

PLANNING COMMITTEE
Council of the County of Maui

MINUTES

Council Chamber

October 16, 2014

CONVENE: 10:16 a.m.

PRESENT: VOTING MEMBERS:

Councilmember Donald G. Couch, Jr., Chair
Councilmember Gladys C. Baisa
Councilmember Elle Cochran (arrived at 10:34 a.m.)
Councilmember Stacy Crivello (arrived at 10:12 a.m.)
Councilmember Don S. Guzman
Councilmember Mike White

EXCUSED: Councilmember Michael P. Victorino, Vice-Chair

STAFF: Chancy Hopper, Legislative Analyst
Pauline Martins, Committee Secretary

Ella Alcon, Council Aide, Molokai Council Office (via voice conference)
Denise Fernandez, Council Aide, Lanai Council Office (via voice conference)
Dawn Lono, Council Aide, Hana Council Office (via voice conference)

ADMIN.: Michael J. Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel
Patrick Wong, Corporation Counsel, Department of the Corporation Counsel
William Spence, Director, Department of Planning
John Rapacz, Zoning Planning Program Administrator, Department of Planning
Jo-Ann Ridao, Director, Department of Housing and Human Concerns (Item 57 & 58)
Robert Halvorson, Planning and Development Division Chief, Department of Parks and Recreation (Item 57 & 58)
Clayton Yoshida, Current Planning Program Administrator, Department of Planning (Item 57 & 58)
Ann Cua, Land Use Planning Supervisor, Department of Planning (Item 57 & 58)
Danny Dias, Planner, Department of Planning (Item 57 & 58)

PLANNING COMMITTEE

Council of the County of Maui

October 16, 2014

OTHERS: Grant Chun, Vice President, Maui, A&B Properties, Inc. (Item 57 & 58)
Beverly Livingston
Robbie Dein
Catherine Clark
Thomas Croly (Item 59)
Plus (11) other people

PRESS: *Akaku Maui Community Television, Inc.*

**PC-57 ANNUAL COMPLIANCE REPORT – MAUI BUSINESS PARK PHASE II
PROJECT BUSINESSES (GC 14-5)**

PC-58 ANNUAL COMPLIANCE REPORT – HALIIMAILE SUBDIVISION (GC 14-6)

CHAIR COUCH: ... (*gavel*) ... Will the Planning Committee meeting of October 16, 2014 please come to order. My name is Don Couch. I'm the Chairman of this Committee and it is 10:05 p.m....a.m., sorry, and I apologize for the delay. We've had some quorum issues and they have been settled and we're ready to go. Alright. First of all, everybody please turn your cellphones on to silent mode so we can have an uninterrupted meeting if at all possible. I'd like to welcome Gladys...Chair, Council Chair Gladys Baisa.

COUNCILMEMBER BAISA: Good morning, Chair, and I apologize, I had no idea you were in trouble.

CHAIR COUCH: Well, that's alright. We weren't supposed to be. Vice-Chair of the Committee, Michael Victorino is excused. Elle Cochran is excused for now. Stacy Crivello is excused. Don Guzman, good morning.

COUNCILMEMBER GUZMAN: Good morning.

CHAIR COUCH: And Councilmember Mike White.

COUNCILMEMBER WHITE: Morning, Chair.

CHAIR COUCH: Good morning. Thank you, guys, for hanging in there. We also have from the Administration, Jo-Ann Ridao, Director of Housing and Human Concerns.

MS. RIDAO: Good morning.

CHAIR COUCH: Good morning. Will Spence, Planning Director.

MR. SPENCE: Good morning, Chairman.

PLANNING COMMITTEE

Council of the County of Maui

October 16, 2014

CHAIR COUCH: Good morning. And we have Robert Halvorson from Parks for this item as well; and eventually, we're gonna have John Rapacz, Danny Dias, Clayton Yoshida and Ann Cua for Planning for most of the items here today. We have Corporation Counsel, Michael Hopper, good morning.

MR. HOPPER: Good morning, Chair.

CHAIR COUCH: And Committee Staff, Legislative Analyst Chancy Hopper, good morning. Legislative Analyst Kim Willenbrink will be here and Committee Secretary Pauline Martins, good morning. And as a resource, we will have a couple folks for different items. We'll call them when it, when the time comes. Okay. The items on today's agenda is PC-57, Annual Compliance Report – Maui Business Park Phase II Project; PC-58, Annual Compliance Report – Haliimaile Subdivision and PC-59, Illegal Vacation Rental Accommodations. And Members, those are the items that we're gonna discuss today, and members of the public, we're about ready to start public testimony. For anybody who wants to testify, please sign up in the back. I'm sure you all have already. Testimony will be limited to the items listed on our agenda today and each testifier will be allowed to testify for three minutes. We're gonna have a lighting system where the green light will be on for three minutes, the yellow light for one minute and when the red light comes on you're at the end of your four minutes, please end your comments. Without, Members, without objection, ready to start public testimony?

COUNCILMEMBER BAISA: No objection.

CHAIR COUCH: Okay. First testifier is Beverly Livingston...followed by Robbie Dein.

MS. LIVINGSTON: I have a copy of an article to give as written.

CHAIR COUCH: Okay.

MS. LIVINGSTON: Good morning, Chairman and Councilors.

CHAIR COUCH: Good morning.

MS. LIVINGSTON: Thank you for having me. Yesterday morning, *The New York Times* had a front page article. It says, Airbnb Listings Mostly Illegal, State Contends. And I'd like to just read you a few sections out of this just to show that the problem that we're facing here on Maui is actually national. It says that nearly three-quarters of all Airbnb rentals in the city are illegal, violating zoning or other laws. Commercial operators, not hard-luck residents, supply more than a third of the units and generate more than a third of the revenue. At least a handful of landlords are running what amount to illegal hostels. And it took a long time for the people in New York to get data for Airbnb. It took them almost four years. There was a court fight. There, the report says the service was dominated by large-scale operators, finding that 6 percent of the hosts made 30 percent of the revenue. So actually, what's happening is some of the things that are

PLANNING COMMITTEE
Council of the County of Maui

October 16, 2014

happening with things like Airbnb are in...in contention with hotels for the travelers. They're doing hotels. So even the hotel industry is being impacted by this, but more pertinent to our scale of things is the fact that in our neighborhoods, people who are permitted are dealing with perceptions that they're not okay because of what's happening with the illegals. The illegals are not conforming to what the County has said they must conform to; and so therefore, behaving the way they behave, people tend to generalize and say, you guys are all bad...where the ones of us who are permitted really want to foster a good neighborhood, a good presence, a good support for the community. So there's that. Also, there's the issue of if something happens in the illegal rental, say for instance a fire or something like that, if somebody's gonna institute a lawsuit, they're gonna go for the deep pockets which would be the County. They're not carrying the insurance that we carry to, you know, we have to have a very high-level insurance to make sure that the County doesn't get sued if something like that happens, you know. So there's that. And then, also, I want to say I'm, I know since this thing has exploded as far as the number, that the, the Planning Department is overwhelmed trying to handle all these, the influx of the noticing of all the illegal rentals. It's just, with the Airbnb especially, it's just taken off like crazy and there's estimated at least, 2,000. There's like a ten-to-one ratio for permitted rentals to unpermitted rentals and, you know, it's just a mushrooming problem. So anyway, thank you for your attention to this. I'm sorry I'm not really easy in talking about it. I apologize. I've just got so many things I want to say about it, but anyway, thank you for listening. I really appreciate it.

CHAIR COUCH: Thank you, Ms. Livingston. Members, any questions to the testifier? Mr. White.

COUNCILMEMBER WHITE: Thank you. Thank you for being here. Do you have a sense of how many unpermitted operations are listed on Airbnb from Maui County?

MS. LIVINGSTON: There's a, there's an estimate that around 2,000 homes, free-standing residences are being listed, whether it's Airbnb, VRBO, or HomeAway, FlipKey. It's about, they think about 2,000 and there's what, little over a 100 permitted ones?

COUNCILMEMBER WHITE: Alright. Okay. Thank you. Thank you, Chair.

CHAIR COUCH: Thank you. Members, any further questions? Seeing none, thank you, Ms. Livingston. Next person to testify and the last one to sign up is Robbie Dein, D-e-i-n.

MR. DEIN: Aloha, good morning --

CHAIR COUCH: Good morning.

MR. DEIN: --Council members and all here. Thank you for the opportunity to be heard. I've been living on Halama Street in Kihei since 1998. I raised my family there. I'm a realtor and I watched as the dialog from the early 2000s to when we finally instituted B&B guidelines and short-term vacation rental rules and laws evolved, and what was apparent to me in our community on Halama Street is that there was a lot of concern amongst homeowners as to how to preserve the character of the neighborhood because it is residential. Those of us who have

PLANNING COMMITTEE

Council of the County of Maui

October 16, 2014

children and have to get up at 6:00-6:30 to get them on a school bus were concerned about the impact. I think so much time and energy was dedicated, hours and hours and tax dollars essentially to create these guidelines and thought put into it, that we came up with a good set of guidelines and the intent was that we would have neighborhoods where there'd be a certain density, a certain number of permitted units and that would be able to operate conceivably in harmony and in balance so that all the owners or property owners in the neighborhoods needs and lifestyles would be considered. And what's happened over time is that many of us who are perhaps more entrepreneurial, creative, wanting to participate in the opportunity have followed the guidelines. We've given up our homeowner exemption, we've...paying \$5,000 more dollars a year in taxes. We spent the time and energy to go through the permitting process and had our electrical systems inspected and our permits checked for compliance with County Planning Department, and we've done everything we needed to do to create a successful working environment and follow all the effort and energy. And I've had neighbors in our community in our neighborhood, tell me that well, I know, you know, what's happening is they're not experiencing the intent of the guidelines and the law. There is people operating without permits and that, we don't get a real sense of what the balance should be, because if you're only...and this isn't an accurate number, but let's just say in a neighborhood with all the considerations that are in place, that there might only be four, five or six, whatever the number is potentially permitted properties and you have ten or eleven and those residents experience a much greater density and those unpermitted properties may or may not have supervision. The neighborhood isn't experiencing the intent and the character and quality of what all the effort intended it to be. I also...I'll speak to and I think it's really imperative that the, that the resources were, that were planned or dedicated to following through and actualizing the vision. And I also have clients around the island, one in particular, and they went through the B&B process. This is a client who owns a property in Haiku. She had physical complications, had a couple of strokes and now she's reliant on her B&B income 'cause she can't practice professionally. And I'm looking at listing her property and what's happened is there's such a proliferation of non-permitted competition in the area, that she's finding, she just might have to sell her property because her taxes are higher, her homeowner exemption's gone and there's people operating that are highly competitive and undercutting her and it's just not what the intent and spirit of the law was.

CHAIR COUCH: Okay. Thank you, Mr. Dein. Are you about ready to wrap up because your time is...?

MR. DEIN: Yes.

CHAIR COUCH: Okay.

MR. DEIN: Thank you very much for the time.

CHAIR COUCH: Thank you. Members, any questions of the testifier? Mr. White.

COUNCILMEMBER WHITE: Thank you for coming today. How many, what number of illegals would you say you have on Halama Street versus the ones that are permitted?

PLANNING COMMITTEE

Council of the County of Maui

October 16, 2014

MR. DEIN: I can't really speak to a definitive number. I know that other neighbors have mentioned that prior to the laws being invoked, that they had concerns and still do. Signage isn't necessarily required for a B&B, so I can't really tell you a definitive number, but I do hear from my neighbors that they have concerns and they know there's more present than what they think should be.

COUNCILMEMBER WHITE: Okay. Thank you. Thank you, Chair.

CHAIR COUCH: Thank you. Members, any further questions? Seeing none, thank you, Mr. Dein.

MR. DEIN: Alright. Thank you again.

CHAIR COUCH: Somebody else has signed up to testify. We have Catherine Clark. And then we'll go to the District Offices.

MS. CLARK: This is twice in one week. I really need to stop doing this. So, aloha, Chair Couch and Council members. The B&B ordinance was signed into law in January 9, 2009. Almost three-and-a-half years later, I was honored to be present on the ninth floor when the STR ordinance was signed into law by Mayor Arakawa on May 23, 2012. Following this year picture, which was the signing of the ordinance, he stepped back and said I hope everyone knows that this means there will be enforcement. We acknowledge that we were aware of this and aware that owners would now have an obligation to apply for a permit. There was finally a process for everyone that wanted to be legal. Between May of 2012 and now, 172 STR applicants have come forward to get a permit with over 100 of these already approved and through the process. They join the more than 100 B&B owners that are legal to operate. These are the good guys, the ones that have done the right thing. Are they proud to have a permit? Absolutely, they are. But so far, there's been no benefit to having a permit and in fact for many, it's been seen as a punishment with some feeling that it has put them at a competitive disadvantage. Years ago, if somebody asked what I did for a living, I probably would have mumbled and moved the conversation along. Today I'm proud to say that I'm in the vacation rental business. I don't own a rental, but we do reserve vacation rentals for clients coming to the island. As an industry, we've made great strides over the past 10 years. We've learned to compromise and to understand the County's side of the process. We've also become more involved in our communities. But with the lack of enforcement, we are concerned that we will be seen as the reason for a shortage of long-term rentals. Caps for each community-planned district are part of each ordinance to be certain that the vacation rental industry doesn't deplete the supply of long-term rentals. If only the permitted properties were operating, we are confident that this safeguard would provide the protection the community needs. All of this, of course, leads us back to enforcement. MVRA has come to the conclusion that we will need to take an active role in enticing owners without a permit to apply. We're willing to answer questions and help them through the process. If we step forward to fulfill this role, we need to know that the County will move swiftly on their end when they find a property that is not permitted. A big piece of this puzzle is the ease with which an applicant can apply. When these ordinances are

PLANNING COMMITTEE

Council of the County of Maui

October 16, 2014

reviewed within the next few months, I encourage you to ease the application process, but strengthen the penalties for operating without a permit or not adhering to the terms of a permit. We believe there can be a win-win for everyone involved, the County, the community and the permitted vacation rental owners. Thank you.

CHAIR COUCH: Thank you, Ms. Clark. Members, any questions for the testifier? I'm sorry, oh, I thought I saw your hand go up there, Mr. White, sorry. Alright. Thank you. Anybody else wanting to testify, please come down. Oh. Okay. And then sign up at the end of your testimony, please.

MR. CROLY: Aloha, Chair. I know you asked me to be a resource for this Committee and I wasn't sure whether I'd reserve my comments until then or make them in testimony, but didn't want to miss an opportunity, because I always have something to say. I'm Tom Croly and I'm speaking on behalf of the Maui Vacation Rental Association. The private home rental industry has changed dramatically in the past six years since we passed the B&B ordinance and even in just the past two years since we passed the short-term rental ordinance. Airbnb is...you already heard about them. They've become a phenomenon, growing from a variation of couch surfing, hey, I've got an extra couch, you can sleep on it tonight to now being a dominant player in the vacation rental industry, not only in the vacation rental industry, but in the hotel industry. In a recent valuation of their, of that business, Airbnb, they've been valued at \$10 billion. This was a startup from some Harvard graduates just a few years ago and it really has revolutionized what's happening there. Folks who really had no interest in being hosts or bed and breakfast owners and didn't really invest in the infrastructure or the regulations associated with it were invited and to use a room in their home to invite guests in, it even led to people renting apartments, setting them up as vacation rentals and then using Airbnb as the marketing venue for these rentals. And just as that's changed the vacation rental industry, we see the Internet changing industries like the taxi industry with Uber and Lyft. We don't have them here on Maui yet, but this same type of discussion is taking place around the country where taxi drivers are saying, you're making me subject to all these conditions for my taxicab yet there's this whole industry where people can summon the taxi on their cellphone and someone comes there and they're not regulated in any way, so this is not a unique situation that we're in here. And it's changing so quickly that it's difficult to come up with hard guidelines for enforcement that you know are going to work because the, you know, the marketing channels change and so forth. I want to say that MVRA is committed to creating a fully compliant vacation rental industry, and I want everyone to know that all of our members, all the members of the Maui Vacation Rental Association either have been granted their permits or have a permit application that is still in process. So at this point, we're talking about folks that are not part of our group and it's difficult to reach out to them. It's easy for them, though, to become operators in this industry these days. They don't really even need the resources that we offer because these Internet resources are out there for, to do that for them. Reaching full compliance is going to take a lot of things to happen beyond just enforcement. One of the things that we were just in this room this week discussing was what should the tax policy be for these types of operations. With the tax policy that was put in place by the Administrator last year, quite frankly in violation of Code, that tax policy has said to the people who got permits, we don't want you here. Give up your permits. And a lot of them have

PLANNING COMMITTEE

Council of the County of Maui

October 16, 2014

said they'll do that. A lot of them have said I'm ready to give you back my permit. You've doubled, you tripled my taxes, you can have this permit back because you know what, my neighbor didn't get a permit. He's paying the lower taxes and here I am. So we're faced with a problem there and until we solve these problems with respect to tax compliance, with respect to making the process more compliant for people to get through, then we're going to continue to battle this, the illegal folks out there. I'll give you one quick example. I see that I'm, I've hit overtime here.

CHAIR COUCH: Yeah, let's...

MR. CROLY: Yeah.

CHAIR COUCH: You're gonna be a resource.

MR. CROLY: Yeah, I'll have...

CHAIR COUCH: Why don't you do that later?

MR. CROLY: Okay.

CHAIR COUCH: Yeah. Why don't we do that later?

MR. CROLY: Sure. Sure.

CHAIR COUCH: Members, any questions to the testifier? Seeing none, thank you, Mr. Croly. And we'll call you back up when this item comes up. Anybody else in the gallery wishing to testify? Seeing none, we'll go to the District Offices. Hana District Office, how you doing over there?

MS. LONO: Good morning, Chair. This is Dawn Lono at the Hana Office. My testifier had to leave, but will submit testimony in writing.

CHAIR COUCH: Okay. Thank you. Molokai District Office?

MS. ALCON: Good morning, Chair. This is Ella Alcon on Molokai and there is no one here waiting to testify.

CHAIR COUCH: Thank you. And Lanai District Office?

MS. FERNANDEZ: Good morning, Chair. This is Denise Fernandez on Lanai and there is no one waiting to testify.

CHAIR COUCH: Thank you, ladies, and sorry for the delay. Alright, Members, seeing that there is nobody coming down, racing down from the gallery to testify and no one at the District Offices, without objection, we'll close public testimony.

PLANNING COMMITTEE

Council of the County of Maui

October 16, 2014

COUNCIL MEMBERS: No objection.

CHAIR COUCH: Okay. Public testimony is closed and thank you, ladies. Members, there is some written testimony. It's now on SharePoint, so you'll have to check on your SharePoint locations. I guess that's the new process, so everything is being done electronically. You can pull SharePoint up on your computer or your tablet, so please look at the written testimony. There are two items...written testimony, so take a look at those and those will be entered into the record. Alright. We're all ready. The first item on the agenda is PC-57 and without objection, I'd like to also bring up PC-58 because it's the same company and the same person.

COUNCIL MEMBERS: No objection.

CHAIR COUCH: Okay. So Members, the Committee is in receipt of General Communication 14-5, from Grant Chun, Vice President, Maui, A&B Properties, Inc., transmitting the 2014 Annual Compliance Report for the Maui Business Park Phase II Project, Kahului, Maui, in accordance with Condition 19 of Ordinance 3559 (2008). And we're also in receipt of General Communication 14-6, from Mr. Chun, transmitting the 2014 Annual Compliance Report for the Haliimaile Subdivision project, in accordance with Condition 17 of Ordinance 3312 (2005). Let's start with the first one, Ordinance 3559, Change the Zoning from Ag, M-2 Heavy Industrial and R-1 Residential Districts to M-1 Light Industrial District for the Maui Business Park Phase II Project for property situated at Kahului, Maui. The ordinance is in your binders. The change in zoning was subject to 19 conditions. Condition 19 requires an annual report on the landowner's compliance with the conditions of zoning imposed by Council. Last time we met on this item on August 14, 2014, Members had questions for the Department of Housing and Human Concerns and the Department of Parks and Recreation regarding identification of land for affordable housing, park and Kahului Community Multi-Purpose Center and the next steps and the timeline for the affordable housing land conveyance to the County and next steps for the County's use of the land for affordable housing. We received responses to our follow-up letters on these questions. They should be in your binder. We have here with us Ms. Ridao from Housing and Human Concerns and Mr. Halvorson from the Parks Department and, of course, Mr. Chun. So first, let's hear from Planning, do you have any comments on their status report in this time?

MR. SPENCE: Mr. Chairman, we have no comments.

CHAIR COUCH: Okay. Ms. Ridao, can you kinda go over with what your responses were to this for us, please?

MS. RIDAO: Thank you, Chair. Yes, we have met with A&B on several occasions regarding the location of the affordable housing component and as you're aware, there are 40 acres that is in this component. There are seven acres for a multi-purpose center and three acres for park purposes. We will be actually meeting with Parks Department and A&B tomorrow to go over the actual plat for this project. So we're progressing toward the actual location becoming a reality.

PLANNING COMMITTEE

Council of the County of Maui

October 16, 2014

CHAIR COUCH: Okay. And Parks, do you have any comments on the information that Ms. Savage provided for us?

MR. HALVORSON: No additional information, Chair. We're basically in the same position as Housing. We're reviewing the final plats.

CHAIR COUCH: Okay. Thank you. Corporation Counsel, any comments?

UNIDENTIFIED SPEAKER: ...*(Inaudible)*...

CHAIR COUCH: Okay. Thank you. Alright. Members, with that, we will bring down Mr. Chun as our resource person and have him speak to some of the things. You do have in the responses dated August 28, 2014 and September 5, 2014, maps and responses from the Departments. So, Mr. Chun...welcome.

MR. CHUN: Good morning, Mr. Chair.

CHAIR COUCH: Good morning.

MR. CHUN: Thank you. Good morning, everyone.

CHAIR COUCH: And so the question we have for you...actually, let's open it up to the Members. I think, Mr. Guzman, you had a question?

COUNCILMEMBER GUZMAN: Of course. Thank you, Chair. And of course, closest to my heart is the Kahului Community Center and the park parcel. The status of that, Mr. Chun, it looks like as though on the maps it's been identified, and I wanted to know if the next step would be a right of entry agreement to allow design for such a facility.

MR. CHUN: Well, actually from our side as Ms. Ridao mentioned and Mr. Halvorson referenced, first, the next step is to proceed with the submission of a subdivision application to establish the parcel upon which the multi-purpose center would be situated. So we're actually meeting, we have a draft, preliminary plat for that subdivision prepared, and we'll be meeting tomorrow to kind of make sure we're all on the same page as far as that. To the extent that either of the Departments desires a, you know, right of entry from us to go upon the property, you know, we'd be more than willing to accommodate.

COUNCILMEMBER GUZMAN: Thank you. Thank you, Chair. Is that confirmed also...can I confirm that with the Parks Department --

CHAIR COUCH: Sure.

COUNCILMEMBER GUZMAN: --that you're in, agreeable to, if need be, request a right of entry

PLANNING COMMITTEE

Council of the County of Maui

October 16, 2014

agreement?

CHAIR COUCH: You gotta talk to the microphone.

MR. HALVORSON: The Department is ready to proceed once we have some control on the property.

COUNCILMEMBER GUZMAN: Okay. Some control meaning the right of entry agreement?

MR. HALVORSON: That would probably be sufficient.

COUNCILMEMBER GUZMAN: Okay. Thank you. Thank you, Chair.

CHAIR COUCH: Thank you. And by the way, I should, I'd like to acknowledge the presence of Ms. Crivello, thank you...and Ms. Cochran, she's coming in. Thank you. Members, any questions of Mr. Grant on this? Any further questions? I'm sorry, Mr. Chun, sorry.

MR. CHUN: That's fine. You can call me, Mr. Grant if you like.

CHAIR COUCH: Yes, I know. I have a, just a small, I mean, just an interesting observation that, the parcel according to the map, it's actually gonna be two parcels and a small, a 2.2 acre portion around apparently a future area for the Maui Lani or Waiale Subdivision and then another bigger 37.8 acre parcel and about three different kinda or two different park areas and the community center? Is that, is there a reason for the splitting of that just two different...?

MR. CHUN: Yeah, we're working with the terrain of the land and the location of the cultural preserve. So our goal is to, or has been through the course of the discussion that occurred at zoning to situate these activities as close to the boundary of Maui Lani as we possibly can, so that's what we're work, we've worked to do. Of course, when you, once you start actually doing these things, not on a map, but on the land, there are topographical issues and pre-existing, you know, cultural preserve issues that are being accommodated, and that's why the layout of the subdivision is as it is and that's why it's taken some coordination between the various users, not just the County, but also the, you know, the DOE, yeah, because they're looking at ultimately providing another school in the area.

CHAIR COUCH: Okay. Alright. I just noticed that that was kinda funky looking --

MR. CHUN: Yeah.

CHAIR COUCH: --split there. Members, any further questions on the A&B park portion? Okay. Then we'll move onto the Haliimaile one. Let me just give you some background. Ordinance 3312 changed the zoning from Interim to R-1 Residential District and park, PK-1 Neighborhood Park District for the Haliimaile Subdivision Project. The change in zoning was subject to 17 conditions. Condition 17 requires an annual status report. I have some questions for Planning. I don't know...Housing, do you have -- let me ask Housing first. Housing, do you

PLANNING COMMITTEE

Council of the County of Maui

October 16, 2014

have any questions or comments on this?

MS. RIDAO: No, we have no further comments on this.

CHAIR COUCH: Okay. Thank you. Then you don't necessarily need to stay. We'll have Parks come up. Oh, no, I'm sorry. Parks isn't involved in this one. Planning, any comments from you?

MR. SPENCE: No comments, Mr. Chairman.

CHAIR COUCH: Okay. You're satisfied with the compliance report?

MR. SPENCE: Yes.

CHAIR COUCH: Okay. Members, questions open up for Mr. Chun on the Haliimaile. I know we had some concerns last time actually for the other one, but I just wanted to make sure you had, all had your concerns answered before we file these two items. No questions? Everything's fine?

UNIDENTIFIED COUNCIL MEMBER: Yeah.

CHAIR COUCH: Okay. In that case, Mr. Chun, do you have any further comments on the Haliimaile one?

MR. CHUN: No, sir.

CHAIR COUCH: How you doing with the water?

MR. CHUN: Still working on the water, sir.

CHAIR COUCH: Okay. Ms. Cochran, did you have any questions?

COUNCILMEMBER COCHRAN: No.

CHAIR COUCH: Okay. Well, thank you, Mr. Chun.

MR. CHUN: Thank you. Thank you, everyone.

CHAIR COUCH: Members, I think what we'll do, we'll do this in one motion...actually, I'm gonna defer this because this item is an annual report and we want to keep an eye open next, for the next year to see if they have any questions, if you guys would have any questions for them so. Without objections, I'm gonna defer these two items. Is that...

COUNCIL MEMBERS: No objections.

CHAIR COUCH: Okay. Staff, you're alright with that? That's what I thought.

PLANNING COMMITTEE

Council of the County of Maui

October 16, 2014

COUNCIL MEMBERS VOICED NO OBJECTIONS.

ACTION: DEFER.

CHAIR COUCH: Okay.

PC-59 ILLEGAL VACATION RENTAL ACCOMMODATIONS (CC 14-250)

CHAIR COUCH: In that case, Members, we're gonna go right on to PC-59 Illegal Vacation Rental Accommodations. We're in receipt of County Communication 14-250 from Council Chair Gladys Baisa on the matter of Illegal Vacation Rental Accommodations. This matter was referred to our Committee by Council on October 3rd of this year. Before we start with the comments from the Department, I would like to have Ms. Baisa see if she has any opening comments...Chair?

COUNCILMEMBER BAISA: Thank you very much, Chair. Where do I start? Why did I write this letter and why did I ask that we discuss this, I think is the crux of the matter. And the crux of the matter is that we passed these laws and we heard the timetables earlier that were presented by the testifiers and we have a six-year-old B&B ordinance and we have a two-year-old STR ordinance and recently, I've been hearing more and more about people being concerned who are permitted operations. And they're concerned about seeing their numbers go down and hearing a lot about illegal operations and you know, I don't particularly like the word, illegal, but I do much prefer unpermitted operations happening. Illegal sounds kind of like something really bad is going on in there like _____ gambling or, you know, really bad things happening in these homes. Nothing bad is happening in these homes, but they are unpermitted and therefore, they have an unfair advantage, which I don't think is right to the people that have gone through a very, very vigorous and expensive process to get their permits, that they are facing competition from people who just decide they're gonna do it and don't want to go through the permitting process and don't want to pay any of the things that are involved here and have the benefit of it. I don't think it's fair to those owners that have done it. I don't think it's fair to anyone. It's certainly not fair to the County of Maui because we probably are losing out some money here. And the other problem that I kept hearing about over and over was people were complaining about the effect this was having on the ability for people to find places to live, because people that owned property saw it much more advantageous to rent out three bedrooms for the night to separate people and make a pile of money than renting it to a long-term resident who pays once a month and that's it. And so, it got to the point where I'd heard it a lot and finally someone made an appointment, in fact, was a couple of people made an appointment to come and see me. And living in my very Utopian little, you know, Camelot existence, I was not aware that all of this stuff was happening on the Internet. But these folks came and brought me a whole list, Xerox copies of Airbnb and the list of all these things that were going on that they had found on the Internet and printed and brought to me. And while I could easily, you know, have a debate with them over allegations of illegals, it kinda makes you nervous when they bring you, you know, Xerox copies of all this

PLANNING COMMITTEE

Council of the County of Maui

October 16, 2014

stuff. And so I suggested that we put this on the agenda and we sit here and discuss it, because I think we need to acknowledge that there is something going on and kinda sit down and put our heads together to figure out how can we stop practices that should not be going on and encourage people that do go through processes by rewarding them. I mean, I don't think it's fair that we're penalizing people who have been law-abiding citizens. And so, Chair, that's essentially why I brought this up.

CHAIR COUCH: Okay. Thank you. Alright. Members, without any objections, I would like to bring Mr. Croly down...probably should sit down because we're gonna go back and forth, I think, as a resource person.

UNIDENTIFIED SPEAKER: He can sit here.

CHAIR COUCH: Okay. See if he can, Mr. Croly, sit here. Department, any comments before we get going with questions?

MR. SPENCE: Sure. Thank you, Mr. Chairman, Committee members. We share some of Chair Baisa's concerns. We have been through quite an arduous process of developing legislation for the typical property owner to be able to come in and apply for a Bed and Breakfast or a short-term rental home permit, and as you remember, the only alternative before then was a conditional permit that took several years to get through, et cetera. Now you can get through in six months, in a lot of times, actually, less, you know, just by meeting all the outstanding criteria. For those 100 or so folks who have actually obtained a permit, as you know, they do lose their homeowners exemption. They're taxed at a different property tax level. They now pay their GET and I say now pay their GET and TAT. You know, some people before were doing, were being good citizens and paying those taxes, for sure now that they are and they are faced with quite a bit of unfair competition for folks who, you know, you've heard the comments of Airbnb and VRBO, they are...we have no idea if they're paying any taxes whatsoever. You know, they remember the days of a former Administration where enforcement was not the best well thought-out process and people are very astute at hiding their operations while still advertising, but...so there's very unfair, you know, competition going on out there for the people who have chosen to come in and comply with County laws...County and State laws. The, so, you know, I'm sure we'll get into other discussion on this. We have some ideas as we go along through the discussion. With me today is John Rapacz. He is the Planning Program Administrator for Zoning and Enforcement. He brought quite a bit of information with him as well as quite a few ideas that we've been bouncing around and how we can improve things. So those are my opening remarks, Mr. Chairman.

CHAIR COUCH: Okay. Did you want to add to that, Mr. Rapacz, or you want to wait for questions?

MR. RAPACZ: I can share.

MR. SPENCE: Why don't we...okay, if you would like to share now.

PLANNING COMMITTEE
Council of the County of Maui

October 16, 2014

MR. RAPACZ: Thank you, Mr. Chair and Members. Just a little bit of background on what the enforcement part of the Zoning and Enforcement Division does and consists of. We have six positions for Zoning Inspectors and/or Inspector Trainees. Right now, five of those positions are filled. We're trying to fill the sixth position. Of the five that are filled, two of them are brand new trainees, who have been hired recently, earlier this year. So that leaves us with one working supervisor and two experienced inspectors, along with those two trainees who are learning and they are productive, but they are not up to speed yet and are not experienced. So what do those folks do? They do enforcement for all aspects of Title 19, which is the Zoning Code. They enforce for SMA violations, shoreline setback violations, Historic District violations and any sign permit violations. Most folks don't know that sign permits, sign...most signs require permits. It's a whole, another regulatory scheme that my Division is involved in enforcing. Now in addition to doing enforcement on all of those areas, the inspectors also do the inspections for Certificates of Occupancy when they're circulated through our Department for review, our inspectors will go out and look and make sure that there's enough parking and buildings aren't built in setbacks and they don't have illegal signs. We also enforce and inspect for farm plans. When people apply for farm plans, we frequently will go take a look and then when there are complaints of possible violations of farm plans, we enforce those as well. And then there are other times when the inspectors are asked to accompany planners from the Current Division when they are doing site inspections for applications, frequently they'll ask a Zoning Inspector to go along as well and assist with those. So that's all of what we have to do and the TVR, short-term rental, B&B related enforcement is a portion of that. Right now, the -- and I'm just gonna say, TVR as a general term, the TVR related enforcement is definitely the highest priority within the Division for enforcement. It receives the most of our attention and definitely the most of our discussion and in particular, about how to improve our processes. We are constantly looking at improving our efficiencies and we are constantly looking at revising our procedures. A lot of that has come from suggestions from the industry on how we might improve things and we are doing so. Right now, we have approximately 1,300 Requests for Service in our complaint system regarding combination of Bed and Breakfast, short-term rentals and general transient vacation rentals. It appears that almost, well, slightly less than half of those have been entered into the system since September. Okay. And I'm just going back to January 1, 2013. So that's for last year and then this year. And since September, about 587 have been entered into the system. About 500 of those have been entered into the system by our inspectors, doing what we call proactive enforcement, meaning we get on the Internet and we search and we try to find these advertisements for illegal operations that do not have permit numbers. Now those numbers I just gave you, there may be duplicates in there. We have not had time to go through and sort out the cases in which a particular property has advertised in three different places and we've issued or identified those three different locations or those pages in the Internet. So that's just to give you an idea of the scope of what we're dealing with. One of the earlier testifiers, I think, used the word, overwhelmed, and we try not to have that feeling and we try to assess the situation, see what we can do to improve it, then prioritize and then move ahead and we are doing that. Given that, I don't know how long it's going to be before enforcement actions are followed through, through notices of warning and then through notices of violation. I don't know how long that's gonna take to do that for 1,300 individual complaints with the number of inspectors that we have. And then again, of course, the final step in any enforcement is not just

PLANNING COMMITTEE
Council of the County of Maui

October 16, 2014

issuing the notice of violation, in order for the enforcement to really be effective, we have to be able to collect the fines. And if I were Mr. Hopper sitting next to me, I'd be getting nervous about how many fines we're going to have to submit to try to get judgments on them and collect them. And that's when the enforcement will, the word of enforcement will be really effective in the community, is when people really have to start shutting down and paying. Thanks. That's what I have for summary.

CHAIR COUCH: Okay. Members, I would like to hear from Mr. Croly first and then we can go with questions if that's alright with you guys.

COUNCILMEMBER BAISA: Yes.

CHAIR COUCH: Okay. Mr. Croly, you've heard what the Department has to say. You were also gonna mention an example as well. Can you kinda --

MR. CROLY: Sure.

CHAIR COUCH: --fire away.

MR. CROLY: John has pointed out the breadth of the issue and it is exploding. It's exploding because the Internet has facilitated people making this use as I've said before, without having to go through what the traditional Bed and Breakfast folks did. And this is even non-regulatory. Back when we first started the Bed and Breakfast ordinance, it was necessary for you to have your own website, to take your own pictures and invest money in just doing your own advertising. Now you practically don't have to do that anymore. Airbnb will facilitate that to, even to the extent of sending a photographer out to take the pictures for you and getting your website set up. So it's become very, very easy.

CHAIR COUCH: Get a little closer.

MR. CROLY: Oh, it's become very, very easy for people to get themselves online and make this use. So therefore, we have seen an explosion in the numbers. In answer to the question as to what the numbers are, it's really hard to pin it down because there are so many advertising venues now. But also one thing that complicates figuring out what the numbers are of these vacation rentals is they're mixed in with those that are condominium units where the short-term rental is allowed, so you might do a run on VRBO, for example, and it'll say something like, there's 1,400 units in a given area, but 1,000 of those 1,400 in that area may be legally permitted condominium units operating in that area, so it's not simply a matter of how many are there listed. And then the VRBO or the Airbnb, the way that they list them is by room. Each room is an individual listing, so if there is a homeowner listing five rooms that they rent out separately, that's five different listings, unique listings on Airbnb, so it's really hard to quantify what is the number. What I can say is the number of folks who are unpermitted, outnumber those who are permitted significantly. And getting those folks to come into compliance is a combination of factors, in getting to one of the examples that I wanted to make of someone who we have made a decision

PLANNING COMMITTEE

Council of the County of Maui

October 16, 2014

not to allow to come into compliance and that would be a renter, someone who rents a home, maybe they rented a four-bedroom home, but it's just, you know, mom and dad and one kid living in that home. But they've tried to make use of the other three additional bedrooms that they have, renting them out short-term and they've set themselves up with a, with an Airbnb ad and they're renting out those rooms. If that, if I say to that person, you have to go get a permit, they say I can't get a permit because I'm a renter of this property. I'm not the owner of this property. The ordinances we've put in place only allow the owner of the property to get a permit. So now you've put that person kind of in, between the rock and a hard place. You say to them, you must shut down to be compliant, but the person signed a lease to rent this house and they've been depending on the income that they're making off of these rooms to rent that house. I'm not in any way justifying it, but I understand where that causes that person to do whatever he has to do to get around the rules that we've put in place. So it's a consideration that we have to make. There's other folks who are actually trying to comply with the rules that we've put in place, but because of some peculiarity of their property, whether how it was constructed or because of objections maybe being raised by neighbors, they're not able to get through the process expeditiously or as efficiently as we would like to see that happen. So there's a number of fronts we have to go about to try to encourage compliance and the Maui Vacation Rental Association is ready to start working to that end. Our members came to us and said help us get a law and we got that law and our members became compliant. But now there's a whole other industry out there and our members are coming to us and saying, hey, we don't like this unfair competition. So we're committed to trying to bring those folks on board, but where we need to draw the division between the private side of things, what we are doing and what the County does is we can't do the enforcement part. We can help educate these people, identify these people as to, you know, what they should be doing correctly, but when it comes down to if they don't want to do it correctly, that has to become the kuleana of the County to do that and Mr. Rapacz's folks will have to take those efforts, but we want to work cooperatively with them to facilitate that as best we can.

CHAIR COUCH: Okay. Members, you heard all the comments. Now I'm opening up the floor to questions. Mr. Guzman.

COUNCILMEMBER GUZMAN: Thank you, Chair. As I was listening to the, excuse me, the Department and Mr. Croly, I was jotting down my little graph here, but I'm not sure if it, it will...it's all in theory right now, so Mr. Rapacz, you might want to just follow along with what I've got to say. So, in the DCCA, which is the Department of Commerce and Consumer Affairs for the State and the Department of Tax for the State, they use a term and it's also in the HRS, de facto, de facto corporation, de facto business. They outwardly, a business...an entity is claiming they don't have to pay the taxes because they're not a business, but then the DCCA comes in and says, look, you guys under HRS are de facto business, de facto corporation. You outwardly put out to the public your business. You have people managing, you have an account, so therefore, you are a de facto business, even though you're not registered with the DCCA. So that gives the Department of Tax the right and there's an implied assumption that they're already a business so that Department of Tax immediately taxes them. They can tax 'em as a business. So if that's a function that we can use or that theory we can use, we can put the onus on the people that are

PLANNING COMMITTEE

Council of the County of Maui

October 16, 2014

outwardly advertising on the Internet as a business and we can say de facto business, you are Airbnb, now the Planning Department then takes that determination and says, okay, yeah, they're de facto and then by implied assumption, the Department of Tax, our Department, our RPT, then classifies their lot in a certain, you know, tax category, boom, sends out the tax fee or the increase in the tax or decrease, what may it be. Then there would be a second level or a third level order to show cause or a motion to show cause, so if they fight it, they, I mean, immediately that would be probably in the determination stage of de facto. You would put the onus on them to come in and show cause that they are not in fact a de facto. So they would do the work. So there would be an implied assumption if they're outwardly appearing on the Internet as being a business, then, hey, we don't have to argue anything. You're just automatically implied as a business because you outwardly presented yourself so. And then you would have that other layer that would be allowing them to show -- you would send a letter. You would have a hearing, a motion to show cause that you're not, so they would then come in a say, hey, we're not, but -- and anyway, the final result would be the Department of Tax would just tax 'em and there would be kind of a streamline. That could be a, it's a theory. I just was thinking about it right now, so not sure whether it works or not, it would probably be something we would have to look into, but it's an idea to try to streamline it. I know some jurisdictions do that as well. I did speak I think Chair Couch and myself briefly spoke to one of the visitors that were in attendance, I think, in one of our meetings from I -- what jurisdiction was that from, I forgot. But anyways, I asked them simple question how they enforced and they enforce through their tax department --

CHAIR COUCH: Oh yeah, yeah. That was ...*(inaudible)*.

COUNCILMEMBER GUZMAN: --through collections. That's how they enforced it. And then he vaguely said, oh, yeah, they just look on the Internet and then place them into that classification. But then as I was listening on the floor, I was thinking, how is that possible? How is that process? So, I was just jotting down my little theory of how it could be done in comparison to how the State does it, the DCCA and the Department of Tax via the State so we could emulate what they're doing. Because there are some businesses that do not want to register with DCCA and they do their business and they kinda hiding from the Department of Tax, you know. And so it's in the HRS, de facto corporation, de facto businesses. You know, they, automatically it's an assumption and they've got to prove that they're not.

CHAIR COUCH: Right.

COUNCILMEMBER GUZMAN: They're gonna be taxed.

CHAIR COUCH: And I guess...

COUNCILMEMBER GUZMAN: If they smell like a duck, they walk like a duck...

CHAIR COUCH: Sure. And to Corp. Counsel on this one, we have specified that exact concept on just the short-term rental home ordinance. Using Mr. Guzman's example, could that be extrapolated so we can do that for any illegal vacation rental of any type?

PLANNING COMMITTEE

Council of the County of Maui

October 16, 2014

MR. HOPPER: It's in the short-term rental home permit ordinance right now and so basically anyone who advertises for that type of use, it is a, what they call prima facie evidence, which is essentially, the advertising alone is sufficient for the Department to show, to state a basic claim that the operation is ongoing. Obviously, the, if there's an appeal filed, the appellant can argue in front of the Board of Variances and Appeals that they're, even though they advertise, they are somehow or somehow never actually did operate a vacation rental and can argue as to why there would be advertising if they were not operating a rental, which seems difficult to believe. So that's what the, that's what you would, the burden shifted in that manner for short-term rental home use, so there is that sort of arrow in the quiver that you, that can be used through enforcement that I think would be a great help in stating the initial claim. It may be nice and it may be important to have additional evidence as well, though, to be convincing to the Board, but based on the law, the evidence of advertising is sufficient to state a claim that an illegal operation is on-going.

CHAIR COUCH: But what about for other than short-term rentals, though? Can we use the fact that we put that in the short-term rental law and the fact that HRS allows the State Department of Tax to do as Mr. Guzman said, de facto operations, can we expand that, you know, that if you're advertising a B&B or if you're advertising a TVR, even though it's not in our ordinances for, specifically for B&Bs and TVRs, can we still use that as prima facie evidence?

MR. HOPPER: Well, the evidentiary law would only apply specifically to short-term rental home operations that are illegal, although I'd kind of argue; it would be difficult for someone to say, well, I'm not really operating a short-term rental home. It's a B&B in my house. That would be kind of an odd defense, but even without that de facto or that prima facie language, if there is evidence presented of advertising for a vacation rental use and again, this is going to be weighed by the Board of Variances and Appeals in any appeal, I would say that evidence would be pretty convincing, as long as the actual, the area that's being advertised can be verified that that's the area that this person owns, that's actually being enforced against. Again, I think it would be a very difficult defense for someone to explain that they actually did not operate the vacation rental at the time that the ads were up and that, you know, that clearly had shown that, you know, you were taking bookings for this property during this time, whether it's a B&B or a short-term rental home. The prima facie evidence language makes it clearer and easier, but I do think evidence of advertising should be very strong evidence that the operation was ongoing. Again, though, additional evidence would be very helpful in those cases as well, in the event that, you know, an attorney may try to argue that the, that advertising was, is insufficient alone to establish that the person was operating, although, again, it would be difficult to explain why there is an ad showing that you were taking bookings during a time period and that, and for someone to argue, we weren't in fact taking those bookings. So I think that that's going to be critical evidence. That's part of the, I think, the benefit that you get from enforcing against a business that does need to be very publicly soliciting advertisements for their operation. I think that that does show if they're operating illegally, pretty clear evidence that they're operating because they would need to reach people who use the Internet and that does give good evidence, I think, but having additional evidence, you're not always going to have something as good as, you know, guest

PLANNING COMMITTEE
Council of the County of Maui

October 16, 2014

testimony or things like that, but as much evidence as can be gathered would be beneficial. But the advertising should be very key evidence as well as the impressions of the Zoning Inspector in any investigation, and if there are complainants, for example, that would testify as witnesses that are there and witness the activity, I think that's also very helpful in establishing a case.

CHAIR COUCH: Okay.

MR. SPENCE: Comment, Chairman.

CHAIR COUCH: Sure.

MR. SPENCE: Personally, I like the idea of when we do enforcement, that real property tax is informed of the operation because I mean if...well, for obvious reasons. That should be, and that should be a part of their Code if there's evidence of a use that was not fairly represented, et cetera. The...I also like the idea of the State Department of Taxation possibly going after people for unpaid taxes. That said, you know, we have 1,300 open RFSs, very few of those properties advertise where they're located. Every now and then you run across one that publishes a little map, I am right here and so it's easy to go find them, but those, those are extremely rare. And so basically what you have to do is you have to go book a room and then they'll tell you where they're located. The photographs advertising their units on VRBO or Airbnb, sometimes you can track down those locations, sometimes you can't. But if you can track down the location at that time, you can say, okay, now I can find out who the owner is and we can proceed from there. That's the key thing is finding the location. Once you do that, you know, we have certain things within our Zoning Code that says how you proceed with enforcement. You issue a notice of warning; you issue a notice of violation. We have Administrative Rules to those effects as well and of course we've been reminded that the accused have due process rights to go to Board of Variances and Appeals and everything. So it is quite a process. I certainly think we can find ways to streamline that process so it's much more efficient and then once we get into those, once a notice of violation is issued and it's not challenged, and it's upheld, you know, then there's all kinds of things that can kick into it, but it's getting to that point, it's finding out where the operation is taking place and then going through whatever steps are set up by law and, you know, we'll, you know, I'm certainly happy to work with this Committee, with Corporation Counsel on how to streamline those steps so it's a much more efficient process.

CHAIR COUCH: Okay. Mr. Rapacz and then, Mr. Croly.

MR. RAPACZ: Thank you, Mr. Chair. Just back to the question about the provision in 19.65 for short-term rental homes with the advertisement being prima facie evidence of operation. I think it would be helpful to have similar provisions in 19.64, for Bed and Breakfasts and also in 19.37, which generally prohibits TVR use where not permitted.

CHAIR COUCH: Okay. Well, that's something that this Committee can work on if it makes it easier for you to do it. Mr. Croly.

PLANNING COMMITTEE

Council of the County of Maui

October 16, 2014

MR. CROLY: The Director hit on the main point I wanted to make, which is the advertising that's done these days is generally not immediately evident where the property is. In fact, Airbnb that we were just talking about, their model, the way that they have set it up in such a way, you're not even communicating directly with the owner of the property. You're having to communicate through the Airbnb system to the owner, and they strip away such things as web addresses and telephone numbers in that communication process. So in order to identify an ad to a property, there really has to be some level of knowledge of the area and to some degree, knowledge of the industry, and that is something where the Maui Vacation Rental Association can be of some assistance there because we have folks throughout the island who have permits and those folks are familiar with their neighborhoods and when they see a picture of something, they can probably identify, that is my neighbor's house, and we can assist with identifying an ad being linked to a particular property, but that's not always immediately evident just from the advertising of itself. And again, recognize that when we use this word, advertising, we think of it in a very traditional sense, but things like Uber and Lyft that have come along where someone can pick up their cellphone and push a button on there and then a vehicle shows up to pick them up, that guy didn't advertise, but he's now part of this system and those are the types of things that we really have to be prepared for. There's going to be ways that people will be able to facilitate this use without even putting an ad up that somebody sees that the Internet will facilitate. So it becomes a very complicated issue, even though it seems rather simple on the surface to say, if they're advertising, then we can enforce and that's all we need. And the numbers are really great to the point that what we do recognize what we must do is we must get people to in general comply without having to go through an enforcement process. We need the enforcement process to be used sparingly, but very publicly when it is used so that those uninitiated out there would see that if I do this, this is what could happen to me. And I think that that would have a great effect as well as the Maui Vacation Rental Association working to inform people when they are out of compliance that they're out of compliance and inform them what they need to do to get into compliance. One thing that the County could do to facilitate this, too, would be, let the advertising companies, the Airbnbs, the VRBOs, the HomeAways, the BedandBreakfast.com know that it is a requirement of Maui County Code that all their advertisers have a permit number displayed. That makes it easier for the enforcement people to look and say, that ad is compliant. But if we can get those folks, the folks that are facilitating the bookings to tell their people, we need your number to be on the ad or the listing of your property. That would be very helpful and I think a letter from Corporation Counsel to those folks saying, it is a violation of Maui County Code to advertise without this, whether it would be successful or not, would be a useful thing to do.

CHAIR COUCH: Okay. Thank you. Members, any questions after that discussion? Mr. White.

COUNCILMEMBER WHITE: Thank you, Chair. You know, I think the Director brings up an important point is that we have to look at how we can streamline the process, but I just wanted to get a sense of what the process timeframe looks like now. Have we, out of the 1,300 RFSs, have we issued or how many notices of warning have we issued thus far?

CHAIR COUCH: Mr. Rapacz.

PLANNING COMMITTEE

Council of the County of Maui

October 16, 2014

MR. RAPACZ: Thank you, Mr. Chair. We have issued, let's see, 193 --

CHAIR COUCH: Notices of warning?

MR. RAPACZ: --notices of warning. Typically, many RFSs can be resolved. RFS is request for service. Many of those can be resolved without reaching the notice of warning stage. Usually it involves a personal contact, if we can make one. And we let people know that we've detected some illegal activity and here's how the process works and here is what the penalties will be and sometimes they stop. And particularly, if it is just advertising, they'll stop. We don't have to go to the NOW stage, so I don't have a figure on how many RFSs have been resolved without reaching the notice of warning, but in addition to those, 180, I'm sorry, 193 have reached the notice of warning stage. At that point, typically, for all types of uses or violations, we generally give folks 30 days to comply before we're going to issue a notice of violation. That's one of the aspects of the process that we're looking at now. In the case of illegal uses versus setback violations, uses can generally be stopped pretty quickly. Setback violations, if you've built your house in the setback, you're going to need a little time to figure out what to do about that. So we are looking at shortening the time allowed for correction of illegal uses, including vacation rental-type uses. So that's one of the parts of the process that might expedite the whole process. The same thing occurs once the notice of violation is issued. On the day it's issued, that means that an initial fine has been imposed, but the notices of violation also generally give another timeframe for correction before the daily fines begin to be imposed. So again, we're looking at shortening that timeframe. The notices of violation have to go to Corporation Counsel for review. That takes some time to come back to us, then they have to be served by certified mail, return receipt and once we get the receipt back, then we know that it has been properly served and it is effective. Many folks, especially illegal operators are not going to be returning any receipts, including those for the notice of warning. Then we have no evidence that they have been warned. So we're looking at the options of having service completed through posting on the property, through hand delivery, other methods to ensure that notice was provided and therefore due process was achieved.

COUNCILMEMBER WHITE: How many have proceeded to the notice of violation at this point?

MR. RAPACZ: For purely unlawful operation we have none. We have cases of revocation and we have at least one case of refusal to renew.

COUNCILMEMBER WHITE: Out of the 193 notices of warning, how many are based on illegal use?

MR. RAPACZ: Those are all for illegal B&B, short-term rental or general TVR use. That's what that number consists of.

COUNCILMEMBER WHITE: Okay. Those are --

MR. RAPACZ: Just for those...

PLANNING COMMITTEE
Council of the County of Maui

October 16, 2014

COUNCILMEMBER WHITE: --absent those that are setback violations or other technical violations?

MR. RAPACZ: Yeah, that's just the TVR related notices of warning.

COUNCILMEMBER WHITE: For illegal...

MR. RAPACZ: For illegal use, yes.

COUNCILMEMBER WHITE: Through advertising or whatever?

MR. RAPACZ: Correct.

COUNCILMEMBER WHITE: Okay. And then what happens, how long does it take for you to go through the entire process of actually shutting them down if they want to appeal? Is this a 18-month process or...?

MR. RAPACZ: It, well, it shouldn't be that and the shutting them down, what we can do is issue the notice of violation and be sure they've received it. That means that from the County's end, it's confirmed that they have violated the law and it's confirmed that they have been informed they have violated the law. At that point, a decision has to be made about what to do. Should we seek an injunction to get them to stop the illegal use; should we seek a judgment in court by which the court rules that these fines are due and are accumulating on a daily basis and I don't, I haven't been with the Division long enough to know how often that happens. I don't believe it happens very often.

COUNCILMEMBER WHITE: So if the, if some of these 193 move to notice of violation, what is the level of the fine that would be assessed?

MR. RAPACZ: The County Charter limits fines to \$1,000, so we would treat the, what we call the initial violation, just the proof that there is an illegal use, that would be \$1,000 and then we would treat each day that that use continues as another \$1,000 maximum. Back to your original question, it shouldn't take 18 months to get to the notice of violation stage and depending on how long it takes for a turnaround from Corp. Counsel that could happen within a three-month period.

COUNCILMEMBER WHITE: I was referring to if it went to appeal.

MR. RAPACZ: Oh, well, that's another question. Part of the notice of violation indicates that the alleged violator has 30 days within which to appeal to the Board of Variances and Appeals. That begins another process which can take quite some time. That could take several months, six months to get it, be sure that the appeal is properly filed and complete and gets scheduled for hearing before the Board.

PLANNING COMMITTEE

Council of the County of Maui

October 16, 2014

COUNCILMEMBER WHITE: Do you have any sense of how many of the 193 you're looking at proceeding to a notice of violation and?

MR. RAPACZ: I'm sorry; I don't at this point.

COUNCILMEMBER WHITE: Okay. Thank you, Chair. Thank you.

CHAIR COUCH: Thank you, Mr. White. As a follow-up, if I may, Members, on those 193, usually when you get to that point, then they are awakened and they say, okay, we'll come into compliance. Do you have any idea how many have decided then to apply for a permit or what kind of, where are we in that 193 other than as you already answered Mr. White about how many are going to go to notice of warning?

MR. RAPACZ: And again, I'm sorry, I can't say how many of those folks might comply or might apply for a permit. I just don't know.

CHAIR COUCH: Okay. But those 193, you have gotten the return receipt back saying that they know that they've got a notice of warning?

MR. RAPACZ: That's a good question. From the data that I have, this is for notices of warning issued. I don't have the data on how many of those we have confirmation of receipt. That's a good question.

CHAIR COUCH: Okay. Members, any other questions...because I have several, too, so. If there aren't any at this point, I will go with mine. Mr. Rapacz, you talked about getting the RFSs for enforcement on things other than just TVRs. How many requests, RFSs a month do you typically get in your Department?

MR. RAPACZ: I'm sorry I didn't come prepared with general data about the enforcement process. I only collected the data--

CHAIR COUCH: Sure.

MR. RAPACZ: --for the TVR.

CHAIR COUCH: But off the top of your head?

MR. RAPACZ: I would say several hundred at least.

CHAIR COUCH: Several hundred a month? Okay. And in a typical case when you go through an RFS, how long does it take to come to some sort of resolution, whether it's yeah, this is a nuisance RFS, we're just gonna close it or there's nothing wrong, we're gonna close it or we gotta go to the next step?

PLANNING COMMITTEE

Council of the County of Maui

October 16, 2014

MR. RAPACZ: I would say that for those that can be resolved just by working with the alleged violator, I would say most of those can be resolved within three months, sometimes two months, just...it depends. Part of what we consider is whether the alleged violator appears to be cooperative and appears to be taking measures to correct certain things or not. If they appear to be and we have some evidence that they are moving to correct items, we tend to make those a lower priority for follow-up and will tend to focus more on the folks who are defiant and just saying it's not a violation or I don't care or I'm not going to do anything about it. Those tend to move more quickly to a notice of warning and a notice of violation. And I'm sorry I can't be more --

CHAIR COUCH: No, that's okay.

MR. RAPACZ: --specific on the numbers.

CHAIR COUCH: Those numbers are kind of important, I mean, just even off the, you know, the off-the-cuff numbers in that you've got four people actually doing and maybe even fifth if the supervisor kicks in as well doing the work, I mean, doing the math, it's, it appears to be a bit of a daunting task.

MR. RAPACZ: I'm hoping that folks are reading between the lines and we could use some help.

CHAIR COUCH: Okay. Then speaking of using help, couple ways that I thought that might be possible is, is there a way that we can contract out just the first, since you've got 1,300 and you've issued 193 notices of warnings, could we do some sort of contract out or get somebody in temporarily to just bang that stuff out right away? That would be the first choice, either through, you know, contract an agency to do that or do it or a temporary personnel switch or something. I'm not quite sure how it would happen but something to, just put somebody on that and bang out those 1,300, or the other side would be find 10 or 20 that you know, you know, and pursue right to the end all the way, concentrate on those 10 or 20 and make it as a, I think one of the testifiers said, if it starts getting out there that we are doing the enforcement and we are going to be very aggressive on the enforcement, that might start getting everybody to come back in line, because I believe either Mr. Croly or another testifier said, you know what, people are laughing at 'em that you got a permit because nobody's doing enforcement, if we get some highly publicized enforcement actions that might start bringing people into line as well. That being said, once we start doing that and people start coming into line, then you have the whole issue of the whole permit process and you've got 200 or 300 or 400 people coming in for a permit, so that can be another item for this Committee and how to further -- I think we already have it coming up, how to further streamline the process so. Just some thoughts that you might care to comment on?

MR. RAPACZ: Okay. Thank you, Mr. Chair. On those first two items, I think those are both great ideas and in particular, of these 1,327, we intend to identify which ones or for which ones we can identify a physical address. That's the first step. So if we can identify a physical address, we can move quickly to get the notice of warning out. If we cannot, it would be great to be able to take that set of essentially Web pages without physical addresses and be able to get those processed for us so that the addresses could be identified. Now that's something that the Vacation Rental

PLANNING COMMITTEE

Council of the County of Maui

October 16, 2014

Association has some expertise at, and we've had some discussions about how we might be able to get some assistance in that regard, and we've actually met with the Association already and heard some ideas about ways to track down physical addresses for Web pages. So that is something we're looking at as well. Terms of contracting it out, I have no idea how that would work in terms of Department policy or budgeting or finance or those kinds of things, but yes, it would be helpful to be able to at least take those -- I think it would be better to do that rather than having some other party involved in the issuance of notices of warning. I believe that should stay within the Department.

CHAIR COUCH: Right, right. But I mean getting you all the information and say --

MR. RAPACZ: Right.

CHAIR COUCH: --farm this out, get all the information and then we can start going right down the list.

MR. RAPACZ: Yeah. And I agree also, it would be a good idea to identify some that would achieve the most benefits in terms of publicizing --

CHAIR COUCH: Right.

MR. RAPACZ: --the violations and the impact of what happens to folks when they violate.

CHAIR COUCH: Right. And along those lines, if you were to get that list of addresses, it would be, I don't know if it's legal or not or whatever, maybe Corp. Counsel can talk about this, I think it should be fine. Couldn't you at the same time forward those addresses and maybe those 193 that you've got going now to RPT and let them get hit in the RPT, the Real Property Tax --

MR. RAPACZ: Right.

CHAIR COUCH: --pocket, too.

MR. RAPACZ: We do that for short-term rental homes annually. We submit a list of those. I'm, there are questions about whether we should submit names to Real Property Tax if we have not yet issued a notice of violation and they've had an opportunity for a hearing.

CHAIR COUCH: Okay.

MR. RAPACZ: And we haven't answered that yet, but I know that's going to be a concern. The other concern that we, I think, we heard from Real Property Tax earlier in the week or a couple weeks ago, that they will not classify or reclassify based on illegal use, so I'm not sure where, what they would end up doing with the information. If we told them there was an illegal use, I think Mr. Teruya had said at one point that --

CHAIR COUCH: Yeah, I recall that.

PLANNING COMMITTEE

Council of the County of Maui

October 16, 2014

MR. RAPACZ: --they don't change tax classifications based on that. So that's something else we should work with Tax on.

CHAIR COUCH: Yep. And that should be in Mr. White's Committee. Mr. White.

COUNCILMEMBER WHITE: Yeah, that was the reason I raised my finger a couple minutes ago, but Mr. Rapacz has correctly reflected the word that we got from Real Property Tax is they cannot tax an illegal use, so it makes it very difficult to invoke a tax penalty on somebody who's not following the ordinance. Now if there's some way we can change that...

CHAIR COUCH: Yeah. Yeah. I was gonna just say if that's because it's in our ordinance that they can't tax an illegal use, we can certainly fix that.

COUNCILMEMBER WHITE: I'm not sure what the basis was, but we had put in the bill that we heard just the other day, a provision that if you are found to be operating illegally, then you would automatically go to the highest and best use which would be the Hotel/Resort tax rate. But, so I, you know, not being a lawyer, I don't know what the fix is there, whether or maybe Corp. Counsel can chime in and maybe give us some ideas or do some research and give us some ideas later as to how we can effectuate a tax, a property tax impact for an illegal operation.

CHAIR COUCH: Any thoughts off the top of your head, Mr. Hopper, or you want to research that a little bit?

MR. HOPPER: I'm not certain why the, what the Department's position is on that, why they would, why not, they don't tax illegal uses and why that is. I need to get more information on that and to date, the enforcement has, from my end anyway, hasn't been focused on the taxation issue, because, I mean, they can be fined \$1,000 a day for the violation and I think that if there was a taxation change, there could be the same rights of appeal as there would be for, you know, Planning notice of violations. But as far as what could be done there, I don't know if the Department of Tax or Finance Department has some suggestions there because I'm sure they deal with it on a daily basis and I'm sure deal with a lot of illegal uses, not necessarily just vacation rental use, so looking at that which goes well beyond vacation rental enforcement, may be a worthwhile issue to look at.

CHAIR COUCH: Okay.

COUNCILMEMBER GUZMAN: Chair?

CHAIR COUCH: Hang on a second. We had, Mr. Croly had a comment as well.

MR. CROLY: One comment that I would make about how Real Property Tax treats illegal uses if you will, in, when, condominiums specifically, people are supposed to self-declare. Okay. And if they don't declare at all, if they don't send in their notice, then they are assigned to the highest

PLANNING COMMITTEE
Council of the County of Maui

October 16, 2014

and best use or hotel. Now for many years, the Real Property Tax Department has been assessing hotel use on condominiums where hotel use is not allowed, okay, where our zoning doesn't permit it and they're not grandfathered in, but people have paid hotel use. Now whether that was simply because they didn't send in their form or whether that's because they self-declared themselves as hotel use, I don't know. But I can say it was an illegal use being taxed at this rate. So it would seem to me that it would be in the purview of this body to set up legislation that would allow that, that would facilitate that if that was the will of the body.

CHAIR COUCH: Okay. Mr. Guzman, you had a...

COUNCILMEMBER GUZMAN: Oh, I just was following on that line. The Feds can do it and the States can do it on using the de facto application of if it smells like a business, it is a business, even though some businesses, they don't wanna register themselves under the DCCA to avoid taxes or stay under the radar. Once it's discovered, they gotta pay taxes. They're send notice, they've sent, they get sent a notice that they've got all the back taxes that they gotta pay. You cannot, I guess, award those who are functioning illegally --

CHAIR COUCH: Right.

COUNCILMEMBER GUZMAN: --you know, by avoiding the back taxes, so.

CHAIR COUCH: Okay. Chair Baisa.

COUNCILMEMBER BAISA: I like the discussion that I'm hearing. I think it's good. I like the idea of maybe an investigative service. I like the idea of the tax penalties. I think we have to come up with some Draconian fear things here in order to, you know, stop what's going on and get people to stop it before we have to go chase them, which is terrible. I wish we could, you know, they would understand before they get caught and we go through all this stuff, but. The other thing, Chair, I was thinking was, there will be a benefit from us having this meeting today. I think that it is a warning to the people out there that are skirting the law that we are on it, that we are going to find ways to find you and make you come into compliance, because it is not fair to others and you need to be fair. We all gotta pay our fair share or go through whatever processes we have. This is the law of Maui County and so I think this is a very good thing that's happening today and I hope it's widely reported. Thank you.

CHAIR COUCH: Okay. Members, I'm going to take a really short recess. I see that Mr. Wong has come in. I would like to chat with him. Short recess. . . .(gavel). . .

RECESS: 11:38 a.m.

RECONVENE: 11:39 a.m.

CHAIR COUCH: . . .(gavel). . . Will the Planning Committee meeting of October 16th please come back to order. Members, we have had some good discussion. Are there any further questions

PLANNING COMMITTEE

Council of the County of Maui

October 16, 2014

that you may have on this subject? We can see that there is some motion...I mean I was really surprised at the 193 notices of warning gone out, that's a pretty good number. Hopefully we'll get some results as people responding and doing the right thing, I hope. And we have this meeting and it's gonna be broadcast and rebroadcast and I'm sure the MVRA can put it on their website that yes, we're starting and actually are in the process of some pretty good enforcement. Department, you may want to consider doing some high profile, get it out there, let's get a few going and potentially use some sort of service to at least identify the addresses that you are having a hard time doing it, to relieve some of the stress off of your Department. Mr. White, do you have any comments?

COUNCILMEMBER WHITE: I'd just like to ask if the Department likes the idea of sending a letter to each of the marketing companies, Airbnb, VRBO, announcing the requirement or you know, coming from Corp. Counsel, announcing the requirement that the permit numbers must be attached to every advertisement. I don't know that they have to follow our request, but I think it's worth doing anyway.

CHAIR COUCH: Mr. Spence.

MR. SPENCE: Well, I'll let Corporation Counsel address any letter sent from Corp. Counsel. I would note, I don't know if Mr. Croly addressed it specifically, but some places like Airbnb as part of their contract with their advertisers, they say that their advertisers must be following all local ordinances. So if, you know, if they're notified of that, I'm not sure how much money they're willing to give up or if they'll change their contract terms, but certainly, they should be aware that, of Maui County law.

COUNCILMEMBER WHITE: I guess another question is if we're finding specific advertisers on Airbnb, can we go back to Airbnb and say, these guys are not following the ordinances because they're not listing their permit number?

CHAIR COUCH: Mr. Hopper, did you have any comments on that?

MR. HOPPER: We can look into something like that with the Department. Again, the enforcement of the Codes through the Department, you know, we could act as their attorney, but, you know, what actual cases they see as potential violations and to date, I don't know if there's actually been violations issued for lack of permit number and we would need to look into doing that because I don't know of other similar cases where the County's done that although it is a part of the Code. We could look into doing that.

CHAIR COUCH: Okay. Thank you.

COUNCILMEMBER WHITE: Thank you.

CHAIR COUCH: Chair Baisa, you had your hand up or your question's been answered?

PLANNING COMMITTEE

Council of the County of Maui

October 16, 2014

COUNCILMEMBER BAISA: It's been like I said a really great discussion, but of course what I'm hoping for is that we will very shortly look at tweaking our ordinances to see what we have to do and I'm assuming that you have that on the radar screen pretty soon?

CHAIR COUCH: Yes, I do

COUNCILMEMBER BAISA: Good. Excellent. Thank you.

CHAIR COUCH: Okay. Any further comments from the Members?

MR. SPENCE: Mr. Chairman?

CHAIR COUCH: Yes, Mr. Spence.

MR. SPENCE: I do have one additional comment, something that wasn't, I know that it's on all the Members' minds, but we haven't discussed it yet in any depth. We are, one of the controversies about short-term rentals is taking away the long-term housing from local residents.

CHAIR COUCH: Okay.

MR. SPENCE: I think, I mean, and that's been one of the controversies we've bandied back and forth over years of this discussion. I think the Council, you know, when you put caps on the number of permits that are available, that sets a certain standard and, but what we're seeing now is a proliferation well in excess of, the amount of permits available. I don't think it's gonna hurt housing stock, but we have so many illegal rentals, now I do think it is taking away from local housing stock, and you know, combined with no, you know, I'm not sure why developers aren't going forward with their projects, there's a variety of reasons, but we're running into a housing crisis here and the more illegal rentals that you have, the more you're taking away from local, you know, rentals available for long-term residential. That's also a consequence of easy advertising on the Internet, et cetera. So that's another reason why we are concerned about going forward with enforcement.

CHAIR COUCH: Okay. Mr. White.

COUNCILMEMBER WHITE: Yeah. Thank you for bringing that up because I think that is correct. I think all of us have a, not just a concern for the folks that have gone through the process and paid their dues to get a permit, but I think the larger issue is the fact that we're, if we've got this proliferation, it really is gonna impact the housing stock. And I think when we worked on the STR bill, our feeling was, well, there may be a few more illegal or there may be a few more operators than we're making permits available, but well okay, well, there will be a rush to get your permits, but that hasn't happened so this proliferation is really quite troublesome, you know, from both perspectives.

PLANNING COMMITTEE

Council of the County of Maui

October 16, 2014

MR. SPENCE: Well, there was a rush right after the short-term, after the ordinance was passed. It's now, it's tapering, you know quite a bit, but it was not the, it was nowhere near the limits that were set by the Council.

COUNCILMEMBER WHITE: Right.

CHAIR COUCH: Okay. Any further questions? I haven't heard much from the West side or the Molokai side. Any...

COUNCILMEMBER CRIVELLO: No, you guys can go ahead.

CHAIR COUCH: Okay.

COUNCILMEMBER CRIVELLO: I have no other questions.

CHAIR COUCH: Okay. Alright. I want to thank the, Mr. Croly for being a resource and the Department for coming up with some good information for us. I believe this satisfies Chair Baisa's concerns. We can certainly revisit this in about six months or so I would guess. I'm guessing that the folks that had the concerns, the testifiers hopefully are heartened to hear some of the things that are going on, and again, I was really pleased to hear that we have 193 notices of warning out there. Hopefully we can work on those and get those folks in compliance. We will keep an eye on this, you know, no matter what happens, I think the Department's gonna keep an eye on this, the MVRA's gonna keep an eye on this. I think everybody wants kinda the same thing, so Members, without any, if there's no further discussion, I'll entertain a motion to recommend the filing of County Communication 14-250?

COUNCILMEMBER WHITE: So moved.

COUNCILMEMBER CRIVELLO: Second.

CHAIR COUCH: Okay. We have a motion from Councilmember White and a second from Councilmember Crivello to file County Communication 14-250. Any further discussion? All those in favor, please say "aye".

COUNCIL MEMBERS VOICED AYE.

CHAIR COUCH: Opposed? Let the record show that there are five ayes, zero noes and two Members excused, Mr. Victorino and Chair Baisa.

PLANNING COMMITTEE

Council of the County of Maui

October 16, 2014

**VOTE: AYES: Chair Couch, Councilmembers Cochran, Crivello,
Guzman and White.**

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair Victorino and Councilmembers Baisa.

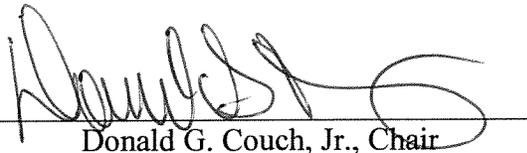
MOTION CARRIED.

ACTION: FILE.

CHAIR COUCH: Members, thank you for hanging in there and for a very healthy discussion. We'll have another set of fun things to discuss at the next Planning Committee meeting. But that being said, this meeting is adjourned. . . .(gavel). . .

ADJOURN: 11:50 a.m.

APPROVED BY:



Donald G. Couch, Jr., Chair
Planning Committee

pc:min:141016

Transcribed by: Joanne Bista

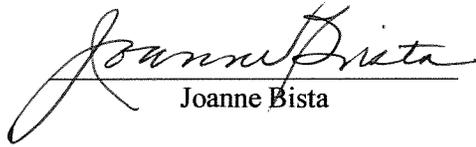
PLANNING COMMITTEE
Council of the County of Maui

October 16, 2014

CERTIFICATE

I, Joanne Bista, hereby certify that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED the 5th day of November, 2014, in Kahului, Hawaii


Joanne Bista