Councilmember Iseri-Carvalho in some of the discussion that has been occurring is that Grove Farm through the series of zoning amendments pursuant to its masterplan for this area, set aside easement 195 in anticipation of future development including Wai'oli and all of this area. That reserve was validated by this County twice and Grove Farm reserved that area and then started to do construction in reliance upon that reserve that the County expected and committed lands around it to the golf course and, you know, the holes were built in reliance upon all and pursuant to all necessary building permits. So we concur and we probably should have stated it earlier, but maybe foolishly never thought it would go this far... we are concerned that it would be a taking without fairly compensating Grove Farm for now having to figure out how it is going to redesign its golf course and keep it at the level of play that it currently is classed for. And we certain... we have been looking at the issue of the taking and the reasonable nexus between all of sudden in 2007 now, pushing a roadway alignment into the golf course for the purpose of accommodating what will hopefully be a 16 lot residential subdivision with no rationale as to why that roadway now has to be jogged from its planned

alignment into the golf course. There doesn't seem to be any connection between this proposal and for those reasons and perhaps I owe you an apology, I didn't jump up screaming a year ago saying this just doesn't seem right. So that addresses that particular issue.

On the issue of the park, Grove Farm can live without extending Nuhou through Aheahe which means that we would have to look at Nokekula as an extension, but then, again, that puts the traffic... and it had always been planned. I mean, Nokekula is obviously a road that was supposed to stub out into lot... easement 195, but that would put the traffic perhaps to the detriment of Ulu Ko into an area maybe that it shouldn't be diverted to... and pushing it through to Aheahe, of course, affects the park. So that balancing act, we throw back to the Council about where you would like to see the punch out at. I think Grove Farm is willing to live with other alignment and leave the park alone going to Nokekula or vice versa. Grove Farm did commit a year ago to perpetual maintenance of a passive park. Now if the Council sees fit to have this park...

Mr. Kouchi: I thought the agreement or the offer was three (3) or five (5) years, and so, you know, we want to be clear on what we are saying, then I want to be clear on what I am hearing. So are you now agreeing to perpetuity contrary to what was said the last time?

Ms. Nishimitsu: I might have to go through my notes, but on the Robin Nelson one, I did go through my notes and it was on December 6.

Mr. Kouchi: I just remember that the limited term seemed to be more irritating than the original declining to maintain it at all. And that is why I know that the offer was only for a limited term and not in perpetuity a year ago.

Ms. Nishimitsu: It was a limited term.

Ms. Iseri-Carvalho: If I could respond. That memory is exactly correct. I think Grove Farm had come in and had not committed at that time. It was the Council's objective to obtain in perpetuity and discussed about the plans and that was at that time that Councilmember Kaneshiro was here and that is when he presented the plan that the community had done. In light of that plan and in light of not knowing what was actually going to be developed, the only commitment from Grove Farm at that time had been for three (3) to five (5) years as stated by Councilmember Kouchi. So it is nice if you are coming here today.

Ms. Nishimitsu: Well, I think the issue was that the community's plans were not for a passive park.

Ms. Iseri-Carvalho: Right.

Ms. Nishimitsu: It was for all of these facilities and the issue of who would have to replace (inaudible) had not been addressed and that might have been the

hesitation on the part of the... of Grove Farm not knowing exactly what it is this community group might expect would be placed within the park facilities. Grove Farm, as far as improvements, did commit to the chain link fence and installation of irrigation I believe and they haven't backed down from that. But because everything is so unclear at this time with these various amendments that are floating. If it is a passive park, that is one thing and Grove Farm can go and price it out. If it is going to be a park that has baseball, basketball, whatever the community wants, then it is another cost item that would have to be done to a park that already exist, has already been dedicated to the County of Kaua'i and has not been used to its... by the neighborhood to the extent that it could have and I think (inaudible) because it lacks the facilities.

Mr. Kouchi: And I understand on the first issue when you were talking about the 80 feet and the legal issues that surround it. You are the attorney for Grove Farm, so you are addressing a legal issue now that you are talking about offering the maintenance on the land... the limited maintenance that is described in the amendment in perpetuity. Are you or would you state for the record that you are the authorized agent on behalf of Grove Farm that is able to make that representation or do we, for clarity, need to have Mr. Tresler as the Vice-President of Grove Farm make that representation I mean as we go forward since we seem to be splitting the legal issues. I just want to be sure what we get represented tonight is not going to be different as we go down the road, so that we can kind of go through the issues one by one and hopefully come to a conclusion on this matter that doesn't get us in court.

Ms. Nishimitsu: That is a point well taken Councilmember Kouchi and I believe I am not authorized to offer up Grove Farm's resources. Obviously, I am their attorney and I am not authorized beyond that, so Mr. Tresler would have to address what kind of resources Grove Farm can commit in connection with that 16 lot request.

MIKE TRESLER, GROVE FARM PROPERTIES, INC.: Good evening Councilmembers. Obviously...

Ms. Yukimura: State your name again.

Mr. Tresler: Mike Tresler, Vice-President for Grove Farm Company.

Ms. Yukimura: Thank you.

Mr. Tresler: Obviously as mentioned with the limited term, we would prefer that. I guess it is not clear exactly what the expectations are in the park at this time, so, you know, I'd rather hold comment until later as far as what is the clear direction of this park and what will happen. I know and so forth and if I can request that, I hold comment until we know exactly what the expectations are or the request are.

Ms. Yukimura: Other questions of Mr. Tresler or Ms. Nishimitsu? Councilmember Bynum?

Mr. Bynum: I want to talk in terms of we were here earlier this year and had these discussions and it is not a matter for me at this point and I will get that clarified later of what the legalities are. I heard clearly from a high level Grove Farm executive that they agreed to a 30 feet additional buffer. That surprised me when I heard it, but I heard it and in good faith, that is what was said and subsequent to that, you know, I had discussions with the Grove Farm executive subsequent to that where that, you know, huddled in the back, back there, and the pressure was... and the question was whether you are willing to increase that buffer and the answer was yes and that is pretty strong memory. I think we have that on record and I think in good faith, you know, that was said.

Mr. Tresler: Again Councilmember, I was... present I wasn't employed by Grove Farm at that time. We did go back and looked at the minutes and video and to our knowledge, we don't show that Myles Shibata was the executive that you are talking about at that time agreed to that. I think what you are referring to is Robin Nelson's comments and, again, this whole issue was sent back to the planning process, so everybody could basically step back and look at what was best for everybody involved and it went through the process. Again, having expert testimony and our position has been all the way through since I have been involved is that within the 80 foot reserve that was set for the road, we are willing to build a two (2) lane road... build the IIA(?) extension and that has been our consistent policy. There is a liability issue that was made clear in our expert's testimony. It was reaffirmed in his letter to us subsequent to the meeting about the safety issue as well. You know, again, we are trying in the big picture. Basically, this is the final phase or close to the final phase of our Puhi/Puakea master development. We've installed major improvements off-site, surface water treatment plant, sewer plant, roads, we had a landfill issue that we lost density on, we've developed great communities and we have been, I guess, this thing has basically deferred or held us back or it has been a long time, two (2) years, from us doing market units. We have done our 60% affordable units. We have done all these things and it is very detrimental to our company. We've basically satisfied most, if not all, most of our conditions and basically we are trying to get to develop and sell our market units. We would and we respectfully request that we have some resolution in all that we've asked and we have been very cooperative and we will remain cooperative. But that road be built within the 80 foot reserve that has basically been there from the beginning. We built the course in reliance on that and we think it is a fairness issue and it is a safety and liability issue as well. So that is our very simple and straightforward request.

Mr. Bynum: If Aheahe was to be built as a two (2) lane road, it requires some of the park to be used and Grove Farm has committed to increasing the size of the park, so it remains in square footage the same, is that correct?

Mr. Tresler: That is correct.

Mr. Bynum: And that is all I have right now, but I might have others.

Ms. Yukimura: Yes, other questions? Council Chair?

Chair Asing: Yes, I guess I have some concerns about the Aheahe connection going through the park. I think that it has a definite impact on Ulumahi and Pualoke coming out of that area and as Councilmember Yukimura pointed out on the...

Ms. Yukimura: Chair, can you speak more closely to the mike, then I think everybody will be better able to hear you.

Chair Asing: Coming out of Ulumahi and Pualoke on Aheahe if you were to get that going through, boy, there is no way you are going to make a left turn on Aheahe to Nāwiliwili unless you have a stop light. And I just... I have a difficult time supporting the road going through the park.

Ms. Yukimura: Other questions?

Mr. Tresler: There is something else that I would like to address is our historical access of Nāwiliwili that you discussed Councilwoman Yukimura. It has always been a position that it is under the jurisdiction of the State Department of Transportation and we've had discussions with them. He has offered his comments on it and we've discussed our historical access off of that area to Nāwiliwili. You know, obviously in your amendment as I read it, you are trying to basically eliminate those accesses and we are asking this Council that we leave it up to the State Department of Transportation who has jurisdiction over that State road to make those decisions.

Ms. Yukimura: Okay, I think... I understand that we have permitting powers though when you come in for Class IV zoning and so forth that we can and have often conditioned access ingress and so forth, so I don't think we are out of our jurisdiction. I guess about that issue, how many ingresses and egresses are you... would you build or allow if there were no limitations?

Mr. Tresler: I believe there are three (3) that exist and we intend to stay within the three (3).

Ms. Yukimura: So one is the entrance to the... the driveway to the Case house, right?

Mr. Tresler: There is another... yea.

Ms. Yukimura: And one is a utility or maintenance access?

Mr. Tresler: There is two (2) residential. There is a Case house, there

is another residence, and then there is access that is to the commercially zoned area.

Ms. Yukimura: Okay, so the other residence is the one that I think Mr. Shibata mentioned as a maintenance access or something.

Mr. Tresler: No, no, it is the maintenance manager's house where he lives.

Ms. Yukimura: Okay, and then you would have just one to your commercial area?

Mr. Tresler: Well, I believe those three (3) will be consolidated and we won't add any basically, so we will use three (3) in that area and if I am not mistaken, that is what it is.

Ms. Yukimura: But you are using it for commercial purposes and it is not just a driveway then. It is actually for more than just a homeowner, those three (3) accesses because they are all going to funnel into one. When you say you are going to combine them, I mean, I rather you just have one access and then make it go to three (3) places.

Mr. Tresler: You know, again, we will work with engineers and the State Department of Transportation to ensure that.

Ms. Yukimura: I know.

Mr. Tresler: You know, it is something that works with them. We have three (3) accesses and all we are saying is that we would want to maintain...

Ms. Yukimura: Yea, but I want you to see there is something coming out from Ulumahi, there is Grove Farm's access beyond the Aheahe... south of Aheahe, there is Pikake coming out and there is just a lot happening there.

Mr. Tresler: There is also a turning lane that is already built to turn into that section if you notice. That is all that we are asking is just to maintain that and don't take it away. There is no reason for it to be taken away.

Ms. Yukimura: Well, but you are going to increase the use. It is not just going to be a driveway if it is access to your commercial properties.

Mr. Tresler: And I understand and it has been zoned by the County for that purpose.

Ms. Yukimura: Okay, other questions? I have some, but I'd like the members (ex-officio and official) to ask first. Councilmember Bynum?

Mr. Bynum: Are there other portions of this amendment that concern you? You mentioned the buffer and the commercial access.

Mr. Tresler: You know, I am going to have to mention the bikepath because we have never agreed to do a 12 foot bikepath. That was never agreed by Grove Farm. We, in fact, stated that we would do, I believe, an eight (8) foot bikepath and to be consistent in connecting through Nuhou, all the way up to Costco area. Councilmember, I am just stating the facts that we didn't agree to build a 12 foot bikepath.

Mr. Bynum: I agree with you.

Mr. Tresler: Thank you.

Mr. Bynum: What the current bill says before amendment is that the applicant shall construct a multi-use path along the north eastern boundary of Nuhou Street from the Pikake intersection and continuing on the Niualu Road to which (inaudible) with Nāwiliwili Road. The multi-use path shall also connect from Nuhou Street to Ulu Ko Park site. The minimum width of the multi-use path shall be 10 feet of concrete pavement surface. That is what is in the bill prior to amendment and that is what is in both amendments. Do you have any objection to that language?

Mr. Tresler: I am going to have to defer my comment now and let me read through what you just read through because I didn't hear something that sounded familiar and the 10 feet. I just recall that we agreed to the 8 feet and I am not saying that we won't agree to it at this point in time. Again, we agreed to do the bikepath.

Mr. Bynum: And Mr. Tresler, the reason I bring this up was this was the first amendment that I ever did as a Councilperson was on this language that I just read and it was done in consultation with meetings with Grove Farm (questions in advance). Are you okay with this... specific discussion with your staff about whether this language was acceptable. And then it was only after that the amendment was entered.

Mr. Tresler: Okay, so I need to verify with our staff that was present at that time because I was told that it was eight (8) feet, so, you know, I am sure that it can be resolved.

Mr. Bynum: I will accept that for now.

Ms. Yukimura: Councilmember Kouchi?

Mr. Kouchi: I guess you have a, for once, easy question this evening. Is it something that could be resolved tonight or understanding your title is Vice-

President and there is a President and is this something that would need to be reconfirmed with the President and something you could not answer tonight?

Mr. Tresler: I can confirm it tonight.

Mr. Kouchi: I just want to be sure if I stay here, it is going to be productive.

Ms. Yukimura: Okay, other questions? Okay, if... you talk about this 80 foot reserve, is that amount that was set aside for a four (4) lane highway?

Mr. Tresler: You know, from the records I have seen, it was actually 60 feet and through the process we agreed to at a 20 foot buffer, so it became 80 feet for the four (4) lanes.

Ms. Yukimura: Okay, if in the wisdom of the majority of the Council, it goes to 52 feet buffer, plus 24... 56 buffer, plus 24 feet of road.

Mr. Tresler: I believe the drawings said 52 feet buffer and then 24 foot for the two (2) lanes and then there is a four (4) foot gutter and curb that abuts the golf course.

Mr. Furfaro: Councilwoman, may I just add a question?

Ms. Yukimura: Sure.

Mr. Furfaro: If we always to maintain the easement or the right-of-way, potentially a four (4) lane highway, what was that width projected at, at the time of the original land use consideration I guess.

Mr. Tresler: I believe that was 60 feet.

Mr. Furfaro: For four (4) lanes.

Mr. Tresler: Yes.

Ms. Yukimura: So you basically... if it is even a 50 foot... you said 52 foot buffer?

Mr. Tresler: Yes.

Ms. Yukimura: And a 24 foot road?

Mr. Tresler: Yes.

Ms. Yukimura: Plus a four (4) foot gutter and curb?

Mr. Tresler: Curb and gutter, yea.

Ms. Yukimura: Then it is like 90 feet total?

Mr. Tresler: It is 80 feet.

Ms. Yukimura: It is 80? Okay, so it is 80 feet? So if it is within the 80 feet, would Grove Farm be amenable to a berm such as depicted in the amendment introduced by Councilmember Furfaro by request?

Mr. Tresler: Which berm are you referring to specifically?

Ms. Yukimura: If you look at the amendment, you know, introduced by Councilmember Furfaro by request, there is a depiction of a berm?

Mr. Tresler: Actually, we wouldn't agree. I think we went through those options with Public Works and I think there is major drainage issues and cost issues. In your drawing, you are actually showing that this road is sub-grade three (3) feet and I think we went through all those things prior to... so, actually, I can tell you the short answer is, no, we would not agree for this design.

Mr. Furfaro: Councilwoman, may I just add one more thing?

Ms. Yukimura: Sure. Mike, I don't want to be argumentative and I just want to go back to some of the history, but I believe we have presented to us previously some isometrical presentation that does show 80 feet up to the start of the road. It included a 20 foot buffer and a 60 foot width before we started the curbing of the road and within that 60 feet, there was the walk and bikepath. You know, I just wanted to share that so, you know, we are all not... as currently, remembering the history of what was presented to us and I do believe we have something that was presented to us that showed the first curve of the road starting 80 foot from the house with 20 foot setback and 60 feet in... I just want to say that if there was a restatement of that from your golf course design professional, it was actually, I believe, after-the-fact that we might have seen some drawings from you. I just throw that out, so that we are all on the same page.

Mr. Tresler: And I don't doubt that you have seen the drawings, but it was based on your request that the drawings were provided.

Ms. Yukimura: So back to my question about the berm and your discussions with Public Works, they were not in front of us. You had separate discussions with Public Works?

Mr. Tresler: Yes, we did have many discussions and we have actually a drawing on the map that was sent up from Planning that shows the actual alignment with the 52 foot buffer and how the road goes with... I believe it is that four (4) foot grass shoulder. I think the Council Chair has a copy of that map that

has that alignment.

Ms. Yukimura: And while he is putting the map on the board, your... the problems with the berm and three (3) foot below grade road are what exactly?

Mr. Tresler: Again, I am not a traffic engineering, so it is pretty hard to be answering this, but I remember those discussions as major cost and drainage issue and being that it was discussed. So, you know, I mean to just draw something up and say...

Ms. Yukimura: So what kind of cost differential are we talking about?

Mr. Tresler: I can't answer that.

Ms. Yukimura: Then how do you know that there is a cost differential?

Mr. Tresler: Well, I mean, basically, it was discussed. I recall with Public Works and Ian and, you know, I don't know what the specific cost differential is, so I can't answer your...

Ms. Yukimura: You told us that we will be... but we want to know why you can't do this, so, you know, tell us if it cost twice as much as an ordinary cost would cost? I mean, I would like to have a little bit more substance in terms of why this is not workable.

Mr. Tresler: You know, it is something that is completely different than what has been discussed twice going through and it is very unusual, so to answer you that, I have to answer a question with a question. How is that that... I mean, yea, I am not a design engineer, shouldn't that be left up to traffic engineering, Department of Public Works?

Ms. Yukimura: You are here to tell us what works and what doesn't work for you.

Mr. Tresler: Okay, can I answer that question and then... we can't do that.

Ms. Yukimura: Well, and I am saying, why and I need some good reasons. You have engineers and consultants and certainly it must be a realistic problem if you say you can't do it. So, I mean, I hope you don't just say, well, we can't do it, that is not really helpful to us.

Ms. Nishimitsu: I think what Mr. Tresler is attempting to say is that the design of the roadway within the alignment that you fix should be left to the engineers who will prepare the plan subject to the review of the Division of Engineering and it shouldn't be engineered at this level.

Ms. Yukimura: Well, I can agree with that except that this is an issue that has been... that has come before us because of prior Grove Farm representations and, you know... well, I believe there were representations made before your time which said that these were to be golf course lots and the road was just going to be a utility road. I think there were verbal represent... (change tape to 6B)... to that effect. So...

Mr. Tresler: Okay, so I think a fair response is that, how can you expect to bring it up without and bring it up tonight and expect an answer when... I mean, I can tell you just by common sense, that is a major cost issue. Yea, it will double the cost as major drainage issues from what I know. I mean, I think that is totally unfair on your part to bring us a drawing and expect me who is not an engineer, but I got common sense to know that that is a major cost issue. And then I see a wall there, so we are going to have cars slamming into our wall, is that a safety issue, that is a major safety issue again to me and if the County is going to absorb that liability, I am not sure. But we are planning on dedicating this road to the County, so, you know, that is my best effort in giving you an answer.

Chair Asing: I have a question. Councilmember Yukimura, where did this drawing come from?

Ms. Yukimura: It came from the Ulu Ko II group and it is an effort to offset noise and dust and I think it is legitimate to try to do that. And, you know, if you had some figures that just said... I mean if it is true that it is doubling the cost, that is significant answer. I am trusting that you actually have a basis for the answer. You know, it wasn't my intention to actually pass this bill out tonight, so I thought everybody would have a chance to go and look at this and come back and say...

Chair Asing: I would suggest that we defer this. I mean I, you know, I hate to... I heading for Honolulu tomorrow to do laser surgery on my eyes and I am looking at the watch now and if we are going to go into hours more of something that this... we are going to keep on discussing...

Mr. Tresler: Let me make one request. If you look at the drawing there, there is a berm plan and...

Chair Asing: I know that. I know that here is the drawing here and this is the 80 foot that you make reference to. There is four (4) feet over there and then you have the 12 feet for the two (2) lane (12 and 12) and then you have another 10 feet there, so, you know, the total there is the 80 feet and here is the berm and here is supposedly the trees that is going to be planted for noise abatement. So I believe this is what your recommendation was and Councilmember Yukimura, is this a problem?

Ms. Yukimura: That is you are committing to that berm there too. Okay, so Chair, I was not aware of the personal constraints that you were under tonight and...

Chair Asing: Well...

Ms. Yukimura: Well, I mean we could just have deferred everything at 5 o'clock if we had so many personal issues.

Chair Asing: I thought we were doing one hour, you know.

Ms. Yukimura: That was on vacation rentals?

Chair Asing: No, but I didn't think this one would... Anyway, I don't want to give excuses for myself. I will abide by...

Ms. Yukimura: Well, you know, already Councilmember Iseri-Carvalho had said that she wanted some legal and we had said that we were going to defer it to the 12th Committee Meeting and then move it out. That was the plan, so, I mean, you know, out of...

Mr. Kouchi: The only thing that I would offer Mr. Chair and it is not about your issues, is this seems as clear as mud and I don't know if we did resolve this tonight that we may not be in a Spouting Horn vendor situation with only five (5) members present next week that there would be consensus.

Ms. Yukimura: Well, that is why, you know, we did have the... a real choice to move it to the 12th and defer it to the 12th. But I think we need to hear from everybody and then finish up.

Ms. Iseri-Carvalho: I just have a question. I know Lorna, as counsel for Grove Farm, I know when we had the vacation rental bill, Jonathan Chun had offered his legal opinion as to some of the issues that we had raised and I would just like to offer that opportunity to you. The Committee Chair has agreed to send over a communication to the County Attorneys regarding the issues that I have raised. It appears that you have raised them yourself as well upon probably your own legal research of detrimental reliance and the takings issue. So if there is some case law or additional case law that you would like to share with the Councilmembers, so that we would be prepared to vote and would not want this to hold up voting on the bill. I think I am well prepared to vote on the bill, but it would offer additional information for others who may not have been as well versed or had the opportunity to engage in legal research or talk to any legal experts regarding this issue.

Ms. Yukimura: Thank you. Okay, Councilmember Rapozo?

Mr. Rapozo: It appears that I won't be able to introduce my amendment tonight and there is a very good possibility that I will not be here on the 12th as well until later in the afternoon because I have some commitments that I have to take care of during the day. But I do want to share that the purpose of my amendment which is to keep it in the existing 80 foot reserve... it is not an 80 foot easement, it is a 60 foot easement that is recorded, but it is a 20 foot addition into the reserve. Is that correct? As I understand... that is what I have researched and the purpose for that is the legal question. For me, it really doesn't matter the cost issue. It could be three (3) times as much for Grove Farm. That is not... I mean, it is worthy of consideration, but that is not the reason for my amendment. It is not about the cost. You know, basically, if it is a cost issue, then you just don't do it, but my bear concern is the legal concerns as far as the takings issue because it will cost this County a whole lot more if we go beyond the 80 feet and all of sudden now, we have to compensate Grove Farm and incur additional liability because we have been made aware by the expert that, in fact, if we go into the golf course, get closer to the golf course, it will increase the liability. So those are my concerns and that is what my amendment addresses. It doesn't address the cost, it does address the 80 foot... the existing 80 foot reserve and I will ask the staff to pass out my draft tonight to all of you, so you can see it before the meeting. As far as the park issue, it is real clear. I think as I stated earlier when this first came up, I think there was... in fact there was some children that came up and testified against going through park. I have always had a problem with that although the residents did concede to having that at this point as I stated earlier with the concern from the neighborhood. My amendment would remove that road, that Aheahe extension to the park and basically allow the traffic to go down Nuhou Road. I agree and I think the intent and I know the Chair spent quite a bit of time in prior meetings explaining the history of this road and the purpose and I think that needs to be preserved as well. The purpose and the original intent of that road, so I will ask staff to pass out the amendments tonight so you folks can all review it.

Ms. Yukimura: Thank you.

Mr. Rapozo: As well as members of the public. I don't care who gets it. As far as I am concerned, it is open to the public and, again, I don't know if I will be here on the 12th until the later afternoon.

Ms. Yukimura: Okay, thank you. Councilmember Kouchi?

Mr. Kouchi: 9:27 p.m. and later in the afternoon is not going to be a problem on the 12th. You are kidding me. While we have Grove Farm up and based on what both Councilmember Iseri-Carvalho has said as well as Councilmember Rapozo, I would like in the interim to receive from Grove Farm a copy of that letter from Mr. Nelson that Mr. Tresler referred to because I do clearly remember before dinner not even one foot, after dinner, oh yes, 30 foot, but obviously each foot you go into the golf course, the liability increases, so if he has a third letter, at least I want him to know that his credibility is destroyed here forever and so after this letter, he should not be planning to come back to at least this particular County Council.

Ms. Yukimura: Thank you. That was on my list too and I have three (3) more questions which I think would be important to get out right now. Is your park commitment contingent on the Aheahe punch out? That is if we do not go with the Aheahe extension, are your commitments on the parks still good or not?

Chair Asing: Yes.

Ms. Yukimura: Yes, what?

Chair Asing: It is good because if it isn't, I am not going to support that.

Ms. Yukimura: Okay, and we don't know the exact nature of your commitment yet. Well, I mean, we know it is the fencing and the irrigation and you are going to come back to us about the maintenance or the improvements.

Mr. Tresler: Yes.

Mr. Rapozo: Can I just add because it is in my amendment as well. In my amendment I have the fencing, the irrigation, the installation of playground equipment and maintenance in perpetuity.

Ms. Yukimura: Okay.

Mr. Rapozo: That is what I have...

Ms. Yukimura: Of the entire park?

Mr. Rapozo: Of the entire park.

Ms. Yukimura: Alright, so that is one question. The other question is, the Nuhou Road and the "T" intersection with Pikake, you know, the existing road system there, that has been dedicated to the County?

Mr. Tresler: Yea, I think that one has.

Ms. Yukimura: Okay, can you confirm that in writing to us?

Mr. Tresler: Okay.

Ms. Yukimura: And just as a developer of that area, you wouldn't have any objections to making it a through street to Pikake?

Mr. Tresler: You mean Nuhou?

Ms. Yukimura: It would be a swerving street, so you wouldn't stop. It

would be a through street to Pikake rather than a "T" intersection with Pikake. Right now you have to make a left turn onto Pikake? It would be doing to Pikake what was proposed to go through the park and it is already a four (4) lane road, is it not, Pikake?

Mr. Tresler: Yea.

Ms. Yukimura: So it just kind of makes sense to just make the four (4) lane road go straight through Nāwiliwili.

Chair Asing: Councilmember Yukimura, you know, I really don't think we should be engineers here.

Ms. Yukimura: I wish we didn't have to, but because...

Chair Asing: We are not...

Ms. Yukimura: But because the transportation was not figured out, we are having to do this. All of this work should have been done at the Planning Department and Public Works level and it should have been done before any house was built on the subdivision. But it is in our laps now and I am concerned about circulation.

Mr. Tresler: Okay, I think working on Costco issue, I believe we cannot because I think they may, in fact, own the land, so that might not be possible.

Ms. Yukimura: Well, if the County owns the road, the County can do whatever it wants to.

Mr. Tresler: Well, again, we need to confirm to you.

Ms. Yukimura: Okay, very good. That was... and my last question is, what kind of commercial uses are you planning for the area that is abutting Nāwiliwili Road?

Ms. Iseri-Carvalho: Is that part of the agenda?

Ms. Yukimura: I need to know the intensity in terms of addressing the access onto Nāwiliwili which affects the flow onto Nāwiliwili and the whole system.

Mr. Tresler: We don't have specific plans, but plan to comply with the zoning ordinance.

Ms. Yukimura: Okay, thank you. Mr. Bynum?

Mr. Bynum: In any of these plans, do you have lots that have

driveways onto Nuhou Road?

Mr. Tresler: I don't believe that... you can see on the map.

Ms. Nishimitsu: Are you talking about the 16 lots?

Mr. Bynum: I am talking about any lots anywhere in this area that have driveways that enter off of Nuhou Road.

Mr. Tresler: Specific driveways for homes, I don't believe so (inaudible). I don't think it is designed that way. I mean the drawings (inaudible) are there.

Ms. Yukimura: The other map might be more...

Mr. Tresler: I think somewhere near Ulu Ko III and Kukui Street, there may be a couple.

Mr. Bynum: I just have an issue with that because you look at this entire plan, you know, all of the lots have interior streets. They don't have driveways going in and off of the collector roads and, you know, I recall seeing testimony at the Planning Department that there was an effort to put some additional lots in that had driveways off of Nuhou Road. And, you know, you look at all of your plans, you don't have driveways off of Nuhou of the collectors. You have interior streets with driveways. I mean, that is kind of standard planning thing I assumed and I would have some problems with... I have some serious questions about having driveways on this collector road for individual residents. Nowhere else in your whole area do you have anything like that.

Ms. Yukimura: So could you confirm that also in writing?

Mr. Tresler: Yes, we will.

Mr. Furfaro: (Inaudible)... quick look at what you submitted on May 16, 2007, there are no lots that (inaudible). That is the map that we have and that is what you should reference. It is dated May 16.

Ms. Yukimura: So it is not just the 16 lots, it is any of the lots along... well, then it should be easy to confirm.

Mr. Furfaro: You don't know how current that is, but the one we have is May 16.

Ms. Yukimura: Okay, any other questions of Grove Farm? If not, thank you very much.

Mr. Tresler: Okay, thank you.

Ms. Yukimura: Now, is there anyone else from the public who wishes to testify?

DEWAYNE KONG: Good evening, my name is Dewayne Kong. I kind of feel under the weather so pardon, but just sitting here, I just felt compelled to speak, you know. Just listening to all of this and, in fact, you know, Mr. Tresler and Lorna and so on, you know, they are people here too. They come here and they talk about how it was, how it should be, what it is, what I have seen, da, da, da, and they are here and pardon the expression or the implication, but regurgitating of what they found out or what they heard, okay. I have lived through all of this okay and I get offended when I see Mr. Tresler laughing and think it's funny because it is not funny okay. He claims how fair that they have done this, fairness. We did that, we did that, we did that, but, yet, through all of this, I don't have to hire an attorney to say things should have been... or was done in good faith, okay. We are here today sitting for things that not the County Council did or not the community did, but what Grove Farm did or did not do. We have to remember that when this came about, the 2002 ordinance, they were the applicants and nobody else. They asked for all of these changes okay. So I get very confused when I listen to all of this and it starts to turnaround and they say, tell us what we have to do okay. Well, in 2002, they were told what they want, they asked what they wanted, they got what they wanted and they didn't do what they were told to do okay. Now we are here in 2005, 2006, 2007 and we are trying to go back and make changes that was already passed. Where I am confused is, okay, we went through this whole process, we talked about connectivity because you have to remember Ulu Ko II residents came in with the proposal of no road okay. But we had to sit through and said, it is important to have the road and connectivity is important. So we went through all of these workshops and so on and after the workshops, connectivity is important. So we have all this connectivity grid and then now I hear support of not having the Aheahe punch out. Okay, that is kind of, for me, wow, when I heard that I said wow. Okay, so if we want to preserve the park, I am not against preserving the park, but when Mr. Rapozo mentioned how he has been hearing a lot of testimony of people who want to preserve the park. Well, my question is, in 2002, when this four (4) lane road was passed by the County Council, the applicants for their applicant, where were these people to preserve that park then? Okay, I have a hard time understanding that.

Ms. Yukimura: Well, partly it was published with the wrong spelling.

Mr. Kong: Well, I still think Grove Farm, that was their responsibility to tell them about the changes in the park because, for sure, they came around to us to gather support on that the realignment of that road okay. So there shouldn't be any, you know, misclarification. Everybody knew as I mentioned regarding good faith...when they came and they said that this realignment four (4) lane would go to Aheahe and so on, they told us and I am going to reiterate that there will not be a road behind our homes and there will be only a service road down by the mauka

nine (9) lots further down. That is where I refer back to good faith, okay. If that was not true, why did they tell us that? So at this time, now they are saying, yea, we got 60, we will give you 80 and it has to be in that area. My concern is, they continue to say, yea, we did this, we do that, we will do whatever, we will do this, but always will say, but we can't do this, it cost too much for this, drainage and so on. So I am just, again, just want to say, when we all got into this whether it was the stop light group, County Council, Preserve Ulu Ko Group, Grove Farm, the intention was, we were going to do this in good faith to try to resolve everybody's issues. I still think that we continue to try that, but Grove Farm has not stepped to the plate to do their share and that is what I feel. And then one last thing, Mr. Rapozo, I am confused because you say in your amendment that you want that 80 feet just within the road within the 80 feet? Within your amendment and I don't know, it doesn't... it seems like it is the...

Mr. Rapozo: I think you might have the wrong amendment. They are going to be passing out the new, so that was actually taken from the wrong...

Mr. Kong: So that is where I was confused.

Mr. Rapozo: I was confused too when it was brought to my attention.

Mr. Kong: Okay.

Mr. Rapozo: It was right after I had spoken to you outside too and I said, oh my God, but that is going to be circulated if you want a copy.

Mr. Kong: I guess in closing I just said, you know, please consider not just what is being I guess... back because I have lived it and I guess what is even more disturbing is every time a new personnel from Grove Farm comes on board, they come here and testify and they are looking for answers and they are not the person to make the call, so who is the person to make the call? I mean, shouldn't we be requesting that person, so that we don't have to... every time re-clarify this, that and so on? Sorry for being so blunt. That is all that I have.

Ms. Yukimura: Any questions? Councilmember Kouchi?

Mr. Kouchi: Dewayne, I guess on the Aheahe issue, is it your opinion that the four (4) lane should be held or that we should have that two (2) lane that suggested with preservation of the land in the park. Because I know in your testimony, you were referring to what was the original 2002.

Mr. Kong: Well, my concern is, all of a sudden before this went to the Planning Commission, the talk was, connectivity showing that their... and convincing us that, hey, we have to have the connectivity at Nokekula. All of a sudden now, let's not put the one by the park, but just Nokekula, so I am confused in, you know, we are saying connectivity, but not here, but let's put it there. You know, and that wasn't the intent. If you look at the amendment that was sent over

to the Planning Commission which was, to me, I thought was a consensus of some sort of feeling of what you guys were trying to pass, those connectivity issues or alignments were there. So, you know, as I said, I am not for or against that road there, but I am saying, we cannot just pick and choose one thing or the other because when this 2002 amendment came about, there is a sweeping four (4) lane there and more importantly, there is other zoning changes that was made. You have to remember, before the 2002, there was no Ulu Ko III. Now we've got an Ulu Ko III next to us. There were different zoning changes from R-4 to commercial or open to R-4, so it is just not a road thing. So what I am saying is, it is easy to say, oh yea, no road, but remember that Grove Farm was the applicant, Grove Farm got all the other changes also. So the last point maybe, you know, and, again, you got me going in regards to cost, we are going to say, oh, yea, we can't do this kind of berm or buffer because it is going to cost too much. Well, let me tell you, if they are not going to... if Grove Farm is not going to be required to build any road to Aheahe, they will be saving some money. If they are not going to be required to build a four (4) lane road all the way behind our home which was in the general or original plan, there are saving money there too. I mean, cost is relative to what you want to determine to be.

Mr. Furfaro: Councilwoman Yukimura, I have a question.

Ms. Yukimura: Yes, Councilmember Furfaro, go ahead.

Mr. Furfaro: Thank you and I think we understand the sensitivity as that is your primary home. Dewayne, I just want to make sure the drawing that we have there which does not show the road starting until there is a 80 foot made up of the 20 and the 60, I think that was also what inspired the amendment that went down to the Planning Department from this Council. I, for no other reason, I just want to... does this meet your expectations, this 80 feet?

Mr. Kong: That one has no 80 foot buffer, right? That is just 80 feet and (inaudible).

Mr. Furfaro: It starts 20 feet off the property line, then the 60 feet with the landscaping and the bikepath in it, but the curb of the road does not start until it is 80 feet from...

Mr. Kong: If you told me that when I bought my home in 1990 and that an easement was there and the road was going to be there, I would have expected it. Just based on what has happened through the history and what Grove Farm has implied to us especially in 2002 and telling us, things have changed, we are not going to... I just think it is very reasonable for Grove Farm to have good faith in giving us that extra 24 feet and that is... as I said, I am not an attorney, I am just saying, hey, in good faith, I mean...

Mr. Kouchi: Again, the picture depicts the curve of the road at 54 feet

or 52 feet rather.

Ms. Yukimura: 52.

Mr. Kouchi: 20, 18 or 8 and 10.

Mr. Kong: Right.

Mr. Kouchi: So it is 52, 24 feet for the road and then the four (4) feet (inaudible) gutter or whatever, so this doesn't start at 80 feet.

Mr. Furfaro: I am sorry. When I looked at it (inaudible) I thought I did.

Mr. Kouchi: The road, the curve of the road starts at 52 feet.

Mr. Kong: And that is why I said...

Mr. Furfaro: And thank you for (inaudible) and my misinterpretation.

Mr. Kouchi: But Dewayne is saying that he supported the curve at 80 feet.

Mr. Furfaro: Yes, that I knew, but I didn't know if the drawing depicted that.

Mr. Kong: Yea, and that is why I said, no.

Mr. Furfaro: Thank you for the clarification. You as well Mr. Kouchi. Thank you.

Ms. Yukimura: Any other questions of Mr. Kong? Okay, we have to do a caption break at 9:50 p.m. Is there anybody who wants to speak? Anybody else? Mr. Schleck, you got three (3) minutes and then we are going into a caption break.

BOB SCHLECK: I will make this very quick. My name is Bob Schleck and I am with the Nuhou Stop Lights Group and I am sorry that Ms. Lake isn't here this evening, but it is just that we, again, ask that there not be a road through the park that that be preserved and that the Nuhou Road follow an alignment that is... since Grove Farm is dedicating the road to the County, it be a road that is functioning as a usable transportation route for all traffic not limited to any variety, but that it be a usable route that is useful to the community and not useful to developments created along that. Thank you.

Ms. Yukimura: Question?

Ms. Iseri-Carvalho: And the question was are you (inaudible) of all of

the amendments?

Mr. Schleck: Yes I am.

Ms. Iseri-Carvalho: And the current one. I guess Mr. Kong had brought to the attention of Councilmember Rapozo that there was some discrepancy which was corrected, so you have the updated version?

Mr. Schleck: I think I have the updated.

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

Mr. Schleck: Thank you for all your work.

Ms. Yukimura: Yes. We really should take caption break, so we will come back at 10 p.m. and hopefully wind this up.

There being no objections, the Committee recessed at 9:50 p.m.

The meeting was called back to order at 10:00 p.m., and proceeded as follows:

Ms. Yukimura: Assuming there is no more dialogue and I don't see any hands, the Chair would entertain a motion to defer Bill No. 2210.

Ms. Iseri-Carvalho: I just wanted to state before... we can schedule a concurrent executive session for this matter, so that the County Attorney's opinion otherwise we are going to be stuck in that situation.

Ms. Yukimura: Thank you. Staff, if we can have that scheduled for the Committee of the Whole.

Ms. Iseri-Carvalho: And my understanding is that you will be the one forwarding the request to the County.

Ms. Yukimura: Okay.

Mr. Rapozo: And, again, I made the point earlier about making sure that the attorney was here, so it is at our convenience yea, not at their... in other words, if it happens at 9 o'clock at night, it happens at 9 o'clock at night.

Ms. Yukimura: That is right and that is a separate memo that is going out under Councilmember Rapozo's signature. Okay, so then a motion to... May I have a motion please?

Upon motion duly made by Councilmember Furfaro, seconded by

Councilmember Rapozo, and unanimously carried, Bill No. 2210 was deferred.

Bill No. 2177, Draft 1 A BILL FOR AN ORDINANCE AMENDING CHAPTER 8, KAUAI COUNTY CODE 1987, RELATING TO ZONING DESIGNATION IN LIHU'E, KAUAI (Grove Farm Properties, Inc., Applicant)
[This item was deferred.]

Ms. Yukimura: I understand that there is at least one person who wants to testify, so I am going to suspend the rules and ask if there is anyone in the public who wishes to testify?

There being no objections, the rules were suspended.

Ms. Yukimura: Mr. Kong, did you want to testify?

MYRON EMOTO: Just for the record, Myron Emoto. I just wanted to have time to say that we wanted to defer 2177 and that is it.

Ms. Yukimura: Okay. You are in favor of deferring?

Mr. Emoto: In favor of deferring.

Ms. Yukimura: Alright, thank you. Anything else?

Mr. Emoto: No.

Ms. Yukimura: Thank you. Is there anyone else who wishes to testify?
Mr. Schleck?

Mr. Schleck: I would also like to defer this until some resolution of the road is solved. Thank you.

Ms. Yukimura: Alright, thank you very much. Any further testimony? If not, we will come back to order.

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

Ms. Iseri-Carvalho: Oh wait, Dewayne.

Ms. Yukimura: Oh, I am sorry, Mr. Kong. The rules are suspended.

There being no objections, the rules were suspended.

Mr. Kong: For me on this bill.

Ms. Yukimura: Can you state your name?

Mr. Kong: Oh, sorry. Dewayne Kong for this Bill on 2177, I would oppose this bill and the reason I would is because this bill is asking for a rezoning of an open district to R-4. From my understanding and correct me if I am wrong is to further expand the golf course to align to make it a so class... world class golf course or a golf course that will fit bigger tournaments or so on and this would also accommodate the development of their clubhouse. What bothers me again is when I bought my property in 1992, there is this map given to me in 1991 of the course alignment of all the courses. It also depicts the clubhouse and until today, that area is still open for them to build the clubhouse, but they have not done so. So, for me, it is hard to justify rezoning a piece of property from open to R-4 for 16 lots that they say is vital for them to fulfill the development of their ideal golf course. To me if you are... from 1991 until now, that was not the issue and if it is now, it kind of concerns me that to bank everything on a 16 lot development approval of zoning, I just can't see a corporation of that magnitude that that is important because if I just look... as I said in the 1991 map, they can build that golf course and their 18 hole alignment would be exactly where the fairway is... I mean the driving range is right now and clubhouse could be pretty much built as they planned, but I guess they want to develop the old Case house to do that, but I still can't see any justification as the reason for rezoning this open to an R-4, so I cannot support that.

Ms. Yukimura: Okay, thank you. Any questions? If not, thank you very much. Anyone else wishing to testify? If not, we are coming back to order. The Chair would entertain... well, is there any discussion? Otherwise, I will entertain a motion to defer.

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

Upon motion duly made by Councilmember Furfaro, seconded by Councilmember Iseri-Carvalho, and unanimously carried, Bill No. 2177, Draft 1 was deferred.

Ms. Yukimura: Oh, we are back on PL 2007-2. Were we not able to get Mr. Costa? Okay, so then the Chair would entertain a motion to defer PL 2007-2.

Upon motion duly made by Councilmember Furfaro, seconded by Councilmember Rapozo, and unanimously carried, PL 2007-2 was deferred.

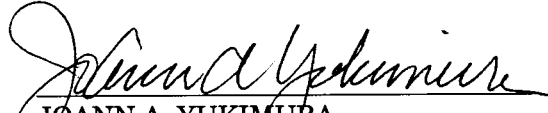
There being no further business, the meeting was adjourned at 10:00 p.m.

Respectfully submitted,



Lisa Ishibashi
Council Services Assistant

APPROVED at the Committee Meeting held on January 23, 2008:



JOANN A. YUKIMURA
Chair, Planning Committee Chair