

PLANNING COMMITTEE
Council of the County of Maui

MINUTES

September 2, 2008

Council Chamber

CONVENE: 9:09 a.m.

PRESENT: VOTING MEMBERS:

Councilmember Gladys C. Baisa, Chair
Councilmember Jo Anne Johnson, Vice-Chair (in 10:03 a.m.)
Councilmember G. Riki Hokama
Councilmember Bill Kauakea Medeiros (out 10:00 a.m.; in 10:13 a.m.)
Councilmember Michael J. Molina

NON-VOTING MEMBERS:

Councilmember Michael P. Victorino

STAFF: David Raatz, Legislative Attorney
Clarita Balala, Committee Secretary

ADMIN.: Jeff Hunt, Director, Department of Planning
Joseph Alueta, Administrative Planning Officer, Department of Planning
Kalbert Young, Director, Department of Finance
Scott Teruya, Acting County Real Property Tax Administrator, Real Property
Tax Division, Department of Finance
Michael Hopper, Deputy Corporation Counsel, Department of the Corporation
Counsel

Seated in the gallery:

Roy Silva, Executive Assistant, Office of the Mayor

OTHERS: Alan Kaufman, Kula Community Association
Thomas Croly, Maui Vacation Rental Association
Netra Halperin
David Greenberg
Eve Hogan, Maui Coffee Grower's Association
Madge Schaefer
Jocelyn Perreira, Executive Director, Wailuku Main Street Association,
Inc./Tri-Isle Main Street Resource Center
Hank Kline
Sandra Atherton
John Rapacz, Esq.
Warren Watanabe, Executive Director, Maui County Farm Bureau

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

(24) additional attendees

PRESS: *Akaku: Maui Community Television, Inc.*
Chris Hamilton, The Maui News

CHAIR BAISA: . . .(*gavel*). . . Good morning, everyone.

COUNCILMEMBER MEDEIROS: Good morning.

CHAIR BAISA: And the meeting of the Maui County Council Planning Committee of September 2nd will come to order. The Chair will note that a quorum is present. And before we get into the meeting may I request that everyone in the chamber please put your cell phone ringers or pagers or whatever on silent mode please, so we will not be interrupted by whatever music you have on it, even though it might be fun. It might interrupt our proceedings. This morning I would like to introduce the voting Members that are present. I have our Council Chair G. Riki Hokama. Good morning, Mr. Hokama. And we have Bill Kauakea Medeiros.

COUNCILMEMBER MEDEIROS: Good morning, Madam Chair. Aloha.

CHAIR BAISA: Good morning, Bill. And we have Michael Molina.

COUNCILMEMBER MOLINA: Good morning, Madam Chair.

CHAIR BAISA: Good morning, Mike. Excused for the present time is our Vice-Chair of the Committee, Member Jo Anne Johnson. And we also have a non-voting Committee Member present with us this morning and that is Michael Victorino.

COUNCILMEMBER VICTORINO: Good morning, Madam Chair.

CHAIR BAISA: Good morning, Mr. Victorino, and thanks for joining us.

COUNCILMEMBER VICTORINO: My pleasure. Thank you.

CHAIR BAISA: Also from the Department of the Corporation Counsel we have our regular helper, Michael Hopper, Deputy Corporation Counsel. Good morning, Mike. And also we have with us from the Executive Branch, Jeff Hunt, our Planning Director.

MR. HUNT: Good morning, Chair.

CHAIR BAISA: Good morning. And standing by also we have Scott Teruya from our Real Property Tax, Administrator. Good morning, Scott, thank you. He's standing by just in case we need him. I also have with me our regular Committee Staff, David Raatz our Legislative Analyst [*sic*] and our, Clarita Balala, our Committee Secretary. Thank you,

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

Staff. We will be taking public testimony starting in just a few moments, and those wishing to testify should sign up with Committee Staff right up here with Clarita. Testimony will be limited to three minutes. Testifiers are requested to state their name for the record and indicate if they are representing any group besides themselves.

Members, today we have one item on our agenda which we are continuing. It is PC-40, and the name of the bill at the moment is Transient Vacation Rentals Legislation. Our sole item for discussion is the legislation submitted by the Department of Planning relating to transient vacation rentals or TVRs and bed and breakfast homes or B&Bs. We have devoted several recent meetings to the package of legislation submitted by the Department of Planning earlier this year. We are focusing on three bills submitted by Mr. Hunt on April 18th which have been approved as to form and legality by the Department of the Corporation Counsel. As we discussed most recently on August 19th, this package of bills includes legislation to allow B&Bs in Ag and Rural districts, allow TVRs in Business and Resort districts, and establish new permitting standards for B&Bs and TVRs.

On both July 1st and August 5th we made substantial progress on what we have called the B&B Bill which is listed as Item 2-B on today's agenda and entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE, RELATING TO ZONING". The Committee has thus far approved six motions relating to this bill. One, to limit B&B permits to property owners. Two, to allow a B&B permittee to reside in one single-family dwelling on a lot and maintain B&B units in a second single-family dwelling on the same lot. Three, to approve B&Bs as a permitted use in the Rural zoning districts. Four, to disapprove B&Bs as a permitted use in the Agriculture zoning district. And five, to incorporate the recommendations of the Hana Advisory Committee, Lanai Planning Commission, and Molokai Planning Commission. And six, to require house rules. On August 19th we approved the motion to reconsider B&Bs as a permitted use in the Agriculture zoning district. So that is where we will begin our discussion after public testimony. Then I will allow Mr. Hunt to continue reviewing the suggestions contained in his, in this June 27th correspondence to the Committee. Without objection the Committee will now accept public testimony on PC-40.

COUNCIL MEMBERS VOICED NO OBJECTIONS

CHAIR BAISA: Thank you very much. I would also like to point out that we've been joined also by Joe Alueta, the Administrative Planning Officer for the Department of Planning. Welcome, Joe, thank you. We have received prior to beginning the meeting two, request to testify by two people. Our first testifier will be Alan Kaufman and Mr. Kaufman will be followed by Thomas Croly. Mr. Kaufman.

...BEGIN PUBLIC TESTIMONY...

MR. KAUFMAN: Good morning.

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

CHAIR BAISA: Good morning.

MR. KAUFMAN: I'm Dr. Alan Kaufman. I am a veterinarian. I'm a goat farmer. I'm the immediate past president of the Kula Community Association and Chair of the Ag Committee for the Kula Community Association. Gina Flammer has a much nicer voice than I. She was unable to be here this morning, so as I read our testimony for the community association, please pretend you're listening to her.

Hi, Alan, thank you for representing us this Tuesday at 9:00 a.m. at the Council Planning Committee's meeting focused on TVRs and ag land. As you may know, if you show up at 8:45 you'll not only get parking but will be called right away to give your testimony. Here are our TVR survey results, my original TVR testimony and the Maui Coffee Growers Association position which we agree with. The coffee growers' position is an ag group that counters the Farm Bureau's position that anything other than ag practices on ag land hurts farming in general. The water cutbacks and huge increases in fertilizer costs have made the coffee growers' position more potent, as anything that helps farmers stay in business is good for both the farmer and his consumer. Our 2008 survey question that went to every Kula postal address, vacation rentals on Ag-zoned land, short-term rentals on Ag-zoned land should be permitted under the same rules as for other residential areas which was supported by 78 percent of those responding. From Gina's previous testimony, our Kula Community Association Board supports short-term rentals with a manager in Ag districts. While the ag community seems divided on this issue, our survey showed that 78 percent support short-term rentals on ag land. In the end our Board agreed with the Maui Coffee Growers Association who see it as a way to make agriculture, especially for the smaller farmer viable. Our Board also recognizes that there will be permitting rules and a special State permit process providing more oversight to assure that ag lands and farming practices are not negatively affected. Thank you very much.

CHAIR BAISA: Thank you very much, Dr. Kaufman. Members, questions for Dr. Kaufman? Member Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair. And good morning, Dr. Kaufman. Thanks for being here and for your testimony. The Maui Coffee Growers Association, how many members are you speaking of in that association? As far as separate growers?

MR. KAUFMAN: I cannot address that. If you ask how many members we have in the Kula Community Association, I can address that.

COUNCILMEMBER MEDEIROS: Okay. But you cited the Maui Coffee Growers Association as supporting the position that your group takes. So I wanted to know, in using their statistics, I mean them as a supporting organization, how many of them are there?

MR. KAUFMAN: Bill, you got that backwards.

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

COUNCILMEMBER MEDEIROS: I'm sorry. Go ahead.

MR. KAUFMAN: They don't support our position, we support theirs.

COUNCILMEMBER MEDEIROS: Okay. And they...

MR. KAUFMAN: And we agree with it.

COUNCILMEMBER MEDEIROS: Right. And their position is counter to the Maui Farm Bureau's position, is that correct?

MR. KAUFMAN: And I do not know how many members that are on the Maui Farm Bureau or how many agree with the Farm Bureau's position, Bill.

COUNCILMEMBER MEDEIROS: But you don't know the Coffee Growers, how many members there are?

MR. KAUFMAN: I know that 78 percent of the people in Kula who responded to our survey agreed that agriculture was an appropriate place for vacation rentals.

COUNCILMEMBER MEDEIROS: Okay. Yeah, I got that from your testimony. But I didn't get how many people belonged to the Maui Coffee Growers Association.

MR. KAUFMAN: My testimony does not address that.

COUNCILMEMBER MEDEIROS: Okay. Thank you very much for your testimony.

MR. KAUFMAN: Absolutely, Bill.

COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair.

CHAIR BAISA: Any additional questions? Member Molina.

COUNCILMEMBER MOLINA: Thank you, Madam Chair. Good morning, Dr. Kaufman. If, do you offhand know the numbers of surveys that were sent out to the residents?

MR. KAUFMAN: Approximately. Basically, there are I believe 3,000 residential addresses in Kula and I believe that another 1,000 or a little bit more, mail boxes, post office boxes, and we sent to every, every one of those. So it would have been somewhere between four and 5,000 total mailings that went out.

COUNCILMEMBER MOLINA: And you received back, about roughly how many? Do you know offhand?

PLANNING COMMITTEE MINUTES

Council of the County of Maui

September 2, 2008

MR. KAUFMAN: I know that it was the second largest response we ever had. The largest response we ever had was with regard to the location of the Kihei/Upcountry highway, and that was a 15 percent response rate. I know that one because I was the one involved counting those. I did not do the counting on the vacation rental one, that was Gina's work.

COUNCILMEMBER MOLINA: Thank you. Maybe if you could relay a message to Gina if we could get, you know, some specific numbers.

MR. KAUFMAN: Be happy to provide additional information.

COUNCILMEMBER MOLINA: Great. Thank you very much, Dr. Kaufman. Thank you, Madam Chair.

CHAIR BAISA: Thank you very much. Members, any additional questions for Dr. Kaufman? If not, Doctor, thank you very much. Our next testifier will be Tom Croly and we've had a few more folks sign up. He'll be followed by Netra Halperin. Good morning, Mr. Croly.

MR. CROLY: Aloha, Chair. Aloha, Committee Members. I am Tom Croly and I'm speaking on behalf of the Maui Vacation Rental Association. Recently, the County Council granted a two-year Conditional Permit extension to a bed and breakfast in Makawao. This permit extension was well deserved and by most accounts this operation is considered to be an asset to both its community and its neighborhood. I thank the Council and the Land Use Committee for this action. However, I'd like to take a moment to point out to the Committee just what efforts went into granting this permit over the last seven and a half years. In the written testimony that I submitted I detailed the chronology of this permit. I'll skip going over those specific dates, but I ask you to consider that cumulatively this one permit for a four-room B&B has consumed two Planning Commission meetings totaling more than seven hours of the Planning Commission's time. Two Land Use Committee meetings totaling more than six hours of this Committee's time, and it was discussed at five full Council meetings where it consumed more than four hours of the full Council's time. All this with consideration to public testimony that would have been given about the permit as well. That's a total of more than 17 hours of public meeting about just one B&B. The total process has taken this applicant over seven and a half years, and during that seven and a half years this operation has only been fully permitted for one year. This permit is not unique. I could have shown the same inefficient use of time and effort for any of the dozen or so Conditional Permits that are now active.

My point here is that the Conditional Permit is not the proper means of permitting this particular use. The B&B permit process that you're now discussing is the place where this permit and hundreds of others like it should be processed. This body must act in its legislative role to produce a policy to allow this to happen, and the Administration must be trusted to administer this policy. The permit applications that do not fit into this

PLANNING COMMITTEE MINUTES

Council of the County of Maui

September 2, 2008

policy will have to be processed by the Conditional Permit. But we must do all that we can to keep that number minimized. As I testified at the last Committee meeting, there were approximately 122 B&Bs on the island that could conceivably fit into the B&B permit as it now stands in this Committee. If the Ag zoning is added as a place where B&B permits could be obtained, there would be an additional 133 that could potentially fit into this process. These 255 owner operated B&Bs represent only about a third of the vacation rental industry on Maui. You were given a handout as well that shows that we're dealing with just a small segment right now of the vacation rental industry. The additional vacation rental properties are either managed by on-site residents, resident managers, or they're managed by an on-island professional management company, or they're rented out directly by their off-island owners. This Committee will have to consider how to deal with these segments of the vacation rental industry after you've completed this B&B ordinance. But for today I ask that you recognize the failure of depending on the Conditional Permit to regulate this industry, and reconsider your decision to exclude properties located in Ag zoning from obtaining B&B permits. I, I hope that we can move this legislation forward and then get on to the bigger questions as to how to regulate non-owner occupied vacation rentals here on Maui. Thank you for your attention.

CHAIR BAISA: Thank you, Mr. Croly. Members, questions for our testifier? Yes, Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair. Mr. Croly, good morning, and thank you for being here. This is the chart you referred to?

MR. CROLY: Yes.

COUNCILMEMBER MEDEIROS: Oh, okay. Because it didn't have, you know, the name of who submitted it and it was detached from anything else. So this was submitted by you?

MR. CROLY: It was submitted on behalf of the Maui Vacation Rental Association. Yes.

COUNCILMEMBER MEDEIROS: Okay. Along with your written testimony?

MR. CROLY: Correct.

COUNCILMEMBER MEDEIROS: Okay. Thank you very much. Mahalo, Madam Chair.

CHAIR BAISA: Member Molina.

COUNCILMEMBER MOLINA: Yeah. Thank you, Madam Chair. Good morning, Mr. Croly. Just to get some additional clarification on your testimony. So you're suggesting something like a Conditional Use Permit extension as the base that you had discussed in your testimony. Something like that rather than going through say the Land Use Committee and then on to the Council, that should maybe instead just go directly to the

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

Planning Director, Planning Department, and be given discretionary approval or disapproval? Is that what you're suggesting?

MR. CROLY: What I'm suggesting is that the, the bed and breakfast permit as it now exists today was so narrow that not too many properties were able to, to make applications through the bed and breakfast permit process. So most of the applications for any kind of vacation rental or bed and breakfast have had to go via the Conditional Permit. And as you well know, as, as the Chair of the Land Use Committee, that is a very arduous process, and there's, there's many steps along the way. And the example I made of this one renewal shows that it took this person seven and a half years, and in seven and a half years was only permitted for one year. And it took up 17 hours of legislative time, and this was just not the right way to go about permitting this B&B. It should have fallen into the Bed and Breakfast Ordinance, and the Bed and Breakfast Ordinance as proposed is one that would be approved administratively.

COUNCILMEMBER MOLINA: Okay. Thank you very much. Thank you, Madam Chair.

CHAIR BAISA: Thank you, Member Molina. Any additional questions for our testifier? If not, Mr. Croly, thank you very much.

MR. CROLY: Thank you.

CHAIR BAISA: Our next testifier will be Netra Halperin, and Netra will be followed by David Greenberg. Good morning.

MS. HALPERIN: Good morning, Chair Baisa and Committee Members. Oil has gone up to \$112 per barrel. Importing our food has only going to, is only going to get more expensive. Maui imports up to 90 percent of our food right now. We have only up to ten days of food stored in warehouses on Maui. Creating diversified agriculture on Maui is imperative for our food security. Several weekends ago at MCC's Sustainable Living Conference, a speaker said that Maui residents would need to get used to the idea of paying more for local produce. I think there is another option. Several weeks ago I had the pleasure of hearing Councilwoman Johnson at the Maui Tomorrow, West Maui forum speak on, speak. She discussed the value of agritourism in helping businesses such as Alii Lavender Farm and Surfing Goat Dairy stay financially viable and promote sustainable diversified agriculture in Maui County. And I agree with her statement that it would be wonderful if visitors could have the opportunity to stay at a local farm or ranch and learn about Maui's rural lifestyle. And I would like to propose that that model would actually help many families living on ag land. Aside from the two mentioned above, I know of many small farms that would be able to get out of the hole if they were able to practice agritourism, especially a bed and breakfast.

Let me do an impact benefit analysis. Let's say a farmer needs to grow \$600 for a day, he could have 60 people drive their cars onto the property, pass all of his neighbor houses to get a tour of the farm disrupting work getting done. Or he could have six people drive

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

onto the property, enjoy the farm at their leisure, sleep quietly in their beds, and then enjoy a fresh homegrown fruit breakfast in the morning. So actually overnight stays is the least impactful activity of agritourism. I attended the Mayor's meeting with the farmers at the Pukalani Community Center several weeks ago. The great majority of the farmers that spoke were crying for the ability to practice agritourism of some sort. From my observation almost all of the farmers practicing diversified agriculture really want the ability to do agritourism, including a bed and breakfast. Also it takes a lot of money and expertise to start a farm. Many of the people on two-acre ag parcels don't have that expertise. One smart farmer spoke about a dating service to bring together landowners and farmers. This coalition would give the expertise and labor, and then the entitlement to operate agritourism would bring in the funds needed for the operation. Even if the family is only producing enough food for themselves and their friends and neighbors, that is much less, that is that much less food that needs to be imported from the mainland. Please consider supporting B&Bs on ag land so the above coalition is possible and we can finally make diversified farming a reality in Maui County. Thank you.

CHAIR BAISA: Thank you very much, Ms. Halperin. Members, any questions for our testifier? Seeing no questions, Ms. Halperin, thank you very much. Our next testifier is David Greenberg and Mr. Greenberg will be followed by Eve Hogan.

MR. GREENBERG: Thank you.

CHAIR BAISA: Good morning.

MR. GREENBERG: Good morning. I've spoken here before more than once. My job, I live in Hana, have lived there, owned property there for 30 years, have been running an illegal vacation rental, B&B for about 12 years and which has helped me sustain my little farm there. My main job though as I've said before is in sustainable ruralism. Unfortunately, this island, the State is not too interested in sustainable ruralism, so I have to go a long ways to work which is Southeast Asia, and South America, and Central America where I've learned a lot about how to make agriculture in rural areas work where it wouldn't ordinarily. It's an integrated approach of mixing ecotourism with agriculture. The County of Maui, the State of Hawaii, as I've said before, is mainly interested in ecotourism which is not sustainable. I come from Hana where I've lived for a long time which is not a sustainable community on almost any level. And the only way it can become sustainable and work would be through an integrated approach of ecotourism and agriculture together.

Mr. Medeiros, who is my Councilman, was interested in numbers. I would like to give him some numbers. He came to a meeting where the community came together. There must have been almost 100 people from Hana which is a rather large amount of people. I believe it was sometime in November. The main issue was vacation rental on agriculture property, Agriculture-zoned property. And out of the 90 people, almost 100 people that showed up, about 49 people actually testified. Forty eight of those people were for a kind of an ecotourism on agriculture property. Even, even your own niece who doesn't even

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

own a vacation rental pleaded with, with you to keep, to make it legal vacation rentals in the area, because it would not only, it would destroy the fabric of the community. And she wouldn't even be able to get married, because there would be no place for her guests to stay. So that if you want numbers, 48 out of the 49 people that testified were for vacation rentals, B&B on agriculture property, and this would, represented more than half the community of interest. And only one person was a little bit against it, which kind of made me feel when the last vote, where you did not support what your community said was that you maybe, I don't know what's on the mind here. But Hana particularly needs vacation rentals, an integrated sustainable approach to the community; otherwise, I don't know what's going to happen. Thank you.

CHAIR BAISA: Thank you very much, Mr. Greenberg. Hang on. Members, questions for our testifier? Member Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair. Good morning, Mr. Greenberg. Thank you for your testimony. First of all, I'm not sure what niece you're talking about, because in Hana as our tradition is, they all call us uncle and aunties whether they're related to us or not. That's one perspective, you know, I think you would notice in Hana. The second perspective, which I have a different perspective than you, as far as Hana not being sustainable, having grown up in Hana and Keanae, Kipahulu and Kaupo, and having spoken to my dad and grandfather that came from the same area, Hana at one time was separated from the rest of the island. There weren't any roads that connected Hana to Central Maui or this side of the island, so Hana has always been independent and sustainable on its own. It has never depended on other resources from other districts. Hana has always lived on agriculture, hunting, and fishing, and it has always been sustainable. So I just have a different perspective than you do on, on that portion of your testimony. But I appreciate your testimony and I know the importance of what vacation rentals do for our community, and that's what we're deliberating on at this time. But thank you.

MR. GREENBERG: Thank you. I would like to just say one little quick thing just about that, about sustainability. There is only one legal hotel in Hana, it's the Hana Maui Hotel, it has not made a penny in 45 years.

CHAIR BAISA: Sir.

MR. GREENBERG: It only loses money.

CHAIR BAISA: Sir.

MR. GREENBERG: I'm sorry.

CHAIR BAISA: Testifiers will respond to the question from the Members. Thank you so much for your testimony. Any other questions for our testifier? If not, thank you,

PLANNING COMMITTEE MINUTES

Council of the County of Maui

September 2, 2008

Mr. Greenberg. Our next testifier and the last person signed up to testify today is Eve Hogan. Good morning.

MS. HOGAN: Good morning, and thank you so much. I had no intentions of testifying 'cause I think you already all know how I feel about vacation rentals on ag land. I'm the owner of the Sacred Garden in Makawao. But I wanted to speak to you this morning, because I'm also a member of the Coffee Association and you had questions about the Coffee Association. So I quick ran out in the hall and called the powers that be so I could answer your questions. There are currently 75 members in the Maui Coffee Association, and they range from everything from the people who run the big coffee plantations to people like me who happen to buy a agricultural property that has about 600 wild coffee trees on it, and I'm trying to figure out how to manage 600 wild coffee trees. So I just wanted to answer that question for you.

I also wanted to paint a picture for you a little bit about what it's like for a small farmer in that I have a 10,000 square foot greenhouse full of orchids and ornamental plants as well as water plants. And last month I just finished doing the books, because it's the end of the month. We sold \$575 worth of plants. Five hundred and seventy five dollars worth of plants being open seven days a week, 10:00 to 5:00. That, when you divide it up by 30 days is about \$20 a day. When you consider when I hire somebody to cover the greenhouse when I'm not there it costs me about \$86 a day to cover somebody, and I have to pay for the plants, the ones that I purchase from, you know, the purchasing price. So I just wanted you guys to really, really recognize that a vacation rental, and what I'm talking about is a small one unit place that could bring in maybe 89, 90, \$100 a night. How huge that would be in supplementing the agricultural business to allow me to keep this incredibly beautiful Sacred Garden open to the public that I really see as a community service. Because people come there to mourn, they've come there to pray, they've come there to just sit in the beauty of these plants, and occasionally they take a plant home with them. It's a service to the community. But I can't afford to do it unless I have a way of supplementing that. Thank you for your consideration.

CHAIR BAISA: Thank you very much, Ms. Hogan. Members, questions for our testifier? Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair. Ms. Hogan, thank you for those numbers of the coffee farmers. And I'm assuming members mean individual members, not growers?

MS. HOGAN: That's correct. From my understanding it's 75 individual members with about 25 showing up regularly to meetings, and that alternates some, like one month it will be one 20, group of 20 and then five different ones will be there the next month and five not. So it kind of, I'd say there's probably 30 to 35 active members.

COUNCILMEMBER MEDEIROS: Okay. And you know how many different growers are incorporated in that association?

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

MS. HOGAN: I, I don't know. I can find out for you. It's my belief, and this could be wrong, that each membership is a grower, because I don't think they sign up all their workers and all their other people. It's individual growers from my understanding.

COUNCILMEMBER MEDEIROS: And, and as coffee growers, they have a co-op that everybody takes their stuff to, to be marketed?

MS. HOGAN: They do things like booths at the County Fair, and booths at some of the different green type fairs and sales things. And they also sponsor education for coffee growers, they brought in a speaker from another country recently to educate coffee growers on how to do it. And to educate the community about the immense labor involved in coffee growing.

COUNCILMEMBER MEDEIROS: Okay. Well thank you for those numbers. I appreciate it.

MS. HOGAN: Thank you.

COUNCILMEMBER MEDEIROS: Thank you for your testimony. Mahalo, Madam Chair.

CHAIR BAISA: Members, any more questions for Ms. Hogan? If not, thank you very much, Eve. We have one more testifier who signed up, that'll be Madge Schaefer and she'll be our last testifier this morning unless someone else would like to sign up. Good morning.

MS. SCHAEFER: Good morning. I didn't even get in the chair.

CHAIR BAISA: Good timing.

MS. SCHAEFER: Thank you for this opportunity. Give me just a second here. I have sent a letter regarding Chapter 19.64 of the B&B Ordinance. I had made an assumption in my first letter that the notification of neighbors was measured from the center of the property, the proposed B&B, instead of from the four corners which Mr. Alueta corrected me for it and I appreciate that. I'd like to specifically address . . . *(change tape, start 1B)*. . . 19.64.040. This section addresses the permit request notification to all owners, lessees within 500 feet of the proposed B&B. In Maui Meadows where lots average 93 feet by 230 feet I calculated 66 properties that would have to be notified, and I do have, I do have a couple of copies of a map that I'd like to distribute. Most of the lots are not even on the same street as the proposed B&B. This creates a problem in Chapter 19.64.050 which is described as below, this section addresses the protest rights of owners within 500 feet notification area. It determines that if there is a 30 percent protest surrounding owners, the permit will go to the Planning Commission for a hearing. In Maui Meadows based on the scenario of a 66-lot notification it would require 20 property owners to protest. It does not weigh property owners adjacent to the proposed B&B any greater than a property owner who lives a street away and has virtually no impact from the B&B. I would respectfully request that added language be considered, and that language would,

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

and it's presumptuous of me but, but the language I would suggest is if 25 percent of the immediate adjacent property owners state concerns or objections to the B&B permit request, a public hearing shall be required by the Planning Commission. That would give those most affected by the B&B an opportunity to be heard. And I thank you for the opportunity to comment. May I pass a couple of these?

CHAIR BAISA: Staff will take care of it, Ms. Schaefer.

MS. SCHAEFER: Okay.

CHAIR BAISA: Also do you have your testimony written?

MS. SCHAEFER: Yes. I have, I have submitted my testimony and a letter dated, to each of the Committee Members dated, oh, I didn't date it. But it was a follow-up of a March 31st letter that I sent.

CHAIR BAISA: Okay.

MS. SCHAEFER: And I was surprised when I looked because especially in, in Maui Meadows where there are large lots, speaker, properties two blocks away, I would imagine a property owner would be hard pressed to say no to something if they weren't directly affected. I know I would be, I'd be reluctant to, to not support the petition. So it's just a consideration that I would appreciate being looked at.

CHAIR BAISA: Well, thank you very much for your testimony.

MS. SCHAEFER: Thank you. You all are, this is a tough, this is a tough issue, and I think you all are trying to deal with it as fairly as possible. And if everybody leaves here unhappy, then you've probably done your job.

CHAIR BAISA: Thank you. Members, questions for our testifier? Member Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair.

CHAIR BAISA: Madge, hang on a second, please.

MS. SCHAEFER: Okay.

COUNCILMEMBER MEDEIROS: And good, good morning, Ms. Schaefer, thank you for being here.

MS. SCHAEFER: Good morning.

COUNCILMEMBER MEDEIROS: I just need some clarification on the added language you're recommending.

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

MS. SCHAEFER: Yes.

COUNCILMEMBER MEDEIROS: It's 25 percent of the immediate properties?

MS. SCHAEFER: Yes, 25 percent of the immediate, adjacent properties. So for instance if I was proposing a B&B, if my neighbors on either side or behind me or across the street, I would consider those to be immediate, adjacent property owners. They would have the most impact.

COUNCILMEMBER MEDEIROS: So your added language wouldn't incorporate a radius kind of area?

MS. SCHAEFER: Yes, I suppose you could use that. I'm, I'm sure that Planning, the Planning Director or Joe can suggest appropriate language. This was my first stab at it and I don't pretend to be a professional to get all the --

COUNCILMEMBER MEDEIROS: Okay.

MS. SCHAEFER: --"i's" dotted and the "t's" crossed.

COUNCILMEMBER MEDEIROS: So immediate, adjacent for you would mean properties that share a common boundary or across the street?

MS. SCHAEFER: Yes.

COUNCILMEMBER MEDEIROS: Okay. Thank you so much for your testimony.

MS. SCHAEFER: Thank you.

COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair.

CHAIR BAISA: Any additional questions for our testifier? Member Molina.

COUNCILMEMBER MOLINA: Thank you, Madam Chair. Good morning, Ms. Schaefer.

MS. SCHAEFER: Good morning.

COUNCILMEMBER MOLINA: Thank you for coming by. Just to follow up on Member Medeiros' question in terms of a radius, would you recommend say residents within say 500 feet, 1,000 feet of the person applying for a TVR?

MS. SCHAEFER: Well, you know, maybe it would be fair, I thought about this on the way over here. I was thinking, you know, if a person who applied for a B&B, before they started jumping through all these hoops, maybe the good thing would be to go to the immediate,

PLANNING COMMITTEE MINUTES

Council of the County of Maui

September 2, 2008

adjacent neighbors and say to them do you have any objection. If they do, then it would, then it would require that, well, let's say, okay, let's take the worse case scenario, every neighbor said no. Then that person could choose to, knowing that this is going to the Planning Commission, could choose to change their mind about operating a B&B, or make the 500, still make the 500-foot notification knowing that it's going to trigger a Planning Commission hearing because of the immediate, adjacent neighbors objections. I don't want to make this too complicated, but I think that gives that B&B, potential B&B owner an opportunity to dialogue with his immediate neighbors first, and, and get a sense of whether this is going to be an easy road to hoe or it's going to be a hard one.

COUNCILMEMBER MOLINA: Thank you. Thank you, Madam Chair.

MS. SCHAEFER: Thank you.

CHAIR BAISA: Members, any additional questions for our testifier? If not, Ms. Schaefer, thank you for coming.

MS. SCHAEFER: Thank you so much.

CHAIR BAISA: Has everybody that wants to testify signed up? Ms. Perreira, would you please turn in your paper.

MS. PERREIRA: Can I use it for my notes first and then I'll pass it over?

CHAIR BAISA: By all means, I would not want you to lose your notes.

MS. PERREIRA: Thank you.

CHAIR BAISA: Okay. Ms. Perreira.

MS. PERREIRA: Good morning, Chair Baisa, Honorable Council Members. My name is Jocelyn Perreira. I'm the Executive Director and the Tri-Isle Main Street Program Coordinator. I'm stating and I guess restating as well, 'cause I've been here before, one of the positions of our Main Street Program and its network of small towns. First of all, we do want the B&Bs and the TVRs to be looked at as two separate distinct functions, and we do feel that a process is necessary. Particularly because you have neighbors involved and it's a zoning issue, and they have the right to be noticed and notified and have a right to participate and express their concerns relative to this particular issue. One thing we do is we, we do support the position of the Farm Bureau, because we believe ag is ag and although there are unique circumstances as we do support from time to time. We feel that bed and breakfasts should be subordinate to ag uses. The concern could be for the cumulative effects in the areas and whether or not you're giving too much of these, and we talked about caps and how much, how much goes into which particular area. The best way to resolve this truthfully is via the community plan process when the

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

community is directly involved, have a right and a process to make clear what they feel they want in their communities.

We recommend further that looking at Rural designation for properties that have marginal ag use, like I believe the Kline's had a, a good example of where their property had some marginal ag use, and looking at, you know, whether or not that should be a Rural designation instead of Ag is something that might have to be looked at too. Again this is best done we believe in the community plan process. As far as 17 hours as being cumbersome, I don't believe that we concur, we have a difference of opinion on that. Because we know that when you're talking about changing zoning it is so important and so critical, the dialogue has to be taken. There are many people waiting for their families to get on even ag land, and they cannot because they cannot even get access to water meters. How long have they waited in the process to get a water meter? And so this is a use that is a privilege and not a right, and therefore, we believe that a process is necessary. And thank you so much for allowing our continued contribution, we feel it is important. And thank you so much.

CHAIR BAISA: Thank you, Ms. Perreira. Members, questions for Ms. Perreira? Seeing none, thank you very much.

MS. PERREIRA: Thank you.

CHAIR BAISA: Are there any additional testifiers who would like to come up? I see somebody approaching the podium here. If you are so moved, please come and sign up your paper.

MR. KLINE: Thank you, Chair Baisa.

CHAIR BAISA: Good morning.

MR. KLINE: Aloha! My name is Hank Kline, you've heard from me before. I'm from Haiku. I'm just responding to the, you know, I'm here to talk about the ag. The Farm Bureau's position on ag, it's not realistic. I mean we, we need to deal with these small ag lots, the small ag lots are really the best place for B&Bs. It's a no brainer, they're bigger, there's no impact period, you know, there's no, and the other thing I want to say is that, the important point I want to make is that we have not heard one good reason, one bona fide reason why B&Bs should not be permitted on ag land. We've heard opinions and so forth but not one good reason. Some previous testifiers have just given their opinions and the Farm Bureau's opinion which is respected. I'm a member of the Farm Bureau. But we want sustainability here, that's the number one issue on Maui. I remember when the election was last year, sustainability. Okay, let's start walking the walk and stop talking the talk. We need sustainability and the way to do it, one way to do it is with government support. Well, I don't think that's going to happen. So how about B&Bs, that's, that's a good way. It doesn't cost the government anything and as long as they don't create any problems let's go for it, on ag land. Thank you.

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

CHAIR BAISA: Thank you very much, Mr. Kline. Members, questions for our testifier? There just might be somebody that wants to talk to you, Hank. Hold on.

MR. KLINE: Okay, I'd like to answer any questions.

CHAIR BAISA: No questions for our testifier. Thank you very much. Are there any additional testifiers? Ma'am, would you please come forward and you can sign your paperwork after you speak. If you'll state your name.

MS. ATHERTON: I'm Sandra Atherton, I had not prepared anything but I do want to comment. I have a two-acre B&B in Haiku and we have, last year we had, we're very proud of this, we had over 6,000, between 6 and \$7,000 worth of ag sales. We have a, about 1,200 native plants, we have a nursery with 1,200 native plants. We're working with Anna Palomino of Hoolawa Farms and Wendell Parker who on, on introducing more and more native plants to the property. This is my hobby and this is my passion. I didn't expect to ever make enough living to support a huge, you know, property by this in Haiku. So we had been doing vacation rentals with an owner on site since 2003. Our 2007 revenues as I said were between six and 7,000 a year, our 2008 revenues we will be lucky to do \$2,000 this year. And the reason for that is we were, we've been shut down. We cannot operate. So we had to let go of our plan for acquiring new plants. When the County came out to inspect our property to look at us as a vacation rental they told us to tear the shade cloth off of our nursery. This caused some of our plants that needed shade not to do well. They said we're not supposed to have shade cloth over it. Our planner, Will Spence agreed, differed because we don't have walls. So we are trying to do ag, we have a 5/8's water meter. We've applied for a 3/4 water meter. I got a letter from Mike Foley years ago saying that if we give you a 3/4 water meter, you'll use too much water. So how can we do ag? How can we do vacation rentals when there's obstacles no matter which way we turn?

Char Parker who is the head of the Stay Local network is our property manager. We have, she has had plans and to, you know, renovate the property with the native plants to use them for Hawaiian demonstrations of hula, of how to make the various implements and materials needed for hula costumes. And she's contacted hula halaus on different islands. But we're starving, I mean we're starving for funds to carry on these projects. And the vacation rentals have always helped us to do that and now we're, you know, we're really struggling. So please understand that, oh, we also have a garden and we have 75 medicinal noni plants. We have a garden that feeds four families right now. We supply produce for our guests, we have supplied that in the past, and we have about 75 banana and papaya trees as well. But you can't make a living off of that either. So just please consider everybody does have special circumstances and especially to grow the native plants, there's not a huge market for those and really their main use is for, for hula and Hawaiian ceremonial use. So it's, you can't really, there's not a real big market for those except for the ti leaves which we're going to be trying next. Okay. Thank you.

CHAIR BAISA: Thank you very much for your testimony.

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

MS. ATHERTON: Okay.

CHAIR BAISA: Members, questions for our testifier? If not, thank you very much for your testimony. Anyone else who would like to testify? Seeing no one else rushing up to the podium, I guess, Members, that we have received all of our public testimony for this morning. And with no objections the Chair will close public testimony for today.

COUNCIL MEMBERS VOICED NO OBJECTIONS

...END OF PUBLIC TESTIMONY...

CHAIR BAISA: Thank you very much.

ITEM NO. 40 TRANSIENT VACATION RENTALS LEGISLATION (C.C. No. 08-61)

CHAIR BAISA: Members, to begin our deliberations I would like the Committee to pick up where we left off on August 19th. And I would like to call the Members attention to what we have called the B&B Bill. This is the bill listed as 2-B on today's agenda entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE, RELATING TO ZONING". At our August 1st meeting the Committee voted to delete Section 2 from the bill. That is the section that would establish B&Bs as a permitted use in the Agricultural zoning district. At our August 19 meeting, the Committee voted to reconsider that action. Under Robert's Rules of Order the big consideration returns us to the original question, the motion to delete Section 2 from the bill. An affirmative vote on this question will affirm the Committee's earlier deletion of Section 2. A negative vote on this question will reverse the Committee's earlier deletion of Section 2 and reestablish B&Bs as a permitted use in the Ag zoning district. Is there any discussion on this question? Member Molina.

COUNCILMEMBER MOLINA: Yeah. Thank you, Madam Chair. And as, as was mentioned at the last meeting that we had, we had the reconsideration to open up this matter to possibly allow B&Bs back into the Ag zoning district and I appreciate having the discussion here today. Based upon my own observations and hearing comments from the public, I think it's worthy that we at least have the discussion. I would like to seek, at this point some comments, additional comments from the Planning Department as to how if we do reinstate this back into the bill what measures would be taken to monitor or any types of parameters we should include to ensure that if we allow for this that, you know, this is something that I guess everyone can live with so to speak. People who are, who may be against having B&Bs in Ag zoned areas versus others who are supportive of it. So I would just like to seek some guidance from the Department on this if they can provide that for us.

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

CHAIR BAISA: Thank you, Member Molina. And I'll refer that to Director Hunt. Director Hunt.

MR. HUNT: Thank you, Chair. Let me refer back to the bills that are before you right now. I think that would be a good, at least a starting point for the Committee. And under the second bill out of the packet that were reformatted by the Corporation Counsel, if you go to Page 4 of that second bill, there's some language that the Planning Department originally proposed that would allow B&Bs in the Ag zone. It did have some limiting language to it. It has to be operated in conjunction with a bona fide agriculture operation and meet the following income standards. And the income standards is either \$1,000 in agriculture products, if the lot is less than two acres or \$2,500 if the lot is two acres or greater.

COUNCILMEMBER MOLINA: Excuse me, Madam Chair. Mr. Director, I apologize. Could we take a brief moment to get us on the same page?

COUNCILMEMBER MEDEIROS: That would be fine.

CHAIR BAISA: I'm asking Mr. Raatz if he could please get that projected on the wall for us.

COUNCILMEMBER MOLINA: Thank you.

CHAIR BAISA: So that we'll be able to look at it. It'll take us just a second.

COUNCILMEMBER MOLINA: Thank you.

CHAIR BAISA: Is that where we are, Mr. Hunt? Section 12?

MR. HUNT: I believe that's the actual 19.30 language.

CHAIR BAISA: Yeah. Well, it's great that we can't, we'll, we'll find it in just a second. Let's take a very brief recess. Nobody leave the floor. . . .(gavel). . .

RECESS: 9:58 a.m.

RECONVENE: 10:00 a.m.

CHAIR BAISA: . . .(gavel). . . Members, we'll continue. Director Hunt.

MR. HUNT: Thank you, Chair. The, the language that the Department proposed on Page 4 of the second bill as reformatted by Corp. Counsel is now up on the wall. And you can see that the criteria would be that it has to be in conjunction with a bona fide agriculture operation, and then it has two income tests depending on the size of the lot. If the lot is less than two acres you'd have to have an income test of \$1,000, or meet the income test. If the lot is two acres or larger the income test would be 2,500, and then another option

PLANNING COMMITTEE MINUTES

Council of the County of Maui

September 2, 2008

would be, outside of those income tests if the site is listed on the State or National Register of Historic Places. A little bit of background on how we came up with these income tests is there is concern in the community and I'm sure you've heard it with commercialization of our agricultural lands. If the, if the B&Bs or TVRs are more profitable than farming, there's a concern that, or and easier than farming there's a concern that our agricultural lands will be converted to commercial uses. At the same time we understand the idea, the concept of supplementing, but not replacing the, the bona fide farm income. And so that's where the income test came up with. This was recommended by, I believe the Farm Bureau originally suggested the \$2,500. In fairness to them I don't believe they did a scientific test or anything, it was just a suggestion at that point. The Planning Commission felt it was a reasonable figure and so that's why we included it in, in the bill to, to this Committee.

It's important that we realize that what the language would do would only apply to B&Bs. And the B&B definition is either a lessee or owner on site in the same building right now. Now there's language proposed to expand that. It's also important to realize that even with this language we believe you'd still need a Special Use Permit, and we believe you could obtain that approval through the Special Use Permit. To be honest there's some difference of opinion on that. We've gotten communications from the State Land Use Commission and the State Office of Planning that agree with our opinion that with a Special Use Permit or let me rephrase that, that a Special Use Permit could be used to allow for a B&B in the Agriculture zone. Some other statistics you should, I think you might be, might want to be aware of is one third of the Conditional Permits that the County has approved have been on agricultural land. So up to this date 12 Conditional Permits have been approved by the County, and four of those have been on agricultural land. There's also a fairly high demand, I did a survey of the Conditional Permits that are pending and I didn't get through all of them, I got through maybe two thirds of them, and I believe about 45 percent of those are on agricultural land. So there does seem to be a somewhat of a high demand. So and in the Planning Department's opinion we think it's reasonable to allow these on agricultural land with some limits so that it does supplement and not replace the bona fide farms.

CHAIR BAISA: I have a, Chair has a question then I'll let you talk, Mr. Molina. Can you tell me how the Planning Commissions and how the Hana Advisory Committee felt about this?

MR. HUNT: The Planning Commission, the Maui Planning Commission recommended these. This is a recommendation from the Maui Planning Commission. I don't recall the Hana Advisory Committee.

MR. ALUETA: The only difference is that, again the Maui Planning Commission reduced the number from the \$35,000 to the, the figures that you have up there. Molokai wanted nothing to do with it so they didn't want to have any B&Bs in the Agriculture district. Lanai, it was, they wanted the \$35,000 or 51 percent of the farm income, whichever is greater.

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

CHAIR BAISA: Right.

MR. ALUETA: So, so again to be subordinate to a farm activity. And then Hana wanted to try to decide on their own so there wasn't much of a discussion.

CHAIR BAISA: And we have incorporated their positions in, in the bill so we really are looking at the Maui Planning Commission then. And they have been in, in support?

MR. HUNT: That's correct.

CHAIR BAISA: Okay. I just thought that was really important because we want to respect or pay attention to what our Planning Commission said. Member Molina.

COUNCILMEMBER MOLINA: Thank you, Madam Chair. Good morning, Mr. Director. Just to follow up on your comment where it says, this will be reasonable to allow for with limits. Can you specify what kinds of limits you would suggest? Or you're referring to?

MR. HUNT: With the language we're proposing you'd have to meet an income test and further more you'd have to go to a public hearing before the Planning Commission for the State Special Use Permit.

COUNCILMEMBER MOLINA: So as written it incorporates that, the income test, as well as requiring the applicant to go for a public hearing?

MR. HUNT: Correct.

COUNCILMEMBER MOLINA: Okay. All right. Thank you, Madam Chair.

CHAIR BAISA: Thank you very much. Chair would like to note the presence of Vice-Chair Johnson. Welcome. Members, any additional questions? The Chair would like to call your attention to a possible amendment that has been circulated at this moment to this provision, and I have introduced it for the purpose of discussion because it's a suggestion that has come to us from MVRA. And they are suggesting that instead of the \$1,000 that, well, along with the \$1,000, that the possibility of an equivalent donation of ag products through the Maui Food Bank or in the case of the \$2,500 the same thing, an equivalent donation to the Maui Food Bank. And I thought it was important that we discuss it. Members, any comments? Member Molina.

COUNCILMEMBER MOLINA: Yeah. Madam Chair, if you deem it permissible maybe, may we hear from the representative of the MVRA to get further clarification on these proposed amendments.

CHAIR BAISA: If that is the Committee's wish. Any objections to having a representative, the representative, Mr. Croly explain this?

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

COUNCILMEMBER MOLINA: No objections.

CHAIR BAISA: Thank you very much. Mr. Croly, if you could please explain this recommendation.

MR. CROLY: Sure. Thank you, Councilmember Molina. The suggestion of a donation to the Maui Food Bank as opposed to showing an income test is to include folks that are engaged in agriculture but aren't engaged in agriculture for profit. Mr. Kline here is a good example, he produces thousands of pounds of produce from his farming efforts every year. However, he consumes them himself, he shares them with, with neighbors and friends and so forth. He's not in the business of bringing them to market which is, which is really a whole 'nother part of the industry, bringing product and having product available in quantity and so forth to market. So by allowing him to meet this requirement by making a donation to the Food Bank, we believe that that both is serving the community, as well as the spirit of, of the ordinance here that would ensure that there is true agriculture taking place on the, on the property.

CHAIR BAISA: Mr. Molina.

COUNCILMEMBER MOLINA: Okay. Thank you, Madam Chair. If Mr. Croly could continue with the other proposed amendments? Mr. Croly, could you continue 'cause there was some other additional language that you had proposed.

MR. CROLY: I'm sorry. I . . .

COUNCILMEMBER MOLINA: If you could go through the whole. . .

CHAIR BAISA: Do you...

MR. CROLY: Yeah. I thought we were just discussing that one thing. Some, some thought was given to the fact that as people age, their farming efforts may be very difficult. And so they were asking that perhaps an exemption should be put in for someone based on their age. So that's the second exemption. And then there, there's a third possibility and that is that the lot in question has no agricultural capability. This, someone would have to make a determination about whether it's because the topography of the lot is such that, that agriculture would be impossible, whether it's that the weather conditions, where it's located, the availability of water or whatever. There certainly are some lots that are located in Ag districts that have no ag potential. But if there is a farm dwelling on that, on that property, then we wouldn't want to deny that person the ability to use their home as a bed and breakfast and, and receive the benefits of that.

COUNCILMEMBER MOLINA: Okay. Now I have a question if you'll permit me, Madam Chair?

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

CHAIR BAISA: Yes. Please go ahead, Member Molina.

COUNCILMEMBER MOLINA: First with regards to the \$1,000 or equivalent donation of ag products and a \$2,500 or equivalent donation to the Maui Food Bank. Who would make the determination of what is worth \$1,000 worth of ag products? Would that be the --

MR. CROLY: That's a good question.

COUNCILMEMBER MOLINA: --owner? You know what I'm saying? Who would make the judgment? 'Cause, you know, I could say my, my oranges or my vegetables are worth this much in my view. You know what I'm saying? How could that determination be made?

MR. CROLY: I would only have to guess that, that we could get the Food Bank to value what is being donated. Okay, we got 1,000 pounds of oranges here and oranges are selling for \$2 a pound, whatever, whatever the case is. I, I don't have the answer for you there.

COUNCILMEMBER MOLINA: Okay. And with regards to the determination of the, leaving it to the Department of Planning to determine whether agriculture productivity, there is or there isn't any productivity. Would you also include say maybe the Farm Bureau? I mean the people who are experts in this area?

MR. CROLY: Whose kuleana this is, is up to you guys to decide. The Department of Planning is the one who's processing these permits. So it would seem to me that, that they might be able to seek internally the expertise and then, and then make a judgment on it.

COUNCILMEMBER MOLINA: I see. Okay. Thank you. Thank you, Madam Chair.

MR. CROLY: Thank you.

CHAIR BAISA: Thank you very much, Member Molina. Chair would like to ask the Planning Director for his comments on these ideas.

MR. HUNT: The idea . . . (*change tape, start 2A*) . . . is somewhat unusual. I think we'd like a little bit more time to analyze that and talk to some people. The, the idea of suggesting that the land isn't suitable for farming, this actually is done in other jurisdictions that, that have very progressive laws on preserving g land. Oregon, for example, requires income tests for their farm land for farm dwellings with an exception that if your land isn't suitable for farming then it makes sense to allow an exception. What happens when we zone ag land is it's done with a broad brush and there's a lot of times when the soils or the micro-climate of a particular area doesn't necessarily result in productive farm land for that particular site. So it does have some scientific basis for that. If the, if the application is going to the Planning Commission for public hearing and that's due to the Special Use Permit, one idea would be to include that analysis in the Special Use Permit. The Special Use Permit is intended specifically to address ag land. That's, that's what

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

the Special Use Permit is about, is to allow this use on ag land. I think that would be a better, or that would be worth consideration. Also we could come up with perhaps some criteria in regards to the ALISH land classifications and other land classifications that the State has already gone through in their determinations. So I guess my response to the question would be we need a little bit more time, especially on the donation one. The non-suitability is an accepted standard, we would need some time to flesh out the details on that.

CHAIR BAISA: Thank you very much, Director Hunt. So essentially what you're saying is you'd like to take these suggestions and we can deal with them later rather than including them in the discussion here and belaboring it and spending a lot of time?

MR. HUNT: I, I would feel more comfortable coming back to you with some more information on these.

CHAIR BAISA: All right. Thank you very much. So the Chair would then like to go back to the rest of the amendments that is before us as suggested by the Planning Department, and we will reserve this discussion of possible changes that we've talked about to a later date. Member Johnson.

VICE-CHAIR JOHNSON: Yes. I, I just wanted to find out, did we get a response from the Attorney General yet as to the, in ag zones no overnight accommodations. Have we received a response?

MR. HUNT: The Planning Department has not yet.

VICE-CHAIR JOHNSON: Okay. And as far as the General Plan goes, because I know you're working on the important ag land designation and looking at the areas that should be preserved underneath that type of legislation and working with certain landowners. Have we any progress to report on that front with the identification of important ag lands?

MR. HUNT: I don't believe we've made what you would consider progress at this time in identifying those ag lands. It is part of the process as you noted. So hopefully when the end product comes out it will have some kind of a determination regarding that.

VICE-CHAIR JOHNSON: Okay. And one final question and that would be in the area of agritourism, because as you know State law allowed the counties the right to go and pursue both the, I guess the ordinances that would govern agritourism and that particular subject matter. Have you, has your Department been able to look at how you might address that issue at this point in time?

MR. HUNT: We haven't, we haven't drafted any ag tourism bills at this point. We support the concept of ag tourism, it's as they say the devil's in the details. And the whole issue again really on Ag zone is, is like I alluded to earlier is how do we allow for commercial uses without turning our Ag zones into commercial districts.

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

VICE-CHAIR JOHNSON: Yeah. And, and I guess the follow-up to that would be then we still don't have the definition actually of agriculture that, you know, we've been working on for many, many years. We still don't have that then moving forward.

MR. HUNT: No, but we are working on that --

VICE-CHAIR JOHNSON: Okay.

MR. HUNT: --as part of an agricultural district bill. The Department's working on that including subdivisions and minimum lot sizes and the definition of ag use.

VICE-CHAIR JOHNSON: Okay. Madam Chair, I, because, and I'll state it again, I didn't realize we were going to be revisiting the ag use on the B&Bs. I just feel that there's certain fundamental work that needs to be done with agritourism, with the definitions of agriculture, with a determination so that we're not inconsistent with State law as to overnight accommodations on ag land. Until I feel that we've been able to make sufficient progress I still will not support at this point in time this process for allowing administrative approvals for either bed and breakfast or transient vacation on ag land until we get those issues resolved. That's just one Member's opinion because I think fundamentally we're putting the cart before the horse if we do not address the core issues. And I've always been one of the individuals to support at least trying to progress in a logical, reasonable way.

The fact that there are accommodations on agricultural land right now, I understand that. I understand that people are doing their best. But by the same token there is a process that people have been utilizing and which Mr. Hunt said repeatedly, there are applications and we have approved them on ag land through a different mechanism. And it's on a case-by-case basis. So I just do not feel comfortable, I feel it's a disservice to the agricultural industry and the community to move forward on something where these laws are still unclear about what we can and cannot do. So I'm sorry if I offend people who are on ag land. It's not that I don't support these kinds of endeavors, but until we get these things ironed out, Madam Chair, I'm not going to be supporting any expansion into an area that is already clouded with a lot of uncertainty. And especially if we give permission and then subsequent to that it's found out we had no right to do so. Thank you, Madam Chair.

CHAIR BAISA: Thank you, Member Johnson. Any additional comments? Member Hokama.

COUNCILMEMBER HOKAMA: Chair, thank you. Listening to this morning's testimony and comments I would just say that I think it's important we get some type of resolution to the current State statute. I think it's been confusing for the various jurisdictions, not all of us I think are viewing it in the same manner and therefore maybe legislative revision to the State, current State statute might be needed for better clarification of what is the intent of the Legislature. We all can read plain English, if you read plain English it says no

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

vacation rentals in Agricultural zoning so that is pretty clear-cut to Legislators like ourselves in the...in this level.

But what I wish to share, Ms., Ms. Chair, is that we've heard comments this morning about the notification distances. In the past it was always viewed that there are community-wide potential impacts, whether it be on the road system, distance of sound, depend upon the area that we are viewing a request for a permit. But I think some of the recommendations this morning may make sense in various, specific zoning categories. You know, when you look at Residential, maybe 500 feet works, in Rural or Agriculture it might not work at all. So I think the testifier brought us some good comments or recommendations. I will say that maybe we need to look at also what the Liquor Department does. If there is an applicant that gets 50 percent concerns or objections, it is not even processed, it is automatically rejected. And I think we should keep that kind of administrative procedures in place so that if there is that type of concern or objection in a region or neighborhood already, we can deal with it administratively and not come into the legislative arena for a final decision.

My other comment or question for the appropriate planners is couple things. I would hope that the, the Planning Department would ask State Department of Agriculture why lands are being designated or retained in Agriculture classifications. It might not make sense to us but it may make sense to them. And so I would ask that we take their comment into consideration before we make a County ruling that the land has no agricultural potential. Again we know there's many different types of agriculture activities, Chair. Of course it may not be good for sugar but it may be good for something else.

And quickly, Chair, two quick areas of concerns. If you don't need to grow agricultural products for profit and you can do without it, then why do you need a vacation rental. Because if not, then you come right back into the, the concern of the Department of it being a substitute use. And if that's the case, then what is Mr. Teruya down there from Property Tax to view and assess the property as? Still Agriculture? Do we still give them the preferred tax rate? Do we still give them considerations of other tax considerations we give homeowners and others? I think those are the areas that we need some additional information, Madam Chair. Thank you.

CHAIR BAISA: Thank you, Mr. Hokama. Mr. Alueta, you're burning up to say something.

MR. ALUETA: No.

CHAIR BAISA: Please.

MR. ALUETA: Not too much.

CHAIR BAISA: Go right ahead.

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

MR. ALUETA: Thank you, Madam Chair. I just wanted to address a few things with regards to the agricultural issue. There, there's your ALISH map and then you have your ag productivity rating which is A through E. And so there's multiple things, there is an ALISH map, agricultural lands of Hawaii that we have. And there's also the ag productivity which is done by the University of Hawaii. And that...

COUNCILMEMBER HOKAMA: That is not to be confused with the Important Ag Lands category.

MR. ALUETA: Yes. And so there are multiple categories or tools that we can use. I think we're concerned, with regards to ag productivity that's one of the characters, one of the five tests that we use with regards to reviewing State Special Use Permits. And again Ag A, A, B and C are the highest productivity on the map; however, you have to be very careful when you read those because we have a lot of lands that are E lands. But when you add water they become B, A and B lands, not the company's lands, but the productivity lands. And so it's very different, so just because you see a land that says, oh, it's low, has poor productivity, as soon as you add water to it, it becomes highly productivity, productive.

With, so as far as what the legislative intent was with regards to ag tourism. It's clear what they, I think I know what their intent was, however they left a loophole similar to the County has a loophole called the Conditional Permit. The State, on the State level you have the loophole called the State Special Use Permit and from reading, or from discussions with State Land Use Commission even though it says no overnight accommodations, that's provided you do an ag tourism bill, right. It doesn't prohibit the processing or people applying for a State Special Use Permit. And that's the position that we've taken is that what we're proposing with the B&B in 19, in 19.64 and the amendments to 19.30A deal only with the County side. Now we're saying this is the minimum requirements that you need to do before we'll even consider a bed and breakfast application in the County Agricultural district. Whether you, even if you go through all of that and you meet that County requirement, it does not exclude you from meeting the requirements of the State Special Use Permit. Okay. And from comments that we're getting, it's going to be very difficult for anyone to meet the State Special Use Permit requirement if it is processed objectively and stringently to the law; however, in the political realm it doesn't necessarily get processed that way. But what I'm saying is there's two different processes, and the process we're dealing with today has only to do with the County side. State Legislature with regards to State agricultural tourism deals with, would deal more with people like Alii Lavender Farm and the Surfing Goat people, which by the way do need a State Special Use Permit and have never come in for them because they don't meet, and they, and so they technically are illegal because they're not following State law. So I cringe when people use them as a good example.

Notification requirements, with regards to Madge Schaefer and, and Maui Meadows. I have no, from, from a processing standpoint I don't think we have an objection to adding her comments about giving a little more weight to adjacent property owners. But I do

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

not, but that should not be exclusive of the 500-foot notification requirement. So there should be a multiple, if then, you know, one, you have to make all three basically. You would have one, make sure you don't have objections from the 500-foot notice. Two, you have to have no objections from your adjacent, a certain percentage of your adjacent property owner exclusive of property owned by the same owner or controlled by the same owner and provided that the adjacent properties are not running illegal transient vacation rentals. And at the same time, you know, again Liquor Control if, if that's a third layer of, you know, concern or issues that you want to have in a notification process. But I do not want, I mean from our standpoint we wanted it only to have the 500-foot notification and set a percentage there and that was it. Hopefully, that addressed some of the issues but thank you.

CHAIR BAISA: Thank you, Mr. Alueta. Mr. Hopper, any comments?

MR. HOPPER: For the, the sake of giving complete information here, I should advise you that I recently talked to a county attorney from Kauai. They recently did a bed and breakfast/TVR bill, and it was their opinion that the county could not allow, even by a Special Use Permit, bed and breakfast or TVRs in ag land. That was their opinion. But it does differ from the written opinion of the State Office of Planning which does state that by Special Use Permit that a TVR or B&B can be allowed if the criteria are, are met in the Special Use Permit law. That has been consistently the position of this County. So for the sake of getting all the sides out there I wanted to advise you of that, and to allow you to make your decision I wanted to read the law to you right now. It's Section 205-5, it's State law and states that, "Each county shall adopt ordinances setting forth procedures and requirements, including provisions for enforcement, penalties, and administrative oversight, for the review and permitting of agricultural tourism uses and activities as an accessory use on a working farm, or farming operation as defined in Section 165-2; provided that agricultural tourism activities shall not be permissible in the absence of a bona fide farming operation. Ordinances shall include but not be limited to. . ." And among the, the ordinances it states in this next subsection which is two, "Requirements and restrictions for accessory facilities connected with the farming operation, including gift shops and restaurants; provided that overnight accommodation shall not be permitted." In speaking with the State Attorney General, as well as the Office of Planning, that is what is not permitted by County ordinance. It's saying that you could not by ordinance permit that and have nothing else happen. You would have to come and get what, what Joe said, their equivalent to a Conditional Use Permit which is a State Special Use Permit.

Now the issue with the State Special Use Permit is not so much whether or not it can be granted but whether or not the circumstances dictate that it should be granted. And among the very difficult legal requirements to meet is the statement that, and this is 205-6 dealing with special permits, subsection C states that, "The County Planning Commission may, under such protective restrictions as may be deemed necessary, permit the desired use, but only when the use would promote the effectiveness and objectives of this chapter; provided that a use proposed for designated important agricultural lands shall not

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

conflict with any part of this chapter.” The key there is that the use proposed actually does have to permit, has to promote the effectiveness and objectives of the chapter which is, are the uses on agricultural land. So that’s a determination that needs to be made by the Planning Commission in that situation. And that does appear to be a difficult standard to meet in a lot of cases. You would have to show that your use is actually promoting the ag law, you know, the Section 205. I’m not saying it’s impossible to do. I’m saying the Planning Commission needs to make that as a clear finding prior to permitting. And, and there’s a bunch of other requirements for a special permit that the, the State has delegated to the Planning Commission specifically, not the County.

Now you obviously have your own, your, your job is to deal with the County’s, according to the State, it’s not with the State law, it’s with the County’s own Agricultural zone. You have an Agricultural zone that sets forth the permissible uses. So I believe you can dictate what can and can’t be done in, in that zone. As far as State law though, they left it up to the Planning Commission to dictate in this particular case whether or not a bed and breakfast or TVR can be permitted on agricultural land. But I can tell you there are differing opinions based on the, on the State law whether or not this can be permitted by County ordinance and Special Use Permit. Kauai County who just recently passed the bed and breakfast/TVR ordinance did not have agricultural lands included, because they felt that that was not legally permitted.

CHAIR BAISA: Thank you very much, Mr. Hopper. Members, any comments or additional questions?

COUNCILMEMBER HOKAMA: Question, please.

CHAIR BAISA: Yes.

COUNCILMEMBER HOKAMA: Thank you, Madam Chair. So hearing your comments to us, Mr. Hopper, I’m taking it that even for the State Special Use Permit that an approval would be an exception of the law than a, it’s going to be harder to get an approval than a denial. Because you need to pass this litmus test that you mentioned.

MR. HOPPER: Absolutely. For, for, for Special Use Permits and Conditional Use Permits the burden is on the applicant to show that they are entitled to the permit, that they have met the criteria. The burden is not on the, either the Council or on the Planning Commission to find a reason to deny the permit. The burden is on the one seeking the permit to show that they have met all of the criteria. There’s recently a decision involving vacation rentals and the, the, the Federal Court has basically interpreted the County’s own Conditional Use Permit law, for example, and stated that even if all of the criteria for a Conditional Use Permit are met, the County retains jurisdiction to deny the permit because of the word may in that particular code section. This, for example, in the State Special Use Permit law states that, “The county planning commission may, under such protective restrictions...permit the use, but only when...” and sets forth a criteria. So it tells specifically the commission when they can grant these permits, not when they can

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

deny the permit. So, yes, the burden should be, as with for example a variance or with an exception to a law on the applicant to show they're entitled to that, not on the body whether it's the Planning Commission or the Council to deny that. So that would be an accurate statement that I believe that you made.

COUNCILMEMBER HOKAMA: Thank you. And, Madam Chair, when appropriate I would ask you if you would allow Mr. Teruya to share any comments he may have regarding the, the topic of taxation.

CHAIR BAISA: All right. What the Chair would like to do is it's 10:35 and we normally take our break around now. The Chair would like to take a 10 minute break until a quarter of 11:00 and the meeting will reconvene at that time and we'll have Mr. Teruya speak. The Committee's in recess. . . .(gavel). . .

RECESS: 10:35 a.m.

RECONVENE: 10:49 a.m.

CHAIR BAISA: . . .(gavel). . . The meeting of the Planning Committee will come back to order. When we took our break, Mr. Teruya was about to make some comments in regards to the tax matters in regard to this issue. Mr. Teruya. I also see that we have joining us Mr. Kalbert Young. So who's speaking, guys?

MR. YOUNG: Madam Chair, Kalbert Young, Director Department of Finance.

CHAIR BAISA: Thank you, Mr. Young, for being here.

MR. YOUNG: I'm only here, I understand that the Committee has some questions regarding the section of the Maui County Code relative to Real Property taxes. And Mr. Teruya and I can provide some, any response or comments. Mr. Teruya can speak more to the technical aspects of the Code as it relates to taxes. So it's at the pleasure of the Committee.

COUNCILMEMBER HOKAMA: Madam Chair.

CHAIR BAISA: Yes. Member Hokama.

COUNCILMEMBER HOKAMA: Maybe if I can ask a few questions for our Finance representatives.

CHAIR BAISA: Thank you very much. It might clarify what we need to hear about. Thank you.

COUNCILMEMBER HOKAMA: Thank you. Director, thank you for being here with the Committee this morning, as well as Mr. Teruya from Real Property Tax Division.

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

Gentlemen, I think for this Committee what we would ask of you this morning is a couple of questions. One, how would the Division view, and we have a proposal and we have made no decisions. But we have a consideration that instead of burning for profit a X amount of dollars that you can give an equivalent dollar value donation to a worthy non-profit such as Maui Food Bank. And that would satisfy a annual gross income requirement or litmus test that the Planning Department is considering to implement. If that being the case and they have a vacation rental or bed and breakfast, how would Real Property Tax view that property parcel and how would it make its assessment and under what category of taxation would the Division be doing its calculations on? And if it's not clear, then you need to tell us the ordinance is not clear and you need to make it clear for us.

MR. TERUYA: Okay. Mr. Hokama, there is several questions in your question. First of all, when properties in agriculture whether or not, Real Property doesn't look at it as a income threshold. The ordinance doesn't say that you have to have a threshold in order for you to get agriculture. That being said, when properties have agriculture use, they are taxed or at least assessed a productivity rate per acre or per, per use that they claim is used for agriculture. The remaining portion is valued and classified based on its use. So many times that if somebody's working their land they're probably living on the property. So they'll probably get a home exemption and that gives them the 300,000 exemption and you're put in the homeowner classification. So the Code says once you apply and are granted a home exemption, your classification is homeowner, yeah. And the value would be established based on its actual use, yes.

COUNCILMEMBER HOKAMA: Would it make it easier if we put in language in the proposed ordinance either, well, let me just, you know, take, ask you the question to confirm. Our understanding, such as under the Condominium category, if you use one unit for one night as a short-term or a transient accommodation, then you get taxed by the County as Hotel?

MR. TERUYA: That statement would be correct. The County Code says that when properties are condominiumized it's based on its highest tax rate used within that assessment year. So if you live in it for 10 months but rent for one day, then it would be in Hotel/Resort. That's according to the County Code, yes.

COUNCILMEMBER HOKAMA: So is that something that you, that type of clarity is what you would ask of us to consider in this proposed ordinance?

MR. TERUYA: In the proposed ordinance it would be yes. Because we're looking for direction as to how to classify. The Code is silent on how to administer a classified bed and breakfast unit. Currently, it's just administratively, just classified under existing zoning. But if the Council should want they could, they could identify how it's going to be classified. That's the problem that we're having now is the Division is trying to make administrative memorandums or decisions on how to do it when the Code is silent and that's the problems that we're having.

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

COUNCILMEMBER HOKAMA: So would we put in that language you just shared with the Committee or should we put in something of highest and best use?

MR. TERUYA: For, for myself it would be easier if the Code is clear as to how it's going to be classified. In the B&B Ordinance from the Title 19 or I believe the Planning Department it's clear that it says there should be no home exemption. But it doesn't say how to, what classification you're going to be in. So I think it's just additional language to, to suggest or at least identify how to be classified, similar to TVR as well.

COUNCILMEMBER HOKAMA: So an example would be such as Hotel category or Hotel tax rate? Hotel/Resort?

MR. YOUNG: Mr. Hokama, the Department would recommend that if the Council decides to take this up that the classification, that ideally the classification, the specific classification be identified for bed and breakfast properties, as well as TVRs or any other use that the Council considers, that the specific classification or tax category be identified in the ordinance in the interest of clarity.

COUNCILMEMBER HOKAMA: Okay. Okay. Madam Chair, I am happy to allow the other Members have their opportunity with Finance. Thank you.

CHAIR BAISA: Thank you very much. Member Johnson.

VICE-CHAIR JOHNSON: Yes, and you know, I know that we're talking about ag and we're going . . . *(change tape, start 2B)*. . . to the, you know, Rural class and also the Urban or Residential type class. So if you're looking at agriculture land and a property is condominiumized, what is the mechanism that you utilize I guess to classify or to check as to whether that property, if there's two homeowners on that property, in the principle dwelling you have supposedly the main farm family, and then in the secondary dwelling you have supposedly farm workers. But, you know, the way that we're non-enforcing, you know, there isn't usually somebody on the second property that's actually doing the farming work on the property. So ostensibly you get two homeowner exemptions on that one condominiumized farm lot. So what do you do or what is your capability with checking to see whether both of those properties are actually legitimately getting a homeowner exemption? Do you have any way to, to check on that?

MR. TERUYA: Just to clarify your question, I believe you're talking about a parcel that becomes condominiumized such as Launiupoko is what you're alluding to.

VICE-CHAIR JOHNSON: Right.

MR. TERUYA: In that situation when they condominiumize and they become two separate parcels, well, condominium units, each homeowner, owner can apply for a home exemption. Now to verify how are they a homeowner it's just, it's the form that you fill

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

out. We are, we had, we are allowed to ask for Federal income tax returns that identifies the, the specific location that the person is living at. That's one of, one of the tests, yeah. Yeah, it's just proof of residence. And that's one of them. The other, when you condominiumize we gotta remember you're, like in this separate category of the Code that says once you condominiumize you're to identify what is the use of the property. And there's only five categories, it's a homeowner, it's apartment, commercial, hotel or timeshare. So those are the five categories you attest to.

VICE-CHAIR JOHNSON: Okay. Now what if somebody puts down on their, that they're doing a timeshare or they're doing a TVR on their form? How do you look at that? Do you look at it and say, oh well, you're doing something that's not legal. Do you, you know, notify Mr. Hunt's Department or how do you handle that?

MR. TERUYA: I can't tell you for sure that if somebody in Launiupoko is doing timeshare that they would answer timeshare. I'm not sure. Normally, we take the affidavit to be true and that's usually the category that they are placed in based, because it's their onus to tell the Division what they're use, what they're doing. And usually we take that condominium declaration form as a legal document stating what is the use.

VICE-CHAIR JOHNSON: Okay. And, and we still, and I think, Kalbert, you know, you were aware that we had tried, I guess at the State legislative level there was a statute passed that required I guess the information with regard to TAT and GET to be shared with the County. Have you ever been able to secure that information? And this would be on all the land use categories.

MR. YOUNG: Yes, Ms. Johnson. There, that legislation was passed by the State Legislature I believe back in 2006. Since then it's been an administrative dealings with the State to try and garner that information and thus far we have not been able to secure that information from the State. There are legal issues related to the State providing that type of information. There's also procedural issues related to that information because the State doesn't, the way the TAT or GET is submitted does not always require that the specific property on which that income is earned is presented or in the portion of which the total revenue is collected. So the big issue is say, it's easier to describe in the case of say like a Hilton or a Hyatt hotel or a Marriott property, they may file a single TAT application or form but it doesn't necessarily dictate how much revenue is being garnered by all of the properties in the State of Hawaii managed or operated by Marriott. So the State may have a procedural problem in providing that information. The net result is that the counties, not only Maui, is seeking this information, but all of the counties are basically not able to get the information that they're seeking from the State.

VICE-CHAIR JOHNSON: Yeah. And, and I guess that's one of our problems in identifying and verifying independently whether or not the properties are actually getting the proper exemption, or if they're getting homeowner exemption and yet they're really being utilized as a commercial type operation. With regard to, I guess the, the forms that you send out, I know you've done questionnaires in the past. Is there anyway that I guess

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

specifically that we would be able on a Countywide survey basis be able to get information on agricultural lands as to I guess what the, what the actual use is? Or have you already done that on ag lands?

MR. TERUYA: Ms. Johnson, are you referring to condominiumized properties or just --

VICE-CHAIR JOHNSON: Well...

MR. TERUYA: --ag lands in general?

VICE-CHAIR JOHNSON: Yeah. Just in general because a lot of times I know you've done the condominium surveys. I know you've done different surveys and of course you investigate when there's a complaint. But when people are I guess falling into a particular category on ag land, are you able to determine if they're in the appropriate category and what, what surveys, if any, have been sent out to try and garner that information?

MR. TERUYA: We haven't sent out any questionnaires to people who are on ag or are receiving ag use. What we've done recently, real recently is we've actually sent out letters when properties that receive ag are transferred, we're asking the new owners to attest if this is true. So what we will do, I'm not sure if it's in place right now that we automatically just not allow the, the ag use but we're sending out questionnaires.

VICE-CHAIR JOHNSON: And, and what does that help you to learn? Is, is it just basically that there's a legitimate farming operation going on in the property?

MR. TERUYA: Well, that is what we're trying to identify. The Council did give the Real Property Tax Division a compliance position and we're trying to utilize that position to begin a program that will look at the ag properties and be sure that people who are receiving these benefits are truly doing what they attested to, yeah.

VICE-CHAIR JOHNSON: Yeah. I, I really appreciate that. Thank you, Madam Chair. And I think that's one of the things that perhaps in another venue we can continue to follow up on that State legislation. Because whether it's for transient vacation rentals or if it's for other purposes, I think it's really important that we try and get that information so we can verify what categories legitimately people are falling into as far as taxes go. 'Cause there are many people paying just \$60 a year and I know that several of them, I know personally are not entitled to that. Thank you.

CHAIR BAISA: Thank you very much, Member Johnson. I for one believe that we need to spend some time looking at our real property taxes in detail. But that's not what we're here to do today. Members, any additional comments? Questions for anyone? Member Molina.

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

COUNCILMEMBER MOLINA: Thank you, Madam Chair. Question for Mr. Teruya and Director Young. Just getting back to this consideration that we have here today to reinstate the approval for B&Bs in the ag zone areas.

CHAIR BAISA: Thank you, Member Molina, for reminding us.

COUNCILMEMBER MOLINA: Thank you. You're welcome, Madam Chair. Just for, on the subject of taxes now. Currently, you have an Ag-zoned property, you pay the Ag property tax rate as well as Ag water rates, am I correct?

MR. TERUYA: Well, first of all if you're on Ag-zoned property you would be classified as Agriculture unless you have a home exemption that has been granted.

COUNCILMEMBER MOLINA: Okay. Would you suggest that if we do allow B&Bs or reinstate this back into the Ag-zoned areas that we again create a new classification because you're expanding the use of the property?

MR. TERUYA: I would say yes that a classification, that's why we, like Director Young mentioned that it'd be good to identify how you're going to classify them or how, what classification they will be put into. Because right now, I mean just for equitability, if a condominium or a property that's zoned Hotel is allowed to do a short-term use on one bedroom or et cetera this would be a like use, yeah. You're allowed the same type of use on your property, and for taxation all we're trying to do is be equitable. So if you can do the same use as somebody in Hotel, from our standpoint they're in Hotel.

COUNCILMEMBER MOLINA: So maybe a classification rate along the lines of a Hotel rate which is \$8.20 per \$1,000 of valuation?

MR. TERUYA: Either that or it's just clearly stated in the ordinance that you are going to go to Hotel/Resort. Yeah. Just identify what class that they're going to go to. You can create one or just state which class that they're, they should be appropriately put into.

COUNCILMEMBER MOLINA: And also the applicant would now not be eligible for homeowner's exemption as well?

MR. TERUYA: Well, currently the B&B Ordinance states that, that you are --

COUNCILMEMBER MOLINA: Okay.

MR. TERUYA: --not allowed a home exemption. Yeah. It should be consistent, at least with TVRs as well. I would think that's the same type of proposal, yeah.

COUNCILMEMBER MOLINA: Okay. Thank you. Thank you, Madam Chair.

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

CHAIR BAISA: Thank you, Member Molina. Members, any additional comments along this line? And I do agree with Mr. Teruya that I think it would be a very good idea to add that to the ordinance at some point. Member Johnson.

VICE-CHAIR JOHNSON: Yes. And this would be for Planning Department. Because when we got these ordinances originally and your Department, Mr. Hunt, was kind of looking at mapped areas, you know, in what I guess is consistent with the community plan and where resort type accommodations would be. It was my understanding that there were no, there were none of these maps included within the Agriculturally-zoned areas. It now seems that, and I don't know who is, you know, pushing this going into the ag area, but I think that, I want to know from your perspective, is this something that is consistent with your original position of just looking at the mapped areas and permitting TVRs or B&Bs only in those areas? Or is this different?

CHAIR BAISA: Director Hunt.

MR. HUNT: Our bills included a, a resort map area for TVRs that would be under the existing definition. What we're asking, what we're talking about now is B&Bs. So the provision that was up on the wall and that's in the second bill in your package would simply be to allow B&Bs to be permitted in the Agriculture district. It wouldn't be for TVRS.

VICE-CHAIR JOHNSON: Okay. So you're, you're not going to adopt a similar position then that you had, you know, for your, your TVRs than? You're, you're treating them separately, is that what you're saying?

MR. HUNT: Definitely.

VICE-CHAIR JOHNSON: Okay. With regard to bed and breakfast accommodations because of the way that we changed the ordinance which was now to look at the second dwelling, was that part of your original submission? I can't recall if that was part of, okay. Because originally and I see Mr. Alueta shaking his head that because now what we've approved in this currently configured Bed and Breakfast Ordinance it more closely resembles a transient vacation rental. Does that, does that kind of I guess go along with what your TVR definition would have been originally in the separate dwelling?

MR. HUNT: I don't agree with your assessment that it now is similar to a TVR. I think what the Council has done in some ways is brilliant. What you've done is you've taken, at this point if it's adopted, you've taken the B&B definition which previously included a lessee which didn't have any, necessarily require the owner be on site. And you said no, we're only going to allow owners B&Bs. Then you said now as long as we're supporting the owners of the property let's consider allowing the owners to rent out the ohanas. And again I think that's good legislation. I don't think that's clouding it with, the B&Bs into TVRs. I think you're just expanding the definition in some areas. In some areas you're not. Again, we're no longer allowing lessees, or no longer would allow lessees. So I think it's, it's good B&B legislation.

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

VICE-CHAIR JOHNSON: Yeah. And what I'm, I'm not, you know, implying that it's good, bad, or whatever, it's just that, you know, that it had evolved into this situation. What I was trying to determine was based on your original submission, the secondary dwelling or the right to be in the secondary dwelling which was not contained within the principle dwelling on the property. That was not part of your original submission. Is that correct?

MR. HUNT: That was not part of our bills but it was discussed a lot. It came up at the Planning Commission and there was actually a vote, an affirmative vote but it didn't carry the number of votes to pass as a motion. But the Maui Planning Commission voted four to two to include the ohana.

VICE-CHAIR JOHNSON: Okay.

MR. HUNT: We discussed it a lot at staff. I think it's, it was one of the issues that was definitely needed to be addressed during this whole discussion on B&Bs and TVRs. In our County Code we have a very strict definition of B&Bs. Not every jurisdiction out there has the same definition, and some of them do allow the rental of another building or whatever. So it's up to our community and how we want to define B&Bs.

VICE-CHAIR JOHNSON: Yeah. And...

MR. HUNT: And I think the road you're going down to have just the owner I think that's a good road.

VICE-CHAIR JOHNSON: I understand that and I, I think what we're trying to do is accommodate some of the requests and sort of have a hybrid. Because your current application of HRS 205 and the requirement of a farm plan, just refresh, and so that I'm not, you know, stating anything that's wrong. When you look at a principle dwelling or whoever I guess in the permitting department. Let's say you have an agricultural subdivision. The farm plan from my understanding does not get implemented until the second dwelling application comes in? Is that correct?

MR. HUNT: The first dwelling has to have a farm plan submitted. The second dwelling has to have the farm plan implemented. The third dwelling needs \$35,000 and five acres.

VICE-CHAIR JOHNSON: Okay. So what you're doing then is under HRS 205 my read of it and you can correct me if I'm wrong, Mr. Hopper. But my read of HRS 205 says that 51 percent of your land if you have an agricultural operation has to be committed to farming, and that the principle dwelling and any accessory dwellings shall be in support of the farming activity on that lot, is that correct?

MR. HUNT: I'll defer to Mr. Hopper on that.

CHAIR BAISA: Mr. Hopper.

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

MR. HOPPER: I can look that up again. I don't recall offhand but I mean the basic idea is that, yes, you have to do, you have to have a permitted use under the State Ag law. You need to be doing something under both State and County laws that is supported in that zoning district. So you're, you're home needs to be in support of an agriculture use. Agriculture conservation on the County side is a permitted use. For B&Bs and TVRs and if this is where you're going, you would need to get, that's why you need to get your State Special Use Permit because that use in particular is not permitted anywhere in the State law.

VICE-CHAIR JOHNSON: Okay. So having, you know, heard that. When the principal dwelling is put into place without having the farm plan implemented, do you believe, Mr. Hunt, that's consistent with HRS 205 in that the principal dwelling shall be in support of farming activity on the land?

MR. HUNT: There's a number of ways to regulate farm land and farm dwellings. I'm not sure the County is doing it the best way and we are actually looking at that as part of our, part of our farm package. And I think at this point we can say we are willing to look at it further. We need to take a look at it in more detail. The idea that you're allowed a second dwelling that quickly could be, I think we can take a good look at that. Perhaps we should allow the second dwelling only if it's actually needed and it's not allowed automatically.

VICE-CHAIR JOHNSON: But where you have condominiumization I mean, and, and I'm not sure because I don't get involved in what gets permitted or what doesn't. But let's say, for example, you've got, you know, an eight-bedroom principal farm dwelling, you know, that's going up. And then they come in at the same time and maybe they have some palm trees or, you know, other stuff or they said, oh well, we put this into Ag dedication or Ag conservation. I mean, how do you, how do you look at that? How does your Department view that in light of HRS 205?

MR. HUNT: Our Department looks at the farm plan and if the farm plan I believe affects 51 percent of the land, then they allow the farm plan. There's a number of loopholes in our, in our ag, in our ag land laws right now, and as was noted soil conservation or land conservation is one of them. And I think it deserves more scrutiny, and I think we need to examine our agricultural regulations to see if we need to tighten them up.

VICE-CHAIR JOHNSON: Yeah. I, I appreciate that. And do you think it would be prudent because from what I understand about the legislation that's before us, we would then be giving you the administrative authority to approve B&Bs on agricultural land with, with all these unanswered questions? Is that correct?

MR. HUNT: Well, actually it would be a Planning Commission approval at this stage. Because you need a State Special Use Permit and the State laws could change. But at this stage because the State still requires a Special Use Permit and the Planning Commission has

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

that authority, then it would be a Planning Commission decision. It wouldn't be an administrative decision.

VICE-CHAIR JOHNSON: But the only thing that they have to guide them is, as you just explained to us, laws that currently have loopholes and where there may be a lack of clarity like overnight accommodations. The things that Mr. Hopper has said, all those unanswered questions. Do you think it's fair to the Planning Commissioners to kind of have to make that analysis or make a ruling without having the benefit of clear and adequate legislation?

MR. HUNT: I, I think the legislation and the standards, again, should be examined and clarified and maybe improved. But that's the system that we've been using now. This body right here has approved four out of 12 Conditional Permits on agricultural land. So I guess the dilemma is do we say, well, the system needs improving so let's not, let's not approve any more or we can continue approving them and as we're approving them we, we look at the system to try and change it and improve the system. And I think that's, the later option is what the Planning Department is offering.

VICE-CHAIR JOHNSON: Okay. And, and, you know, point well taken. I think that sometimes at least from my perspective when somebody's gone through the process, filed the application, gone through the analysis and looked at, you know, what their farming operation is or at least each case. I believe, you know, we've tried to weigh the merits. So anyway, Madam Chair, I'm, I'm not going to flog a dead horse. But I'm just going to state again I think that the fundamental obligation I believe we have is to iron out these issues. I don't mind revisiting this at a later time with regard to the ag issue. I think we should stick with the original track that we were proceeding on and that as far as agriculture goes that right now we concentrate on the core things. And then we can address those issues, I know we have, I've sent many of them to Committee. Then I don't mind relinquishing that, you know, authority. But right now I just think that we'd be opening up a can of worms, and I think it would not be responsible on our part to move this legislation forward, just specifically on ag land. The, the remainder of it I'll support going through and, you know, to at least allow people to, you know, continue on with their operations. And I was at a meeting the other day with Mr. Hunt and I did not realize this, but I guess transient vacation rental accommodations, and I'm not sure about B&Bs, but TVRs, if the person has been in operation without more than a 12 month break, doing their accommodations since 1981, if they can provide evidence, because many of these people say they've been operating for 30 years or whatever. Those people can still, from my understanding continue their operations and be grandfathered in. So some of the older operations I believe would still be eligible for that. Thank you, Madam Chair.

CHAIR BAISA: Thank you, Member Johnson. Any other Members have anything they'd like to contribute to the discussion before we vote on the motion before us? If not, then the Chair would like to call for the vote on the pending motion. The motion, now, Members, listen carefully because this is tricky, to delete Section 2 from the B&B Bill is the motion.

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

A “yes” vote will reaffirm the Committee’s prior action and disallow B&Bs on Ag zoning. So if you vote “yes” you are saying we do not want to allow B&Bs in Ag. If you vote “no” it will reverse the Committee’s prior action and allow B&Bs in the Ag zoning district. So the Chair will call for the vote and I will remind you what you’re voting on. All those in favor, remember that a “yes” vote is to reaffirm the Committee’s prior action to disallow B&Bs in the Ag-zoning district. All those in favor please say aye.

VICE-CHAIR JOHNSON: Madam Chair, just point of information. And I’m sorry for interrupting. But I just wanted to understand from a procedural perspective, because we had already voted on this particular issue in a prior meeting. I just want to understand from Robert’s Rules of Order perspective if we’re revisiting this, has this been brought back up as an item for reconsideration?

CHAIR BAISA: Yes.

VICE-CHAIR JOHNSON: Okay.

CHAIR BAISA: You were not at the last meeting --

VICE-CHAIR JOHNSON: Right.

CHAIR BAISA: --and we have checked the Robert’s Rules and we’ve had legal opinions and I believe that what we’re doing is according to the rules.

VICE-CHAIR JOHNSON: Okay, and because it was brought up for an item for reconsideration all the individuals who supported this originally, is there any difference in terms of the votes that we cast now?

CHAIR BAISA: They were the voter, they were the people that had to bring this up for reconsideration and they did.

VICE-CHAIR JOHNSON: Okay. Thank you.

CHAIR BAISA: So let me repeat the question. A “yes” vote, an “aye” is to reaffirm the Committee’s prior action and disallow B&Bs in the Ag zoning district. All those voting aye, please say aye.

COUNCILMEMBER HOKAMA: Aye.

VICE-CHAIR JOHNSON: Aye.

CHAIR BAISA: We have two ayes. A “no” vote is to reverse the Committee’s prior action and allow B&Bs in the Ag zoning district. And those persons would vote “no”. May I hear the noes?

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

COUNCILMEMBER MOLINA: No.

COUNCILMEMBER MEDEIROS: No.

CHAIR BAISA: No. Chair votes no. So we have two ayes and three noes. And essentially what that does is to reverse the Committee's prior action to allow B&Bs in the Ag zoning district. Are we clear? Corporation Counsel, okay? Okay. So that's, so that's that. Thank you, Members.

VOTE: AYES: Councilmember Hokama and Vice-Chair Johnson.

NOES: Councilmembers Medeiros and Molina, and Chair Baisa.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

ACTION: APPROVE motion to allow bed and breakfasts in the Agriculture zoning district.

CHAIR BAISA: Mr. Hunt, shall we proceed with the agenda.

MR. HUNT: Just for clarification. The, the motion was to allow them so we're back as --

CHAIR BAISA: Yes.

MR. HUNT: --the bill was presented?

CHAIR BAISA: Yes.

MR. HUNT: There was some discussion on some additional language. Would like us to pursue that and bring that back to this Committee?

CHAIR BAISA: Would you please.

MR. HUNT: Okay.

CHAIR BAISA: Yes.

MR. HUNT: The next item, should we move on to the next item then?

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

CHAIR BAISA: Yes, please. You have already previously stated that you would like more time to pursue some of those possible ideas and changes and bring them back to the Committee. So if you'll proceed with your list.

MR. HUNT: The next item that was under discussion by the Committee was the item of caps which would be a limit on the number of permits that we would allow. The Planning Department, although we didn't originally propose this language, we in the original bills we submitted it in the June 27th memo. And as a little background what the numbers are in the June 27th memo is we took the percentages that were in the Kauaian Institute Study as to the number of B&Bs in each community plan district and then we reduced the total number down to 400 and divided it by those percentages. We believe that the caps could have some good, good benefits to them. I think it sends a message to the community that even if we're going to allow these we're not going to let them run rampant. I think it would give some people some comfort on that. It would send a message to people that you do need to get a permit. There was some, we've had testimony and talk about people, and I won't name any industry, but some people out there exaggerating the ease on getting a permit or B&B or you don't even need a permit. This would kind of send a strong message that, no, you do need a permit, we're only allowing so many of them. And then we would by limiting them to certain districts, then one district wouldn't necessarily get overwhelmed. To refresh your memory there was some discussion in the past about these numbers that we proposed and we just threw them out there as a starting point. I don't know if you want to amend them or revise them, by all means we can help you do that. I would like to offer one correction. On, this is on Page 3 of the June 27th memo, we had 10 percent in Hana and 12 percent in Makawao and those should be reversed. Actually, I reviewed the Kauaian Institute Study and the Kauaian Institute Study showed 12 percent of our TVRs were in Hana and 10 percent were in Makawao.

CHAIR BAISA: Mr. Hunt, would you please give us those percentages correctly again for all the districts?

MR. HUNT: Page 3, the June 27th memo we're suggesting as a starting point 400 permits for B&Bs broken down as follows, 10 percent in Hana which would be 40, and that should be corrected to 12 percent and 48. The memo goes on to say 25 percent in Kihei which equals 20, pardon me, 100 permits. The memo says 12 percent in Makawao and 48 permits and that should be corrected to 10 percent and 40 permits. The next one is Paia/Haiku and that's 27 percent or 108 permits, Wailuku/Kahului 4 percent or 16 permits, West Maui 22 percent or 88 permits, and Molokai has no limit . . . (*change tape, start 3A*). . . because they are suggesting they all be done through the Conditional Permit process and likewise on Lanai. Subsequent conversations regarding this language, I believe Member Johnson suggested some language in the introductory sentence and we felt that was a good suggestion, and I'll leave that to her to repeat it unless, but it spoke more to just the numbers and not the 400 permits in general. One other thing to keep in mind, if we, when we start discussing the Conditional Permit process we may want to revisit this issue and say do we want to cap Conditional Permits as part of this 400 or not.

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

Right now as it's worded it would only apply to the bed and breakfast permits, but I think it's worthy of discussion should we throw in the Conditional Permits also.

CHAIR BAISA: Okay. Director Hunt, thank you very much. Member Johnson, I know this was an item of particular interest to you. Do you want to take the lead?

VICE-CHAIR JOHNSON: Yes. And, and I think the language that I had made a recommendation on is, "The County shall be restricted in approving permits for bed and breakfast homes as distributed per the following community plan regions and is further restricted by the applicable community plan." And then as noted by Mr. Hunt I, I would be happy to make that suggestion in the form of a motion to move to amend.

CHAIR BAISA: Please do so if you feel that you'd like to.

VICE-CHAIR JOHNSON: Yes, Madam Chair. I move to amend subsection addition to 19.64.030Q to alter the language to state, "The County shall be restricted in approving permits for bed and breakfast homes as distributed per the following community plan regions and is further restricted by the applicable community plan," and with the percentages and number of permits or actually percentages noted as was outlined by Mr. Hunt.

COUNCILMEMBER MOLINA: Second for discussion.

CHAIR BAISA: Thank you very much. We have a motion by Member Johnson, and a second by Member Molina. And sorry, but I didn't get all that language, maybe you could repeat that or we can have Staff repeat that.

VICE-CHAIR JOHNSON: David, do you have that?

CHAIR BAISA: David, yeah.

MR. RAATZ: I don't have it.

VICE-CHAIR JOHNSON: Okay. It just said...

CHAIR BAISA: I just want to be very clear on what we're voting on.

VICE-CHAIR JOHNSON: Right.

CHAIR BAISA: You know, when we're doing a motion, it's really bad if we don't know what we're voting on.

VICE-CHAIR JOHNSON: If, if the Members will turn to the June 27, 2008 transmittal from Department of Planning on Page 3, it would be the center section of the page. And all I'm doing is substituting what was submitted by Mr. Hunt which was, "The County shall

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

not approve more than 400 permits for bed and breakfast homes as distributed.” And so my language would be to change that to say, “The County shall be restricted in approving permits for bed and breakfast homes as distributed per the following community plan regions and as further restricted by the applicable community plan.” And, Mr. Hunt, do you want to read what those, what those are? Because you said you made a change and I wasn’t sure if, I think it was between Hana and one of the other districts.

MR. HUNT: Correct. Hana should have 48 permits under this equation.

VICE-CHAIR JOHNSON: Forty-eight.

MR. HUNT: And Makawao should have 40.

VICE-CHAIR JOHNSON: Okay. So, Madam Chair, just, just for purposes to get it on the record. Hana, 10 percent would be 48; two, Kihei/Makena, 100 permits at 25 percent; three, Makawao/Pukalani/Kula, 40 permits at 12 percent; four, Paia/Haiku, 27 percent and 108 permits; five, Wailuku/Kahului, 4 percent, 16 permits; six, West Maui, 22 percent, 88 permits; and then Molokai and Lanai, it said it was not limited but I think we need to clarify those as per our previous conversation also to say that it’s not determined. Because they were the communities I believe that wanted to make their own determination.

CHAIR BAISA: Correct. Member Johnson, I’m going to ask Mr. Raatz if he could please explain that we need to fix the wording of the motion. There’s a little technical thing here. David, if you could, please.

MR. RAATZ: Thank you, Madam Chair. Just to clarify that the language that Director Hunt was quoting from in his June 27th memo is not in the bill that’s before the Committee. So Staff was basically interpreting Councilmember Johnson’s motion, it’s not really a motion to amend but a new motion basically to incorporate Director Hunt’s language with her additional language.

VICE-CHAIR JOHNSON: Yes. That, that, that is, because I wasn’t sure if you had adopted this last time or not, if you had enough time to revisit it. So I’m looking at putting that language in then as an amendment to include what I just outlined.

CHAIR BAISA: For some reason Mr. Raatz feels that it really isn’t an amendment.

VICE-CHAIR JOHNSON: Oh.

CHAIR BAISA: That it’s just a motion to include.

VICE-CHAIR JOHNSON: It’s a new motion to include it. Then...

CHAIR BAISA: If he would accept that language, then okay.

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

VICE-CHAIR JOHNSON: Yes. I, I have no problem with that. And I guess just for one clarification to, to Mr. Hunt. Because we're looking at number of permits, because each one of the bed and breakfasts that would be included within these community plan districts, some may have ten, you know, rooms within a unit, some may have five, some may have one. How is that going to be viewed in, in terms of the administrative application of what we're doing with the intent? Because I mean we could have a whole lot more units than what we're anticipating. And I should state that I want to be clear about it so that we don't have more confusion. So if you want to say, you know, even coming up with units that are attached to that with a cumulative impact or you're just saying permits?

MR. HUNT: It's, it's a very good question, I'm glad you raised that issue. The way the language is right now is it's just permits. We, we believe it'd be easier to administrate. I acknowledge that one permit could conceivably have several different units. Some of the B&B people rent out their rooms individually, others rent them out more. You need the whole family to rent out, especially an ohana seems to be rented out more as one unit even if it has more than one bedroom. But that's a good point, people should realize that these numbers are permits and not necessarily units. On the other side of the coin is the language as further restricted by the community plans. There's existing language right now, particularly in Paia and Hana, that restrict B&Bs, and there, it's conceivable that further amendments or updates to our community plans as we go through the General Plan update could result in additional restrictions. And people need to be aware of that, that just 'cause we're offering these numbers it's no guarantee.

VICE-CHAIR JOHNSON: Right. And, and I think too the additional point is being made that just because we outline this is no guarantee that that number of permits, if the community plan says it discourages or does not allow or the neighbors, you know, have a big problem. There's absolutely no entitlement along with this issuance of the number of permits? Is that correct?

MR. HUNT: Correct.

VICE-CHAIR JOHNSON: Okay.

MR. ALUETA: If I may, Madam Chair? I just wanted to...

CHAIR BAISA: Yes, Mr. Alueta.

MR. ALUETA: On the permit issues, 19.64 limits it to six, maximum of six bedrooms. So conceivably you could have six rooms per permit, okay, or 2,400 rooms. If someone comes in and they're doing a bed and breakfast and they're renting the cottage out, if it's a two-bedroom cottage we count that as a two-bedroom bed and breakfast. We're just going to count the rooms, we're not going to count that as one. That's going to be two rooms if it's a two-bedroom. So we're going to count rooms based on the structure.

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

VICE-CHAIR JOHNSON: Right. So if they're living in the main unit then and they're renting out the ohana and it's two rooms, they would only be entitled to get one permit the way that our ordinance is currently structured. And therefore, that two units within that structure would just count towards the number of units, but it would have no bearing on the number of permits, because you're, you're still taking out one permit whether you have two or whether you have the six maximum.

MR. ALUETA: Correct. You're one permit regardless. We consider it structures. Not, we're not counting them units. So if you have two structures on a property, a main dwelling and a ohana unit, if you rent, you're allowed to rent out maximum of six rooms. You would declare how many rooms you would be renting out and where they're located. So conceivably you could have a, a six-bedroom house and a two-bedroom ohana unit and you're renting four rooms in the main dwelling and two rooms in the ohana unit. How you choose to rent them, meaning if you say it's a package deal, you need to rent two rooms, the two rooms in the ohana as one, that's up to them. But from a permitting standpoint there's only one permit for the property. There has to be an owner on the property, and the rooms that are limited to being used for short-term rental will be at maximum of six rooms.

VICE-CHAIR JOHNSON: Okay. All right. So, you know, I, I just want to make sure that people understand that, because the way the bill is configured they're not going to be having an unlimited number of rooms and an unlimited number of permits. It's basically you're the homeowner, you're living either in the home or the ohana, and you need that additional income to keep your farming operation alive; therefore, you are, you know, you're certifying that you're going to take out the one application for the B&B for that permit. And, and just to I guess further add because of the CPRing *[sic]* on some of our agricultural lands, it's not going to be permitted that on that same TMK you're going to allow somebody who is, let's say maybe a homeowner living in the ohana unit having a single extra room as a B&B, and then having the property on the same TMK where there's one homeowner and there's seven bedrooms, renting out the six.

MR. HUNT: We don't recognize condominium property regimes as, as anything more than affecting the use of the land, the ownership. It doesn't affect the zoning, it doesn't affect the subdivision. If you CPR your land, it doesn't mean you can get two dwellings on each of those CPR lots. We look at it as one lot.

VICE-CHAIR JOHNSON: Okay. So I just wanted to make sure that that's the way you're going to be looking at it when you're applying the laws as far as the agricultural uses and compliance with HRS 205. So there would still be only on that condominium property regime lot no more than six units allowed?

MR. HUNT: Correct.

VICE-CHAIR JOHNSON: Okay.

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

CHAIR BAISA: Thank you very much, Member Johnson. That's a very important clarification. Thank you. Member Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair. I think when Member Johnson read her motion she did put the new changes of permits for Hana and Makawao correctly, but she used the old percentages.

VICE-CHAIR JOHNSON: Oh.

COUNCILMEMBER MEDEIROS: Because it's supposed to be 12 percent at 48 permits for Hana and 10 percent at 40 permits for Makawao, Pukalani, and Kula.

CHAIR BAISA: Thank, thank you, Member Medeiros. Mr. Raatz, are we okay accepting that as a friendly amendment? Okay. Thank you. Are you done, Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Yes. Thank you, Madam Chair.

CHAIR BAISA: Chair Hokama.

COUNCILMEMBER HOKAMA: Just a quick question for Planning Department. If we incorporate the recommendation of unit counts or, or permit caps when an application comes in, we'll take East Maui since Mr. Medeiros brought up the 48, potentially you have up to, close to 300 units or bedrooms that could be utilized potentially. So when the Department makes an assessment on a permit to be fair on what we would ask in return for mitigation or improvements because of the activity now in, I'm assuming a non-permitted category. What would that be based on? Only on the permits X units or on the regions capacity? And, and I bring that up because let's say you, if you had a 300-unit hotel development, we would be asking for minimum 75, under the old calculation, 75 affordable housing units. You would have park assessment, sewer fees, road improvements, utilities to mitigate that impact on the region and island in general. So how is the Department planning to view these permits with a cap? Independently and it's not to be taken cumulatively? Or can you just educate us on the approach of the Department?

MR. HUNT: We would view them as individual permits and not cumulative bedrooms. I think the point that Member Johnson raised is something we need to consider when we establish these numbers. And our statistics show most of our B&Bs are coming in at four bedrooms and they're not coming in at six. We have some language proposed in the ordinance that says you'd have to have the structure permitted and constructed to help against speculation and building a big house to be a B&B. But we would, we would look at it as a permit number and we would monitor that. In terms of triggering other compliance, we talked to the Housing and Human Concerns Director and she believes given the wording of 2.96 there's no trigger unless there's a building permit involved or a

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

subdivision lot involved. So this doesn't trigger those kind of impact fees, at least in housing.

COUNCILMEMBER HOKAMA: I understand what, what the, what you just said, Mr. Hunt, from the Planning Department's perspective. I'm just saying what does it take then, or when would it be taken at a cumulative impact? Because now you've reached a certain density that it definitely makes a difference in that rural community.

MR. HUNT: There is a provision in the ordinance that says if there's another B&B within 500 feet, it triggers a public hearing, so then the Administration wouldn't have the authority to approve that. It would get kicked to the Planning Commission, and I think that would be one of the issues that we would address. That's, that's one of the intents. One of the topics of discussions we had was to firm up that language to say that none would be actually approved if there was another one within 500 feet. The Council could consider that type, it's a stronger language, it doesn't allow for the, the public hearing to allow for it.

COUNCILMEMBER HOKAMA: That would be under 050 the permit, permit subsection, Mr. Hunt.

MR. HUNT: I don't know it off the top of my head. It sounds good.

COUNCILMEMBER HOKAMA: I'm just making a general kind of assumption --

MR. HUNT: Yeah.

COUNCILMEMBER HOKAMA: --that that's where we would look at revisions.

MR. HUNT: I believe so.

COUNCILMEMBER HOKAMA: Well, thank you very much.

MR. ALUETA: If I may, Madam Chair?

CHAIR BAISA: Yes, Mr. Alueta.

MR. ALUETA: In addition to, you know, your overall, when do you look at comprehensively you look at it, again as Director Hunt had pointed out, limitation with regards to the 500 feet, that was part of the consideration. You also have to look at it now when you're doing the legislation as well as when you're doing the community plans. That's, I mean you're looking at the cumulative impact at those points also. But from our aspect we're going to take each individual permit, process them individually, and then the only guiding principle as far as regulating density and, and cumulative impact is what do we have established as a number limit as well as disbursement, meaning the 500-foot radius.

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

COUNCILMEMBER HOKAMA: Okay. Thank, thank you.

MR. HUNT: If I could follow up?

CHAIR BAISA: Yes, please, Director Hunt.

MR. HUNT: We should also remember that there's notification requirements, and we have been getting some complaints via the process on the applications that we're processing now that there's, there's a lot of these in our neighborhood, not necessarily permitted, but that comment has come in. And so I think that's another avenue where we could consider cumulative impacts is the comments from the neighbors.

COUNCILMEMBER HOKAMA: Thank you, Director.

CHAIR BAISA: Member Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair. Quickly, Director Hunt, so these permits would be for existing structures or they could come in and build a new structure and apply for a permit?

MR. HUNT: If the bill is adopted as proposed, it includes language that says the building has to be permitted and constructed prior to the B&B permit being approved. So they couldn't come in with huge building plans and get the B&B and then build the big building.

COUNCILMEMBER MEDEIROS: But they could come in with a design for the maximum allowable units in a building, construct it and then apply for a building, I mean for a permit?

MR. HUNT: That's correct.

COUNCILMEMBER MEDEIROS: I see. Okay. Thank you. Mahalo, Madam Chair.

CHAIR BAISA: Member Molina.

COUNCILMEMBER MOLINA: Thank you, Madam Chair. We're speaking on the proposed amendment from Member Johnson, am I correct?

CHAIR BAISA: That's correct.

COUNCILMEMBER MOLINA: Okay. I just wanted to just make a comment, not only on the amendment but the whole concept itself, and I appreciate the Department, you know, throwing this proposal out at us. The concern I have is just the regional distribution of these permits. I mean if it's the body's will to limit a total of 400 permits then so be it. But when you're looking at the distribution, you know, the three areas I represent, Makawao/Paia/Haiku, you have a total of 148 out of the proposed 400 permits.

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

Personally, I just would like to see it more evenly distributed amongst the other communities. Because this is a lot for this region and I realize this was based on the study, the Kauaian Institute Study, if I'm correct. So I'm just stating my reservations over this. So I just wanted to let the Members know, I would prefer to see a more even distribution. I mean, I know there's not as much being allotted for Wailuku/Kahului or, you know, then you have Kihei of course which is a growing community, but so is the Paia/Haiku area. But again these are based on the so-called demand for the amount of permits and within the region. But I don't know, I just think 148 is, is quite a lot for the areas that I represent. So I'm going to be stating my reservations towards this proposal. Thank you.

CHAIR BAISA: Thank you, Member Molina. Do you have any alternative numbers you'd like to propose?

COUNCILMEMBER MOLINA: Well, not so much the, well, I guess you could split it up, you know, say if you have 400, divide it by six community plan regions or seven community plan regions. I mean that's one, one way to go about it. But I'm just at this point stating my reservations on the current proposal. Or we could just do away with the regional distribution itself and just limit 400 permits Countywide, I mean, you know, or Maui island-wide. Could do it that way without specifying that, you know, only 10 percent or 10 percent for Makawao or 12 percent for Hana and 27 percent Haiku/Paia, you know. So I just throw that out as a consideration.

CHAIR BAISA: And let, and let the permit process dictate first 400 that's it. Okay. Let's ask Director Hunt. I think he has a comment.

MR. HUNT: There's, there's two numbers you can play with and I think you know them. One is the overall figure and we could reduce that, and the other one is the percentage by district. The reason we threw out the percentage originally was there was concern that if we just put a large number out there, perhaps, and I believe it was Hana was the example, Hana could get overwhelmed, and so that we needed to put a cap per district. So perhaps we could work with you and come up with some better numbers or something to, to address your concerns. But it seems like a district-wide cap, it seems to address the concerns that have been expressed in the past. Perhaps the numbers are too high in certain districts.

CHAIR BAISA: Member Hokama.

COUNCILMEMBER HOKAMA: Madam Chair, you've been very diligent in paying attention to what the GPAC is doing. Have they gave any indication of their, their geographical approach or approach to this issue regarding the subject we're currently on?

CHAIR BAISA: To my knowledge and at the times I've been present that has not been discussed. But I may have missed a meeting and maybe Director Hunt has more information, more, more comprehensive information. Director Hunt.

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

MR. HUNT: The policies that have come out, up through the General Plan update speak more to adopting, have the Council or the County adopt clear language and then enforce it. So I think the message we're getting through the General Plan update is our existing process is a little ambiguous. And, but they haven't gone so far as to specify specific numbers particularly because the two bills that we're working on, one is the Countywide policy plan, so that would be a policy that affects the whole County, and then the next one is just the Maui island plan. When we get into the community plan process I believe there will be, or there's a good chance there will be some numbers that are proposed.

COUNCILMEMBER HOKAMA: Madam Chair, you know, I thank Mr. Molina, he kind of shook up the cobwebs in my memory banks. But that's how we came to this dilemma in a sense, Chair. The County did choose by geographical regions where we wanted the visitor industry to grow. We created destination areas, we created project districts, we made designations in our last two General Plans and current community plans where we wanted this type of activity to occur so community participates. The problem is we chose not to enforce the policies of what this County's people chose, where they wanted certain activities. And I think Mr. Molina brings up a good point, 'cause I would not like to see this anywhere and everywhere. I think there still needs to be some protection of the basic zoning categories and what people can anticipate as responsible permitted uses within the areas of property ownership. And so I would hope that we can kind of, maybe consider another option, 'cause I believe Mr. Molina brings up a good point and that we may want to make designations of where we would like to have this type of accommodation located if it does make it past the Council, Madam Chair. Thank you.

CHAIR BAISA: Thank you. Members, any additional, Member, I'm sorry, Member Alueta. I feel like you're a Member.

MR. ALUETA: Sorry. I, I was just trying to, after Councilman Molina spoke I, I asked the Tax Office to provide a breakdown of how many dwelling units are out there. So that if there is a distribution there's a potential we could look at how many structures or dwelling units are distributed by each community plan. Of course he had the number right with him. So I'll just read out some numbers. But as far as Hana there's approximately 1,200 dwelling units; Kihei/Makena has 17,000, I'm just going to round it; Lanai has 1,600; Molokai 3,600; Makawao/Pukalani/Kula about 10,000 or 9,800; Paia/Haiku, 4,900; Wailuku/Kahului, 16,000; and West Maui about 14,000. So we can go and try to crunch some numbers and go back and look at what that would break down if you distributed them based on their dwelling units and limited with the 400 cap, and we would exclude the Lanai and Molokai. So we can come back with a different percentage based on being it distributed by the dwelling structures.

CHAIR BAISA: Member Johnson.

VICE-CHAIR JOHNSON: Yes, Madam Chair. I, I think for purposes of discussion I, I understand what people are saying. But I think that one of the things that I appreciate

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

about the wording that was submitted by Director Hunt on this is that it's further restricted by applicable community plan. That's to me a realistic cap of its own. Because if the Planning Commission is looking at this and it's inconsistent with the community plan, basically it may not even be that we'll ever get to anywhere near these numbers. So I think that this is something that no matter how careful we get, no matter how close percentage-wise we try to approach, it's not going to be a perfect number. But I think that the basic language is very sound, and I would love to move this aspect forward. Because I think for people in the community, they're looking at, okay we don't want to be overrun with everybody doing bed and breakfast or a TVR. But if you put caps on these particular numbers I think it's really important to at least give the assurance that we're not moving resort accommodations out of resort areas into our neighborhoods. So I would just ask for the, even if it is, you know, conditional support or support with reservations and then if there is something more realistic that could be I guess brought on to the floor of the Council when we go to discuss this as a formal amendment, I'm, I'm pleased with that. But I would really like to at least look at a cap of some sort as a protection but with the language that these caps are further protected, because the community plan would take precedence over everything.

CHAIR BAISA: Members, any additional comments? Member Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair. Just one additional since some of the concerns were raised. For, for Hana and it was discussed in our Hana Advisory Committee that the district would want to have caps, and I think as Director Hunt said it was left to so many permits and not of concern where they went. Hana might get overwhelmed by too many permits, so we are in favor in the Hana district of having some kind of caps. The other thing is, you know, it's very difficult to subvert zoning laws and we, I appreciate the intent of zoning. However, such places as Hana where we have very little opportunities for employment and for businesses, this helps our local economy. Yet we don't want it to overwhelm and change the character of our district. So we're trying to, you know, bring a balance to it in some kind of allowance. Mahalo, Madam Chair.

CHAIR BAISA: Thank you very much. Member Victorino.

COUNCILMEMBER VICTORINO: Yes. I, I've been very intrigued and very informed at the various aspects. But I'll say this, to speak for Central Maui because it doesn't seem Central Maui gets spoken about, because everybody talks about their district. When it comes to Central Maui I'd like to see these numbers kept the same, no offense to any other colleague. But Central Maui has always been and should continue to be the prime residential area for Maui County. So I would not like to see a proliferation of B&Bs or TVRs in Central Maui. Not to say the other areas would have a proliferation, but I don't see a reason to have Central Maui being, being changed. So I would be in favor, even though I'm not going to vote on it and have any say on it now, when it does come to the full Council I would be one of those that would support keeping the central area with a very low percentage. And I think the only question I had for Mr. Teruya or Mr. Alueta, when you say the word . . . (*change tape, start 3B*). . . "dwellings" because I was very

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

interested when you said 16,000 dwellings. And it seemed like a very big Central Maui and you said 17,000 for Wailea/Makena/Kihei. When you say a dwelling, how do you determine a dwelling? I mean I'm just asking you directly, or maybe Mr. Teruya can tell us how a dwelling is derived from?

CHAIR BAISA: Mr. Teruya, the man with the answers.

MR. TERUYA: Councilmember Victorino, these numbers that I gave over to Joe, these are just really rough and dirty numbers. And what, what it is, is what we've done is, I can't really remember what numbers he mentioned, but I broke it down by dwellings and commercial data. So the dwelling units are any residential or condominium units by classification. Okay. Dwelling would be structures. When we talk about units in real property, we're talking about structures. If they're attached, they're one unit. I mean if it's a duplex, it's still one unit, yeah. We're talking about structures. So these numbers that we have here are rough, but they're pretty accurate in as far as what you guys are trying to do in establishing percentages. Our numbers are pretty concrete. So with the exception of some commercial data and, and again some commercial properties are used for residential uses as well. So our numbers are broken down by classification and by, by district. But our numbers are available if you guys so choose to, to look at it.

COUNCILMEMBER VICTORINO: And not to dwell on, on the point and I'll personally get together with you on that. When you say a dwelling for a condominium, so one condominium is one dwelling? If I say, for example, Mahana Kai or Maui, Maui, I mean there's a lot of condominiums just like, using South Maui. One condominium is one dwelling?

MR. TERUYA: Well, it would be, it would be clearer if we talk about by TMKs. Because like an apartment unit may have ten units but it's one dwelling.

COUNCILMEMBER VICTORINO: Okay.

MR. TERUYA: Yeah. If it's condominiumized, then each unit is counted. Yes.

COUNCILMEMBER VICTORINO: Okay.

MR. TERUYA: That's why I have broken it down by classifications because it's kind of, somewhat misleading because there may be a lot of condominium units but that may not be as, as B&Bs. But it all depends on what classification. I have it broken it up so if, we can probably get into --

COUNCILMEMBER VICTORINO: Yeah.

MR. TERUYA: --better detail as you guys get, get there.

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

COUNCILMEMBER VICTORINO: Thank you, Mr. Teruya. I just, I think for the public, same point, and no, some of my members have their own ideas and they're commenting on the side. I want to hear it from you so the public can hear it. And, 'cause if I don't understand it maybe there's some other people that may not understand it quite so well. So I thank you for explanation, and we'll get together and get more, in a finer detail. But thank you. Thank you, Madam Chair.

CHAIR BAISA: Thank you, Member Victorino. Members, the Chair is very aware of the hour and also aware of the fact that many of us have another meeting this afternoon. So the Chair would like to defer voting on this matter until our next meeting. I think it will give time for the Planning Department to look at alternative, possibly, numbers. We have some very good numbers in front of us, but we want to be sure that if we're going to vote on numbers that we have numbers that we can all feel comfortable with. So the Chair would like to, without objection, the Chair would like to defer the matter to our next meeting.

COUNCIL MEMBERS VOICED NO OBJECTIONS.

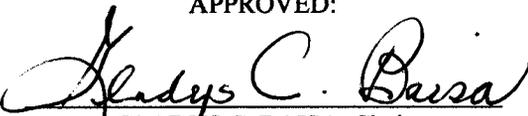
ACTION: DEFER PENDING FURTHER DISCUSSION.

CHAIR BAISA: Chair would like to thank everyone who came today. I'd like to thank our testifiers. I'd like to thank my Committee Members. Thank you very, very much for your diligence. This is a very difficult matter and we continue to plod along here but we're making progress. I'd like to thank the Staff, the Administrative representatives, and everybody who's been here to help us.

And I'd also, before I adjourn, like to thank the menehune who brought the beautiful orchid plant to adorn the Chair's desk today. I don't know where it came from, but it appeared this morning, and I'd like to say thank you to the Secret Santa, whoever it was. So again, everybody, thank you very much. We are moving forward here and the Chair would like to adjourn this meeting. . . .(gavel). . .

ADJOURN: 12:03 p.m.

APPROVED:


GLADYS C. BAISA, Chair
Planning Committee

pc:min:080902

Transcribed by: Daniel Schoenbeck

PLANNING COMMITTEE MINUTES
Council of the County of Maui

September 2, 2008

CERTIFICATE

I, Daniel Schoenbeck, 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 16th day of September, 2008, in Pukalani, Hawaii



Daniel Schoenbeck