

PLANNING COMMITTEE

Council of the County of Maui

MINUTES

September 18, 2008

Council Chamber

CONVENE: 9:06 a.m.

PRESENT: VOTING MEMBERS:
Councilmember Gladys C. Baisa, Chair
Councilmember Jo Anne Johnson, Vice-Chair
Councilmember Bill Kauakea Medeiros

EXCUSED: Councilmember G. Riki Hokama
Councilmember Michael J. Molina

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

ADMIN.: Kathleen Aoki, Deputy Director, Department of Planning
Joseph Alueta, Administrative Planning Officer, Department of Planning
Scott Teruya, Acting Administrator, Real Property Tax Division, Department of Finance
Michael Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel

OTHERS: Susun White, Paia Merchants Association
Thomas Croly, Maui Vacation Rental Association
David DeLeon, REALTORS® Association of Maui, Inc.
Richard Yust, Maui Food Bank
Warren Shibuya
Jim Smith
Bart Mulvihill
Kutira Decosterd
Jocelyn A. Perreira, Executive Director, Wailuku Main Street Association/Tri-Isle Main Street Resource Center
Sharyn Stone, Maui Vacation Rental Association
(20) additional attendees

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

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CHAIR BAISA: ...*(gavel)*... Good morning, everyone. The meeting of the September 18th meeting of the Planning Committee of the Maui County Council is called to order. I'd like to note that a quorum of the Committee is present. A bare quorum of the County is present. First of all, I'd like to ask everyone who's here in Chambers if you would please put your cell phones or pagers or whatever you might have with you that makes noise on the silent mode, because we just need to move along here. And I'd like to introduce the folks that are here with us today. We have our voting Committee Members. I have my Vice-Chair Jo Anne Johnson.

VICE-CHAIR JOHNSON: Good morning.

CHAIR BAISA: Thank you very much, Jo Anne, for changing your schedule around and being here with us this morning. And I'd also like to thank voting Committee Member Bill Kauakea Medeiros for being here.

COUNCILMEMBER MEDEIROS: Aloha and good morning, Madam Chair.

CHAIR BAISA: Thank you, Bill. I know it's a rough week for you but thank you for making the effort. Also, excused today with very good excuses are voting Member Mike Molina and Council Chair Riki Hokama. At the present time, there are no non-voting Members of the Council here. From the Department of the Corporation Counsel this morning, we have with us our regular help, Michael Hopper, Deputy Corporation Counsel. Good morning, Mike. And from the Executive Branch representatives we have our brand new Deputy Planning Director Kathleen Aoki. Welcome, Kathleen. Nice to have you at our Planning Committee. Now, you'll know about us. Of course I'm sure she's been watching all along. We also have with us a regular, Joe Alueta who is the Administrative Planning Officer in the Department of Planning. Welcome, Joe. And I have my regular Committee Staff, David Raatz, our Legislative Attorney and Clarita Balala, our Committee Secretary.

We'll be...we'll be beginning public testimony starting in a few minutes and those wishing to testify should sign up with Committee Staff. Testimony will be limited to three minutes and testifiers are requested to state their name for the record and to indicate who, who they are representing. Members, today, we have one item on our agenda which most of us are familiar with by now and that is PC-40, 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've been focusing on the three bills transmitted by Mr. Hunt on April 18, which has been approved as to form and legality by the Department of the Corporation Counsel. As we discussed most recently on September 2nd 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.

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Over the last couple of months we have made substantial progress on what we have called the B&B bill, which is listed as 2b on today's agenda and entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE, RELATING TO ZONING". On September 12, I took the liberty as your Chair of submitting an updated version of the B&B bill reflecting the Committee's votes thus far which is listed on today's agenda. I would like the Committee to continue its review of the updated B&B bill after public testimony. Without objection the Committee will now accept public testimony on PC-40.

COUNCIL MEMBERS VOICED NO OBJECTIONS.

CHAIR BAISA: Thank you very much. We have several testifiers who have signed up to testify this morning. And our first testifier will be Susun White and she's with the Paia Merchants Association. And she will be followed by Tom Croly with MVRA. Good morning, ma'am.

...BEGIN PUBLIC TESTIMONY...

MS. WHITE: Good morning. Aloha.

CHAIR BAISA: Aloha.

MS. WHITE: My name is Susun White and I'm speaking to you today representing myself as a 23-year Maui resident, as a merchant and co-owner of the Wine Corner located in Paia for the past 10 years, as the Executive Director of the Paia Youth and Culture Center for the past 15 years, and as the spokesman and a director of the Paia Merchants Association. For myself, I speak from the place of Maui as my home where I raised my children. As a merchant, I speak as someone who has been in business in Paia for 10 years in the most depression proof business of them all. As the ED of the youth center, I speak as an economist who realizes the youth center is supported in a large part by Paia businesses. And when business is bad the youth center suffers financially. And as the spokesman for the Paia Merchants Association, again, I speak as, I can hardly say the word, economist, a realist economist, the facts are all 33 merchants that I speak for today are in favor of regulated vacation rentals whether or not they are B&Bs or TVRs. And I'd like to emphasize the word regulated. Why? Because all of these merchants live and raise their families on Maui and they care about Maui and her future. I want you to recognize that most of the merchants in Paia Town are couples. They're families. They are not corporations.

All Paia merchants are suffering economically. Ten merchants have gone out of business due to economic factors. Five of these businesses closed directly related to the closure of the vacation rentals. One of them in business for 72 years, they closed because the closure of the vacation rentals was the last straw after opening the electric bill for the month. The average decline in business for merchants in Paia compared to last year is at

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45 percent; 25 percent of which most merchants attribute directly to the closure of vacation rentals. Three more businesses are facing closures. All three have been in operation for over 12 years. The closure of the vacation rentals has severely if not annihilated the wind surfing business for the North Shore. There are no more tournaments, which amass huge economic profits for the North Shore. The major factor being there is nowhere for them to stay.

No one can truly determine the economic impact of the closure of the TVRs, and we want the Council to recognize that the merchants realize this. But of all, there are a lot of other factors included in order of incurrence. The Paia Mill closing, inflated rents by greedy landlords, bike tours closing, higher energy costs, closure of the vacation rentals, national recession, airline shutdowns, restricting of kayaking businesses, restriction on wedding businesses. The one of all those that I just mentioned that this County Council has the power to affect right now is the TVRs. How? By helping in all ways possible to expedite the process. I am not here to play the role of the whiney merchant. Rather I prefer to be solution-oriented. In that spirit, I offer you a solution. First, a reprieve on the closure of the vacation rental businesses for the period of time required for the County to determine the process. Second, that the process . . .

CHAIR BAISA: Ms. White?

MS. WHITE: Pardon?

CHAIR BAISA: Excuse me. Will you be able to conclude in a minute?

MS. WHITE: Yes.

CHAIR BAISA: Please. Thank you.

MS. WHITE: Second, that the process as quickly as possible mirror the process required to obtain a liquor license. This process includes a criminal record check, tax clearance check, approval of neighbors within 500 feet, zoning clearance, a yearly fee. The TVR would include a process within the yearly renewal fee for addressing any community's complaints. It would be similar to liquor; three strikes you're out. Yearly fees would account for paying for the process and funds to support low-income housing. Please realize that you can make a difference and act on it. I cannot overstate how important this acting is to keeping small towns, small towns. As circumstances now are only the big corporations will be able to afford to have business in our small town and survive the high rents and loss of business, and even they will have a hard time. Thank you for your consideration.

CHAIR BAISA: Thank you very much. By any chance, do you have your testimony written?

MS. WHITE: Yes.

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CHAIR BAISA: We'd like to have a copy. If you would please leave one with our Secretary so we can circulate it to everybody.

MS. WHITE: Okay.

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

VICE-CHAIR JOHNSON: Yes. Thanks very much, Susun, for being here. I appreciate it. One of the, well, there's a couple messages that you were giving, one is that it's a long protracted permitting process. It takes a long period of time so that adds to some of the difficulties that your business community is facing. But apart from that are you able or have you been able to differentiate between I guess the problems with the airlines that we experienced not having sufficient seats, some of the costs for the airfares actually for people to get here versus some of those individuals that just don't have the accommodations?

MS. WHITE: Yes.

VICE-CHAIR JOHNSON: So, because I've gotten different mixed reports from the business community who have nothing to do with TVRs and they're experiencing the same thing.

MS. WHITE: Right. Well, that's why I really tried to separate them out, the businesses, and because the vacation rental closures happened before the airlines went out of business. We're looking at, the effective, the actual closure of vacation rentals outside of the windsurfing community impacted by no place to stay is about from 20 to 25 percent. Most businesses in Paia now regardless of what the business is, is down 45 percent. So then the airlines and the lack of tourism and the recession is for the other difference.

VICE-CHAIR JOHNSON: Yeah. And I, I really appreciate that because our, you know, even our hotels, even some of the timeshares now they're all seeing a tremendous softening in that market because of, you know, we can do the best marketing in the world, but if you can't get here or if you can't afford to be here, then the discretionary income is very difficult to come by. So, are there any other things within this ordinance because we're moving through a lot of different, you know, amendments changes, discussions, are there any other things that the merchants could actually make a suggestion to, to either add into the ordinance or to I guess look at other options that are before us that might streamline this process?

MS. WHITE: I think that more it is, is just keeping it very simple. And, you know, as far as in agriculture land or on the North Shore to totally say no to vacation rentals in agricultural lands, well, then we don't have any vacation rentals. If you look at it, we only have Paia, Kuau, and Sprecklesville, and Makawao and Haiku. And most of the lands surrounding are, they're agricultural. But it could be done again regulated and with a yearly review thing and with neighborhood approval. And I know some of that stuff has been mentioned and placed in the ordinance but to have it a process that is not so cumbersome

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that nobody can do it financially or time-wise. And something that's also in favor of neighborhoods so we can keep our neighborhoods, neighborhoods and with restrictions. I mean I recognize that we can't have vacation rentals running rampant -- and I speak for the merchants too -- and have, you know, 33 of 'em in one neighborhood and 3 people live there.

And so, but in some way to, to, for the Council to recognize this is an emergency situation. This isn't something that we can see dragging on and dragging on and dragging on. And I know a lot of it is tied up to the general plan and all, all the stuff that's going on in zoning, but if we wait too long the, the impact on the small towns, especially in the North Shore is going to take years to recuperate from. It's devastating. And these are businesses that are in business for long, long term and they've gone through many cycles of economic crisis. They've gone through the early recession in the '90s, 9/11, and recovered and recovered. They are not recovering from this and that's where the big red flag is...people need to take a look, look at it.

VICE-CHAIR JOHNSON: Yeah. I really appreciate that. And I think that one of the challenges that we have is whatever we pass has to be in compliance with State law. We can't basically ignore State law so that's one of the challenges we have and particularly on ag land. And that's always been my concern is if we're going to do anything do it right.

MS. WHITE: Right.

VICE-CHAIR JOHNSON: Okay. Thank you.

MS. WHITE: Thank you.

CHAIR BAISA: Thank you, Ms. Johnson. Member Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair. And thank you, Ms. White, for your testimony, for being here this morning. I wanted to ask you because in your testimony you emphasize regulated vacation rentals and I think you shared some of that with Member Johnson, can you expound more on what you would consider or what you would recommend as far as regulated?

MS. WHITE: Regulated is, there's two different meanings to regulated. One meaning is where it's going to be allowed in zoning; Agriculture or different areas, whether we change those laws and lighten them up a little bit or the whole zoning issue. The other part of regulation is once we decided what is going to be allowed is the process that I mentioned as far as getting a liquor license that it has to have an annual review. It has to have a way for...if there are complaints for neighbors and somebody is out of control where they yearly have to address it and that it's regulated in that way. It's just not once you get it you're done and yahoo let's go. So that kind of regulation and also in, in money. You

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know it's a business it's a money-making endeavor and regulation in whatever the fees are going to be. That they're not exorbitant but they also pay for the whole process.

COUNCILMEMBER MEDEIROS: I see. Thank you. And, and you support vacation rentals in Business zoning districts?

MS. WHITE: Yes, I do.

COUNCILMEMBER MEDEIROS: Okay. And . . .

MS. WHITE: I also support it in ag land with a lot of thought and restrictions in areas, certain areas.

COUNCILMEMBER MEDEIROS: Okay. You know that's a recommendation that would take some very creative legislation to decide what's allowed and what's not allowed in ag, because several of our districts are really different from other districts.

MS. WHITE: I think it's going to have to be district-by-district, neighborhood-by-neighborhood. And I think for Maui County to survive the next five years economically we're all going to have to be very creative and think outside the box.

COUNCILMEMBER MEDEIROS: Yeah. Okay. Thank you for your responses and thank you for your testimony this morning.

MS. WHITE: You're welcome. Thank you.

COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair.

CHAIR BAISA: Thank you. Ms. White, I wanted to ask you a question myself. You brought up a very interesting perspective that we had not really heard here previously and we've been meeting now for a long time, and that was the impact of this lack of people particularly in Paia and the merchants suffering, having an impact on your youth center.

MS. WHITE: Yes.

CHAIR BAISA: Can you talk a little more about that? I'm concerned because, you know, we have youth centers all over the County and of course certainly a lot of nonprofit organizations and if this is having a trickle down effect on them I'm interested in knowing about that.

MS. WHITE: Well, the Paia Youth and Culture Center as you know it's located right outside town and we are supported tremendously by almost, I don't have the exact figures, I could come up with what our donations are yearly and it has increased year by year. We are well known in town. All the merchants know us. We have the Taste of the North Shore, which is 100 percent supported by our merchants. The restaurants give free of all

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the food. We cannot have the "Taste" this year because they can't afford to do it. Our donations have gone down substantially. I've had merchants tell me directly face to face I'm sorry I will not be able to donate this year what I have in the past. We don't have the money. Donations go from anywhere from annual giving to we have merchants that sponsor certain things. We have one merchant that sponsored the monthly telephone bill for our radio station. It goes on and on and they are slowly, slowly at first pulling back, but now in the last month it's been a major pullback of giving, because they don't have it to give anymore. People are trying to pay their rent.

CHAIR BAISA: I understand. This is a frightening thing because, you know, as we're looking at the new budget there's already been threats about cutting back on funding for nonprofits.

MS. WHITE: Yes. I know.

CHAIR BAISA: And if nonprofits are going to lose government funding along with the donations from the private sector this could have a serious impact on human services in our, in our community. So, I appreciate you're coming to tell us this today. Thank you very much.

MS. WHITE: Thank you.

CHAIR BAISA: Are there any additional questions for our testifier? Member Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair. Yeah, I just wanted to follow up on one other item, because when I asked you about, to explain more on what regulated would mean to you and you did, and I think the suggestion of an annual review is very, a good suggestion. And you also suggested similar regulations as you experienced with the...your liquor --

MS. WHITE: Yes

COUNCILMEMBER MEDEIROS: --license or your liquor permit and that three strikes and your license is revoked.

MS. WHITE: Revoked.

COUNCILMEMBER MEDEIROS: And so you would recommend that also --

MS. WHITE: Yes.

COUNCILMEMBER MEDEIROS: --for vacation rentals?

MS. WHITE: I think it needs to be taken seriously. I mean there has to be of course awareness that you can't have the grumpy neighbor, and we know all that, that could happen but it

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has to be taken seriously. If you're given the privilege of having a vacation rental either in a Business District or a Residential or Agricultural it's a privilege. And it does affect our, our community in every way, and if people say it doesn't, they're lying. There's no difference than having a bar affect the town. And so it has to have that and it has to be taken very seriously by the owners of the vacation rental.

COUNCILMEMBER MEDEIROS: Okay. Once again, thank you, Ms. White, for your testimony. Mahalo, Madam Chair.

CHAIR BAISA: No more questions? If not, Ms. White, thank you very much for coming today. Thank you for your testimony and please leave a copy for us. Thank you. Our next testifier is Tom Croly and he's with MVRA. And our next testifier will be Dave DeLeon from the REALTORS® Association. Good morning, Tom.

MR. CROLY: Good morning, Chair. Good morning, Members. I am Thomas Croly and I am speaking on behalf of the Maui Vacation Rental Association. I've submitted written testimony and I'm going to give you kind of a synopsis of it here, but if you have questions about the topics that are in the written testimony, please feel free to ask. The Planning Department has put forth a proposed cap of 400 B&Bs. MVRA would support this cap, as it would only apply to owner-operated B&Bs. It is important to note that the aggregate number of 400 represents less than 1 percent of the residential properties islandwide. So from an islandwide perspective this density is less than 1 in 100 residential homes that could be used for this use. We're not talking about an onslaught. The regional distributions may exceed 1 percent in specific areas like Hana, because either the demand in this area is greater or the amount of residential housing in this area is so low.

If the Committee decides to adopt caps for B&Bs, the best method of applying these caps would be as an expression of the percentage of residential housing rather than fixed numbers. Making this cap a percentage allows for the total number to grow as the number of homes grows and allows this industry to grow while keeping it in check with the population of Maui. To that end, the caps that we would support look something like this. In Hana, 4 percent of the residential housing; in Kahului, just .1 percent of the residential housing; in the North Shore and Upcountry areas combined, 1¼ percent of the residential housing; in Kihei, in Makena, 1 percent of the residential housing; and in West Maui, 1 percent of the residential housing. I won't make comment on what caps should be installed in Molokai and Lanai and would leave it up to the discretion of the, of the folks in those communities to call for their own, their own caps.

Now, the second issue that I'd like to address today is that of money and taxation. The current proposed B&B ordinance calls for a loss of the homeowner exemption as the additional tax penalty for being granted the permit to operate a B&B. I wanted to take a second just to point out what that additional tax penalty represents in real dollars to these homeowners and that's the only folks that are being considered for B&B permits are folks that would qualify as homeowners on their taxes. For a home valued at \$500,000

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the increase in, in property tax would go from \$400 a year to \$2,425 a year. This would be an increase of \$2,025 per year. That's how much more tax the owner of, of a home assessed at \$500,000 would pay if they were granted a B&B permit. For a home assessed at \$1 million this represents an increase in taxation from \$1,400 a year to \$4,850 a year or an increase of \$3,450. And finally for a property assessed at two and half million dollars it increases the taxes from \$4,400 a year to \$12,125 a year, an increase of a whopping \$7,725 per year.

We do support Chairman Hokama's amendment to make certain that these properties are properly checked annually to make sure the homeowner exemption is not being granted to the permit holder. However, we are opposed to any additional taxation or fees that might be suggested, because as you can see these fees are quite substantial as they stand now and they will discourage compliance if they're made any more painful to someone wishing to rent out a room or two in their home. Thank you for your, for your attention.

CHAIR BAISA: Thank you very much, Mr. Croly. Members, questions for Mr. Croly? Member Johnson.

VICE-CHAIR JOHNSON: Thanks very much, Tom, for being here and I appreciate you writing out all your testimony too 'cause sometimes it's, you know, the numbers --

MR. CROLY: Numbers...yes.

VICE-CHAIR JOHNSON: --kind of your eyes glaze over after a while. The, the one thing I wanted to find out because obviously each community plan is very different and in some community plans and plus in the language that we have in our draft ordinance there is respect for the community plan. So, if we change the caps to actually allow greater numbers to be in areas that are discouraged by the community plan, how, how do you feel that's going to fly?

MR. CROLY: That's, that's a very good question. In what we're doing with these caps is not creating greater numbers. We're actually restricting the, the number and we're being more definite on what that restriction will be. Some of the community plans have language that say restrict the number. Okay. Those are the ones that are, that are pretty firm about it. They use, they use the word restrict. Setting a cap and a percentage like this particularly an extremely low percentage in most cases we're talking about 1 percent or 1/4 percent of housing that's an extremely low cap. No one can say that that's, that's an increase or a proliferation of these businesses in any way shape or form.

VICE-CHAIR JOHNSON: Yeah. And, and I guess my concern with setting a percentage is that if we have residential subdivisions that continue to be authorized in places where we don't have services available, it becomes increasingly difficult for us to manage with limited human resources for Fire, for Police in areas that would traditionally be difficult to serve. So that's why I'd sort of like to know what a manageable number would be in these areas. So, I appreciate your perspective but . . .

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MR. CROLY: The manageable number that's today is not going to necessarily be the manageable number for 10 or 20 years from now. And if history shows us when we, when we, when we take a stance on this, we usually end up 20 years down the road before we're, before we're reviewing it again. So, we do have to look ahead towards that. These caps have nothing to do with whether there will be future development in those areas. It just says if there is future development in these areas, then you will allow another 1 out of 100, 100 of those homes to be used in this, in this manner.

VICE-CHAIR JOHNSON: Yeah. And we'll have to agree to disagree, because I think we have to be more conservative and proceed with caution and just not set these I guess percentage numbers at this time. Thank you.

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

COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair. Mr. Croly, thank you for being here. And I, too, like Member Johnson thank you for putting these numbers in a readable and sensible way. I'm not sure if it was ever presented to us but I would be very interested, because you discussed the increases in taxes in different scenarios should the taxes or the home exemptions be removed. I would be interested to find out in kind of a spectrum of the industry, how does the revenues of the business compare to the taxes? Do you folks ever do that?

MR. CROLY: Well, that's, that's a good question. When, when we first discussed the, the idea of taxation and, and what taxation should apply to, in this case, specifically bed and breakfast, owner-operated bed and breakfast, what was suggested was that it be a percentage of the revenues generated so that someone with one bedroom renting it out for \$75 a night is not being hit with the same kind of taxation as someone with six-bedrooms renting them out at \$150 per night. That, that it should be, it should be based somewhat on revenue. Unfortunately, because that varies so widely and becomes, becomes something that's difficult to put a hard number on and, and quite frankly police, the, I think this is why this choice was made to, to just remove the homeowner's exemption when this bill originally came up 10 years ago. And why, why we've come around to accept that it, it represents perhaps the, the most reasonable compromise.

But the percentage would vary widely depending on how big the operation is. Again, if someone's got a two and a half million dollar house and their taxes are going up \$7,000 a year and they have one-bedroom generating \$15,000 a year in, in gross revenue, then it's not going to make any sense for them. On the other hand if someone has a rather modest home and their taxes are going up \$2,000 a year and they're running four or five-bedrooms out of there, then the percentage is going to be very low.

COUNCILMEMBER MEDEIROS: Okay. Mr. Croly, thank you for your explanation and for your testimony this morning.

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MR. CROLY: Thank you, Bill.

COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair.

CHAIR BAISA: Any additional questions for Mr. Croly? If not, thank you again.

MR. CROLY: Thank you.

CHAIR BAISA: Our next testifier is Dave DeLeon. And Mr. DeLeon will be followed by Richard Yust from the Maui Food Bank.

MR. DELEON: Aloha. I'm Dave DeLeon representing the 1,600 professionally licensed realtors in Maui County. I would just like to take this opportunity to thank Chairman, Chair Baisa and the Members of the Committee for all the hard work you've put in, in trying to legitimize this important element of our economy - vacation rentals. After six months of effort and a lot of complicated issues it would be, this would be a good time to take a step back and remind ourselves of what we're trying to achieve here. Before they were shut down, vacation rentals . . . *(change tape, start 1B)*. . . brought lots of economic activity to Maui and especially to our more remote towns. You will hear testimony today about how the decision to shut them down, well, actually you've heard that testimony already, has affected the businesses in Paia. Our goal is to bring these small businesses back online so that they can start contributing to our economy again. And bring them back online in such a manner that without causing any disruptions to our neighbor, neighborhoods.

I'm concerned that we're losing, losing that focus and, and we keep piling on conditions and limitations as we continue to add on conditions and limitations. Very few of these businesses will be able to help in our economic recovery. My specific concern is a suggestion made during the last Committee meeting that we apply hotel class property tax rates to bed and breakfasts. Bed and breakfasts are by definition the owner, homeowner's residence. Some property, some part of the property will be used just like any other residence for the owner's family. There are no restaurants. There's no gift shops. There's no convention halls. It's just a home renting out rooms on a short-term basis. If the tax rate is set too ambitiously, then very few of these businesses will be able to make any economic sense out of this and we'll lose the reason why we've been going through this exercise. What is too high? Hotel rate is too high.

RAM recommends that the Committee continue their existing policy to set B&Bs in the County Code that is the owner, the owner loses the homeowner exemption and pays an improved residential rate. Such a taxation policy would be both equitable and reasonable. Thank you.

CHAIR BAISA: Thank you very much, Mr. DeLeon. Questions for our testifier? Member Johnson.

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VICE-CHAIR JOHNSON: Yes, Dave, early on way back when we were I guess four years ago considering Member Carroll's bill at the time on B&Bs and TVRs, the MVRA had taken a position that they didn't object if they were given the ability to utilize their property as resort, you know, type dwellings and, you know, have some of the things. They didn't object to paying GET or TAT, which are generally assessed to hotel type properties. They actually made the suggestion that they would be willing to pay an increased rate on their taxes for the privilege of doing so. So, now you're telling us that that's not the case?

MR. DELEON: Oh, well, number one, I don't represent the MVRA and I was not part of that conversation four years ago. However, what you're saying is, yeah, of course a vacation rental would have to pay TAT, and as well as the general excise tax. That doesn't result in the hotel room tax, however, being necessary. Nor does it...I don't know who was speaking to you and what their, and what their perspective was, but on analysis, if you take a hotel room tax, you're talking about roughly a quadrupling of the tax. As Tom pointed out to you a few moments ago someone with one-bedroom is out of the game.

Now, if our process here is what we're trying to do is make this an economic benefit for our small property owners and it's, you know, the people who live here and need the extra income, they'll be exactly the people you're taking out of the picture 'cause they're not going to be able to afford the taxes. Somebody with a large house with, you know, you know, magnificent facilities may be able to afford the taxes, but the more small, smaller end resident will be taken out of the equation if you go that high.

VICE-CHAIR JOHNSON: So then how would we get sufficient revenue to maintain enforcement if we're not going to get it through real property tax?

MR. DELEON: You're going to get a major increase. It's going to more than double the property tax on any property that you, that you apply this...if they're getting a homeowner exemption what we're saying is homeowner. So they're now getting a homeowner exemption, you get \$300,000 off the top of the value of their property, and then you have a current rate it's \$2. You take off that 300,000 so the value of the property is increased, then you've...and you're charging...I think 4.75 rate that is where you get your money.

VICE-CHAIR JOHNSON: Okay. And with regard to I guess the different level of amenities or different number of rooms that a B&B or vacation rental would offer, how would you propose dealing with the disparity in how people actually market their homes?

MR. DELEON: I think if you were to talk to the tax...the tax division they will tell you the more complicated you make it, the more difficult it will be for them to enforce.

VICE-CHAIR JOHNSON: So, you're saying that a person who has one-bedroom and a person who has four-bedrooms and rents their home out continuously should pay the same tax?

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MR. DELEON: Rate.

VICE-CHAIR JOHNSON: Okay. But in terms of their real property tax and the rate, if they're paying it based on the assessed valuation of their home and the use of their home isn't that the same? I mean you're . . .

MR. DELEON: Not necessarily. I mean it's different properties. You assume that somebody's only got one-bedroom for rent, it's going to be a smaller property.

VICE-CHAIR JOHNSON: Not necessarily, you know, not the way our bill is structured. One final question and that is in regard to I guess the assertion that you made with the taxes, you know, and I guess B&B being different from transient vacation rental. So, if I understood what you were saying, you're saying a bed and breakfast should not be paying TAT or GET?

MR. DELEON: No, I didn't say that. I said very explicitly that they do and will necessarily have to. It's State law.

VICE-CHAIR JOHNSON: Okay. Well, I, I just --

MR. DELEON: What I said was --

VICE-CHAIR JOHNSON: --misunderstood what you said.

MR. DELEON: --it doesn't follow, because they're paying those that they have to pay hotel, hotel property tax rates.

VICE-CHAIR JOHNSON: Okay. Thank you.

MR. DELEON: That's, that's the difference. Thank you.

CHAIR BAISA: Any other questions for Mr. DeLeon? Seeing none, Dave, thank you very much for coming today.

MR. DELEON: Always a pleasure. Thank you.

CHAIR BAISA: Our next testifier is Richard Yust. He's with the Maui Food Bank and he'll be followed by Warren Shibuya.

MR. YUST: Good morning, Chair, --

CHAIR BAISA: Good morning.

MR. YUST: --Committee Members. It's been brought to the attention of the Maui Food Bank that your Committee is working on legislation that would give small-scale farmers an

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incentive to donate fresh produce to the Maui Food Bank. This testimony today is meant to inform you that our agency, the Maui Food Bank, supports this concept, because the Food Bank is in great need of fresh produce. Fresh fruits and vegetables are a commodity, which is in short supply. Whenever farmers donate fresh produce to the Food Bank it is distributed very quickly for those hungry people in our community that do not know where their next meal is coming from. Fresh produce is an added blessing.

We are aware that these small scale farmers have hard times marketing their crops either because the quantities they produce are too small or not quite up to commercial grade. We would very much like to encourage these small scale produce producers to bring their products to the Maui Food Bank so that we can distribute them to people in our community that live with the risk of going hungry. The mechanism to create that incentive is a provision in the proposed legislation that would allow applicants seeking a bed and breakfast permit for Agriculturally zoned property to use their donation to the Maui Food Bank of \$2,500 worth of farm product as a means of demonstrating the use of their property.

I want to assure that the Maui Food Bank supports this concept and is willing to create the necessary protocols to allow such a win-win proposal to function. Also, there was earlier testimony regarding the donations that are coming in from either the TVRs or the businesses and being the executive director of a, of a nonprofit here on Maui is we have seen our donations go down as well. A number of vacation rental properties that used to donate to us on an annual basis no longer do. A number of businesses that used to donate to us on, on a, either monthly or annual basis also no longer donate to the, to the Maui Food Bank. So, we're having to obviously make, make other arrangements to keep the services that we offer by scaling either, either things back or increasing our efficiency. Anyway, again, thank you and I look forward to seeing what happens with this.

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

COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair. Thank you, sir, for being here this morning and representing the Maui Food Bank. I just would like to know when the farmers, whether they're small time farmers connected with vacation rentals or whether large farmers that do it commercially, when they donate food to the...or fresh produce to the Maui Food Bank who determines the value of that donation?

MR. YUST: Typically, the value is determined by IRS regulations which they've just recently re-passed the Farm Bill which is now allowing charitable tax donations for fresh produce. And then there's also other America's Second Harvest guidelines that also determines the value of, of the donated produce.

COUNCILMEMBER MEDEIROS: Okay. So, with those guidelines the Maui Food Bank would give a value to that donation and give that receipt for that donation to the person donating or the farmer that's donating?

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MR. YUST: That is correct. And we would typically base it, not typically by the item, we'd based it by, by the weight of what they're donating.

COUNCILMEMBER MEDEIROS: And do you know if the guidelines that you utilize to determine the value is wholesale, retail, farmer's prices?

MR. YUST: It's, it's actually, it's actually below wholesale level. It's, it's like C grade type...type pricing that's, that's utilized. It's...because obviously the typical donated product is not at saleable levels so the, so it's at a much lower level as far as the value of it.

COUNCILMEMBER MEDEIROS: I see. And, and would your records separate the different donors and would the, your records be available to us as far as the quantities of donations from vacation rentals or farmers?

MR. YUST: Yeah. We could certainly pull any, any additional information that you would need. We, we track each individual donor, farmer, and also if it came in from say a vacation rental and it was listed as coming from that particular rental we could certainly pull all that information for you.

COUNCILMEMBER MEDEIROS: Okay. That's, that's good to know because, you know, the consideration of the \$2,500 income from such as small farmers such as found on vacation rentals that would be necessary so that we could somehow get some kind of report on corroborating the donations. But thank you for your testimony this morning.

MR. YUST: Yeah. Thank you.

COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair.

CHAIR BAISA: Thank you, Mr. Medeiros. Any additional questions? If not, the Chair would like to ask you a question.

MR. YUST: Certainly.

CHAIR BAISA: Again, looking at the bigger picture, tell me what's happening at the Food Bank?

MR. YUST: ...*(sigh)*...

CHAIR BAISA: I mean I'm pretty much aware that the nonprofits are being inundated. What's going on with you guys?

MR. YUST: The, the biggest thing that we're seeing is the, the lack of food donations from the retail sector mainly because they're consolidating their, all their shipping now, because

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the shipping has gone up so, so dramatically. They're consolidating their shipment so they're not buying as much extra so they're not...they don't have as much leftovers, say, so to speak, to donate to us. So, we're seeing, we're seeing that a dramatic decrease roughly already about 20 percent so far starting our first, the beginning of this first fiscal year for the Food Bank. That and then along with the financial contributions we're seeing also a decrease in that as well.

And then on the flip side, unfortunately, we're seeing higher demand. Almost, almost equal to the amount of shortage of food coming in we're seeing a higher demand, almost 20 percent higher demand also in the same period of time as well. So, we have fewer resources coming in, higher demand which means that the people who are, are seeking assistance are, are getting less and many of them are actually starting to complain that they don't, even with the, even with the donations they're not having enough to even fill the bellies of their kids and that's really a shame.

CHAIR BAISA: Do you do this Countywide?

MR. YUST: We, we are Countywide. We, we ship to Molokai every month. We've, we've had to, we, we stepped up the increase when the Molokai Ranch shutdown just to help kind of head off the initial onslaught of people seeking food assistance. We typically ship anywhere between, you know, 6 to 10,000 pounds to Molokai each month of food and that goes, that gets distributed by 18 agencies over on Molokai. We're just now starting to...because we're seeing a bigger increase on Lanai; we're getting ready to increase shipments to Lanai as well.

CHAIR BAISA: So, you really see the opportunity to have commodities donated to the Food Bank in lieu of this direct sales income that is the alternative as a real way to help feed the hungry?

MR. YUST: I, I certainly see it as a win-win. I think if this could, if this could be part of this legislation, I certainly...and especially when it comes to, you know, obviously fresh produce. It's such a valuable commodity that a typical low-income family can't afford fresh produce. As we all know, the price of it at the stores is just out of reach for many. And, and we already pick up, we're already picking up from the farmers markets all the extra. We're picking up from a few farmers on the island, but this would be, certainly a major win-win for, for the Food Bank and the, and the unfortunate people in Maui County that don't have the funds to afford fresh produce.

CHAIR BAISA: I'm thinking it might be very timely because of the situation right now where everybody is suffering.

MR. YUST: Yes.

CHAIR BAISA: I'd like to thank you very much for --

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MR. YUST: Thank you.

CHAIR BAISA: --coming today and offering your perspective on this. It's a very valuable one.

MR. YUST: Thank you, Madam Chair.

CHAIR BAISA: Members, any additional questions? If not, thank you very much.

MR. YUST: Okay. Thank you.

CHAIR BAISA: Our next testifier will be Warren Shibuya. And Mr. Shibuya will be followed by Jim Smith. Good morning, Warren.

MR. SHIBUYA: Good morning, Chair Baisa, and good morning, Councilmembers Johnson, and Medeiros. Also, good morning, Staff Members. I am Warren Shibuya speaking for myself; a retired Maui resident serving on both Board of Variance and Appeals and General Plan Advisory Committee. I speak for...to four points against PC-40 as written: (1) urge consistent application enforcing zoned land uses; (2) request you to simplify and streamline County ordinances leading to reducing amounts of special conditions and applications; (3) ask for equitable and consistent application of County tax assessments based on uses of properties; (4) remember...a communities' characteristics shall be determined by respective communities not legislated by commercial and personal profiting interests. Allowing commercial lodging uses in Agriculture and Rural and in some Urban zoned lands inflicts irreparable harm to respective areas and community's unique character.

In other words, I ask the Committee simplify rules and stop creating "sacred cows" based on private economic reasons. Instead, focus on developing community aloha and welfares.

First, I feel compelled to speak on the, the direction this Committee is interpreting State Agriculture and Rural definitions to populate areas currently lacking in levels of services and already below County prescribed infrastructure standards. Purpose and intent of Chapter 19.29.010 clearly prescribes low and I quote "low density development which preserves the rural character of certain areas" allowing small-scale agriculture and keeping of animals. Maui's general plan, draft, and community plans do not prescribe higher densities in Maui's Ag and Rural zoned lands. This Council should not approve proposed changes because it ignores public law and public will as expressed in the Council adopted General Plan and community plans.

Secondly, PC-40 contradicts numerous community Covenants, Conditions, and Restrictions, that's the CC&Rs, which clearly prohibit temporary lodging in their neighborhoods or Agriculture zoned communities. Absent active status of communities enforcing their CC&Rs, Council ought not make laws overriding lawful community rules promoting special County housing and economic arrangements to benefit few. Favoring

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few “sacred cows” is unacceptable and leads to quasi-governing practices, discretionary decision-making, selective conformity, opens the County to contested legal challenges, and creates settings for contentious neighbors. Promote aloha and lokahi in Maui’s communities.

Third, this, this Council should assess fair and equitable taxes upon properties based on property uses, prescribed densities and getting needed public health and safety. If parcels used for economic and commercial gain, then parcel owners must be assessed to provide for improving up to standard services and infrastructure conditions through impact fees and commercial assessment rates. Why is proposed law treating properties providing lodging services separate and different from businesses, landlords, and hoteliers? Equally applied impact and property assessments are legal and accepted practices levied upon developments whether permanent or special or temporary zoning exceptions or allowances. In summary, please ensure consistent land uses and equitable applications of tax and impact assessments for public welfare and benefits. Mahalo.

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

COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair. And, Mr. Shibuya, thank you for your presence this morning and for your testimony. I just wanted to ask you if you can submit a copy of your written testimony to our Staff for the rest of the Committee Members and ourselves?

MR. SHIBUYA: Yes. I have provided that.

COUNCILMEMBER MEDEIROS: You have?

MR. SHIBUYA: Yes.

COUNCILMEMBER MEDEIROS: Okay. Thank you so much for that. And thank you once again for your testimony.

MR. SHIBUYA: Thank you.

COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair.

CHAIR BAISA: Thank you, Mr. Medeiros. Any additional questions for our testifier? If not, thank you very much, Warren, for being here.

MR. SHIBUYA: Thank you.

CHAIR BAISA: Our next testifier will be Jim Smith. And Mr. Smith will be followed by Bart Mulvihill.

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MR. SMITH: Chairperson Baisa and Members of the Committee, my name is Jim Smith, and I'm privileged to, to be able to come and express my concerns. I have been involved in this process since about 1987 when there was a request for a special use permit for a transient vacation rental in Haiku. And the process at that time was that a person would come and, and submit a permit and go through a public hearing and then a deliberation was made. Now that was the process. And you're not deviating from that process basically I don't think. It shouldn't be deviated from. The reason I say this is we are dealing with a situation in which the Administration process has been avoided. We've had an executive branch that has decided that it was inconvenient to process bed and breakfast permits. We've had an inundation of individuals encouraged and led by hand by the Board of Realty to purchase land to establish vacation rentals.

Now, our laws are established to enhance a moral value, which is the common good. As a member of the Paia-Haiku community plan we were very conscience of this and we said that a bed and breakfast was in effect a transient vacation rental. It is. And we said the lifestyle is what we're looking at. We have to preserve the lifestyle and putting inns on agriculture land discourages the lifestyle we must preserve. And that's what you're doing. Now, you've had 800 or more ignore the law. And you've had executives ignore the enforcement of the law and now you feel compelled to rewrite the law for some innate flaw. Well, I think you may be looking in the wrong direction. I think that's the reason why there's so much time.

One of the fundamental issues is a distinction between dollar value and moral value. What's good for us all and what's good for me with a dollar. And it's in this issue that we can see that. And if you look at the...it was the Champion [*sic*] property in Haiku that was set up for that and they bought that for \$100,000 and their argument was to put their kids through college, and they sold it for \$400,000 to another inn, to an owner from New York. That's the deal. Nothing else. No food to the Food Banks. It's all wonderful. But what we're talking about is an economic engine versus a moral value, which is our laws, and the laws lose when there's no moral imperative and this bill doesn't recognize that fact at all.

And this bill when you talk about transferring of permits say they can't be transferred, but that doesn't mean you haven't already said it was an accessory use and they can get a permit. So, it would seem to me that if you go along with this fiction that it's a problem with the legislation, then what you want to do is make a moratorium of an extension of a bed and breakfast permit after the sale of the property. In other words, this property cannot be used subsequent to sale for "x" number of years. That's my suggestion but please stay strong to common good and, and recognize the fiction. Aloha.

CHAIR BAISA: Thank you, Mr. Smith. Questions for our testifier? Thank you very much, Mr. Smith. Appreciate it. Bart...our next testifier will be Bart Mulvihill and he will be followed by Kutira Decosterd. And if there's anybody else in the gallery who would like to testify, would you please come forward and register so that we know that you want to have your moment here. Good morning, Mr. Mulvihill.

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MR. MULVIHILL: My moment in the sun.

CHAIR BAISA: Yes.

MR. MULVIHILL: Good morning, Council Members. Madam Chair. My name is Bart Mulvihill. I'm here strictly as a private citizen and...although I am a realtor. I wonder when the Mayor decided or unwittingly to make the TVR issue the cornerstone of her legacy. I thought she would have persuaded or pursued affordable homes. After all we know that's pretty much what got her elected. Instead of being proactive she decided to or indirectly, nationalize 1 percent of our homes and condos if you will to meet the shortfall of affordable homes. That for the most part have never been available to the general public. I hate to say it but this smells a lot like Cuban Castro.

A \$3 million house on the ocean that has a \$15,000 a month mortgage, you cannot rent this house to anybody in the general public. That means somebody would have to make about \$350 to \$400,000 a year to qualify. How many of those jobs do we have in our County at this time or ever will? Now, Puamana, Kaanapali Plantation, well, for the like were pretty much, you know, improperly zoned or for the most part designated wrongly when their building permits were issued. The initial buyers back in the late '60s made sense of these second home purchases knowing that the onsite manager or even a realtor could rent their unit while they're not there and couldn't afford to be there for the most part. In business they call that making the numbers work.

Now, several disgruntled malahini owners in Puamana and several other communities that have always been a TVR neighborhood are obviously unaware of how these projects came to be and want to rewrite an acceptable lifestyle of old. Puamana, for example, there are 52 units that are managed by Whaler's Management out of 115 that are active TVR's. One hundred and ninety-six owners though did vote don't allow TVRs. That's 81 that don't rent out that said we think we should do that and let our fellow owners do that. That's, that's outnumbering the non-dissenters 7 to 1. I guess the will of the majority of the people are not heard.

You know, in Montana they have an expression. We're going to keep on farming until the money runs out or move to Vegas and, you know, be a bellman and I think that's what's going to go on in Hana. But when a person goes to an agriculture subdivision I don't want them to be, you know, unfairly labeled as being a terrible person when they come there. They don't bring barking dogs, roosters or whatever unless the SuperFerry has changed their rules. You know, people like my mom and dad were amazing people and one of the gifts that they always left for the people that worked in the hotels or in the resorts was one thing, they left the books behind that they read. My mom loved books on history and my dad loved books on biographies. The great Tim McCarver, famous Philly, mailed a book back to my family home that he had taken, he had to put back and get back to us. He had taken it home to finish it. People need to take a gift of Maui home with them and I don't think just keeping them all huddled in big hotels and sterile

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environments is going to do anything for our reputation. Maui is Maui and we've got to share that loving hand. Anyway, sorry for the emotion here but we're putting my better half out of work with some of these new laws and I think they're ludicrous. Thank you.

CHAIR BAISA: Thank you very much, Mr. Mulvihill. Members, questions for our testifier? If not, thank you very much for coming.

MR. MULVIHILL: Thanks a lot.

CHAIR BAISA: Our next testifier is Kutira Decosterd. And if anyone else is wanting to testify, the Chair would appreciate it if you'd come forward and sign up. Good morning, Kutira.

MS. DECOSTERD: Good morning, Madam Chair. Good morning. Again, I was not really thinking of coming and testifying, but something which puzzled my . . . *(change tape, start 2A)*. . . hearing and I just would like to share with you about those taxes. And I'm testifying for myself and I want to just share where I'm at. When I bought my land over 20 years ago it was for a pretty good price. I could afford it. I worked and now it has, it's now more in value, but the taxes when I hear that it would be taxed to what my value of the land regarding what I make, and last year in 2007 my income as a bed and breakfast which I declared with the tax, you know, to the, the Transient Tax and the GE Tax was a little bit more than \$50,000. And I want you to know that is without taking out what it costs to run a bed and breakfast. It's really a labor. I mean you work but it gives me that extra butter on the bread to make it work.

So, the taxes I'm not quite sure but I appreciate your questions, Jo Anne, of saying, yeah, well, what if it's a large property and has only a small, the income is small to them they pay. Yes. I have that question, too, because I belong to them. I want you to know I have maybe now my property is maybe now millions worth. I don't even know. I never had to do anything because it is my security. It's my social security. It's my husband and my only what we have to get old with. That land I don't own any other property. I own that land and I have worked with a vision it's going to take care of me as I take care of the land. But I am at that place where I do need that extra income to make it work but that extra income is not lots. So, I am ready to tell you what I have because I'm declaring it, you know, and I want you to know this is not much, but if you're going to tax me towards what my property is worth which I really don't care because I'm not intending to selling it. It is what--I will die on that land. That is where I live, where I belong. I don't know if I can keep my property. I don't even know if I can keep my business.

Right now this year I have not been able to operate. I would love you to just consider people like me too. So again I was not, I didn't want to come and talk, but it seems I'm the last one again. I really appreciate all of you making a way to find a way that we can do it, you know. And, yes, I'm on ag land. I need your support. I want to do it and I need that butter on my bread. Thank you. Any questions?

CHAIR BAISA: Member Johnson.

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VICE-CHAIR JOHNSON: Yeah. Thanks so much for coming. And I know it's hard because you do run, you know, your, your farming operation too. But one of the things that I was looking at because of the concerns that have been raised about taxing everybody at the same level when there are different degrees of how people manage their properties regardless of the acreage, regardless of the size. Would a sliding scale on the permit fee based on the number of rooms and the revenue generated from those rooms, do you think that would be something that might help us address some of the disparity in different people's operations?

MS. DECOSTERD: Well, as much as I understand for the lady who testified for the, she was before me about she said something about the liquor license, she was there and she said the liquor license is based what you pay of what you make. So, for example, why can I not be charged of what I make. You know like that you say there is a percentage of what you make, but yes, how many rooms and how much you rent out if you based me on, on the value of my property I'm out, I'm out it, because my property certainly raised its value. But it doesn't mean anything to me because I'm not speculating of selling it. However, of what I make, you know, like according of what my income is it should be in a way I'm willing to pay more because I am aware I am having a business, but make it in a way that I can operate my business. If, if I say I make around \$50,000 that doesn't really, if I tell you what I'm paying of it, you know, to run it there is not much left. Enough, you know, to, to really make it worthwhile.

VICE-CHAIR JOHNSON: Yeah. And, and that's the reason why I'm looking at if the taxation is put at something other than what was originally proposed or what we've been speaking about which is more in the hotel category. I think that perhaps we may have to look at a sliding scale for fees that are tied to the permit and based on all the things that you're stating as well as even some of the room charges and the impacts that you have in the area. So, I, I think that that would perhaps be a more equitable way to deal with all of the different operations. Just like yourself some are smaller. They have less impact. They are, you know, not getting the kind of income that somebody who might be in it 365 days a year and does a lot of advertising and has a lot of rooms for rent would be under.

MS. DECOSTERD: I mean I really think that's a subject which maybe needs more discussion. And the impact of the MVRA should be, definitely be considered because they have the biggest understanding of what kind of people are in that business and find a way where everybody is kind of like taxed in a way we can continue with that business where it's not outrageous, and yes, there should be something. But to find a way which really makes it worthwhile.

VICE-CHAIR JOHNSON: Thanks very much. Appreciate it.

CHAIR BAISA: Thank you, Member Johnson. Any additional questions? Member Medeiros.

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COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair. And thank you for your testimony this morning. Can I ask you what area your property is in?

MS. DECOSTERD: Yes. I'm in Haiku, Huelo.

COUNCILMEMBER MEDEIROS: Haiku, Huelo.

MS. DECOSTERD: Yes. Huelo.

COUNCILMEMBER MEDEIROS: Okay. So, it's in Huelo?

MS. DECOSTERD: Yes, correct.

COUNCILMEMBER MEDEIROS: I see. Okay. And how large a property is it?

MS. DECOSTERD: I bought my property in 1988.

COUNCILMEMBER MEDEIROS: No. How large is it?

MS. DECOSTERD: Oh. It's three acres.

COUNCILMEMBER MEDEIROS: Three acres.

MS. DECOSTERD: Actually 2.8.

COUNCILMEMBER MEDEIROS: 2.8 acres.

MS. DECOSTERD: I would put it.

COUNCILMEMBER MEDEIROS: And so you do some farming on?

MS. DECOSTERD: Yes, I do.

COUNCILMEMBER MEDEIROS: I see.

MS. DECOSTERD: And I have no water by the County. I have my own water system. I have my catchment and it's, and yeah, it's quite a bit. Most of my money really goes to help support. Now, I need new wind towers. I need money for that.

COUNCILMEMBER MEDEIROS: Okay. Well, thank you for your testimony this morning.

MS. DECOSTERD: I appreciate that. Thank you.

COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair.

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CHAIR BAISA: Thank you very much for being here. If I remember correctly you've been here a few times. You kind of run like a sustainable operation don't you? You have your own water and your own, are you on the grid?

MS. DECOSTERD: No, I'm off the grid. I'm totally off the grid.

CHAIR BAISA: That's, that's incredible.

MS. DECOSTERD: Yeah. I'm, I'm really proud of it. And I'm a board member of the Summit International where I advise on how to be sustainable and I just came back last week from Switzerland and I'm leaving on the first of October to be in a meeting in Indonesia and then go to Bhutan for another meeting. I see every country. It's not just us in America or here us in Maui. Everybody is looking how can we make it sustainable, but I also see economy is really spiraling down. It doesn't matter if you're in America. I saw it in Switzerland and in Germany right now, too, that people are looking how they spending their money. And we're in for a rough time. So, of making it somehow possible of little businesses I consider myself as a small business. We need your support. We need your helping us to get through that, and not by tomorrow, we need it now. So, I didn't want to actually come up because I want to give you now the time to deliberate and find ways, but I just needed to put in that piece. And please do not hesitate. Make a decision now, don't hold off another year.

CHAIR BAISA: Thank you very, very much. Members, are we all done? Thank you very much, Kutira.

MS. DECOSTERD: Thank you. Thank you.

CHAIR BAISA: Appreciate it. Our next testifier is Jocelyn Perreira. And Ms. Perreira is our last testifier who has signed up. If there is anyone else, please be prepared to come up as soon as she's done. All right. Ms. Perreira, good morning.

MS. PERREIRA: Good morning, Madam Chair; Members of the Council present. My name is Jocelyn Perreira. I'm the Executive Director and the Tri-Isle Main Street Program Coordinator for the Wailuku Main Street Association Inc./Tri-Isle Main Street Resource Center. Our organization advocates for and represents the interests and needs of merchants, professionals, residents, and friends in our small towns with historic fabric. I'd like to restate again so it's very clear there's a difference between bed and breakfast and TVRs. We are concerned and request the removal of B-CT, Business, from the proposed new ordinance. We do not want to have these kinds of things within the small towns, the Business District areas. We prefer to maintain conditional use permit process. It is an important process but we do know it needs to be streamlined and made to be worked better so that we can determine the unique and difference.

It is important to note that when you speak about our small towns it's very important to have command of the facts. Paia Town has more than 80 businesses in town. And

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Makawao Town has vastly more than 90. These...this is really important, we all in for the fight of our lives. I have no qualms about the fact that every single merchant and every business for that matter today is struggling and they're struggling for a variety of reasons. The airlines not the least of which, the tough, tough economic times, mill closings, inflated rents, greedy landlords, you name it. I mean they are being inundated but it's not just even in our small towns. It's also in the malls. If you walk into the local malls, you'll see a lot of places vacant and empty as well.

What we cannot afford to do is compromise the product that brings and keeps bringing our visitors here. We don't want to be Anywhere, USA. This is not sold, Maui sold out to the highest bidder. If people want to come and visit our small towns, they need to, we need to protect the uniqueness found in the mixed use, the flavor, the real dynamic that is on the street that makes it a for real town and not a town that tried to be replicated. The authentic character and the dynamics of these small towns are the reason the visitors want to come and spend time in our small towns.

What needs to happen very honestly is to market to our local people who live here, our local residents, everyday people who are here whether they're transplants or they're longtime citizens. Efforts need to be made that way so that they are the meat and potatoes, the visitors are the gravy. We're all in this together and we have to think carefully. What we don't want to do and what we continue to do is strongly support our community plans. The process allows for ample input via noticed public hearings. There are unique circumstances and we support those unique circumstances in being wholeheartedly supported. Thank you for this opportunity to offer testimony.

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

COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair. And, Ms. Perreira, thank you for being here this morning.

MS. PERREIRA: You're welcome.

COUNCILMEMBER MEDEIROS: Yeah, we heard from a merchant from Paia that supports vacation rentals in the Business District zoning. So, do you have a sense of the different small towns that your organization represents about the consensus from those small towns as far as supporting or not supporting vacation rentals in these small towns as business people?

MS. PERREIRA: Yeah, well, first of all, I want to say we fully respect the rights of the person that testified to feel the way they feel and to support whatever they want to support. They may be representing a segment of the retailers that are out there and that strongly feel that way or a percentage that have been heavily impacted by transient vacation rental situation and there's no question to that. But our role and our obligation is to represent and advocate for the broader community that make up the small towns. We do this in a

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variety of ways. We've continually collecting data and information and surveying and having discussions and so on and so forth.

A while back when there was a business capacity study done for Paia, as an example, it was clear every single merchant had participated, as did professionals as did residents. We broke it up in teams with outstanding community leaders that represented sections of teams that went out in teams to get information and bring it back. And one of the things that came back at that particular time that I can share with you was that they wanted the town to be 60 percent kind of to the residents to support the sustainability to keep the town sustainable with like 35 percent toward, geared toward attracting visitors. They did not want to become a resort destination just to attract visitors. They realize the importance and, and the uniqueness and the specialness [*sic*] of their town that keeps people coming from all over the world to experience it, was that they had to be and remain a very real town. And that was what the results were. So, I can only share with you what the results were.

Beyond that they heavily participate in the community plan process which revealed and is clear in the community plans, the sentiments of the community, and they continue to strongly participate in the general plan process that identifies important policies to keep and retain the importance of small towns. All of our small towns are involved in that. And I can give you information related to that and let you know that, you know, nobody should be the bad guy here. Everybody is trying to eek out a meager living. I think some of the people feel like they got treated disrespectfully and we're sorry that some of these people had to suffer for those circumstances, but we are a nation and a County of laws and that's the only thing we have to stand on.

COUNCILMEMBER MEDEIROS: Okay. Thank you, Ms. Perreira. And you did mention that your organization does participate in the general plan process.

MS. PERREIRA: Yeah.

COUNCILMEMBER MEDEIROS: Now, do the merchants of the small towns participate through a different organization or do they participate through your organization?

MS. PERREIRA: We have representation in our organization for merchants. There are, in our small towns there is like Main Street towns, the towns that have historic fabric, in those towns they may have a merchant organization that are geared and focused on merchant related issues. Our goal and function is the overall big broad picture. We do have and insist upon merchant representation and retailing representation on our, in our organization so that we are getting a good random sampling and reflection of what the opinions are out there.

COUNCILMEMBER MEDEIROS: Okay. Thank you, Ms. Perreira, for your testimony and for your explanations. Mahalo, Madam Chair.

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CHAIR BAISA: Thank you very much. Members, any additional questions for our testifier? If not, Ms. Perreira, I just have one quick question.

MS. PERREIRA: Yes.

CHAIR BAISA: We've been talking about, you know, the, what's going on in the small towns, and of course, today it's more Paia because we have a representative from the Paia Merchants Association, but I understand this is also happening in Haiku and in Makawao. It's like ghost town nowadays when you walk through many of these small towns and I even find parking spaces in Kihei and Lahaina, which is amazing. But do you, I don't hear a connection, do you make a connection between the shutting down of the vacation rentals including B&Bs and TVRs and the downturn in business at all?

MS. PERREIRA: First of all, I'd like to say our small towns are not ghost towns. They're thriving and they having a little tough time, but please continue to come and visit and especially support them now more than ever.

CHAIR BAISA: You forgot I live Upcountry.

MS. PERREIRA: But the other question and the response to the...and there is ample parking if you park and walk and do a lot of things in the small towns. But there is a connection, yes. There is a connection that you have a downturn. Anytime you have one of the factors that, that draws visitors into the area that they're going to patronize businesses or so on and so forth of course you're going to have some sort of impact. You could take the bike tours and you can say the bike tours impacts small towns too because while they're coming through the towns it's causing the local residents to...to not...stay away from the town because they don't want to deal with the humbug of that. I mean there are very, but there are also different sides to any issue as you can see. So, have they been impacted? Yes, but there are visitors all over this island so if you market your business to all over this island you're going to get your fair share of businesses like everybody else. But I have no doubt that especially certain kinds of businesses like restaurants in those particular areas where these TVRs and bed and breakfasts are, are more heavily impacted, but that's one of the reasons why we are more supportive of the B&Bs as opposed to the TVRs. But we still feel they need to come under scrutiny and under a Conditional Use Permit process.

CHAIR BAISA: Thank you. Thank you very much for the explanation. Thank you for coming.

MS. PERREIRA: Thank you.

CHAIR BAISA: Any additional questions? No? Thank you very much. Okay.

COUNCILMEMBER MEDEIROS: Madam Chair?

CHAIR BAISA: Yes.

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COUNCILMEMBER MEDEIROS: Yeah. Being that we have bare quorum is it possible for a short recess for some personal needs being that we can't leave with a bare quorum?

CHAIR BAISA: Let me find out, let me find out if we have one, if we have any more testifiers and if we do would you mind we take that one and then take the break, or would you prefer the break now and we'll take our?

COUNCILMEMBER MEDEIROS: We just have one more left?

CHAIR BAISA: Just one more that I know of. Is there anyone else . . .

COUNCILMEMBER MEDEIROS: She's saying two. Oh, I saw . . .

CHAIR BAISA: Just one more?

COUNCILMEMBER MEDEIROS: Oh, one. Okay.

CHAIR BAISA: So, shall we wait?

COUNCILMEMBER MEDEIROS: Sure. No. We, yeah, we . . .

CHAIR BAISA: Thank, thank you, Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Okay.

CHAIR BAISA: Don't worry I promise I won't make you suffer. Okay. Our last testifier. Ma'am, you'll need to sign up after you testify please.

MS. STONE: I'm hungry too, Bill. I promise to be quick. Sharyn Stone. I'm Secretary of MVRA. I did want to make very clear, Jo Anne, just so you understand part of the condition of joining MVRA is that we are all registered to pay GET and TAT. There is never any suggestion of not paying those fees. We are more than willing to accept the loss of homeowner's exemption in exchange for the privilege of operating a B&B. And I did just want to reiterate on Tom's figures before so you know how much that would mean to all of us. It's a pretty hefty fee. For a home valued at 500,000 it represents an increase in property tax from \$400 a year to 2,425 a year, that's an increase 2,025 per year. For a home assessed at one million it represents an increase in this homeowner's property tax from 1,400 to 4,850 a year, an increase of 3,450 a year. Finally, for a property assessed at 2,005 [*sic*], I beg your pardon, 2,500,000 it increases this homeowner's taxes from 4,400 a year to 12,125, an increase of a whopping 7,725 a year.

Now that's just what we would be paying with the loss of the homeowner's exemption. What you may be suggesting when you're asking us then to pay hotel property taxes would quadruple those amounts. Then when you give me a heart attack by also

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suggesting that we pay a percentage of what we make, ah . . .*(laughing)*. . . Oh, good. Thank you. Our aim, our aim here after all this time is definitely have to have some legislation that works so we can still be in business. I did hear someone say before I think it was Warren saying he didn't want to see us...bed and breakfast and TVRs because of the increase in density. I would reiterate that we are using existing housing. That's very important. There is not an increase in density. I also heard the word commercial being thrown around yet again. I want to point out very clearly we are not a commercial use. We are a residential use as defined by the Uniform Building Code and also the Babson lawsuit that came up many years ago. The definitive finding in that legal case was that we are a residential use. Very clearly. I just want to summarize by saying what are the naysayers saying here? Bed and breakfasts are accepted all around the world but not Maui. I don't think so. Thank you very much. I'd be happy to answer any questions.

CHAIR BAISA: Thank you, Ms. Stone, and please be sure you sign up before you leave the floor.

MS. STONE: Yes.

CHAIR BAISA: Members, any questions?

MS. STONE: Thank you.

CHAIR BAISA: Thank you very, very much. Is there anyone else out there who would like to provide testimony this morning?

. . .END OF PUBLIC TESTIMONY. . .

CHAIR BAISA: If not, the Chair will call a recess and we'll be back at quarter of 11:00. The Committee is now in recess. . . .*(gavel)*. . .

RECESS: 10:32 a.m.

RECONVENE: 10:46 a.m.

CHAIR BAISA: . . .*(gavel)*. . . The Planning Committee will come back to order.

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

CHAIR BAISA: Members, with public testimony closed I would like to begin our deliberations today and in order for us to do that I'd 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 ordinance listed on today's agenda and entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE, RELATING TO ZONING". At our August 1st meeting, the Committee voted to, to delete Section 2 from

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the bill. An affirmative vote on--oh, I'm sorry I'm reading from the wrong thing. We're going backwards. We do not need to go backwards. We're supposed to go forward. Sorry about that. We have devoted several meetings of course to talking about the B&B bill. We've been focusing on three bills and today we have been talking about and will be talking about the B&B bill. As we discussed on our last meeting on September 2nd this package of bills includes legislation to allow B&Bs in Ag and Rural Districts, and TVRs in Business and Resort Districts. Members, Chair needs two seconds. . . .(gavel). . .

RECESS: 10:48 a.m.

RECONVENE: 10:48 a.m.

CHAIR BAISA: . . .(gavel). . . The menehunes have been in my desk. Now, I have the right papers. Apparently, menehunes got in my desk during the break. I should watch them more carefully. We're going to pick up where we started a while ago. And now that we're through with public testimony, in order for us to begin our deliberations today on the B&B bill I need to ask for a motion to recommend passage of the updated B&B bill which is the one you received for today's meeting. Since we have so many people here today I need a motion.

VICE-CHAIR JOHNSON: So moved.

CHAIR BAISA: Thank you very much, Vice-Chair Johnson.

COUNCILMEMBER MEDEIROS: And I'll second for discussion.

CHAIR BAISA: Thank you very much. All those in favor say aye.

COUNCIL MEMBERS: Aye.

CHAIR BAISA: Opposed, no? Motion carries.

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VOTE: AYES: Councilmember Medeiros, Vice-Chair Johnson, and Chair Baisa.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Hokama and Molina.

MOTION CARRIED.

ACTION: Recommending APPROVAL of updated B&B bill.*

*(*The vote was later retracted by Chair Baisa prior to the meeting being adjourned.)*

CHAIR BAISA: I would now like to ask Mr. Alueta--and I hope you've got your papers, Mr. Alueta, better lined up than I do--to please help us pick up where our deliberations left off at our last meeting. I'd like to call the Members' attention to Page 3 of Mr. Hunt's testimony, his correspondence really, dated, dated June 27th. This is what happens when a issue drags on and on and on. After a while we're drowning in paper. Mr. Alueta.

MR. ALUETA: Thank you, Madam Chair. After last meeting of this we had, we were discussing the amount of caps or permits --

CHAIR BAISA: Yeah.

MR. ALUETA: --per, based on per region. I believe my Director had explained that he had taken a percentage or rationale based on the MVRA's Kauaian Study that they had submitted with regards to the amount of B&Bs and TVRs that were out there legally or illegally and that was where the discussion sort of ended. It was at that time that I believe that Councilmember Medeiros, as well as Councilmember Molina, had concerns over the amount and wanted to potentially reduce that, that number of the cap. I also just want to make a note that the cap is not a goal. So, the cap is just the maximum amount of permits that the Department would potentially issue, but sometimes caps can be viewed as sort of a goal of what we want to desire in those communities. So, I just wanted to keep, have the Members keep that in mind when you're discussing it. And that's where we last left off, Madam Chair.

CHAIR BAISA: Thank you very much for bringing us back to date here. I remember what we were talking about but I also thought that we might be looking at any alternative recommendations that the Department might have, or are you still sticking with the recommendations that were preferred earlier?

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MR. ALUETA: Since the last meeting, the Department has not been able to gather any more additional information given the, the conferences that we, the Department had last week to meet with Real Property to discuss looking at housing units. And when we...the one concern or issue that we may have with housing unit is we count, housing units aren't necessarily ag structures. Theoretically, although, although people may have a dwelling, an ag dwelling. I'm not sure how that is counted and...from the agricultural, I mean, from the Real Property Tax. And so, I have not worked with them to get any numbers. I remember giving you some structural numbers but that was just a ballpark from the Real Property Tax, and I have not been able to work with them to refine it in any way.

But again at this point in time for discussion purposes, you know, I think the main issues or the concerns that came up was from the two Council Members as to their particular districts and to how they wanted those modified as sort of a starting point. Like...although it's a cap, this is a law. Laws often get amended. So, I'm not, I'm not thinking that anything we put down today or get, even if it gets adopted by the full Council is going to be set in stone forever.

CHAIR BAISA: Thank you very much. I think that's a wonderful point to make. You know many times people feel that we're going to make a law and then we have to live with it forever. Well, really we make these laws and I think we can amend them. I'd also like to point out the attendance today of Scott Teruya who is our Real Property Tax Administrator and he's with us today. And I'm wondering, Scott, if you could join us somewhere so that you can participate in the discussion where there's a microphone. He's very patiently sitting in the back there. We'll get him situated with a chair and a mic. Would it be easier to...will that chair come out? Or how about Mr. Victorino's Chair since he's not with us today? We have an expert mover here, Mr. Alueta. Good, good job, Joe. Okay. This is Mr. Teruya. Mr. Teruya, any comments in regard to this dwellings and how we count them and whatever?

MR. TERUYA: Council Members and Chair Baisa, . . .*(change tape, start 2B)*. . . first of all, regarding the unit counts, we did some real preliminary numbers that broke out units per district and per classification. However, we never got the chance to break it down with the Planning Department and identify what units are we really counting for discussion as far as a TVR because, you know, our, our units include every classification including Hotel and I'm not sure if these units would be good numbers to be included in the, in the analysis so we would ask for more time to work with Joe and the staff.

CHAIR BAISA: Thank you very much for those comments. Members, any comments? Member Johnson.

VICE-CHAIR JOHNSON: Just to clarify then as far as the caps go, is your Department still basically, and I guess this would be for, for Joe or Kathleen Aoki, are we just looking at going with what we have right now or are you suggesting that we wait till we get a little bit more information? I just want to be clear about the direction we're headed in because last time I made a motion to actually move forward with the proposed caps in the areas as

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had been stated as a I guess consideration and so that motion lapsed. So, now we're here with this new schedule. So, I just want to know should I be making that motion again or should I not?

MR. ALUETA: I'll give you the...Madam Chair?

CHAIR BAISA: Go right ahead.

MR. ALUETA: Council Member, I'll just give you where I guess my Director was going at the time and the rationale behind the numbers. His basis for the numbers were based on the Kauaian Institute what was out there as far as legal and illegal TVR and B&B operations, which I think you could say operated during the Arakawa Administration and maybe before that on kind of a laissez-faire market meaning there was no regulation or regulation was not enforced. And therefore, the, the...those that operated illegally or legally did so based purely on market demand. So, if there was a demand for vacation rentals within the Haiku district, that's where they congregate or on the North Shore or in Hana or wherever. And I think that's...and, and not, maybe not so much so in the Kahului area or maybe in the Kihei area where a lot of that demand may have been picked up by condominiums and the hotel and resort areas. Maybe not so much in the West Maui areas because they were being picked up again by the condos and, and our existing destination resort areas. And so, where we did not have pure hotels in the demand for those locations by visitors was not great. And I think that's where...that's one of the benefits I guess you could say of using the numbers picked up by the Kauaian Institute in that it, it sort of picks up a free market demand for these alternative accommodations. And so, it might be good to use those as...and, and use that as a starting point as far as percentage-wise and then trying to regulate them and trying to take into account the, your other existing laws that need to be accounted for and also your existing demands of your communities as to how much impact they are on those communities.

VICE-CHAIR JOHNSON: Yeah. And, and these are...because we're talking only about the bed and breakfast permits right now I know some of the concerns that were expressed are about, well, when you come to the transient vacation rentals which we haven't moved off B&Bs yet these are the caps on the B&Bs. So, you're intending to have caps also on transient vacation rentals units or no?

MR. ALUETA: I think it says so in the, in the letter on Page 3 is that it does not account for transient vacation rentals. It...although you, you know, you've muddied the water I guess when you expanded it to the ohana unit or to a second dwelling. I guess the intent was that you would capture some of that demand that exists out there or some of those existing units that are called TVRs because they don't meet the definition of the current B&B ordinance. So, some of those, some of those TVRs maybe picked up by the...your new definition or proposed definitions for a bed and breakfast, and therefore, that may change. We haven't even gotten to that point of talking about it but the Director does state that if you do follow our proposal which is to eliminate the option of the conditional

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permit for transient vacation rentals, okay, and only leave the options of a bed and breakfast or your new definition of a bed and breakfast, and potentially some of our other locations that we've suggested for TVRs to be steered toward, then you may want to consider increasing the cap of this B&B.

But I think for the sake of the discussion and simplicity we're only trying to focus on let's get through the hump of the B&B because I think from our standpoint that can be, that's the bulk of our goal is to streamline the process for people who want to operate a bed and breakfast.

VICE-CHAIR JOHNSON: Yeah. I, I really appreciate that. This would, my next question would be to Mr. Teruya, when we're looking at the bed and breakfast some of the testifiers have stated that, you know, they believe the improved residential would be an appropriate category. They would be giving up of course the homeowner exemption or at least that's what we've been discussing. So, I don't know if you've had an opportunity to look at some of the revenue projections and some of the figures that we were presented with today. But can you give us a sense of I guess in combination for the revenues that we would be anticipating receiving and the revenues that we're not receiving now, are these figures in your estimation fairly accurate?

CHAIR BAISA: Mr. Teruya.

MR. TERUYA: Ms. Johnson, I haven't had a chance to review the numbers that you had, but, you know, I, I couldn't speak as to how much more revenue would be gained. I can give you an estimate as to the difference we would receive if somebody did not have a homeowner's exemption. That I can do. You know like I would just use like maybe a median figure of like 600,000 as a home and if you were to have a home exemption, you know, you take 300,000 off the bat. You got 300 times the tax rate of \$2 that's \$600 in property taxes as a homeowner. So, if you did not have it, it would 600 times 4...in improved residential 485 that would about 23...\$2,400. So, I couldn't, but I couldn't tell you how much more we're going to get, but that would be an example as to whether you had one or did not have one. So, the difference taking out 600 from there would be I guess around 22...2,300 for improved residential. But you got to understand that not every property goes to improved residential.

VICE-CHAIR JOHNSON: Right.

MR. TERUYA: If you're in Ag zone you're going to Ag and that's a different tax rate, you know, 450 per 1,000. But I also wanted to make...alert your attention to the fact that in the, if a proposal is to allow B&Bs or TVRs in a region, that becomes your highest and best use and all those properties in that region may be classified differently, yeah.

VICE-CHAIR JOHNSON: Uh-huh.

MR. TERUYA: So, it's different from a conditional use permit process.

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VICE-CHAIR JOHNSON: Because then what you're doing is you're giving them the potential to I guess do a business or do something that somebody else may not have the right to do --

MR. TERUYA: Um . . .

VICE-CHAIR JOHNSON: --as long as it's through a permit process.

(NOTE: Short pause.)

CHAIR BAISA: Gentlemen, would...do, do you really feel, --

VICE-CHAIR JOHNSON: Chair?

CHAIR BAISA: --what, what the Chair is feeling is that we're probably not ready to discuss a cap today. I think both Departments have informed us they have not had the opportunity to put their heads together and that it doesn't make any sense for us to sit here, you know, playing volleyball. What I'd like to suggest is that the next time we take this up that, hopefully, we can have a proposal from that's worked on by Real Property and Planning. That would be very, very helpful so we can move this along. Is that okay, guys? Members?

VICE-CHAIR JOHNSON: That, that's fine.

CHAIR BAISA: Okay. We have one more issue that I would like to take care of today and it's a very simple issue, but I would like to ask the Members if we could change the title of this bill. You know we have so many bills. We have three bills and we have versions of bills and more bills. And every time we get a pile of stuff we don't know what we're looking at. And as it is now the title of the bill doesn't tell us what it is. It's kind of vague. It says "A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE, PERTAINING TO TRANSIENT VACATION RENTALS". When, actually, at this point we're talking about a bill that is pertaining to bed and breakfast. And the Chair would really appreciate a motion to change this title so we know clearly what we're talking about.

VICE-CHAIR JOHNSON: Madam Chair, I move to clarify the title of the bill to reflect, "A Bill for an Ordinance Amending Title 19, Maui County Code, Relating to Zoning as it Pertains to Bed and Breakfast".

CHAIR BAISA: Thank you. Do we have a second?

COUNCILMEMBER MEDEIROS: Second.

CHAIR BAISA: Is there any discussion necessary?

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VICE-CHAIR JOHNSON: Um. . .

CHAIR BAISA: Or any comments by any of our experts? Member Johnson, I'm sorry.

VICE-CHAIR JOHNSON: And my language may not be the perfect, but what I think Staff can do if there are other suggestions obviously when this comes out of Committee I think it's important to know and for the general public to know what we're talking about. And because of how we've separated clearly now bed and breakfast from transient vacation rentals I think that we need to let the public know what we're actually meeting on and what they can look this up underneath in the County Code. So, I don't know if Planning has any comments but that would be my suggestion.

CHAIR BAISA: Thank you very much, Member Johnson. That's very clear to me. You know, if we don't have a clear title on it every time we look for it it's hard to find and when we're looking at...looking maybe six months from now we're not really sure. I'd like a comment from Corp. Counsel and Planning. Is that okay with you guys? Mr. Hopper, would you go first.

MR. HOPPER: I see no problems provided the Council in its rules researched and knows that it change the bill under these circumstances. I'm not familiar with any situation or any reason why it would not be allowed to. The title is fine.

CHAIR BAISA: I had asked the question of legal counsel and told I was okay but I just want to be sure. You don't have a problem?

MR. HOPPER: I do not.

CHAIR BAISA: Okay. How about Planning?

MR. ALUETA: The Planning Department, well, the way we have it on our link to our Planning Department site it's a package of bills --

COUNCILMEMBER MEDEIROS: Yeah.

MR. ALUETA: --relating to B&Bs and it's labeled as bed and breakfast and transient vacation rentals. And so, we don't really want to change the title because we're, our bills are the bills that we drafted and proposed and they relate to both, both topics. It's just that the topic you're dealing with today and focused on is only B&Bs.

CHAIR BAISA: Could we add to that instead of taking anything out and include bed and breakfast in the title somehow? It's just difficult. We have three bills and every time we talk about them we call them bill 1, 2, and 3 and nobody knows what we're talking about.

MR. ALUETA: I don't have a problem with the one you're talking about right now to change it.

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CHAIR BAISA: That's what we're talking about now.

MR. ALUETA: Yes. That's...sorry.

CHAIR BAISA: Okay. So, everybody's okay with Member Johnson's motion? Any more discussion? If not, all those in favor please say aye.

COUNCIL MEMBERS: Aye.

CHAIR BAISA: Opposed? The motion carries with three ayes and two Members excused, Member Hokama and Member Molina. Thank you very much.

VOTE: AYES: Councilmember Medeiros, Vice-Chair Johnson, and Chair Baisa.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Hokama and Molina.

MOTION CARRIED.

ACTION: Recommending APPROVAL to change the title of the bill relating to zoning.

CHAIR BAISA: I wanted to get that out of the way to provide clarity. You know even in chambers when we're discussing this issue and I hear it at forums and I hear it at everywhere I go people are very confused about bed and breakfast and TVRs and do not understand there is a substantial difference. So, I think the sooner we make that clear the better for everybody. Okay. Mr. Alueta, is there anything else on your list? Otherwise, I'll go to mine.

MR. ALUETA: I believe just on continuing down Page 3 of the Director's letter was just the Administrative Rules to add that to 19.64.200.

CHAIR BAISA: And that says?

MR. ALUETA: The Director may adopt the Administrative Rules to implement provisions of this title, of this chapter, excuse me.

CHAIR BAISA: Members, questions? Comments in regard to Administrative Rules?

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COUNCILMEMBER MEDEIROS: Chair?

CHAIR BAISA: Yes.

COUNCILMEMBER MEDEIROS: Yeah. Could Mr. Alueta say again what page?

CHAIR BAISA: It's on Page 3 of the June 27th letter from the Planning Director.

COUNCILMEMBER MEDEIROS: Okay. And is that the one?

CHAIR BAISA: No.

COUNCILMEMBER MEDEIROS: No?

CHAIR BAISA: David, any possibility we could put that up or?

MR. RAATZ: Yeah.

CHAIR BAISA: If you could. This essentially allows that the Planning Director and the Planning Department to develop Administrative Rules for the Administration to implement the provisions of the chapter that we're working on. And we, of course, need to approve that.

VICE-CHAIR JOHNSON: Madam Chair, I will make a motion then that under 19.64.200, Administrative Rules, that we include the following, the Director may adopt Administrative Rules to implement the provisions of this chapter.

CHAIR BAISA: Thank you, Ms. Johnson. Do we have a second?

COUNCILMEMBER MEDEIROS: I'll second it for discussion.

CHAIR BAISA: Thank you very much. Member Johnson, comments?

VICE-CHAIR JOHNSON: Yes. Madam Chair, as was noted by Mr. Alueta from Planning, we don't necessarily approve the Administrative Rules, but this bill would give them the authorization to do what's actually needed to do the nuts and bolts of how they're going to set up the permit system, and, you know, those are the details that are administrative in nature. We don't really get into that. We can make suggestions but I think that every, every ordinance we have has to have this component so it's pretty much standard. Thank you.

CHAIR BAISA: Thank you very much. Member Medeiros, any comments?

COUNCILMEMBER MEDEIROS: No, further comments. Thank you.

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CHAIR BAISA: Planning, any comments?

MR. ALUETA: No.

CHAIR BAISA: Thank you very much. Mr. Corporation Counsel, comments? You're okay with the motion? Okay. Members, any additional discussion? Yes, Member Johnson.

VICE-CHAIR JOHNSON: Just, just one clarification. Because we always get hung up on the word shall or may, and because we always get accused of, well, it says may, but then they maybe not, and then they never get implemented. Should the word "may" in a friendly amendment be changed to "shall"? Do you have an objection to that, Mr. Alueta?

CHAIR BAISA: Or Mr. Corporation Counsel? Let's let Michael go first.

MR. HOPPER: I would advise in this situation the "may" language, the mandate to create rules. This is an interesting bill because there's a lot of things in the bill itself that are oftentimes the subject of Administrative Rules. The Department may have enough in the bill in its current form to administer the permits without more rules. The idea of having rules there would be in case they need them or if it turns out to be a mess in implementing, they could adopt rules which may not rise to the level of amendments to the bill but can as it says implement the chapter. Implement how things are going to be done to make it sort of basically clear to everybody. And those like you said are not reviewed by Council. They would have to be, we'd have to have a public hearing before adopting them, but the Department would make the final decision on whether or not to adopt those rules.

VICE-CHAIR JOHNSON: Okay. So, what you're essentially saying is that the "may" language the way it's structured currently would at least allow the ordinance to be implemented and not have to specifically wait then for all of those other extensive hearings?

MR. HOPPER: That's another issue. Yes. It's good to point out you wouldn't want the Department to have to say, well, we have to wait till we adopt these rules --

VICE-CHAIR JOHNSON: Yeah.

MR. HOPPER: --or otherwise we can't grant permits.

VICE-CHAIR JOHNSON: Okay. That's understood and hopefully we'll be clear enough and there will, there's certainly a good record, Madam Chair, developed by this whole hearing that if our wishes are not made known or clear at this point I don't think they ever will be. So, thank you and I'll support this because I just believe it's the right thing to do.

CHAIR BAISA: Thank you very much, Member Johnson. And thank you for asking that question because that comes up all the time and now we know why the "may" is better. Okay. Any other comments on that? Member Medeiros, ready to vote?

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COUNCILMEMBER MEDEIROS: Yes.

CHAIR BAISA: Members, all those in favor say aye.

COUNCIL MEMBERS: Aye.

CHAIR BAISA: Opposed, no? Motion is carried again with three ayes and two Members excused, Member Hokama and Member Molina. So we've taken care of the Administrative Rule amendment.

VOTE: AYES: Councilmember Medeiros, Vice-Chair Johnson, and Chair Baisa.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Hokama and Molina.

MOTION CARRIED.

ACTION: Recommending APPROVAL of a new Subsection 19.64.200 to Chapter 19.64, Maui County Code, relating to Administrative Rules.

CHAIR BAISA: Mr. Alueta, anything else from your end?

MR. ALUETA: No, Madam Chair.

CHAIR BAISA: Thank you very much. Now, let's deal with...we have had quite a while back, in fact, it was given to us on June 19th a proposed amendment that was submitted by Riki, Chair Riki Hokama and it is in regards to transient vacation rentals legislation PC-40. And he has stated that he would like to suggest an amendment in Section 3 of a bill for an ordinance amending Title 19, Maui County Code, relating to zoning, which we have now added bed and breakfast, to incorporate the following provisions to Section 19.64.060, Compliance and Revocation, as follows: E, he would like to insert, "No later than January 15th of each calendar year, the Department of Planning shall transmit to the Real Property Tax Division, Department of Finance, an annual list of all bed and breakfast homes as of January 1st of that calendar year. The Real Property Tax Division shall review its records and determine that none of the bed and breakfast homes have a homeowner's exemption." He further states the purpose of this amendment is to provide a means for the Real Property Tax Division to verify that approved bed and breakfast

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homes are not receiving a homeowner's exemption before issuance of the annual real property assessment notice.

The Chair would request a motion to adopt Member Hokama's suggested amendments so that we can discuss it.

VICE-CHAIR JOHNSON: So moved.

CHAIR BAISA: Thank you.

COUNCILMEMBER MEDEIROS: Second.

CHAIR BAISA: Thank you, Members. Member Johnson.

VICE-CHAIR JOHNSON: Yes. I'd like to hear from Mr. Teruya at our Real Property Tax Division because I think did the dates work? That's one of my first questions and is this able to be easily implemented also by Planning?

MR. TERUYA: Yeah. I believe this, this is a good measure for us so we can just cross check. And the dates would work fine for us. It's enough time to verify it prior to doing our extract for assessment notices. So, yeah, the division would be, this really helps the division, yes.

CHAIR BAISA: Thank you very much. Mr. Alueta, comments?

MR. ALUETA: Uh. . .

CHAIR BAISA: Since it's going to come from the Planning Department.

MR. ALUETA: Yeah, we'll be able to and we currently will be...we currently cc the Real Property Tax on the approval letter upon the granting of a bed and breakfast or transient vacation rental via the conditional permit and SUP process. This would just make us consolidate and do in addition to that physical notification immediately after the approval we would then run an approved list and send him a comprehensive list for the past calendar year.

VICE-CHAIR JOHNSON: And I really appreciate that. I think this is also a very good measure. And there is one additional thing that I think even though it's just transmitted to the Department of Finance I don't know if you could just as a courtesy include just for information purposes to the Council. I think it's good for us to know because when we're looking annually at where we're going and if we're getting close to caps or we have reached our limitations on number of permits issued for B&Bs, I really think that it's really important to just have us be aware of what's going on, too, in our communities. So, I don't know if you want to include that as a . . .

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CHAIR BAISA: Would you do a friendly...a friendly amendment?

VICE-CHAIR JOHNSON: My friendly amendment would be just to the Department of Planning shall transmit to Real Property Tax Division, Department of Finance, an annual list of all B&B homes and then I guess right at the end it said a courtesy copy shall also be provided to the County Council for information purposes only.

CHAIR BAISA: Member Medeiros, okay with that?

COUNCILMEMBER MEDEIROS: I'm fine with that, Madam Chair.

CHAIR BAISA: Okay. Mr. Hopper, any concerns? None? Mr. Alueta, no problem?

MR. ALUETA: No problem. Is there a specific committee that you wanted or should I just send it generally to the Council Chair --

VICE-CHAIR JOHNSON: Council.

CHAIR BAISA: To the Council.

MR. ALUETA: --and they'll forward it to the appropriate Committee. That's not a problem. Thank you.

CHAIR BAISA: Okay. Thank you very much. Is there any more discussion on that? If not, the Chair would like to call for the vote. All those in favor please say aye.

COUNCIL MEMBERS: Aye.

CHAIR BAISA: Opposed, no? Motion carries again with three ayes and Members Hokama and Molina excused.

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VOTE: AYES: Councilmember Medeiros, Vice-Chair Johnson, and Chair Baisa.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Hokama and Molina.

MOTION CARRIED.

ACTION: Recommending APPROVAL of amendment to Section 19.64.060, Compliance and Revocation.

CHAIR BAISA: We're moving on guys. Okay. We have also had today a communication from Member Johnson suggesting several amendments and I will turn the floor over to Member Johnson.

VICE-CHAIR JOHNSON: Thank you very much, Madam Chair. And I know that, you know, you know whether we agree as a body or not on, on ag I am very aware of some of the problems that have been posed on ag land. And so, I proposed three different amendments that would really look if we're going to go on down the road on B&Bs, then I'm looking at trying to be a little bit more restrictive especially on properties that have Ag zoning but have filed a Condominium Property Regime. I have a real serious issue with Condominium Property Regime on ag land and my main concern is because the subdivision laws were created and most of our small family farms they'll go through a subdivision process. They won't utilize a Condominium Property Regime. This was devised to allow two non-related owners to be on the same tax map key. Now each one of those at least on ag land, if they're both in full residence, they're each getting a homeowner exemption.

Now, I don't want to confuse the issue anymore but I think that the secondary dwellings particularly where it's Condominium Property Regime, it should be consistent with State law, which says that the secondary dwelling should be for farm related uses. And if you have a secondary residence on your property in my view that secondary residence should be for the farm workers. So, I just want to eliminate and prohibit bed and breakfast homes on any Ag zoned property that held pursuant to Condominium Property Regime. And that's my reason principally for doing it. If someone has a family farm subdivision I don't even mind at some point including family farms that, you know, it's okay, because that's the whole purpose I think of why we're literally trying to save the family farm. If they're having difficulty making it, the justification would be I think we had one gentleman come from Hana saying that he was struggling. And I mean fertilizer costs are going up. There's a lot of things going on but most of the people that have filed under CPRs they're very sophisticated. You know, they're not, I mean it's something that's

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new. It's not where the family has been on the land forever. It's a mechanism whereby two owners can go on one lot and do their thing and create, you know, a setting where they are actually in some cases not even doing farming. So, anyway that's my reason for trying to get that out.

The second one and I spoke about this and this would be in all categories, because I think early on I did talk about the difficulty with covenants and restrictions and where you have your association bylaws and the community association or private agreements among the residents or owners. I want to make certain that we don't step into an area that's not really clear and that I want to make sure those CC&Rs, the bylaws or governing documents specifically state that, yes, it's fine to do a bed and breakfast in our particular area. Because that's one of the biggest complaints I've gotten about the adoption in mapped areas or in areas where clearly the condominium or even our association bylaws in the condominium where we live they strictly prohibit it. But I just want to make sure that across all zoning categories that that is not going to become an issue.

And then the last one is that in order to qualify for a B&B permit on Ag zoned property, the applicant must comply with all aspects of Chapter 205, HRS, and provide proof that a farm plan has been fully implemented including evidence of farm income as required by law. And that is something that I believe Mr. Smith talked today and also Mr. Shibuya about consistency with State law and even with our own Constitution. So, I've included as part of my justification for this citation from Chapter 205, which provides the following declaration of policy. And it says it's declared that the people of Hawaii have a substantial interest in the health and sustainability of agriculture as an industry in the State. There is a compelling State interest in conserving the State's ag land resource base and assuring the long-term availability of agricultural lands for agriculture use to achieve the purposes of, then it goes on to say (1) conserving and protecting agricultural lands, (2) promoting diversified agriculture; (3) increasing agricultural self-sufficiency; and (4) assuring the availability of agriculturally suitable lands, pursuant to Article XI, Section 3, of the Hawaii State Constitution.

So, what I want to try to do is prevent or at least this, this challenge that we may have because of the, the actual language that states no overnight accommodations on our Agriculturally zoned lands. I don't know if this will prevent any litigation on the road that we're currently headed down, but I think if we tighten up and we make sure that there is full compliance with the State law and that the principal dwelling is in support of agriculture activity which is the principal use on the ag land. And that also a secondary dwelling is in support or any ancillary dwellings are in support of the agriculture activity going on in ag land. I'm going to try to, you know, do the best that I can to limit potential challenges, because as we know it's not the people that want bed and breakfast permits on ag land that are going to challenge the law. It's the people that will cite the laws under our State Constitution and other citations even under County Code with regard to community plans that . . .(change tape, start 3A). . .will challenge what we're, you know, about to do. So that's the reason why I'm proposing these amendments. And I'm not intending to take a vote. I wanted to have them out so that we don't get criticized

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for not putting things out in the public domain for comment and particularly because we only have bare quorum today, and because we're not going to be able to address the issue of caps.

I just put it out there for consideration and my justification I feel is that, you know, we talk about supporting small farming operations and small farmers and I just don't want to see more pressure put on the development of our ag lands where we could have the opportunity to actually have sustainable farming. And of course taxes will go up, too, on ag land where we expand the permitted uses. So, I do want to see these amendments or possible amendments reviewed by the Members and I'd like comments, too, from our Administration as well.

CHAIR BAISA: Thank you. Thank you very much for submitting this and for your explanation. The Chair also does not intend to vote on these amendments today 'cause they're brand new and I'd like to hope for some public input so that we know how they're, you know, what their reaction is to this and about the impacts of all of the things that we're going to do. I figure we might as well hear about 'em now before we do it and then have to spend a whole lot of time here again or in court. So, I'd like to hear if there's any reaction from the Planning Department and also from Corp. Counsel and that we can think about and of course we can look at this again at our next meeting. But, Mr. Alueta or Ms. Aoki, any, any comments?

MR. ALUETA: Not anything significant. I think that the...with regards to the condominiumization of agricultural you're talking about both, because when you condominiumize say you have a two-acre lot and you condominiumize out one acre for the so-called accessory dwelling or farm labor dwelling you're not, you're not talking just about that 1,000 square feet, you're talking about both properties would be prohibited.

VICE-CHAIR JOHNSON: I'm talking about both properties. Yes. Yeah.

MR. ALUETA: Okay. So, I just wanted to be clear on that.

VICE-CHAIR JOHNSON: Yeah.

MR. ALUETA: And as far as the CC&Rs that's or other covenants if it's a recorded document we'll be able to, we can have that as a requirement of proof that, that they don't have any restrictive covenants, and that can be handled also, through like I said, administrative procedures, but this would make it clear that as far as one of the checkpoints.

VICE-CHAIR JOHNSON: Right. And the reason that I put this in the affirmative, Madam Chair, on No. 2 is that if it's...sometimes CC&Rs are silent on an issue, but I want to make it abundantly clear that when, 'cause we're going through this right now on some of our properties that are covered by community association in Lahaina right now, I want to make sure that it states in their bylaws and governing documents, yes, that it is permitted. So, when people buy into these areas, they know what they're buying into, because we

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have neighbors, you know, complaining and turning in other neighbors. And I think you guys know which property I'm talking about. But it's just a nightmare for us to come in and try to enforce and resolve these very contentious issues where the people that live in these complexes don't agree on it. So, I say if their CC&Rs or their bylaws and governing documents, whatever it is, it better very clearly state that, yes, it is permitted. And then when those get handed out to the individuals that move into those areas they can't say that they did not know that this was a permitted use

CHAIR BAISA: I agree with you. It's not fun to be in the middle of, you know, a bunch of people living together that are not in agreement as to what the rules are. Mr. Alueta.

MR. ALUETA: Thank you, Madam Chair. I just wanted to be clear on, or the intent was that so if it's in the case of, or you would prohibit the B&Bs unless it is either, it has to be strictly listed as allowed before we can grant a B&B? So, if it's, if it's left silent in their CC&Rs and either prohibited or I mean if they just don't say anything about B&Bs, then we are to take that as that it's prohibited?

VICE-CHAIR JOHNSON: Yes. And the reason is that when you are very specific in your covenants and your restrictions, your bylaws and governing documents, before they come and they apply for permits it should specifically have that amended in their bylaws and governing documents so everyone is clear. Because we're getting into situations now where they don't make mention of it and then we're running into problems because people are challenging it.

MR. ALUETA: Okay. And this would not apply to areas that do not have any CC&Rs?

VICE-CHAIR JOHNSON: That's exactly right. Yeah.

MR. ALUETA: So that would be okay to grant B&Bs if they met the qualifications?

VICE-CHAIR JOHNSON: As long as it's within the community plan and as long as there's no other illegal, you know, things that we pass or it's against State law. But I don't have a problem with that but specifically on community associations or areas where they seem to always try to bring us into the picture, and then we have nothing legal that we can go back to. So, I just wanted to prevent that point from being raised in the future. And we're not about to enforce covenants and restrictions, but I'm saying that if someone who lives in a community association or a complex that has governing documents that they better present to the Planning Department clear evidence that this is a, you know, okay with our association and we're fine with it.

MR. ALUETA: Yeah, I think if we do it it's just going to be from the implementation side, and to reduce the liability to the County we're just going to have to be very careful within our application procedures that they're going to have to certify that they're not in violation of their covenants and their CC&Rs and that it would...and that, you know, the, and if we do accidentally grant one and find out later from a neighbor or someone else that they did

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have a restriction that the permit would be, would be, would become null and void. And so, I'm just trying to think of the mechanics from once we do the legislation how do I implement it or how does the staff implement it and also at the same time protect us from liabilities. And the reason that we don't normally like to, we don't enforce CC&Rs is because...and put normal restrictions such as that like those in other places that we don't want to be enforcing CC&Rs. However, because this is an additional permit, the permit requirement is not something that we're outrightly [*sic*] granting, but you still have to apply for a permit. I think we can, administratively, we can come up with a process to implement what your desire is, Council Member.

VICE-CHAIR JOHNSON: Right. And, and that's what I envision is that, you know, they either produce a certified copy from the board, of current, you know, CC&Rs or whatever it is but some type of legal documentation. Not so that you have to do additional work but if the person really wants that permit that the burden is placed on them so that they can certify and whether through affidavit or other means, but I, I would certainly think that getting a copy of the section of their bylaws and governing documents that affirms that would be in their best interest. And if it's not currently included, then my suggestion is for those complexes to get their bylaws amended if they want to permit it.

CHAIR BAISA: Thank you, Member Johnson. Mr. Hopper, any comments on this issue?

MR. HOPPER: Having just received this right now I'd like to reserve some comments for the future. This and all the rest of this, the revisions that we've been making here are going to have to come through our office, and we're going to have to approve them as to form and legality, not just any new proposal but also all the consolidated proposals, and, and I already have thought of a couple of issues to bring up. At the offset, I would generally say that in permitting bed and breakfast, the same way with TVRs you have extremely broad discretion as a Council in what you would like the Planning Department to consider in granting those permits. We typically, as Joe said, do not enforce private CC&Rs, but there are provisions in the Code such as 19.37.010 dealing with timeshare plans and transient vacation rentals where the issue of whether or not a use is expressly or conspicuously shown in the project documents is an aspect of that law. So, it's not completely unprecedented to have to look through and find a documentation to that effect.

I think you would want to know and it's important to know as Joe said about the implementation exactly what will this entail, how will it affect those applying for B&Bs, those that have perhaps no CC&Rs or those that have them that are silent would this impose a requirement that the applicants will have to go get their CC&Rs amended or will this, you know, prohibit a lot of them on ag land. Those are issues that I think you'd want to consider. But I would say those are policy issues at this point. Legally, I don't see a problem but we want to do some more digging and some more questioning on exactly how this would be implemented. At the outset though there's a lot of things that are required for these permits. Conditional use permits, for example, require findings and allow conditions on a broad range of topics. And so, I would say that at the outset

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initially, I wouldn't see necessarily any problems if it's the will of the Council that you review these documents. Again, if a, if CC&Rs restrict the use, the County even if it grants a bed and breakfast permit cannot override private covenants and conditions and restrictions. So, if someone goes, ignores them, gets a permit, they're subject to enforcement from their, their homeowners association whoever enforces it. The County does not have the power. Nor, nor would an association have the power to grant the land use that's not allowed by zoning. So, they exist independently of one another.

CHAIR BAISA: Thank you. Anybody...have our Administrative representative any additional comments on this issue? Members, no more?

COUNCILMEMBER MEDEIROS: Question.

CHAIR BAISA: Member Medeiros.

COUNCILMEMBER MEDEIROS: Thank you, Madam Chair. I wanted to ask the Planning Department because in Member Johnson's proposed amendments 1 and 3 they identify Agricultural zoned property. I would like to ask the Planning Department how does this affect in any way interim zoning, which we have a lot in Hana? Is there any connection if these are applied if the zoning is Interim?

MR. ALUETA: In . . .Madam Chair?

CHAIR BAISA: Mr. Alueta, go ahead.

MR. ALUETA: Councilmember Medeiros, only in areas where you have a County Interim and State Ag would that come into play.

COUNCILMEMBER MEDEIROS: Okay. So, if the State zoning is Ag and the County is Interim then these would apply?

MR. ALUETA: Yeah, as long as there's some ag. If there's either State --

COUNCILMEMBER MEDEIROS: Whether it's the State or the County.

MR. ALUETA: --or County, then these would come into play.

COUNCILMEMBER MEDEIROS: I see. Secondly, even though we're not voting on these today and I think that's good so that the other Members can review this and deliberate on it also with us hopefully in the next meeting, what is the farm income required by law?

MR. ALUETA: There is none under 205.

COUNCILMEMBER MEDEIROS: Then what is...part of, part of it is including evidence of farm income required by law in Item 3.

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MR. ALUETA: The new bill does have but not under 205. The new bill under 19.30A would require a farm income to be able to qualify to apply for a bed and breakfast permit.

COUNCILMEMBER MEDEIROS: So there's no conflict between Chapter 205 and, and what we're requiring on our ordinance proposal and does one supersede the other?

MR. ALUETA: No.

COUNCILMEMBER MEDEIROS: No.

MR. ALUETA: You have to actually...the County, like I said, the County can be more restrictive but can't be less restrictive than the State law. So, the State requires that the dwelling as well as the other one be subordinate to a farm activity. Also, the State law prohibits like I say overnight accommodations, however, within the Agricultural District. However, the loophole within 205 is 205-6, which is the State Special Use Permit. And so that is how people who are within the State Agricultural Districts have been obtaining either a transient vacation rental or a bed and breakfast establishment. So, under our provision, right, under 19.30A we're requiring that they, we're requesting I guess you could say a farm income test to meet the County requirements to qualify for a bed and breakfast application process. In addition to that bed and breakfast application process properties located within the State Agricultural District would also need to obtain a State Special Use Permit under 205-6 and meet Hawaii Revised Statutes Administrative Rules under 15-15-95, which outlines the criteria for an unusual and reasonable use within the State Agricultural District.

COUNCILMEMBER MEDEIROS: Okay. Thank you, Planning Department. Mahalo, Madam Chair.

CHAIR BAISA: Corp. Counsel.

MR. HOPPER: I'm not sure if I missed something but it appears this bill would only, these amendments as proposed would only apply to Agricultural zoned property, which doesn't include Interim zoned property. Right now, if you look under the County Code under Interim, it's bed and breakfast are not a permitted use. That may be subject to change if you consider allowing them in Interim or I think that's in a proposal coming up from the Department or I don't necessarily think there would a problem with expanding that by amendment. But currently, this Agricultural zoned properties would allow B&Bs if these amendments go through. This wouldn't apply to Interim because (a) it doesn't say Interim in these amendments and (b) bed and breakfast aren't a permissible use in Interim right now. It may be in the future but right now if you look through Interim zoning unlike the proposed changes in Ag and Rural, bed and breakfast homes subject to 19.64 is not listed as a permitted use. So, I don't, I do not believe that this would apply to...certainly these proposals don't appear to apply to Interim. I assume that was the

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intent that they would only apply to Agricultural zoned properties. Now if something is State and --

COUNCILMEMBER MEDEIROS: Right.

MR. HOPPER: --and community planned agricultural logically it should change from Interim to Agriculture or whatever the appropriate community plan is. But I think until that actually happens, which is either by ordinance or by a change initiated by the owner, I do not believe that bed and breakfast would be allowed on Interim.

COUNCILMEMBER MEDEIROS: Okay. Well, thank you, Corp. Counsel, for that, for those comments and clarification. Mahalo, Madam Chair.

CHAIR BAISA: Any additional questions?

VICE-CHAIR JOHNSON: I just want to make sure, Madam Chair, that I'm correct because right now the bills that we're looking at have never to my knowledge included the discussion of Interim.

MR. ALUETA: That, that is correct. And I misunderstood Mr. Medeiros's question. I mean Corp. Counsel is correct that as far as bed and breakfasts they're not permitted currently in the Interim District. I took it as meaning as how does it apply to Interim, well, if it's State Ag it would apply but as far as the County side they wouldn't be able to obtain the County side permit for the Interim District. They would have to either get a variance or the law would need to be changed.

VICE-CHAIR JOHNSON: And, and I really . . .

MR. ALUETA: And the 205 would apply.

VICE-CHAIR JOHNSON: Yeah. I really appreciate that because that I think sometimes it gets very confusing and we don't want to go there, because basically that discussion wasn't even held when these bills went through all the hearings at the various planning commissions. Not to my knowledge.

MR. ALUETA: With regards to?

VICE-CHAIR JOHNSON: Interim.

MR. ALUETA: I will tell you that there is a interim bill coming through.

VICE-CHAIR JOHNSON: Okay.

MR. ALUETA: And we did propose, we did add B&B to the Interim District and it did go through all three commissions and that will be transmitted up to you also --

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VICE-CHAIR JOHNSON: Okay.

MR. ALUETA: --as a separate matter.

VICE-CHAIR JOHNSON: As a separate item.

MR. ALUETA: Yes.

VICE-CHAIR JOHNSON: To further confuse the issue.

MR. ALUETA: Yes.

VICE-CHAIR JOHNSON: Thank you, Madam Chair.

CHAIR BAISA: Nobody ever said this was going to be an easy thing, but you know, we're making progress and every time we meet we move ahead a little bit more and that's what, you know, we need to do. We need to get this done.

I think that...the Chair has a couple of things I'd like to tell you. Number one, this morning when we called the meeting to order I asked for a motion to approve the updated B&B bill. Actually, what that should have done was to have the motion on the table rather than to approve it. We haven't quite approved it yet and we're probably a way from approval at this point.

COUNCILMEMBER MEDEIROS: Right.

CHAIR BAISA: As we can tell we're inching along. So, I just want to make sure that that's on the record and that everybody understands what we, what we're doing.

Based on what has transpired this, this, towards the end of this morning and we're getting close to lunch here and I think we're going to lose a quorum shortly 'cause of 12 o'clock appointments, the Chair would like to just say then that the last business that was brought to our attention by Member Johnson will be brought up at our next meeting. It will give everybody time to chew on it and think about it. And also we will expect some kind of discussion on the caps maybe by then our Departments will have time to get together.

If you're wondering why the Planning Department has been very busy, last week they were the host of the Hawaii Conference of Planning Officials here on Maui. And they were very, very busy. They had a very large attendance and did an incredible job of getting together a program and speakers and whatever. So, I know they're kind of probably backed up. It's hard to host something like that and not have it affect all the things you need to do. So, we appreciate all you went through. Not to mention they have a brand new Deputy Director who's not really new to the Department. She's worked

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very hard there for a long time. But, you know, they're going through some, some tough times too. Everybody is.

So, we will be again discussing this at our next meeting of the Planning Committee and we'll try our best to conclude this B&B bill as soon as possible. And so, the Chair then would like to thank again all of the people who have showed up today, all of our resource people, all of my Staff, all of our testifiers. Thank you very, and especially I want to thank the Members of my Committee. You know, we're meeting on an off day. We are normally off on a Thursday and my two stalwarts showed up and I really want to thank you guys for giving up your time to be here this morning and for your help with this. So without further . . .

MR. RAATZ: Madam Chair?

CHAIR BAISA: Yes.

MR. RAATZ: I'm sorry.

CHAIR BAISA: Yes. Go ahead.

MR. RAATZ: If the Committee's intention is to keep the pending main motion on the table before the body at your next meeting, Staff would recommend that there be a formal motion to postpone the pending main motion until 9:00 a.m. on September 30th in the Council Chamber.

(NOTE: Short pause.)

CHAIR BAISA: Just a little technical issue here because I want you to know that especially for those of you that are following this bill very carefully I know that you want to be here whenever we talk about it. If it all goes as planned, we have another issue that we're going to have to take up at that meeting which is urgent. And so, your, this item may have to be second on our agenda, but, you know, we're trying to deal with all kind of legalities and schedules so that, that was my concern. But I would entertain a motion then to keep this, to table that motion until our next meeting 9 o'clock on the 30th.

VICE-CHAIR JOHNSON: So moved.

COUNCILMEMBER MEDEIROS: Second.

CHAIR BAISA: All those in favor say aye.

COUNCIL MEMBERS: Aye.

CHAIR BAISA: Opposed, no? Motion carries again with two excused today, Member Hokama and Member Molina.

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VOTE: AYES: Councilmember Medeiros, Vice-Chair Johnson, and Chair Baisa.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Hokama and Molina.

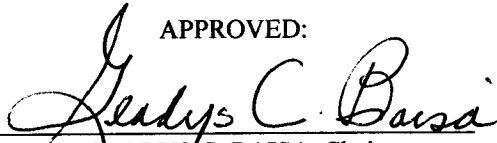
MOTION CARRIED.

ACTION: Recommending APPROVAL to postpone the pending main motion to September 30, 2008 at 9:00 a.m. in Council Chamber.

CHAIR BAISA: And that being said, I'd like to thank everybody again and this meeting is adjourned. . . .(gavel). . .

ADJOURN: 11:47 a.m.

APPROVED:



GLADYS C. BAISA, Chair
Planning Committee

pc:min:080918

Transcribed by: Cathy Simmons

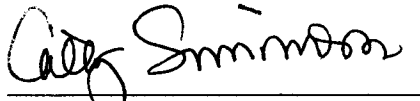
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CERTIFICATE

I, Cathy Simmons, 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 this 10th day of October 2008, in Wailuku, Hawaii.



Cathy Simmons