

**MOLOKAI PLANNING COMMISSION
REGULAR MEETING
JUNE 12, 2014**

*** All documents, including written testimony, that was submitted for or at this meeting are filed in the minutes' file and are available for public viewing at the Maui County Department of Planning, 2200 Main St., Suite 315, Wailuku, Maui, and at the Planning Commission Office at the Mitchell Pauole Center, Kaunakakai, Molokai. ***

A. CALL TO ORDER

The regular meeting of the Molokai Planning Commission was called to order by Chairperson, Michael Jennings, at 12:00 p.m., Wednesday, June 12, 2014, at the Kaunakakai School Library, 30 Ainoa Street, Kaunakakai, Molokai.

A quorum of the Commission was present. (See Record of Attendance.)

Chair Mike Jennings: Okay, we have a quorum. It's 12:00. And we thank you all for coming. We're going to start out with, and it's my discretion, we'll have public testimony, we'll do that now, or unless you want to do it on each item, but I think I would just assume have public testimony right now. So, okay, so we'll start out with Jeanne Lindquist. Jeanne. And please step to the microphone here, Jeanne. Thank you.

B. PUBLIC TESTIMONY

Ms. Jeanne Lindquist. You're welcome. Thank you for coming. My name is Jeanne Lindquist, and I've been a real estate agent for over 25 years. I've been a resident of the State of Hawaii for over 37 years. Thank you for coming. And I am in support of clarifying Chapter 19, of the Maui County Code, to include whatever wordage is required to allow the short-term and long-term rentals at Wavecrest and Molokai Shores, and all of the other condominium units in Maui County that have been using their units as short-term and long-term since their inception. I am in favor of clarifying the lack of notice and clarity. Thank you. This was Chapter 19.

Chair Jennings: Jeanne, thank you. We appreciate it. Thank you. Next, Shirley, you're up next. Thank you. Please come to the microphone.

Ms. Shirley Alapa: I am not a public speaker, gentlemen, so you'll have to bear with me. I'm going to read. I'm Shirley Alapa, and I'm presently the broker in charge of Friendly Isle Realty, while Ray is away. I would like to read a statement from Ray:

Many and a lot of the local doctors, nurses, families come over for sports and visits and they stay at these three condos. It's not just the tourists that use these accommodations. And I too support long-term and short-term rentals in the two condos we're talking about on the East End as well as the entire

island. My family comes and they're not campers on our farm so we often stay at one of the two because it's close. If they want beach, they go to the other end. Thank you for hearing me.

Chair Jennings: Shirley, thank you very much. Next testifying will be Mickey O'Connell. Mickey?

Ms. Mickey O'Connell: I'm Mickey O'Connell. I'm a broker with Friendly Isle Realty. I'm part of the Savage-O'Connell listing duo. I know that this can be fixed to allow the short-term rental to continue at Wavecrest and Molokai Shores, and I just encourage you to do it as quickly as possible. And what I see is that if this is not fixed and we're not allowed short-term rentals, we're going to have a huge loss of jobs on this island; one of them being the front desk at Molokai Shores, all those people that work for Castle Resorts, they're going to be out of work if we don't have short-term rentals. And then, of course, there's all the housekeepers that take care of the short-term rental. And that, you know, in today's world, they all get W-2'd and so they're paying taxes on their income as well. Now, the GET and the TAT that the county makes, I did a just a little brief figuring and with 200 rooms rented per month, and the GET, you know, is 9.25%, that's a lot of tax for the county, that's giving the county around \$69,000 a year. Why would they want to shut that down? Excuse me, that's a month. On a year it's \$832,000 GET tax coming from these rentals. But I think the most important thing to know is that if we didn't allow the short-term rentals, we're going to have such a loss of jobs, the front desk that I mentioned, property managers could let go of at least one bookkeeper 'cause there would not be a need for that girl to work, and, of course, the housekeepers that get paid to clean these rooms. The tourist activity is not the only concern here because we do have family members and baseball teams and people like that that come over and use our short-term rentals at these two condos. And of course, the last but not least, I would think that the county has condoned this all these years as they have been accepting the transient accommodation tax from these homeowners, and that's quite a lot of money that they county generates. So what I'm saying is, just for the good of the island and a lot of the people that are employed here, I know you can fix this. I know you can fix this with the right terminology, I don't know how, but I know that you people have the resources to find out how to fix this so I'm begging you to fix it as quickly as possible. Thank you for your time. I appreciate it.

Chair Jennings: Mickey, thank you. Thank you very much. Rebecca Sanders for -- would you please? Thank you. I know you represent Molokai --

Ms. Rebecca Sanders: I am here on behalf of Dana Harris, of Molokai Vacation Properties. I'm an agent in her office. And I'm just going to read her letter word for word:

To the Molokai Planning Commission and the Maui County Planning Department:

Why pass a law if you are not going to enforce it? In response to David DeLeon's letter on June 19, 2014 to the Maui County Planning Department and the Molokai Planning Commission, I agree that there are enforcement problems on several levels of the short-term vacation property rental business. I have been advocating with all my property owners to become properly authorized to do business as a short-term rental under county code. This involves consulting with other county officials and their contractors to adhere to all the applicable codes and taxes. For over two years, since the STRH ordinance was passed to designate homes as short-term rentals, we have advocated for all our owners to complete the process - most have, and others are in the process. Two years on, we realized the property rates for these newly designated resort properties has doubled our owners' property tax bills, our owners' tax bills. As a property manager for 15 years on Molokai, we are now witnessing a rapid rise in internet pirate property management. By refusing to comply with county codes and permitting protocol, they avoid paying taxes with the county on several levels. Without proper enforcement, these resort properties continue to defraud the county of 50% of their applicable tax as well as proper general excise and transient accommodation taxes. These pirate property owners should not be freely allowed to undercut the value of the our product here on Molokai through unlicensed and unregulated business activities. I appreciate your advocacy on Wavecrest and Molokai Shores condominiums and their valuable economic contributions to our economy on Molokai. Aloha for your consideration of this. Dana Harris.

Chair Jennings: Rebecca, thank you. Is there -- are there anymore that would like to -- public testimony on this matter? Okay, seeing none, is there any --

Mr. Clayton Yoshida: I guess, Mr. Chair, if they don't testify now, after Joe gives his report again, people who haven't testified can testify.

Chair Jennings: Joe, please?

Mr. Yoshida read the following agenda item into the record:

C. PUBLIC HEARING (Action to be taken after public hearing.)

- 1. MR. WILLIAM SPENCE, Planning Director, transmitting Council Resolution No. 14-15 Referring to the Lanai, Maui, and Molokai Planning**

Commissions a proposed bill to amend Sections 19.12.020 and 19.37.010, Maui County Code, pertaining to Transient Vacation Rentals in the Apartment District. (J. Alueta)

Mr. Yoshida: The staff person handling this is the Administrative Planning Officer, Joe Alueta.

Mr. Joseph Alueta: Good afternoon, Planning Commission. Again, my name is Joe Alueta. I'm your Administrative Planning Officer. For some of you, just to give you a quick refresher, there's two methodologies in which you can amend Title 19 or the county code; one is by a director or administrative initiated bill, which would be drafted by me or the director, and I would come to you and present it before prior to going to the council; the other methodology is via a resolution by the County Council in which, by charter, gives -- the commissions have a certain amount days, 120 days, to review and send their comments back to the council before they can act on the proposed amendment to Title 19. Today, what you have is a resolution introduced to amend Title 19, specifically dealing with the apartment district, 19.12, as well as 19.37, which is the restriction on timeshare and transient vacation rentals, okay.

I just want to clarify a couple things that some of the testifiers have made. First of all, the county does not get any of the TAT tax. We don't get it. It doesn't come to us. It goes straight to the state, okay, so none of the -- whether it's general excise tax or TAT tax, the County of Maui does not get it, so we have no financial interest in it. Furthermore, even if you're paying your TAT tax for years, that does not justify illegal activities. It doesn't legalize it in any fashion, okay. So just to clarify that.

Also, we seem to be mixing up two different issues. One is short-term rentals or transient vacation rentals outside of the hotel district or outside some of the apartment districts in what we call "short-term rental homes" are in the single-family districts. Those are handled either by the bed and breakfast ordinance, or by what we call the STRH bill, which is the short-term rental home, okay. Basically, in the County of Maui, we restricted occupancy to long-term occupancy, we require any place that's not transient vacation rental, has to be occupied on 180 days or, typically, 6 months. Back in the '80s, there were bills passed when they were basically gutting, just to give you a quick background, they were gutting motels from the business district as well as transient accommodations out of the apartment district or out of the areas and they define what short-term and long-term rental was. So back in 1989, when they restricted uses in the apartment district to only long-term rental, okay, they made an exception to recognize that there are people who were using the apartments or structures in the apartment district for less than 180 days. So they specifically made an exception, and those three exceptions were: if you were granted a building permit, granted an SMA, or granted a planned unit development -- planned development approval or site plan, okay. The Planning Department currently administers

that. So if you met one of those exemptions that were not subject to the long-term rental restrictions passed in 1989, you are legally -- you have the legal right to run a short-term rental. That's been the policy. So this -- so if somebody came in, I don't know the different apartment districts that are out here where they have buildings, I believe some of them talked about Wavecrest or some of these other condo complexes, if they were doing short-term rental and they met that criteria, they always could do short-term rental, okay, or operate as a quasi-hotel.

Now, what this bill does and what the council is attempting is to make it explicitly clear that exception that was put in the ordinance back in 1989. Currently, you know, you have to do research, and the biggest -- you know, not to knock on realtors but sometimes they don't like to do research, so they just send it to the Planning Department saying, hey, is this legal or not, and we do the research and determine, and buyers also do research during their due diligence, and so the realtors wanted it specifically listed in there that short-term rentals was allowed in the apartment district if you met one of these three criteria because their buyers and the people who are buying the unit there goes: You're telling me I can do short-term rental but I don't see it in the county code. Where does it say that? And so they have to go through this whole convoluted well here's the old ordinance that it specifically exempted it, and so a lot of buyers, to feel more comfortable, they want to see it specifically in the current code that we have. And that's one of the benefits of why the council members wanted to have this resolution put forward.

I'm not going to specifically read my memo report and I kinda gave you the quick and dirty summary of why this bill came about and how it impacts, but I do want to explain, you know, the uses that are allowed, right, when -- because this comes up a lot, what if the use stops? Okay, according to the ordinance, you know, if they stop for a year, do they lose it? No. They don't. It's not considered basically a nonconforming use, okay, in that aspect. So if someone has an apartment unit, and they rent it short-term, and then they want to rent it for long-term for -- because they move to the island, they want to stay there for two years, and then when they leave, they decide to go back to short-term. They can. As long as the structure was granted a building permit prior to 1989, or an SMA, or is in a planned unit development on that plan, they can continue to use it. If it's in the apartment district, just straight up apartment district, and the building burns down, the whole building, and they need to get a new building permit, then they will lose that nonconforming use, then they will lose the ability to do a short-term rental. If the use, this gets a little complicated, but if the use was part of a planned development, like Puamana or some other planned development, and it shows on the planned development that specific building, and they were doing -- and it was, you know, prior to 1989, and the building somehow burned down, if they wanted to rebuild that building according to the plans from the planned development, they would be able to continue to do the short-term use. So I just wanted to give that because there were a lot of times people were confused on like on whether they stop and if they could lose that conformity. If it's straight building, old

building, they could. Also, the way we interpret this law and the way we've been interpreting the law for the last 20-plus years has been that you can only switch back and forth if it was a habitable structure, meaning if you had a 12-unit or 20-unit apartment complex, and you had a manager's office, you couldn't convert the office, or if you had a laundry facility, okay, people get creative, okay, or you had a tennis clubhouse, okay, tennis facility, tennis clubhouse, you couldn't convert the building that was a tennis clubhouse from a tennis clubhouse to a transient vacation rental, okay. It has to have been a habitable structure at the time, in '89, according to the building plans. Can you renovate? Yes. You can. Can you expand? Yes. You can, but if you expand or add units, you can't use them as short-term rental. So that's how we interpret it. I just want to make that's clear. And I spell that out in my staff report.

Also recently, I think some of you have seen our recent amendment to the what we call a planned development section of the county code, 19.32, probably a year ago, it was called pretty much the "Puamana bill" because the only project that ever was impacted was Puamana, and potentially one other unit -- planned unit development, but we feel that, to be clear in this, not only should you be amending 19.12, which is the apartment district, 19.37, which is the restrictions on timeshare and TVRs, but also you should amend 19.32, and I have the proposed language that the department is seeking to be added into the bill. It basically just adds that when you could do -- you know, if they were in a planned development, they would be able to do short-term rentals also.

So again, the Planning Department is recommending approval, we support the bill, so if you look on your list of four items, recommendations and options, 1, 2, 3 and 4, we're recommending approval of the proposed bill with amendments to the Maui County Council, and the amendments we'd like you to approve are the ones that I have on page 2 of the memo report, dated June 4, 2014. If you have any questions, I can try to take them now.

Mr. Doug Rogers: It sounds like the bottom line this isn't going to affect the Wavecrest or the shores anyways because they were built in the '70s.

Mr. Alueta: Correct. They were -- they were always legal to do short-term rentals if they're on apartment zoned land, so it doesn't affect them at all.

Mr. Rogers: Yeah. So they're grand-fathered.

Mr. Alueta: Well, they're not grand-fathered. Basically what it is is that the 1989 bill said they weren't subject to the restriction of doing long-term rental. So essentially Wavecrest or these older condominium or apartment projects, they can always do -- they always had the right to do short-term rental, they can always -- they can continue to do short-term rental. This just clarifies it, and again, the way the realtors explained it to me is that when they try to sell a unit there as a condo and say, hey, you can do short-term rental, it's not

in the code specifically. This puts it specifically in the code for them, so the realtors can go, hey look, you are legal. This is what it is. This thing was built -- the building permit for this structure was 1970.

Mr. Billy Buchanan: You mentioned at the very beginning the taxes went to the state and you kinda like ...(inaudible)...

Mr. Alueta: Both general excise tax and TAT are paid to the state. They're not paid to the county at all. Okay, so what happens is they go to the state and then we -- the counties ask for that money back, okay. That's basically what happens. And typically -- thank you, Commissioner, so it's not a -- sometimes it's not fair; sometimes we get, you know, it's just -- but to say that we get it straight on, the county gets it, no. The only tax the county collects is the property value tax.

Mr. Buchanan: Is there any way to pursue that as far as getting that more directly?

Mr. Alueta: That's something that, yeah, the leg. has to decide or the counties have to, yeah. It's all on the leg. side.

Mr. Yoshida: Yeah, I would clarify that the TAT is collected by the state but the legislature appropriates monies that go back to the county because it's the county that provides many of the services that visitors use, police and fire protection, lifeguard services, county water, wastewater, and so forth, but the struggle has been in the past few years that the legislature has capped the amount that the counties can receive, and so year after year, the mayor and the council go to the legislature to fight for the fair share for the county so we can provide these services, and that's kind of the struggle that has been happening over the past few legislative sessions.

Mr. Buchanan: Being in the middle of that whole thing, yeah, one of my concerns was the fact that there's no policeman for the state. They police anything that goes on. The county, we do all the work. I mean if they're getting the taxes, then why aren't they policing these people?

Mr. Alueta; And the enforcement action is, on the tax side, is, like I said, we enforce it on the land use side whether or not they're legal or illegal. Whether someone pays their general excise tax is not enforced by the county. It's all the state tracks it down. But the funny part is, like I say, some of the, I may be getting off topic, is illegal vacation rentals, they tend to be paying their state taxes because they seem to be more afraid of the tax man than they are of the county enforcement, but we're working -- we do have a proactive enforcement that's going on and so we are trying to enforce on the illegal side. But again, this deals just with a legally operated transient accommodations in the apartment district; that's what this bill is only about, so we're only dealing with in the apartment district.

Mr. Lawrence Lasua: Question, Joe. You stated that the renovation to any of these apartment buildings wouldn't qualify?

Mr. Alueta: They wouldn't lose their --

Mr. Lasua: Oh, they wouldn't lose it.

Mr. Alueta: They wouldn't lose their right to do a transient accommodation.

Mr. Lasua: Oh, okay.

Mr. Alueta: We don't see renovations as a -- but if, like I say, if the building was completely destroyed and they had to rebuild under a new building permit, then that's when the loss of that exemption would come about. Yes.

Mr. Lasua: So the loss of that exemption comes in, now how do -- how would they get it back? They apply?

Mr. Alueta: No. The only way would be through a change in zoning to the entire property.

Mr. Lasua: Oh.

Mr. Alueta: So the property, like I say, if these units are being -- like if you have property on this island that's already being used as short-term rental or hotel like uses but they're zoned apartment, then you should -- the best methodology to secure it is through a change in zoning to one of the hotel districts.

Mr. Lasua: So can the hotel do the zoning district at the same time?

Mr. Alueta: The hotel, yeah, anyone can apply for zoning, rezoning at anytime as long it's consistent with your community plan.

Mr. Lasua: Okay. Thank you.

Chair Jennings: Okay, is there a motion?

- a. **Public Hearing**
- b. **Action**

Mr. Ron Davis: Yes, I move that we approve the proposed bill with amendments to the Maui County Council as recommended in option no. 2.

Chair Jennings: Is there a second to this motion? Bill second.

It has been moved by Commissioner Davis, seconded by Commissioner Buchanan, then unanimously

VOTED: to recommend approval of the proposed bill with amendments to the Maui County Council.

Chair Jennings: Motion carried.

Mr. Alueta: Thank you very much.

D. DIRECTOR'S REPORT

1. Agenda Items and starting time for the July 9 , 2014 meeting. The public hearing items already scheduled are:

- a. MR. WILLIAM SPENCE, Planning Director transmitting the Planning Department's Report with comments, recommendations, and proposed amendments to the planning commissions for review and transmittal to the Council relating to Chapter 19.65 of the Maui County Code relating to Short-Term Rental Homes. (G. Flammer)**

The Report contains a Proposed Bill for an Ordinance containing the Planning Department's proposed amendments to the Short-Term Rental Home Ordinance No. 3941.

- b. MR. WILLIAM SPENCE, Planning Director transmitting the Planning Department's Report with comments, recommendations, and proposed amendments to the planning commissions for review and transmittal to the Council relating to Chapter 19.64 of the Maui County Code relating to Bed and Breakfast Homes. (G. Flammer)**

The Report contains a Proposed Bill for an Ordinance containing the Planning Department's proposed amendments to the Bed and Breakfast Home Ordinance No. 3611

Both reports are available on the County website at:

**www.mauicounty.gov/Planning
(<http://www.mauicounty.gov/index.aspx?nid=121>)**

Mr. Yoshida: Thank you, Mr. Chair. Under Director's Report, we just would note that the regularly scheduled meeting is on July 9 in the Kaunakakai School Cafeteria. We have the review of two ordinances: one is the short-term rental home ordinance that the council passed two years ago, and the other is the bed and breakfast home ordinance, which the council passed in 2008, and we're trying to suggest amendments to the -- the department is suggesting amendments to the ordinances now that we've had two years of experience in implementing the short-term rental home ordinance, and so the reports can be found online on the county website at the link that's listed in the agenda. Because the department is, combined, is proposing some -- about 50 amendments, 5-0 amendments, to the short-term rental home ordinance and the bed and breakfast home, we'd like to start a little earlier, like we did with the rule amendments, we'd like to start at 11:00 instead of 12 to give more time for fuller discussion of the amendments. So if -- I guess we wanted to check if we could get a quorum at 11:00.

Chair Jennings: I saw that in the paper this morning. I don't see any problem, you know, with myself. I'll leave it up to the rest of the board. But Ron says it's okay. Larry okay. Billy? Okay, so why don't we -- Marshall? Okay, why don't we start that at 11:00 on the July 9th for the next board meeting.

Mr. Yoshida: Yeah, I guess we could, you know, poll the other Commissioners also. But so it'll be at the Kaunakakai School Cafeteria, and we may have one or two SMA assessments.

2. **Pending Molokai Applications Report generated by the Planning Department (Appendix A)**
3. **Closed Molokai Applications Report generated by the Planning Department (Appendix B)**

Mr. Yoshida: We've circulated the list of pending and closed Molokai applications reports if the members have any questions on those, either of those reports. If not, then that concludes the Director's Report.

E. NEXT MEETING DATE: July 9, 2014

F. ADJOURNMENT

Chair Jennings: Okay, Commissioners, anything else? Then we'll just --

Mr. Yoshida: You can adjourn the meeting.

Chair Jennings: We'll just adjourn the meeting. Aloha. Thank you all for taking the time to be here and we'll see you at Kaunakakai or Kualapuu School on July 9th? Same place. We're right here in the library. Cafeteria. Is it air conditioned? Dang. Okay, thank you everybody. Ladies, thank you for coming. Thank you.

There being no further business brought before the Commission, the meeting was adjourned at 12:30 p.m.

Respectfully submitted by,

SUZETTE L. ESMERALDA
Secretary to Boards & Commissions

RECORD OF ATTENDANCE

Present

Michael Jennings, Chairperson
Douglas Rogers, Vice-Chairperson
Billy Buchanan
Ron Davis
Lawrence Lasua
Marshall Racine

Excused

Zhantell Dudoit
Diane Swenson
Sherry Tancayo

Others

Clayton Yoshida, Planning Program Administrator
Joseph Alueta, Administrative Planning Officer