

PLANNING COMMITTEE

Council of the County of Maui

MINUTES

October 28, 2008

Council Chamber

CONVENE: 9:12 a.m.

PRESENT: Councilmember Gladys C. Baisa, Chair
Councilmember Jo Anne Johnson, Vice-Chair
Councilmember G. Riki Hokama (in 9:35 a.m.)
Councilmember Bill Kauakea Medeiros
Councilmember Michael J. Molina (in 9:32 a.m.)

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

Seated in the gallery:

Ken R. Fukuoka, Director, Office of Council Services

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

OTHERS: Peter Wilson
Barbara Kline
Margit Tolman, Maui Vacation Rental Association
Thomas Croly, Maui Vacation Rental Association
Tanna Swanson, Maui Bed and Breakfast Association
Bob Getzen
Chris Harrington
Paul Laub
John Rapacz, Esq.
Warren Watanabe, Executive Director, Maui County Farm Bureau
David DeLeon, REALTORS® Association of Maui, Inc.
Jocelyn A. Perreira, Executive Director, Wailuku Main Street Association/Tri-Isle Main Street Resource Center
(17) additional attendees

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

CHAIR BAISA: . . .(*gavel*). . . Good morning, everyone, and I'd like to call the meeting of the Maui County Council Planning Committee to order. Today is October 28th and it is just about 12 minutes after 9:00. Chair apologizes for a little bit of a delay but we're all in an extremely busy time at this moment, and I certainly would like to thank everyone who is here this morning. I'd like to note that we have a quorum present this morning of our voting Members. And I would also like to ask everyone who is in Chamber this morning just as a reminder if you would please put your cell phones, BlackBerries, pagers, and any other thing you might have that makes noise on the silent mode so that we can proceed this morning without interruption. With me this morning I'm very pleased to have the stalwart Members of this Committee. My Vice-Chair Jo Anne Johnson. Good morning, Jo Anne. And Bill Kauakea Medeiros.

COUNCILMEMBER MEDEIROS: Aloha and good morning, Madam Chair.

CHAIR BAISA: Good morning, Bill. Excused are voting Member Michael Molina who will be joining us later and our Chair of the Council, Mr. Riki Hokama. We have no non-voting Members this morning. I think, like I said this is a very busy time for all of us. From the Department of Corporation Counsel this morning we have our Staff member who helps us all the time Michael Hopper, Deputy Corporation Counsel. Good morning, Mike. And we also have from the Executive Branch a number of representatives. We have Jeff Hunt, our Planning Director.

MR. HUNT: Good morning, Chair.

CHAIR BAISA: Good morning, Jeff, and thanks for being here. We have Joe Alueta who is our Administrative Planning Officer from the Department of Planning.

MR. ALUETA: Good morning, Chair.

CHAIR BAISA: Good morning, Joe. We have also with us Ms., Mrs. Agnes Hayashi who is the Deputy Director of Finance. Good morning. How nice to see a member of the distaff side for a change. And also with us we have Scott Teruya who is our Real Property Tax Administrator. Good morning, Scott. And I have my regular Committee Staff, David Raatz, my Legislative Attorney, and Clarita Balala, the Committee Secretary. I'd like to thank all of the Staff for being here this morning. In a few moments we will be accepting public testimony. Those wishing to testify should sign up, up here, right here with Clarita. And testimony will be limited to three minutes, and testifiers are requested to state their name for the record and indicate who they are representing.

Members, today we have one item on our agenda. That is PC-40 Transient Vacation Rental legislation. I would suggest that the Committee again focus on the revised B&B

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bill which I transmitted on September 30th. The bill is entitled "A Bill for an Ordinance Amending Title 19, Maui County Code, Relating to Zoning as it Pertains to Bed and Breakfast Homes". Again I would like to stress that we are talking about bed and breakfast homes. We worked on this bill at our most recent meeting on October 14th and we voted to approve two revisions: one, to establish a limit on the number of B&B permits in each of the Maui island community plan areas; and two, to allow for current conditional permit applications to be processed as B&B permit applications in appropriate circumstances. Before we begin our deliberations today I am now ready to accept public testimony. Without objection the Committee will now accept public testimony on PC-40.

Seeing no objections, the Chair will go ahead with public testimony. Our first person signed up to testify this morning is Mr. Peter Wilson, and Mr. Wilson will be followed by Barbara Kline.

...BEGIN PUBLIC TESTIMONY...

MR. WILSON: Chairman, thank you. My name is Peter Wilson. I live in Kula on two acres of land. I've got a large house and a lot of surrounding vegetation like trees, and limes, and avocados, and bananas, and stuff like that which is rather difficult to keep up with by myself. And we, we have no help at this stage as we used to. We used to have grounds people, and we used to have interior people working in the house to help keep it clean. My wife is a fanatic about cleanliness. I can see dust anyplace I, well, she's terrible that way. But anyway we, we have to keep the house clean, we have to keep the grounds better than they are. And we've for some time during the old days we've had very good visitors who came from virtually all over the world and became very good friends too. And that was one of the nicest things about having a B&B. And, and looking at the, the deal relating to zoning as it pertains, this is also positive, and if we can just get back to something as sensible and as good as this it will certainly please me, my wife, and our kids who come to stay with us too. But anyway it's, it to me it's, it's a big loss because we, we don't have any workers working with us. We don't pay any taxes, we don't have any income. And we used to do pretty good in all those categories before, and now we don't. And as I say the maintenance of the property and the home is not as good as we would like to see it. And so please do what you say you want to do here and make it possible for us to live happily ever after. Thank you.

CHAIR BAISA: Thank you very much, Mr. Wilson. Any questions for our testifier? If not, Mr. Wilson, could you, just one short question. Is your property on agriculture? It's zoned Agriculture?

MR. WILSON: Yes.

CHAIR BAISA: Thank you very much. Thank you. Our next testifier will be Barbara Kline, and Ms. Kline will be followed by Margit Tolman. Good morning.

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MS. KLINE: Aloha and good morning, everybody.

COUNCILMEMBER MEDEIROS: Good morning.

MS. KLINE: I'm testifying regarding the farm. I am Barbara Kline. Did I say that? I am testifying regarding the farm income test for a B&B on Ag land. First I'd like to say there should not be a farm income test. That's right. Instead there should be an implemented farm plan for a B&B on Ag land. I live in Haiku on two acre, on a two-acre lot. One acre is planted to the max with various citrus, bananas, and a huge vegetable garden. We produce thousands of pounds of fresh organic vegetables and fruits. We grow our fruits and vegetables to eat, not for profit. The other acre of our property is a very steep gulch not conducive for farming. I've had the opportunity of meeting with Member Molina and Member Medeiros and have shown them photos and discussed our implemented farm plan. Both of these gentlemen were happy to see that we were practicing subsistence farming and contributing to more sustainability on Maui. I think that is what we all want. I even had the pleasure of showing Member Medeiros around our small farm, and he saw firsthand that we were farming for the food we eat, not for profit. And yes, he saw the very steep gulch. If you live on Ag land and you want to get a permit for a B&B, first you have to get a Special Use Permit and appear in front of the Planning Commission. In order to get the, in order to get to the Planning Commission you have to have your farm plan implemented. A Planning Department planner comes to your property to see your farming and checks out your B&B. If you check out, then you go forward to with, with all the regulations to get to the Planning Commission. It's very hard work growing all the vegetables and fruit we eat. It's not something to be taken lightly. If you ask me to show profit for my fruits and vegetables, I cannot. Does it make any sense whatsoever to ask me to sell my fruits and vegetables for profit and then go and buy them? I don't think so. I urge you to consider an implemented farm plan to obtain a B&B permit on Ag land. It makes the most sense. Thank you very much.

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

COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair. Yes, good morning, Ms. Kline, --

MS. KLINE: Good morning.

COUNCILMEMBER MEDEIROS: --and thank you for being here once again. I think at, at one point in order to meet some kind of an income criteria did you also contribute to the Food Bank?

MS. KLINE: Yes, we do.

COUNCILMEMBER MEDEIROS: Okay.

MS. KLINE: We actually contribute to the Food Bank weekly.

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COUNCILMEMBER MEDEIROS: Okay. And, and does the Food Bank give you some kind of a certification about the value of your contribution?

MS. KLINE: Yes, they do. And I believe that it's a wholesale value.

COUNCILMEMBER MEDEIROS: I see. Okay. And otherwise I remember you mentioning that I think you guys harvested all of your lemons or limes, took it to a wholesaler, and you got all of \$40.

MS. KLINE: Right. Sometimes we have, we planted a few too many lemon trees, but we do eat a lot of lemons in our, in our food. And sometimes we have an abundance and we have taken them to Mana Foods in Paia. And yes, we did get a whooping \$40 for last year.

COUNCILMEMBER MEDEIROS: Well, yeah, thank you for your testimony.

MS. KLINE: You're welcome.

COUNCILMEMBER MEDEIROS: And yes, and thank you, you know, for the tour of your property, and I can see where you were very much so trying to grow things --

MS. KLINE: Yes.

COUNCILMEMBER MEDEIROS: --but were limited potential on that kind of acreage. Thank you for your testimony this morning. Mahalo, Madam Chair.

CHAIR BAISA: Any additional questions for our testifier? If not, Ms. Kline, just one question.

MS. KLINE: Yes.

CHAIR BAISA: I was wondering, when did you begin your farming operation? When did you start planting your trees and things?

MS. KLINE: We actually started planting our trees around the same time that we were building our home, and that was about nine years ago.

CHAIR BAISA: So apparently there is a considerable lag time between the time you actually do a farm plan and when you actually see the products. Can you give us an idea of what that is?

MS. KLINE: Well, it takes many years. It probably takes, you, you could ask my husband that. He knows a little bit better than I. But probably, I don't know, three to four years for it to produce our citrus. And if the banana's really going, I mean you start, first you start with little keikis, and then they grow and grow, and then you get some bananas, and they keep,

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once they get going you have a really good orchard. But it does take, you are correct, it does take years before you produce anything.

CHAIR BAISA: So when you did your farm plan --

MS. KLINE: Yes.

CHAIR BAISA: --I've never really looked at a farm plan and I probably should. If anybody has one and would like to share it with me, I really would like to take a look at one. I am assuming that, you know, because my familiarity with other plans, you have a timeline as to when you plant, and when you would expect to see some kind of return, and the stages that you'll, you know, proceed in, in planting this and then planting that. And is, is that what, what's happened?

MS. KLINE: That's correct.

CHAIR BAISA: The reason I bring this up is because it affects this idea of income, and approving income, and why I think the idea of an implemented farm plan is probably a much more effective way of doing it. Because you have different products that grow at different intervals, you know, if you grow lettuce, if you plant lettuce seeds in a few weeks you're going to have lettuce.

MS. KLINE: That's correct.

CHAIR BAISA: If you're planting trees, it'll be years --

MS. KLINE: Yeah. It'll be years.

CHAIR BAISA: --before you actually see fruit.

MS. KLINE: Yes.

CHAIR BAISA: So anyway, thank you very much. Thank you for coming to explain to us, and thank you also for offering the opportunity to some of the Members to take a look at your operation. Thank you.

MS. KLINE: Thank you. Aloha.

CHAIR BAISA: Members, any more? That's it. Thank you. Our next testifier is Margit Tolman and Margit will be followed by Tom Croly. Good morning.

MS. TOLMAN: Good morning. Aloha. My name's Margit Tolman. I'm testifying on behalf of MVRA and its members in regards to the proposed ordinance to create Chapter 19.38 of the Maui County Code relating to transient vacation rentals. We kindly ask you to revisit the caps proposed by the Planning Department. Reviewing the Kauaian Institute Study

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and the agents data base from 2004, the total numbers of bed and breakfasts on Maui was 346; therefore, the Planning Department suggested cap of 305 is close to reality. However, the split between the districts needs realignment. For example, only 17 B&Bs which could apply for a license under the proposed bed and breakfast bill were counted in West Maui. But the Planning Department is suggesting a cap of 88. Spreckelsville, it's part of the Wailuku-Kahului district and the proposed 16 would not cover the inventory to accommodate the windsurf industry. In Paia-Haiku, we counted 142 bed and breakfasts and the proposed cap is 54. This is the largest district with very low density of B&Bs. The North Shore and Hana has a higher demand for alternative accommodations because there are no alternatives. We would again suggest a higher cap for this area. Makawao-Pukalani-Kula, we counted 52, proposed are 20. Attached is a spreadsheet which shows the proposed Planning Department caps compared to the reality of the vacation rental market. Please open the discussion again for the success of the bill.

Transitional permit. Please find with my written testimony an outline for a possible transitional permit. This could be a short-term solution until new legislation is in place. Business and homeowners are hurting. They are desperate. They need your help now. Our economy is so uncertain at this time and we need our visitors back to stabilize our fragile economy. A transitional permit would allow homeowners with certain requirements as described in the document to reopen after obtaining a transitional permit number from the County. The transitional permit would require owners to agree to start the permitting process as soon legislation is in place. This will assist the County in this transitional time by giving an accurate picture of the number of vacation rentals and the market makeup. Identifying all operators likely to apply would give the County firm numbers to work with. It would be a win-win situation for the County, the Administration, and the B&B/TVR owners. Maui has the potential to be a modern community for diversified and healthy tourism. Mahalo for your time and consideration. Thank you.

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

COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair. I just wanted to ask the testifier if we could have a copy of her testimony. I don't know if it was passed out to us. I didn't see her name.

MS. TOLMAN: Well, sorry, I put on top the spreadsheet.

COUNCILMEMBER MEDEIROS: Oh, okay. I'm sorry. Yeah.

MS. TOLMAN: I was hoping you can follow maybe my numbers on the spreadsheet, but my testimony is behind.

CHAIR BAISA: I see.

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COUNCILMEMBER MEDEIROS: Okay. I see it now, Madam Chair. Yeah.

CHAIR BAISA: It, yeah, it's, it's covered by a spreadsheet.

COUNCILMEMBER MEDEIROS: Right. Okay. Thank you. Thank you for your testimony this morning and for --

MS. TOLMAN: Thank you.

COUNCILMEMBER MEDEIROS: --the numbers that you have suggested.

MS. TOLMAN: Thank you.

COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair.

CHAIR BAISA: Yes. Thank you very much, Margit. Next testifier is Thomas Croly and Mr. Croly will be followed by Tanna Swanson. Good morning, Mr. Croly.

MR. CROLY: Aloha, Chair. Aloha, Members. My name is Thomas Croly and I am speaking on behalf of the Maui Vacation Rental Association. I, we're very hopeful that, that we will get a bill moved out of Committee today. But as we all know, the devil's in the details, and there's a few more details to be buttoned up. One of those is taxation. Fair taxation for B&Bs and TVRs is a very important component to creating an ordinance that will foster compliance. At the last Planning Committee meeting there was some discussion about taxing B&Bs at Hotel-Resort tax rates. This indeed would be a surefire way to ruin all the work that has gone into this legislation. If resident island homeowners are taxed too severely for the privilege of renting out a room or two in their home as a B&B, then we will find that many homeowners will be discouraged from going through the expensive and time consuming process of obtaining permits. The MVRA recognizes that it's fair to tax B&B use at a higher rate than the homeowner; however, the tax for a B&B using one to three bedrooms for B&B use should be less than that of the tax of a property using four to six bedrooms. As well, the taxation of a TVR where the owner does not reside on the property should be higher than that of an owner-operated B&B where the primary purpose of the property is to be the home of the owner. A fair way to tax these different circumstances would be to create two new tax categories: one that we would call TVR-1 for properties using one to three bedrooms for short-term rental, and another being TVR-2 for properties using four or more bedrooms for short-term rental.

Additionally, the bed and breakfast ordinance should contain a provision that allows the resident island homeowners to retain their \$300,000 property exemption for the property that they live on and operate their B&B from. As a result there would be four different taxation models that could be created. First, there would be a B&B with one to three bedrooms that would pay the TVR-1 rate as well as get a \$300,000 exemption. Second, would be a TVR with one to three bedrooms that would pay the TVR-1 rate but not get the \$300,000 exemption. Third, there would be a B&B with four to six rooms which

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would pay the higher TVR-2 rate and still get the \$300,000 homeowner exemption. And finally there would be a TVR rate for TVRs with four or more bedrooms and they would pay the higher rate and get no exemption. This taxation model would create fairness among the different types of vacation rentals and provide that, and provided that the rates are set for these new proposed categories, if they're set fairly, then higher for -- I'm sorry, I got a little, little messed up -- provided that we set the rates fairly. A higher rate for a homeowner but lower than for a Hotel-Resort. It will provide to be a model that should not discourage compliance. I submitted this as written testimony and it, I've, I submitted a model showing what the effects of these rates would be on various different values of properties, as well as what changes would have to be made to the current bill and to the tax code in order to implement this. Thank you very much.

CHAIR BAISA: Thank you very much, Mr. Croly. Members, the Chair would just, first of all, like to note the presence of Member Molina. Thank you very much for being here. The Chair has been advised and I will ask Mr. Hopper to comment on this that this issue of taxation and this discussion probably will be best held at another meeting where it is agendaized and we'll get into the details. Mr. Hopper, would you like to comment? I think now is the best time to deal with it before we get into it too much.

MR. HOPPER: Madam Chair, as far as allowing public testimony you have broad leeway as far as public testimony. As far as agenda issues, I would just read the agenda and see if, if adopting a separate real property tax classification is something that you believe is within the scope of that agenda and be careful. I can do some additional review, but it, it does not appear to be something that it's listed as something for discussion. Perhaps discussing it at a, either a future meeting or if it deals with real property tax in, you know, I, you as the Committee I'm not sure if this would be the appropriate committee to have that discussion in. That's, that's up to you. But as far as the agenda immediately I would just caution to make sure that you believe that this is something that is listed on your current agenda. And I'm not certain that, that it's within the scope of, of these items that you have before you right now.

CHAIR BAISA: Thank you, Mr. Hopper. The Chair would also, and I'm sorry, Mr. Croly, we'll get back to you in just a second. I think, I think it's important that we know the parameters of discussion before we spend a whole lot of time and then we are told that we shouldn't be doing this. The other thing is that Chair is aware that the Administration is working on some proposed legislation in regards to this and will be submitting it very soon for our consideration. You know at our last meeting we talked about having new categories to handle this type of accommodation, and Administration is working on a proposal to submit very soon so that we will be within the window to be ready to discuss this during budget when we set rates. I just wanted you to have that information.

Mr. Croly, thank you very much for submitting your testimony. It's a very interesting perspective. Thank you for circulating it to all of us, because, you know, we are definitely going to be looking at this, and all the information that we can gather to make a good decision is very appreciated. The Chair feels that this Committee has spent a great

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deal of time working on this issue, and I appreciate all the help we've gotten from you and your organization. We want to make a good decision because compliance is going to be the proof of the pudding. If we do not come up with a bill that will work for our community and for all of us and promote the kind of or produce the results that we want, then it's not a very good bill. And so this is why the Chair has taken so much time with it, and I have people saying, well, just vote up or down on the bill. The Chair prefers that we try to refine the bill and deal with the sticky issues. Because once we pass it on to the Council and it goes for first reading, that is not an appropriate place to have these kind of discussions. These kind of discussions should happen in this Planning Committee. And so even if it takes a little more time, and believe me I'm as anxious as anybody else to say we're done, I think it's best that we spend the time and go through the sticky details so when we get to first reading hopefully most everybody will be in support. So that's, that's my statement. Again, thank you. Members, questions for Mr. Croly? Bill Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair. I just need some clarification, Mr. Croly. But once again thank you for your presence and your testimony and for what you've presented to us this morning. In Paragraph 4 of your submitted testimony, I just need clarification because you have a B&B with one to three bedrooms would pay a TVR-1 tax rate as well as get the \$300,000 exemption. What differentiates that from the second one which is also, oh, I see. So one's a B&B and the second one you're referring to just as a TVR?

MR. CROLY: Right.

COUNCILMEMBER MEDEIROS: Oh.

MR. CROLY: We haven't, we haven't gotten into the discussion of TVRs.

COUNCILMEMBER MEDEIROS: Right. Okay.

MR. CROLY: But you know, accordingly the B&B has been defined as the owner lives on the property.

COUNCILMEMBER MEDEIROS: Correct. Correct.

MR. CROLY: A TVR, you know, is probably going to be an owner doesn't live on the property.

COUNCILMEMBER MEDEIROS: Okay. And that's why that second TVR-1 rate would not receive the 300,000 exemption?

MR. CROLY: Correct.

COUNCILMEMBER MEDEIROS: Thank you for that clarification. Mahalo, Madam Chair.

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CHAIR BAISA: Chair would like to note that our Council Chair and a voting Member of this Committee, Riki Hokama has joined us. Good morning, Mr. Hokama.

COUNCILMEMBER HOKAMA: Good morning.

CHAIR BAISA: Members, any more questions? Member Molina.

COUNCILMEMBER MOLINA: Thank you, Madam Chair. Just a quick question for Corporation Counsel. So, Mr. Hopper, with regards to the taxation issue and the testimony, it's okay for us to question the testifier? And I just want to make sure we're not, you know, walking the line on any Sunshine Law issues. Is it appropriate for us to continue the line of questioning for the testifier with regards to taxation that hasn't been agendized?

MR. HOPPER: To further this discussion and for me to give you more frank advice I'd recommend an Executive Session for purposes of discussion if we want to, to get into that.

COUNCILMEMBER MOLINA: Okay.

CHAIR BAISA: The Chair would prefer that we just question Mr. Croly to get clarification on his testimony, and that we do not try to take any kind of action today.

COUNCILMEMBER MOLINA: Yeah. Well, that, that was my question is basically to make sure that we're still on track. We're okay to --

CHAIR BAISA: Yeah. Yeah.

COUNCILMEMBER MOLINA: --question Mr. Croly. Okay. Thank you. Mr. Croly, one quick question with regards to the proposed rates you came up with, \$5.00 and 6.50. Can I ask you what formula you used or --

MR. CROLY: Thank you.

COUNCILMEMBER MOLINA: --was it just some numbers you pulled out of the sky?

MR. CROLY: Yeah. No. They weren't numbers pulled out of the sky. Careful thought was given to these numbers. If we think about what a bed and breakfast is, okay, it's partially the person's home and it's partially their business, a place where they're providing accommodations. If we think about how our tax rates are set up, we have a homeowner rate for people who live in, in their home, and we have a hotel rate at the other extreme which would be a highly intensive operation compared to a bed and breakfast. But if we took the homeowner rate which is \$2.00 per 1,000 and we averaged it with the, with the Hotel-Resort rate which is \$8.20 a thousand, took that average, you come up with \$5.10 a thousand, thus that TVR-1 rate. If we think about the difference between a Hotel-Resort

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and a property that someone doesn't live in but is a residential property, they would pay the Improved Residential rate which \$4.85 a thousand. And the average between that and the Hotel rate would be 6.50. So that's how that \$5.00 and the 6.50 that I have suggested came about. Obviously, those tax rates would be set in the Budget Committee during the time of budget. But we have to, we have to prepare for that here and there is one thing that's specifically in the bill that, that we need to think about, and that is the bill as it's written right now says that homeowners lose their homeowner exemption when they come and apply for a B&B permit. I want to question whether that's the wisest way for us to tax these homeowners, and I would certainly think that that is within the, the scope of what we should be discussing here, whether or not the homeowners will receive that \$300,000 exemption or whether we're going to take it away from them as a result of this legislation.

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

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

MR. CROLY: Thank you.

CHAIR BAISA: Our next testifier is Tanna Swanson and she's the last person signed up to testify this morning. If there's anyone else out there, Chair would appreciate it if you would come forward and sign up. Good morning, Ms. Swanson.

MS. SWANSON: Good morning. Aloha, my name is Tanna Swanson. First thing, I want to thank all of you for my permit that I received recently, and I'm sleeping much better at night now. Today I am representing the Maui Bed and Breakfast Association. And I'm representing those that have a license currently right now and how the bill affects them, and we just are, still have a few concerns. . . .*(change tape, start 1B)*. . . The items actually I want to discuss, one is the use of tandem parking. This was discussed and agreed upon and permits were actually approved on tandem parking. But because it's not in writing anywhere permits have absolutely been denied based on tandem parking. So it is critical that somewhere, which I don't see addressed yet, is the fact that tandem parking is going to be allowed. Grandfathering those B&Bs that currently hold a license under a lessee. There are some out there. I don't know the exact count. I know of one in particular currently holding a license. And even though the proposed bill makes mentions of pre-existing TVRs staying in business, it does not make any mention of lessees staying in business, and I'd like to note that that be put in writing somewhere just to put a protection of those already holding a license.

And then last is getting back to the taxation issue. And when the initial B&B bill was developed, the decision was to prevent speculation by keeping the license with the person, not the property. And from the tax standpoint it kind of went like this, if we go back and look at discussion back, 12, 15 years ago, whenever we developed this bill, it became a legal issue. If we don't want the property to be able to be transferred, we could

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not put it in a different tax category. The tax category would then make it a legitimate business and would give the owner the right to sell the place as a business because we were therefore taxing the business. And that is why the law was developed where the homeowner would lose the exemption. That is why that came about in that order. So it's kind of like you can't have your cake and eat it too. If you're going to tax the property specifically, then that is addressing the property as a B&B and becomes an official business. If you're just going to tax the owner by losing the homeowner's exemption, that license therefore stays non-transferable and goes with the person which goes nowhere. So I think you guys have to remember that. It seems to be we're talking about things that they have a legal ramification down the line that I think no one's addressing, and that's the other issue I wanted to bring up. I've put this in written testimony. If you have any questions I'll be glad to address them.

CHAIR BAISA: Thank you very much, Ms. Swanson. Members, questions for our testifier? If not, thank you very much. I see a bevy of folks wanting to come up and testify. If, if you would please bring your form up forward and if you can't do it before you testify, you can do it afterwards, no problem. I know sometimes we come and we don't intend to testify and as we sit here we say, oh my goodness, I think I have something to offer on this. So people do change their minds. Okay. Our next testifier is Bob Getzen and Mr. Getzen will be followed by Chris Harrington. Good morning, Mr. Getzen.

MR. GETZEN: Good morning, Madam Chair. My name is Bob Getzen. I drove in from Hana this morning. I didn't plan on coming out here but I was really disturbed when I found out the cap had been reduced from Hana's original proposal was 48 and had been reduced to 24. Hana is a very unique community and we've repeatedly said that we would, I've heard that the Committee would revisit the issues of Hana, and I haven't seen those issues revisited. Currently, the hotel and the ranch are for sale. The ranch, I mean the hotel had a buyer and that fell through in the last two weeks. Currently, people are being laid off, people are looking for jobs in Hana. Many people in Hana that operate vacation rentals, they don't have other jobs. They, they don't have a regular paycheck. They have flower farms, and farming right now in the last three months there's accounts that people have had for 25 years that have cancelled. Some of our production is down from droughts, other accounts are down as much as 75 percent. And when you're self-employed you have to look for all means of income. I've been an active farmer for over 30 years and this is the worst, worst year I've had. So I would urge you to consider raising the cap for Hana.

Hana, many of the people coming to Hana now are coming from Maui itself. Rather than going off island for a vacation, they're coming to Hana for a vacation. The other issue in Hana, many of our vacation rentals in Hana are a kokua situation. People have weddings, local people have weddings. If you've lived in Hana for a long time you begin to know everybody. Okay. So we have weddings and funerals and stuff like that. So these homes are offered at no charge to those. We have non-profits like Hana Arts, Ala Kukui and other things. They have people that come in that these homes are offered kokua for them. So there's no funds coming in. The other issue is many of these people also have family

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that live off island or elsewhere, so they want to maintain this home so that people can come, their family can come back and stay and they have a place for them to stay. So I hope you will consider the issue of Hana and look at the issue of caps. From what we've been able to discern, 24 would be at least half of what is probably needed for B&Bs for Hana. So thank you very much. And one other last comment, I would like to thank Bill John Medeiros, I've always called him Bill John, I've known him for over 40 years. But he has been very active in trying to provide for the needs of Hana. So thank you very much, Bill.

CHAIR BAISA: Thank you very much, Mr. Getzen. Anybody, questions for the testifier? Mr. Medeiros, followed by Member Johnson.

COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair. And yes, Bob, thank you for driving the 52 bridges from Hana town to be out here this morning. You know I recently got sort of a survey of how many potential units are in Hana, and I know yourself and the group that you're working with have been working hard on trying to establish that. But you're, you're correct that originally the caps for Hana were 48 permits and then was reduced down to 24. The recent, and correct me or clarify the information I have right now. And in your testimony you recommended re-establishing the 48 permits for Hana. Is that correct?

MR. GETZEN: That's correct.

COUNCILMEMBER MEDEIROS: Okay. And the recent count that I got from Hana was about 62 for all vacation rental breakdowns. But I know at one community meeting, the survey that was done listed it about 80-something.

MR. GETZEN: Yeah, that's correct.

COUNCILMEMBER MEDEIROS: But what's the, what's the, the most current estimates?

MR. GETZEN: It's somewhere between 60 and, and 80. At one time, I think we had identified that there was almost 100, and for various reasons people have closed down. The other thing we haven't taken into account is the people that would apply once you, we came up with a legitimate permitting system.

COUNCILMEMBER MEDEIROS: And did you folks ever, were able to establish a breakdown of what were B&Bs out of that, those numbers?

MR. GETZEN: Well, the, there was the old issue of what a B&B was and then the current proposals for B&Bs.

COUNCILMEMBER MEDEIROS: Say the operator/owner is living on the property.

MR. GETZEN: Yes. And I think we came up with...

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MR. HARRINGTON: Thirty-three...

CHAIR BAISA: Sir...

MR. HARRINGTON: Thirty-three owner-occupied...

COUNCILMEMBER MEDEIROS: Yeah.

CHAIR BAISA: Sir...

COUNCILMEMBER MEDEIROS: I, I, I, the question is only for the testifier.

MR. GETZEN: Yeah. I think it was somewhere about 33 on the owner-occupied.

COUNCILMEMBER MEDEIROS: Okay. About 33. Okay. And...

MR. GETZEN: And then we also had people with the owner on adjacent property and resident managers and stuff like --

COUNCILMEMBER MEDEIROS: Yeah. I do see a breakdown on that --

MR. GETZEN: --those were in the information, yeah.

COUNCILMEMBER MEDEIROS: --from information that I was able to gather. But, Bob, once again thank you for coming from Hana to testify this morning. And I appreciate the, I appreciate the update of information and your presence here this morning. Mahalo.

MR. GETZEN: Okay. Thank you.

COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair.

CHAIR BAISA: Thank you very much. Member Johnson.

VICE-CHAIR JOHNSON: Yes. My questions were almost identical to Member Medeiros. But I, I think it's because of what we adopt as, and correct me, but from what you described under the current definition for bed and breakfast where we're now allowing that second unattached dwelling or ohana, whichever you call it, you're still saying that there would be about 30, 30 people that would fall into that category?

MR. GETZEN: At least 33. We haven't identified everyone yet, 'cause some people, it's hard to, hard to find out what's going on.

VICE-CHAIR JOHNSON: Yeah. And, and then because we have not yet gotten to the transient vacation rental issue which would not fall within that definition, I think that's where I

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would be looking for, you know, if we modified this cap to, you know, get the 30 or 35, whatever it is and then look at a separate cap for those businesses that are actually not within the B&B definition. Do you, you understand what I'm saying that your, --

MR. GETZEN: Yeah.

VICE-CHAIR JOHNSON: --your reasoning is inclusive of all accommodations and yet we're only focusing on the one issue.

MR. GETZEN: No. I believe my reasoning is on B&Bs, on the issue. And then there's the TVRs as, at one of the community meetings in one of the current research we identified over 80 actually operating in Hana. And when I say Hana that was another clarification we wanted, we're including from Nahiku to Kipahulu. And so some of those, what's going on in Nahiku and Kipahulu are sometimes hard to find out what's going on there.

VICE-CHAIR JOHNSON: Okay. So you're just, you're saying you want just for the B&Bs because some individuals may not have applied as yet for a B&B application, but they may wish to do so because they're having difficulty with their farming operation?

MR. GETZEN: Yeah. Some of them are, and some of them have been active farmers for years, and they've also run their vacation rental on the farm. I mean the two supplement each other. The fact that they can run a B&B and be onsite to do their farm is, is a big plus.

VICE-CHAIR JOHNSON: And, and the majority of the individuals that you're speaking about where the cap would be different, those are on Agriculture zoned land? Or they are on non-Ag zoned land?

MR. GETZEN: On the caps for the B&Bs?

VICE-CHAIR JOHNSON: Yeah.

MR. GETZEN: There's a, we, I don't know that we have a current breakdown on that 'cause some of them are rural. And the other issue that we have in Hana is the Interim zoning. And that's a whole nother ball of wax that, that causes a lot of people concern.

VICE-CHAIR JOHNSON: Yeah. And, and that's something we have not yet addressed. But I think that for my purposes it would be helpful for me to know as best as you can determine what those various categories would be. Because that's basically what we're using to establish the initial caps, and when you don't have adequate data or accurate data you're not going to get a result that reflects what your needs are.

MR. GETZEN: Right. Yeah. We've come up with this, I think as accurate as we can with the owner-occupied. The, the people that are above the rate are whatever.

VICE-CHAIR JOHNSON: Okay. And, and that would qualify for the current definition --

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MR. GETZEN: Would...

VICE-CHAIR JOHNSON: --that we have with B&B as opposed to transient vacation rental?

MR. GETZEN: That's correct.

VICE-CHAIR JOHNSON: Okay. Thank you very much.

MR. GETZEN: Okay. You're welcome.

CHAIR BAISA: Thank you very much. Members, any more questions for the testifier? If not, Mr. Getzen, thank you very much for coming.

MR. GETZEN: Thank you.

CHAIR BAISA: Our next testifier will be Chris Harrington and Mr. Harrington is our last testifier who signed up. If anyone else is out there, please come forward. I see another. Thank you. Okay. Mr. Harrington, good morning.

MR. HARRINGTON: Good morning and thank you. I'm Chris Harrington and I, first of all, I want to thank you all for your hard work. I know this has gone on for a long time, and I appreciate when you say you want to work on the details, because if a job's worth doing it's worth doing right. And I think if any of this just kind of moves on confusing it's going to cause a lot more trouble for people who do want to apply and don't know if they qualify or what they're exactly applying for. So I'm sorry to interrupt back there when Bob was testifying, but I kind of know the numbers maybe a little bit better 'cause I helped put them together. So I'm happy to address them. What we did when we broke them down was for people that we can identify that will qualify under owner-occupied or owner-adjacent properties in Hana, right now we've identified 36 which includes from Nahiku to Kipahulu. I don't know how many of those are Ag versus Rural versus Interim. We could probably pretty easily figure that out. But, but I would say that a majority of them are probably on Interim or Rural zoning, and then there's, as you go out of Hana that's where it gets more Ag. So, and I'm happy to talk more about that. Right now that number's at 36 if you include the owner-adjacent, but actually it's bigger 'cause we can't identify everybody, and we don't know who's out there that would apply, you know, it's just impossible to figure out. So we like the number of 48 because that seems to work within the community and that's what we'd encourage you to do.

But I also wanted to talk about, also your question of identifying vacation rentals in Hana or properties, when we say it was, I think 68 was the total number and before it was 80 or even 100. When we say 68, it's properties, it's not necessarily buildings on the properties or the number of accommodations they're offering which is what brings it up more to the 80 or 100 number. So it still may be around 80 but right now we're just looking at the number of properties or people, you know, running a property, not necessarily what's on

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the property. Also for Hana and when I was here before testifying you guys had said that you would look at areas like Hana and the outlying communities and it seems like now is the time to address that. We have a big issue with Interim zoning there. We, a lot of the properties out there were classified as Interim or kind of, as I understand it, thrown into that category which was never meant to be a zoning but now is a zoning. And some of that Interim is designated as Rural or Ag or whatever, I actually hadn't been that familiar with it. I thought it was all designed Rural and then I learned better. So that has to be addressed because otherwise it's unfair to make somebody go apply, or take the year to apply for a Rural zoning which they may have been designed for but they have to go through all that process and expense just to get this permit if you haven't included Interim. And that is an expensive and long process.

And that brings up the point of administering these permits which if say somebody is on, you haven't included Interim and they apply for a permit and they want to be included in those caps but it takes them a year and a half to get that permit, and somebody else has come along who didn't have to jump through hoops. Does that person lose when they've been spending all this money along the way to, you know, qualify? So I think it's important that we decide that and this idea of a transient, I mean transient, temporary permit until you can get your full permit is probably a very good one I think. I don't know how else to address that without being unfair. So I think that's, and then we have, the last thing is just the issue of the community plan in Hana which I think also needs to be addressed. And I realize it's outside the scope but now we're talking about making a cap for Hana and the community not wanting vacation rentals in the subdivision area which is where the community plan says to have them. So what are we going to do about that? And is, do these caps even matter if we're not addressing that issue, I guess is my point. So, and it's, doesn't say you can't have them, it just says discourage. Anyway that's it. Thank you very much.

CHAIR BAISA: Thank you very much, Mr. Harrington. Thank you for driving out from Hana. We really appreciate all the support we've gotten with trying to work on this bill, and it takes people like yourself to come out and make the effort so that we're aware of, you know, it's very difficult to look at such a broad issue. And we are such a big County, I mean, you know, we have such a difference from Lanai to Molokai to Hana to Lahaina, --

MR. HARRINGTON: Sure.

CHAIR BAISA: --Central Maui, everywhere is different. And so trying to look at all of this is very difficult. So we appreciate, you know, people coming to tell us. Members, questions for our testifier? Member Johnson.

VICE-CHAIR JOHNSON: Yes, and, and I know the issue of Interim is really a very problematic one, because we're trying to do, you know, just the zoning categories that, that we've enumerated. So your point is well taken about --

MR. HARRINGTON: Yeah.

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VICE-CHAIR JOHNSON: --a fairness issue. One of the things I would ask is because the General Plan Advisory Committee has come to the various communities, they've met. Have you given any feedback as somebody who's, you know, troubled by the Interim zoning? Have you given feedback to the General Plan Advisory Committee when they're looking at rural growth boundaries or urban growth boundaries or ag designations and this whole issue of Interim land and the Interim zoning. Have you specifically addressed that with them?

MR. HARRINGTON: No. And, you know, to be honest with you, all of, all of this process is fairly new to me just because I've gotten so involved over this issue. So I wouldn't even know where to go do that and I'd love to know. But I've also figured that the time to do that would, would be when we address the Hana Community Plan. So I don't know exactly, but if that's the right place to go, we'd sure be more than happy to do that.

VICE-CHAIR JOHNSON: Yeah.

MR. HARRINGTON: 'Cause I understand Interim is bigger than just Hana. I mean there are other in Molokai or whatever.

VICE-CHAIR JOHNSON: And, and I, the gentlemen that you need to see is Mr. Hunt who is sitting right in the middle over there. Because he basically can direct you if that is one of the topics, because we are through the General Plan Advisory Committee, we are looking at the issues of where to place certain infrastructure, where to place certain types of zoning categories or urban growth boundaries, rural growth boundaries. So I think it would be helpful if you could interact with him and then understand what is possible if anything that could be done within the General Plan Advisory discussion. 'Cause that's one way that you can go or you can wait which would be a much longer process for the community plan. But --

MR. HARRINGTON: Right on.

VICE-CHAIR JOHNSON: --you raise some very good issues and I really thank you.

MR. HARRINGTON: Thanks. I, and I know just with that, I mean thank you for that information 'cause I think that's very helpful for me specifically because I don't know how it all works. But also just if we're looking at this particular issue and trying to deal with this interim thing, if there are going to be specific items put in for specific areas like Hana, then perhaps you could address that interim issue just for Hana since it is kind of important to us out there.

VICE-CHAIR JOHNSON: Thank you very much, Mr. Harrington.

MR. HARRINGTON: Thank you.

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VICE-CHAIR JOHNSON: I appreciate your input.

CHAIR BAISA: Member Molina.

COUNCILMEMBER MOLINA: Thank you, Madam Chair. Good morning, Mr. Harrington. You bring up an interesting issue with the temporary permit proposal. Would this permit be I guess for those who are only currently in the, I guess the process of getting a permit or a zoning change or is this just a blanket for everybody?

MR. HARRINGTON: Well, I think it would follow what Tom was kind of proposing which is to, and he knows about, I'm sorry, you were proposing. The, but in, if you got, if you wanted to get a temporary permit it means you have to apply and follow the rules to apply. But it's giving you the time to operate while you're, while you're following those. If I have to go, and there are more issues than just Interim zoning, but, you know, all these different departments seem to require different things, and they're not always consistent with what they're applying for from what I've heard. It's also very expensive. So to have to jump through all those hoops just to get your permit and start operating seems kind of unfair when you need to have time to go through the County process or whatever it is if it's a zoning change or, you know, putting in a new water, I mean don't know what else they're going to do. I just think it's, it's detrimental at a time like this in our economy to make people jump through all those hoops before, and then not even know if they're going to get their permit from some of these departments. So streamlining the process is one thing, knowing exactly what you need to have in your building to get the permit, and then being able to operate as long as you can show that you're working on those things. And that would, in my mind anyways be what a temporary permit would, would, you know, fall under.

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

MR. HARRINGTON: Thanks.

CHAIR BAISA: Member Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair. Mr. Harrington, thank you, along with Bob for driving out here and, and for updating us on your research. And I appreciate the group that you have in Hana doing the research on this. I wanted to ask you and I, I, you know, both you and Mr. Getzen suggested the 48 cap which it was at one time.

MR. HARRINGTON: Right.

COUNCILMEMBER MEDEIROS: Right. The other thing I wanted to ask you though is the, under the Hana Community Plan the region is fairly large. It actually starts at Kakipi Gulch which is Makaiwa Bay which is way over by Kaupakalua and it extends all the way, and almost into Ulupalakua.

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MR. HARRINGTON: Oh, wow.

COUNCILMEMBER MEDEIROS: Now when you're talking about, you know, numbers I know in Hana we usually consider Hana district from Keanae to Kaupo.

MR. HARRINGTON: Right.

COUNCILMEMBER MEDEIROS: Right. But actually the Hana Community Plan is fairly extensive as far as the region. So would this include the entire region on the community plan? Because we have 90 ahupuaas in our region and that's fairly large.

MR. HARRINGTON: Yeah.

COUNCILMEMBER MEDEIROS: All the way from Koolau, Hana, Kipahulu, Kaupo, and Kahikinui. So I just wanted to bring that to your attention --

MR. HARRINGTON: I appreciate it.

COUNCILMEMBER MEDEIROS: --so that if you guys look at numbers that, you may have to look at the whole community plan region.

MR. HARRINGTON: I, I appreciate that 'cause actually I had no idea.

COUNCILMEMBER MEDEIROS: Right.

MR. HARRINGTON: We always do kind of look at it from Keanae to Kaupo.

COUNCILMEMBER MEDEIROS: Right. Yeah.

MR. HARRINGTON: And we, you know, we can figure out the numbers there because we kind of know the people, but going beyond that it's almost impossible.

COUNCILMEMBER MEDEIROS: Yeah. Right.

MR. HARRINGTON: So, and I don't know how many people are out there in those areas that would do it. But also if that's including the owner-adjacent issue, you know, which I don't even know where that's at with the Committee. There's only a few people in Hana in this area that, that, that kind of come into play with that owner-adjacent. And some of those people are people that have had their, owned their land forever and had it split by a road going through. So now they're, you know, that's unfair to them too, I mean if they're, if they're not able to be adjacent to their property or whatever. But anyway just to throw that in.

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COUNCILMEMBER MEDEIROS: Yeah. I wanted to bring that to your attention and, and to Mr. Getzen's attention so that if somebody on the outside edges of our, not outside but on the edges of the district and region under the Hana Community Plan decides to be one of those 48, if we go with that number that reduces what the, you know, what the. . .

MR. HARRINGTON: So that would be the criteria for...

COUNCILMEMBER MEDEIROS: Right. Because it would be under the Hana Community Plan region.

MR. HARRINGTON: Okay.

COUNCILMEMBER MEDEIROS: Okay. Then next, I agree with you that it's unfair to areas like Hana when you're talking about Interim zoning. And I, I think we need to discuss that, and I think the suggestion of a temporary permit because of Interim zoning or, you know, while you're in transition of getting a permit, you know, needs to be discussed too. So thank you for your testimony this morning.

MR. HARRINGTON: Thank you very much.

COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair.

CHAIR BAISA: Any other questions for Mr. Harrington? If not, Mr. Harrington, thank you again very much.

MR. HARRINGTON: Thank you. Thanks.

CHAIR BAISA: Our next testifier is Paul Laub and Mr. Laub is the last person who has signed up to testify. If there's anyone else, would you please identify yourself so we know. Good morning, Mr. Laub.

MR. LAUB: Aloha mai kakou. . . .(Spoke in Hawaiian). . . Paul Laub . . .(Spoke in Hawaiian). . . and manao is, I'm thinking about the adjacent whatever you call this. So in Lahaina the houses are within literally 15-20 feet of the other houses. So if it's a function of control it should not be affected by a, an artificial boundary of the, of the property. I mean the houses are so close. In the more rural areas where the property is larger, maybe it's adequate if it's within sight distance of one house to the other or on the same road. But it still be under the control of the owner. And so I just wanted to bring up those ideas. Mahalo.

CHAIR BAISA: Thank you very much, Mr. Laub. Questions for our testifier? He's going take off. Paul, I wanted to just ask you a clarifying question. And I realize that you haven't refined your recommendation, but we'll add it to the list of things that, you know, we're going to keep trying to work through. But when we talk about sight distance we may want to consider some kind of limit if we, if we do this. Because, you know, sight

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distance varies a lot depending on what's in the way or how well you see or Gladys with her glasses or without. So, you know, when I put on my glasses I can see a lot more than when I take them off. I'm nearsighted. So I think we might want to, you know, if we're going to do this really think about a number of feet or something. So anyway, thank you very much. Anybody else? Questions for Mr. Laub? If not, thank you. Thank you for sticking with us.

MR. LAUB: Mahalo no.

CHAIR BAISA: You know I'm beginning to think that some of the testifiers are part of the Council. They show up regularly for every meeting and have been for months and months, and I'm really grateful for your support. Anyone else out there who would like to testify this morning? If not, Members, without objection, seeing nobody coming forward the Chair would like to close public testimony for today.

COUNCIL MEMBERS VOICED NO OBJECTIONS

...END OF PUBLIC TESTIMONY...

CHAIR BAISA: Thank you very much. Members, I think that it would make a whole lot of sense for us to just take a very brief morning break this morning and get into deliberations, and we're going to work right up until noon this morning. So we're going to take a ten minute break, and I'd like everybody to come back quickly so that we can get into our work this morning. The meeting is in recess. ...*(gavel)*...

RECESS: 10:13 a.m.

RECONVENE: 10:28 a.m. ...*(change tape, start 2A)*...

CHAIR BAISA: ...*(gavel)*... The Planning Committee will come back to order. We'd like to thank everyone for our little break here. It seems that breaks are very necessary to our ability to function.

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

CHAIR BAISA: Okay. Now that we've closed public testimony, Members, for the record before us we have a pending motion to recommend passage of the updated B&B bill. To continue our deliberations I would like to ask the Planning Department to inform the Committee whether there are any additional concerns we need to address. I will then open the floor for any additional motions to be offered by the Members. Director Hunt, please.

MR. HUNT: Thank you, Chair. The Planning Department believes that the bill has addressed all the issues that we have raised. There's a number of issues that have come to our

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attention from others, and we can address some of the issues that came up today if you'd like. We're here to suit you folks. We've talked with Chair Baisa and also I've had a meeting with Member Johnson about some revisions or further revisions to the bills, and we can talk about those at the wish of the Council.

CHAIR BAISA: Director Hunt, if you would please proceed. One of the issues that is on the table from the last meeting was the issue about bed and breakfast in agriculture. Comments?

MR. HUNT: Well, I met with Member Johnson and I believe she has submitted a memo to you folks, and we can use that as a starting point. I'm getting a head nod the other way.

CHAIR BAISA: I'm sorry, I don't happen to have a copy of that memo.

VICE-CHAIR JOHNSON: No. I did not...

MR. HUNT: I'm sorry. I apologize. We could, we could distribute that memo somehow or use it as a starting point. There's, let me back up a little bit. There's been discussion and concern about the, the proposed income test, and the Farm Bureau on the one hand thinks that that income test is too small. On the other hand we've got some small farms out there that are preexisting that are on small acreages that really it's, would be difficult for them to meet that income test. So if we want to accommodate the smaller farms we should consider revising the income test. There's some language that I passed out this morning that perhaps could be a compromise between the two. It would essentially allow for the smaller farms if they submitted an application within the next six months we, we would allow them. But after that it would be a \$35,000 income test, and so it would be a balance between the Farm Bureau's approach which says you really should be a bona fide farm, and on the other hand allowing, acknowledging that there are these pre-existing small lots out there that wouldn't make the income test. So that's, that's a starting point. There's also been discussion about a farm plan requiring that, and the language that I passed out and Member Johnson also has some similar language, we could discuss the farm plan too.

CHAIR BAISA: Member Hokama. Thank you, Mr. Hunt.

COUNCILMEMBER HOKAMA: If I may ask a question please?

CHAIR BAISA: Absolutely.

COUNCILMEMBER HOKAMA: Thank you very much. Mr. Director, has your Department attempted to at least try to communicate with the State Department of Agriculture and see if they had any recommendations or suggestions to either your Department that could be passed on to this Committee regarding the variables of income considerations for different size of acreages or soil classifications and regarding what actual true activity is occurring on the property? I mean if, you know, Class D for some is not very good land,

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but it might be very good land for orchids because it has other climate advantages or elevation advantages or, or things of, those types of considerations. You know for Lanai we grow pineapple because of various conditions. One is the water consideration, soil acidity, amount of acreages available, topography, slopes, and those kind of things. Obviously, we wouldn't do sugar 'cause we don't have the water on Lanai. But have you been able to possibly get some guidance from State Department of Ag regarding how we may want to try to appropriately adjust income considerations?

MR. HUNT: I don't believe we've gotten input from the State. We had talked with the Farm Bureau and we met with them just recently. And we have reviewed the HRS laws and I think it, it's difficult to create a test that suits every situation. There's so many unusual situations, every situation is a little bit different from another one. And I think if we want to accommodate the smaller farms, then we should find some exemption that essentially says they're farming to the extent maximum that they can, or that they're not suitable for farming, some kind of exemption like that, and then still require a large income test for the true bona fide farm. And I think that would be consistent, the second half of that would be consistent with what the Farm Bureau is recommending.

COUNCILMEMBER HOKAMA: I think it would be fair for the farmer/property owner to know what that maximum extent possible would be. If I had Class A or Class D, whatever it be, I can choose to farm something that I know will not make the income test so I can get another use. So is that the possible, or who makes those types of determination is what I'm asking to be fair so that in the administration of the policy those that will do enforcement can do it fairly and know that, while you chose to do this crop, you know, State Ag will say that, that's not what they would have recommended for this location or this type of soil with your water restrictions or your water availability. So how do we make it so that it's fair because, you know, we've heard even those running for office, it is important to maintain agriculture acreage in this County. Any comments, please?

MR. HUNT: I think the first step would be to pass legislation that sets up the standards, and then the standards can be reviewed by the Department. We can even adopt administrative rules. Some of that review could involve the Farm Bureau or the State Ag. Part of the review could be an analysis of the soils and the microclimate for that parcel of land, a site visit. And so the farm plan should involve all that.

COUNCILMEMBER HOKAMA: And one quick question please followed by, I don't know if Mr. Alueta has additional thoughts he might want to share but for our Chair to assist us in moving toward decision-making hopefully, that I know she desires. Is this the appropriate vehicle for us to place this type of considerations in? Or should this be in another part of the code? Or should this be part of the general plan language and follow the community plan languages? Or should it be in the B&B ordinance?

MR. HUNT: And that's a, that's a good point. I think what we're starting to do is dive into the definition of farm use and regulations on farming because we're talking about B&Bs on

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farm land. And I agree that our whole regulations of the farm, farm area needs, needs review. But perhaps we're getting in too deep here and we just need to say simply set up some parameters for B&Bs and then later on when we review the Ag district, and again the Department is working on a package of Ag bills. We could, we could throw that in there too. And I think Joe wanted to say something if it's all right.

COUNCILMEMBER HOKAMA: But before Mr. Alueta, I just ask that you help us take into account that if we are going to look at other parts of the code for potential revision how long does this then delay the implementation of our potential new B&B policy? Because there's a lot of people waiting for decisions whether to...they're going to get a operation or they're going to be denied an operation. And so there comes a point where time is of a consideration also for us to be able to give them a, a decision one way or another regarding their applications. Do you have any thoughts on that?

MR. HUNT: I agree. It's a challenge because if the farm lands didn't have these B&Bs operating out there right now it would be a lot easier to legislate, and we could actually postpone it until we looked at the agricultural package. But right now we have these B&Bs that you've heard testimony, people have been operating, they want to operate. And I think it'd be, it'd be logical for the Council to say given the fact that we have these existing B&Bs out there perhaps we should adopt an ordinance right now and move forward and not wait for the Ag package to come before you.

COUNCILMEMBER HOKAMA: Okay. Thank you.

CHAIR BAISA: Thank you, Member Hokama. Director Hunt, the Chair would really appreciate it if we could focus on the, the proposed verbiage that you have shared with us, and we'd appreciate it if you'd share it. Because I do know that there are hundreds of interested people that are watching today to see what's going on here, and they don't have a copy of this. Would you please read it for us? And then we can discuss it. We better get to some kind of logical order or we're going to be all over the place.

MR. HUNT: What the proposed language would do would be to revise the draft bill at the top of Page 4 of the draft bill, and the draft bill discusses income tests. And the existing language says that a B&B would be allowed in the Agriculture district if you met an income test of \$1,000 for lots less than two years [*sic*].

CHAIR BAISA: Two acres.

MR. HUNT: Pardon me. And \$2,500 for lots of two acres or more. Another option would be, be located on a site listed on the State Historic Register. Again some of the concerns we've heard from the bona fide farmers is this is too liberal. At the same time we heard arguments from the smaller lot owners that this isn't possible to meet. We certainly don't want to create a situation where our farm zone is more, it's more profitable to run a B&B than to farm for legitimate farmers for large lots. So the, the proposed language is trying to find a balance between the two. The...under "A" of the proposed language that's

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before you now, B&Bs would be allowed if they're operated in conjunction with a bona fide agriculture operation that produced \$35,000 of gross sales and agriculture product for two of the preceding years, or two, for the two preceding years, and that language should be changed, there's an error there. The next option would be, however there's a small lot exemption. So we could allow a B&B in the farm zone if an application was accepted as complete prior to July 1st of next year. So we give them approximately six months. And that application is subsequently approved, the lot is comprised of five acres or less, and an approved farm plan has been implemented so that the lot is being farmed to the maximum extent that is practicable. And then the third option is just the State Historic Register again. And we can massage this language. The language on the small lot exemption is intended to say we're acknowledging the existing small lots out there, but we don't want to keep going forward. We don't want to perpetuate these small lots. We're giving the people who've been operating, who were told by previous Administrations go ahead and operate, we're giving them a chance to come in, we'll give them six months to submit an application. Anybody who submits one after July 1, 2009, the exemption is no longer valid, and then they would have to meet the 35,000 income test. So it's not perfect legislation. We're trying to address the concerns of the legitimate bona fide farmers and recognizing that there are some small farms, small farm parcels operating out there.

CHAIR BAISA: Thank you, Director Hunt. Members, comments on this language? Member Johnson.

VICE-CHAIR JOHNSON: Jeff, with regard to the, I guess consistency with community plan, because that's stated in another part of this legislation, that would be an assumption also that there would be consistency with the community plan.

MR. HUNT: Yeah. So the language would say that bed and breakfast homes are permitted in the Ag zone under Chapter 19.64. So then you'd have to comply with all the other language under the B&B ordinance as well, and you're right, there is community plan compliance language.

VICE-CHAIR JOHNSON: Okay. Madam Chair, I think that, you know, Mr. Hunt and I, I was going to send forward a memo and then I thought well, you know, it, basically my thought is which I reiterated last time is that if the farming community, even the people that are doing, you know, and have been doing legitimate farming activity, as you heard from one of the testifiers today, it is very difficult for them even in these times to turn any kind of a profit, to have any kind of income. Many times it's just basically they're barely managing. The other thing that I did have an opportunity to speak with Mr. Watanabe about was and, and this obviously is something that's not a part of our discussion today, but when we do revisit the Ag definition of whether it's income, I think it should also be your expenses.

CHAIR BAISA: Right.

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VICE-CHAIR JOHNSON: It should also be if you gave out a favorable lease, even if you didn't charge a dime, to farm workers that were displaced that could never afford to do legitimate farming. That to me is making farm land available. I don't believe you yourself and because we do have other people that are getting on in years, they may not feel like they have the strength to do farming. But if you make your lease, your land available on a lease, do a legitimate farming operation and whether you get income from it or not I think it's very important.

But one of the things that I also spoke about with Mr. Hunt is the fact that some of the individuals who are trying to qualify in another way for certain, I guess, tax benefits or certain things before the State Department of Agriculture for ag dedication. What they're doing is they're friends, I'm going to give you a receipt for XYZ, you give me a receipt for XYZ. So it makes a mockery of the income test because there are ways that people will get around it. So from my perspective I don't think that the income test is enforceable, I don't think it covers all the circumstances, even what Mr. Medeiros was talking about this morning with regards to donations. If you're supporting a food bank, or even if you have a farm family living on your property, you may not be earning the income but maybe they are. So I, I do agree with and, and I think that on the larger lots, I don't necessarily even say that 35,000 is even a realistic income. But I'm willing to consider the modification by Mr. Hunt, but I would also like to look at some of the modifications that I made, some of the, I guess the amendments. Because I have some language changes that would kind of work in tandem with what Mr. Hunt is proposing.

But the final thing, too, is I really do favor some form of transitional, you know, because we haven't even gotten to TVRs yet, but that's another subject, we're sticking with the ag now. So I do think this is workable, I may make some amendments, you know, after, after we discuss my specific amendments. But I'm willing to look at it because I think that half a loaf is better than none, and we're trying to do things on the fly, we're kind of trying to catch everybody, once-size-fits-all legislation. And clearly it's not working very well.

CHAIR BAISA: Thank you, Member Johnson, for your comments. The Chair would like to say that, you know, I've been dealing and all of us have been dealing with this for a very long time, and we know that we're not going to have a perfect bill when we're done. The Chair would like to see that like we did with the affordable housing ordinance that we put in the legislation that we finally move forward some statement about a review in a year, and possibly having to, you know, make some changes. I think that it's really important when we passed, when we pass legislation like this that is so broad and has such a great impact that we look at it and we realize that it's probably a living thing that has to be amended. Because we can't possibly think of all the unintended consequences that will come along. So I would suggest that, you know, when all is said and done that we add a clause that we, whoever's here take a look at it in a year and see, you know, what has worked, what hasn't worked and possibly amend it. Any additional comments on this? Otherwise I will have Member Johnson suggest what she'd like to see happen to it. Mr. Medeiros.

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COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair. I just have a few questions for Director Hunt.

CHAIR BAISA: Yes.

COUNCILMEMBER MEDEIROS: Thank you, Madam Chair. Because we're talking about, you know, agriculture and the income test and so forth. Who's the deciding authority on bona fide agriculture operations?

MR. HUNT: It would be dependent on the criteria that you set up. So under the proposed language it would be in conjunction with a, well, the bona fide agriculture operation would produce \$35,000 of gross sales of agriculture for two preceding years.

COUNCILMEMBER MEDEIROS: Okay. Yeah. I understand the income part. But who decides that your operation is a bona fide agriculture operation?

MR. HUNT: We could, you could actually take out the bona fide and just simply say an agriculture operation then.

COUNCILMEMBER MEDEIROS: Oh. Okay. Okay. I, I just thought maybe there was a committee or something. The next thing is, who's the authority on receiving and approving the farm plan?

MR. HUNT: The way the B&B ordinance is set up is it would be the Planning Department unless there were those triggers that went to the Planning Commission. In this case it's in the Agriculture district so you would need a Special Use Permit under existing laws and that would go to the Planning Commission for all of these.

COUNCILMEMBER MEDEIROS: So are there standards or requirements in place already for an approved farm plan?

MR. HUNT: No. But we could adopt those through the administrative rules. And it, it's probably something we should do to lay out criteria.

COUNCILMEMBER MEDEIROS: Right. Okay. In line with that question is again who's the deciding authority on maximum extent of agriculture operation?

MR. HUNT: That would be the Planning Department but we would work with the Farm Bureau and soil experts, taking a look at the studies that have been produced --

COUNCILMEMBER MEDEIROS: Okay.

MR. HUNT: --working with the applicant.

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COUNCILMEMBER MEDEIROS: Okay. Thank you for that. Kind of little bit different line of questioning is, because areas like Hana have so much Interim zoning, what can we do to either include Interim zoning? Because I think as one of the testifiers mentioned, if you need to go through the process of changing your Interim zoning to some more permanent zoning such as Rural, by the time you're done with your process there may not be any opportunities left as far as a cap and so forth. So what is your, your comments about possibly looking at, especially as it impacts rural areas and ag areas like Hana on Interim zoning?

MR. HUNT: Our Interim zoning district bill which is working its way up to you folks contains a provision where B&Bs would be allowed in the Interim district. It just hasn't gotten to you yet.

COUNCILMEMBER MEDEIROS: Okay.

MR. HUNT: In talking to Mike Hopper, we believe you could add that to this bill if you'd like.

COUNCILMEMBER MEDEIROS: Okay. Well, thank you for that, Director. That, you know, gives us a better perspective on things. And finally, you know, when we, and I'm speaking for East Maui which is very rural, very ag, and it's always been like that. Tourism plays an important part, like any other community in Hana, but recently just because of the economic times globally, nationally, and locally tourism is in great decline in Hana where many people losing their jobs or have had their work hours reduced. And even though there's an argument that less people are traveling just because of the cost of travel and energy costs and so forth there's also the realization that people that stay in alternative accommodations most likely wouldn't stay in resort accommodations just because of the cost and the experience. They like to experience the more rural ag kind of experience. So how, how do, what are your comments on being able to allow, you know, alternative accommodations for areas like Hana even though we do not want to compete with the hotel, and we think we don't compete with the hotel because it just is a different clientele that utilizes alternative accommodations?

MR. HUNT: The, the Administration supports these home-based businesses that are intended to accommodate the tourists. We recognize that that's an important part of our economy. That's why we're here before you with these bills to streamline it and to make the permitting easier and to identify clear criteria. I think the, the B&B bill that's before you I think will accomplish a lot of those goals and speak to the issues that, that you just mentioned.

COUNCILMEMBER MEDEIROS: Thank you, Director. I appreciate your comments and suggestions on my questions. Mahalo, Madam Chair.

CHAIR BAISA: Thank you, Member Medeiros. Any additional comments? Member Molina.

COUNCILMEMBER MOLINA: Thank you, Madam Chair. More just for clarification as to --

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CHAIR BAISA: Yes.

COUNCILMEMBER MOLINA: --what the rest of our day will go like. I know we had a lot of testimony and getting a lot of Q&A. Can you give us an update basically? I know we heard from the Director saying that their issues are done.

CHAIR BAISA: Right.

COUNCILMEMBER MOLINA: Now is, is it your, you're the driver of the car, you know what I mean. So now we will be taking considerations for amendments to the bill today and do you anticipate us finishing, taking any final action on the bill at the rate we're moving?

CHAIR BAISA: The Chair would very much like to finish this bill today. But, you know, the Chair tends to be an optimist. I am very interested that we would deal with the proposed language that our Planning Director has submitted in regards to agriculture. The Chair would like to handle Member Johnson's amendments, and then there are, as you know, a few more issues that have been mentioned already today that you...

COUNCILMEMBER MOLINA: Such as the cap.

CHAIR BAISA: Such as the cap. We'd like to revisit the cap. And the Chair anticipates there will be a motion to that effect.

COUNCILMEMBER MOLINA: Okay. Thank you.

CHAIR BAISA: And then hopefully we won't run out of time. So we need to kind of act expeditiously here.

COUNCILMEMBER MOLINA: Thank you.

CHAIR BAISA: The Chair actually is ready to entertain a motion in regards to Member, I mean, I'm sorry, Director Hunt's proposed legislation so that we can discuss it and possibly amend it and move it.

VICE-CHAIR JOHNSON: I move that we adopt the language as handed out to us by Mr. Hunt.

CHAIR BAISA: Do we have a second?

COUNCILMEMBER MOLINA: Second for discussion.

CHAIR BAISA: Thank you very much. We have...

COUNCILMEMBER HOKAMA: Point of information --

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CHAIR BAISA: Yes.

COUNCILMEMBER HOKAMA: --please, Madam Chair. What document are we...

CHAIR BAISA: Mr. Raatz will provide one. We have too much paper, that's our problem. Okay. We have a motion and a second to adopt the language that was proposed by the Planning Director in regards to Section 12 in regards to agricultural B&Bs. Discussion? Member Johnson.

VICE-CHAIR JOHNSON: Yes, Madam Chair. Move to amend to correct the language in Item A where it says, "Operated in conjunction with bona fide agriculture operation that produced 35,000 of gross sales of an ag product or products for the two preceding years".

COUNCILMEMBER MOLINA: Second.

CHAIR BAISA: We have an amendment and that is to clear this language here and essentially take out what I believe was put in by mistake. Two of the three, take that out and just go with two preceding years?

VICE-CHAIR JOHNSON: Yes. That's my amendment.

CHAIR BAISA: Any comments on that amendment? Seeing none, yes, Corp. Counsel.

MR. HOPPER: Just for clarification. I haven't reviewed this bill yet. There were a couple of, of I guess you could call them technical revisions, but also a couple of issues to address that I think would merit discussion now if you'd, if you'd like. Because there's things that I think you would need to address. I'm not sure if you would want to do that right now or, or perhaps in the future just as far as the language and questions that, that we would have before being able to approve the bill.

CHAIR BAISA: If they are wordsmithing kinds of things, can we defer that to Staff or do, do we need to do that here?

MR. HOPPER: I spoke briefly with Mr. Hunt. They relate to how this would be proved. For example, in the current ag ordinance you have, using the State excise tax forms, Schedule F forms for the income test. And for, also the language was in, in that section stated that the sales would be for each of the two years. This simply would say 35,000 for two years. So it's a bit ambiguous as to you met an aggregate of 35,000 or 35,000 for each of the two years. I wanted to bring those up as early as possible.

CHAIR BAISA: Thank you. That's very clear. Member Johnson, should we consider that a friendly amendment?

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VICE-CHAIR JOHNSON: Yes. I, I would say, it was my understanding through the discussions that we had that the 35,000 would be the aggregate during a two-year period. Is that correct, Mr. Hunt? Or did you mean each of the two preceding years?

MR. HUNT: Well, well, Council can adopt whatever you want obviously. The intent was to mimic the existing ordinance which states, as I understand it, 35,000 for each of the preceding two years.

VICE-CHAIR JOHNSON: Oh, okay. Yeah. Then let's be consistent with, because that was my conversation with Mr. Watanabe to be consistent with what we had on at least the large, you know, the large parcels. So I, I guess a friendly amendment...

CHAIR BAISA: Could you restate that please?

VICE-CHAIR JOHNSON: Yeah.

CHAIR BAISA: So we're clear.

VICE-CHAIR JOHNSON: My, my friendly amendment, for each of the two preceding years.

CHAIR BAISA: Member Molina.

COUNCILMEMBER MOLINA: Yes.

CHAIR BAISA: You okay with that? You're the second.

COUNCILMEMBER MOLINA: This is a friendly amendment, right?

CHAIR BAISA: Yes.

COUNCILMEMBER MOLINA: Yeah. So we don't need a...

CHAIR BAISA: Okay. No problem.

COUNCILMEMBER MOLINA: Do we need a motion if it's a friendly amendment?

CHAIR BAISA: No. No.

COUNCILMEMBER MOLINA: I have no problem.

CHAIR BAISA: We're just making friendly amendments. I just want to make sure nobody has an objection to what we're doing.

COUNCILMEMBER MOLINA: No. No objection.

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VICE-CHAIR JOHNSON: No, and, and, Madam Chair, with regard to the issues raised by Mr. Hopper in conversation about how you would establish that, can you offer Mr. Hopper any language to that effect as to how we could incorporate the establishment of that agricultural income?

MR. HOPPER: I was only pointing out that, that in the current, in your current ag ordinance dealing with your, I believe it's the third farm dwelling. The, the income test states that the income, or it says proof of at least 35,000 of gross sales of agricultural product as shown by a State general excise tax forms and Federal Schedule F forms. That's what's currently in, in that ordinance. However, however you direct the Planning Department to measure that income is within your discretion if you want to adopt that as an income test.

VICE-CHAIR JOHNSON: Madam Chair, I would not want to delete the language . . . *(change tape, start 2B)*. . . that was just outlined by Mr. Hopper. Therefore, because we're doing this, am I to understand, Mr. Hopper, that that is a part of the current code?

MR. HOPPER: The current code for a separate provision. I'm giving, I would --

VICE-CHAIR JOHNSON: Oh.

MR. HOPPER: --state that as an example of how this \$35,000 income test has been proved in the past. In your current, in the current version that Mr. Hunt has passed out, that language is not in there and it may be helpful to the Department to specify how they would determine if this income test is met.

VICE-CHAIR JOHNSON: Okay. So to mirror the language that's in the existing?

MR. HOPPER: That's one possible avenue. Yes.

VICE-CHAIR JOHNSON: Madam Chair, I move to amend then to incorporate the language as stated by Mr. Hopper into this ordinance to be consistent.

CHAIR BAISA: Okay.

COUNCILMEMBER MOLINA: Second for discussion.

CHAIR BAISA: Thank you very much. I think we've heard what Corp. Counsel is suggesting, and he's proposing consistency with what already exists in this language that we're going to adopt. Maybe, Mr. Raatz, if we could have somebody restate the whole thing so we're clear as to where we are. It's really important that when we're going to pass legislation that we're clear what we're doing.

MR. RAATZ: I'm sorry, Madam Chair. Staff doesn't have the entire language. We have the handout from Director Hunt but we don't have the language that Mr. Hopper was referencing.

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CHAIR BAISA: Okay. Well, where it needs to be inserted, we'll ask Corp. Counsel if he could just please state it again.

MR. HOPPER: The language it could be inserted at the end of what you have is a Subsection A of Subsection 12 of 19.30A. And at the end of the first sentence I believe as amended you currently have, "Operated in conjunction with a bona fide agriculture operation that produced \$35,000 of gross sales of an agricultural product for each of the preceding two years". And then there would simply be I believe a comma and then "as shown by State general excise tax forms and Federal Schedule F forms". And then a semi-colon and then "or" and then the rest of the bill if you so choose to, to use that as the criteria.

VICE-CHAIR JOHNSON: Madam Chair, I think that that is really very clear. There's no ambiguity to it, it's each of the years, and it states very clearly what it has to appear on so you can't be fudging or manipulating the system. So I think what it does is if you're filing these on existing GET taxes, if you're paying the tax based on income or revenue received, then certainly, you know, if you're not being honest about it, you're not going to want to pay taxes on money that you never received. So I think that's fair and I certainly would want it to be consistent with what we currently have to, you know, to at least try to support agriculture on those larger lots. I still think that there's other work that needs to be done as far as income, but if that's what we're going with for the time being I'll support that.

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

COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair. I just need some clarity on this. So it says the lot is comprised of five acres or less. So would that include...

CHAIR BAISA: Uh, Mr....

COUNCILMEMBER MEDEIROS: I'm sorry.

CHAIR BAISA: I'm sorry. Member Medeiros, can we stick to that first sentence.

COUNCILMEMBER MEDEIROS: Oh, on the amendment. Oh, only?

CHAIR BAISA: Yeah, and let's deal with that 'cause we have an amendment on the floor.

COUNCILMEMBER MEDEIROS: Okay. So, okay. One question on that part then, the 12A. So 35,000 gross sales is before any kind of expenses or losses?

CHAIR BAISA: Director Hunt.

MR. HUNT: It would be gross sales.

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COUNCILMEMBER MEDEIROS: Okay.

CHAIR BAISA: Gross sales.

COUNCILMEMBER MEDEIROS: Okay. That's the only question I have for that part. Thank you, Madam Chair.

CHAIR BAISA: Thank you very much. Member Molina.

COUNCILMEMBER MOLINA: Madam Chair, I apologize. I'm still trying to keep track of this. Any possibility we can have this displayed on the, on the wall if --

CHAIR BAISA: I'm sure that that's possible.

COUNCILMEMBER MOLINA: --Staff could do that?

CHAIR BAISA: Do we need a few minutes, Mr. Raatz?

MR. RAATZ: Yes, please.

CHAIR BAISA: Okay. We'll take a very, two minute break.

COUNCILMEMBER MOLINA: Thank you.

CHAIR BAISA: So please do not leave the floor. . . .*(gavel)*. . .

RECESS: 11:04 a.m.

RECONVENE: 11:12 a.m.

CHAIR BAISA: . . .*(gavel)*. . . Meeting will come back to order. Thank you for the little break here, we needed to work on a few things. We have a motion on the floor, we have a second, and we now have our language up there. Member Molina, comments?

COUNCILMEMBER MOLINA: Thank you. That makes it a lot clearer for me, Madam Chair.

CHAIR BAISA: . . .*(Laughter)*. . . Yes. I agree. Chair would like to discuss a couple of things in this bill, and first of all it's the No. 3 where it says, "An approved farm plan that has been implemented so that the lot is being farmed to the maximum extent that is practicable". It's been brought to my attention that the farm plan does not require that, that actually it's, it's a 51 percent I think. Director Hunt, can you comment?

MR. HUNT: I believe you're right, and you could change the language to reflect what you just said. The idea here was if you're in the farm zone and we're giving you an extra

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entitlement for a B&B that you should be farming your land to the maximum extent that's practicable. I mean we would account for parking and you can have a front lawn and things like that. If you have a gulch, obviously it's not farmable. That's not the intent. But if you have good farm land in a farm zone, we should be encouraging people to farm that land.

CHAIR BAISA: What...

MR. HUNT: We're okay with if you're more comfortable with 51 percent. We can live with that.

CHAIR BAISA: I'd like us to be consistent and if, if that's the language in the farm plan, then why would we want different language? Maybe it'd be better if we were consistent.

MR. ALUETA: I guess the reason is you're trying to establish a higher criteria for an additional entitlement. If you, if you, that's all, if you feel that it should be the same as proving to get a farm dwelling, then we can use that same language.

CHAIR BAISA: Well, you don't want to really hear my comments about farm dwellings and farming and whatever because nobody likes my comments. But I would like to be consistent. Member Johnson.

VICE-CHAIR JOHNSON: Yes. And this is where I would, if you look at my amendments which I handed out on September 18th, my amendment No. 3 I think would clarify some of the language by, if you look at the way it's stated by Mr. Hunt. An approved farm plan has been implemented and is consistent with all aspects of Chapter 205 HRS.

CHAIR BAISA: Can somebody explain what that means?

VICE-CHAIR JOHNSON: Okay. It just means that the 51 percent is what is in HRS 205 that fully establishes what should be taking place on farm land.

CHAIR BAISA: So it says what I'm trying to say.

VICE-CHAIR JOHNSON: It says, basically, you know, where there's a question, if we have consistency with HRS 205 that has always been my thing, and that's why it was really important to me to integrate that language. But the one thing I would add in is just say an approved farm plan has been fully implemented. So I mean you can implement the first phase of it but I want to make sure that it's been fully implemented, and then in compliance with all aspects of HRS 205. So...

CHAIR BAISA: Would you like to suggest that amendment?

VICE-CHAIR JOHNSON: Yes. I'm going to...

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CHAIR BAISA: Wait, wait, wait, wait. Our amended, amendment that we have on the...

VICE-CHAIR JOHNSON: We're, we're not through with our other amendment yet. So the first part I think we should deal with. You kind of got off topic a little bit through me. We should deal with the first part of the amendment that I proposed because --

CHAIR BAISA: Okay. Let's deal with the first amendment.

VICE-CHAIR JOHNSON: --that's on "A".

CHAIR BAISA: Can we please have that restated so we know what we're dealing with?

VICE-CHAIR JOHNSON: Madam Chair, my amendment was to look at Item A and to insert the following language, "Operated in conjunction with a bona fide agricultural operation that produce \$35,000 of gross sales of an agricultural product or products for each of the preceding two years as shown by State general excise tax forms and Federal Schedule F forms, or".

CHAIR BAISA: Okay. That's our amendment. We have a second. Any additional discussion about that? If not, all those in favor please say aye.

COUNCIL MEMBERS: Aye.

CHAIR BAISA: Opposed, no? Motion carries unanimously with five votes. Thank you.

VOTE: AYES: Councilmembers Hokama, Medeiros, and Molina, Vice-Chair Johnson, and Chair Baisa.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

ACTION: Recommending APPROVAL of amendment.

CHAIR BAISA: And now we have another amendment being proposed.

VICE-CHAIR JOHNSON: Yes. Madam Chair, on the, the third number on "B-3". I would move to amend the language that's stated to say, "An approved farm plan that has been fully implemented and is consistent with HRS 205".

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CHAIR BAISA: Need a second for discussion.

COUNCILMEMBER MOLINA: Second for discussion.

CHAIR BAISA: Thank you, Member Molina. We have a motion on the floor. Member Johnson, comments?

VICE-CHAIR JOHNSON: No. I just said, "That has been fully implemented and is consistent with HRS 205". Chapter 205. And then start the language so that the lot is being farmed.

CHAIR BAISA: Okay.

VICE-CHAIR JOHNSON: Yeah. That's my amendment and that would take care of Item No. 3 which I had submitted previously.

CHAIR BAISA: Members, comments? Questions?

COUNCILMEMBER HOKAMA: I just...just a point of clarification.

CHAIR BAISA: Yes, Mr. Hokama.

COUNCILMEMBER HOKAMA: My, my question is so that if anyone asks. Under Subsection B that's being considered, discussed at this time, Chair, that all three criteria needs to be met, not one of those criteria, all three. Is that. . .

CHAIR BAISA: My understanding was all but I'll check with the Planning Director.

MR. HUNT: That was the intent.

COUNCILMEMBER HOKAMA: Okay. Thank you very much.

CHAIR BAISA: Any additional comments on the revision to "3"? Yes, Member Molina.

COUNCILMEMBER MOLINA: Maybe I'm getting carried away with semantics but maybe should we also really clarify that all three? 'Cause when I read it, someone could argue, they said, well, it doesn't really say that all three must be met.

CHAIR BAISA: You want to say meet all the following criteria?

COUNCILMEMBER MOLINA: Yeah, yeah. Maybe that might make it much more clearer.

CHAIR BAISA: Is that clearer?

VICE-CHAIR JOHNSON: All of.

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COUNCILMEMBER MOLINA: Meet all of the following. Yeah. I don't know if that should be considered just as a friendly amendment.

CHAIR BAISA: I think that's a friendly amendment.

COUNCILMEMBER MOLINA: Yeah. Okay.

VICE-CHAIR JOHNSON: I can put that in my motion.

CHAIR BAISA: A very important amendment, but nevertheless. Any additional comments on the amendment that's been proposed on No. 3? If not, all those in favor, please say aye.

COUNCIL MEMBERS: Aye.

CHAIR BAISA: Opposed, no? Motion carries unanimously. Five ayes.

VOTE: AYES: Councilmembers Hokama, Medeiros, and Molina, Vice-Chair Johnson, and Chair Baisa.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

ACTION: Recommending APPROVAL of amendment.

CHAIR BAISA: I'd like to go back to No. 1 in that same area.

COUNCILMEMBER MEDEIROS: Madam Chair?

CHAIR BAISA: Yes.

COUNCILMEMBER MEDEIROS: Yeah. Just a point of information, please, if you would allow me?

CHAIR BAISA: Sure.

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COUNCILMEMBER MEDEIROS: Because, you know, I was not clear on this and speaking to another colleague, they weren't clear either. My understanding of this proposal is that if you meet "A", then you can have a B&B on that kind of zoning. Is that correct?

CHAIR BAISA: Yes. Correct.

COUNCILMEMBER MEDEIROS: And in Subsection 12(b), if you meet all of that criteria, you can have a B&B.

CHAIR BAISA: Assuming you go through the process.

COUNCILMEMBER MEDEIROS: Assuming that you didn't --

CHAIR BAISA: Yeah.

COUNCILMEMBER MEDEIROS: --have the 35,000 gross and cap.

CHAIR BAISA: Yes.

COUNCILMEMBER MEDEIROS: So they're, they're separate, right?

CHAIR BAISA: Yes.

COUNCILMEMBER MEDEIROS: Okay. And, and that makes it clearer for me. Because I, I was wondering, 35,000 and less than five acres --

CHAIR BAISA: No.

COUNCILMEMBER MEDEIROS: --you know, would be, okay.

CHAIR BAISA: This is to help the people that don't have the \$35,000 income.

COUNCILMEMBER MEDEIROS: Okay. So is there some language that will make it clearer for people in the gallery and viewing it on television that you don't have to, you know, meet all "A", "B", and "C", but you could qualify under "A", under "B", and under "C".

CHAIR BAISA: Mr. Medeiros, I think that's why there's the "or".

VICE-CHAIR JOHNSON: Or.

CHAIR BAISA: Or.

COUNCILMEMBER MEDEIROS: Well. I, I think...

CHAIR BAISA: That's what that little word is.

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COUNCILMEMBER MEDEIROS: Yeah, yeah. In talking to --

CHAIR BAISA: It's the "or".

COUNCILMEMBER MEDEIROS: --Corp. Counsel, he had a good suggestion how to make it even clearer.

CHAIR BAISA: Fine. Well, then can we hear that? I'm open.

COUNCILMEMBER MEDEIROS: Or, or, or the Director.

MR. HUNT: As I understand it the Council has, in the past, approved conceptual motions to where you give us the substance of the language and, and Staff can go back and massage and fine tune it.

COUNCILMEMBER MEDEIROS: Okay.

MR. HUNT: That's an idea I have.

COUNCILMEMBER MEDEIROS: That, that would be fine with me.

MR. HUNT: If all we want to do is clarify that you don't have to meet all three of those --

COUNCILMEMBER MEDEIROS: Correct.

MR. HUNT: --we can come back with that language and I don't think it would be a substantive change.

COUNCILMEMBER MEDEIROS: Okay. Madam Chair, if you allow that, I appreciate it. Mahalo.

MR. HUNT: And my intent is should you pass out the bill, then it would be in the next version of the bill. Let's not hold it up for, for that.

CHAIR BAISA: The Chair is very open to allowing Staff to do nonsubstantive changes if the Members are okay with that. Any objections?

COUNCILMEMBER MEDEIROS: No objections.

COUNCILMEMBER MOLINA: No objections.

CHAIR BAISA: No. Okay. Where are we? We were back on No. 1.

VICE-CHAIR JOHNSON: Under "A".

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CHAIR BAISA: The question was I've been asked to clarify the words that's saying, application was accepted and completed prior to July 1, 2009...oops --

VICE-CHAIR JOHNSON: Oops.

CHAIR BAISA: --and has been approved. Why the window? Mr. Hunt.

MR. HUNT: Again we're trying to balance the argument that our farm zone is intended for farming, and we don't want to undermine our bona fide farmers by allowing commercial uses in our farm zone that then tends to raise the price of the farm land to the point where it's not profitable to farm. So that's, that's the intent of the 35,000 gross sales. At the same time we're trying to balance the, the existing situation that there are a lot of small farms out there, small parcels that have had B&Bs in the past. And so we want to accommodate those B&Bs, but because they're existing we're accommodating something in the past, we don't believe that it's good to perpetuate that going into the future. And so that's the intent of the time limit. We could change the time limit or if, if you take the time limit out all together it is a substantial change.

CHAIR BAISA: Members, comments? Member Johnson.

VICE-CHAIR JOHNSON: Yeah. And, and because of one of the issues that was raised by one of the testifiers, Ms. Swanson, where she's looking at, you know, this whole section doesn't really address the issue of grandfathering. Would this be the section that you would put that in? Because I agree with her there is some people that have basically, and I don't know if they have a conditional permit currently and are operating a bed and breakfast and they want to go under this ordinance. Would this be the area where you would not want to cover and I mean, these people would kind of be left out?

MR. HUNT: I think Mike Hopper has some language that he will be proposing to address the grandfathering of the lessee.

VICE-CHAIR JOHNSON: Okay.

MR. HUNT: And I would suggest that we, we, we try and deal with this motion that's on the floor now --

VICE-CHAIR JOHNSON: Yeah.

MR. HUNT: --and come back to that later.

VICE-CHAIR JOHNSON: Okay. Because I just didn't know if that was applicable. Yeah. Madam Chair, I, you know, I mean, it seems kind of arbitrary but, you know, for a lack of anything else. I mean we could revisit it and if we do something else as far as --

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CHAIR BAISA: Right.

VICE-CHAIR JOHNSON: --transitional permit. If we do that, then I mean we could always look at extending this date or modifying it or making other modifications if we're going to go that route. But this is specifically, as I understand it, Mr. Hunt, this is just for the small acreage.

MR. HUNT: It's just for the small acreage and it's an opportunity for the existing farms and small, small-lot owners to go ahead and come in for a B&B without perpetuating that land use pattern out into the future.

VICE-CHAIR JOHNSON: Okay. And, Madam Chair, I have my other, you know, I have other issues but it's, one of them is specific to Ag zoning, and I don't know if it would be appropriate to insert it in here but that's where, I guess, meet the following criteria. You know I'll just make an amendment and see if you can, if I get a second. Meet all of the following criteria and then make like a No. 4 and my amendment would be, provided that the B&B is not covered by condominium property regime.

COUNCILMEMBER MOLINA: Second for discussion.

CHAIR BAISA: Member Johnson, comments?

VICE-CHAIR JOHNSON: The reason I'm doing this, this would be parallel to my Amendment No. 1 which I had included on my September 18th memo.

CHAIR BAISA: Yes.

VICE-CHAIR JOHNSON: And it's worded a little bit differently but I think because this was one of the issues that we have not yet dealt with in the past ag zoning ordinances. The reason that I'm including it is that under condominium property regime what's happening in some of the subdivisions is that you have one TMK, there are different owners so that already the purpose and intent of HRS 205 is being subverted. Also subdivision would trigger certain compliance issues and when you're CPRing [*sic*] an ag lot already what you're doing in many situations is you're not, you're not meeting the definition under HRS 205. And these people in many cases are unrelated. Your, your farm dwellings are supposed to be for support of the farming activity on your land, and the secondary dwelling is supposed to be for farm workers or as an appurtenant structure. So I think that originally I believe Chair Hokama had made this one of the issues about prohibiting it on Ag land. But we haven't gotten there yet, so that would be my reason for adding in this particular component.

CHAIR BAISA: Any other, any other comments from the Members? If not, I would ask Planning Director to comment.

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MR. HUNT: We acknowledge the issue about CPRs. I think we need to recognize that CPRs don't create extra dwellings, it's an ownership issue. Your existing language in the B&B bill would already address the issue of ownership and additional dwellings, there's a maximum already. So I guess we're ambivalent on it. I'm not sure it's necessary but I understand the intent of protecting our farm land. The, I believe the Public Works is going to be coming forward with some bills to address CPRs in the future, and perhaps we want to address it more in the subdivision or in the ag package. But we don't, I don't have objections to it.

CHAIR BAISA: Chair Hokama.

COUNCILMEMBER HOKAMA: I understand what Ms. Johnson's proposal is trying to address, and my other suggestion would be that in a approved B&B operation or a permit can only be on one TMK. That would possibly, I don't know if Mr. Hopper would agree but that might take away the potential of those that have un-subdivided interest of potentially trying to create more structures than the State statute currently allows regarding accessory uses or appurtenant uses?

CHAIR BAISA: Mr. Hopper.

MR. HOPPER: That would be in addition to the definition of a bed and breakfast? Or would you only have that for the agricultural lots? I mean currently bed and breakfast requires that you are on, you need to be, the owner needs to own the, own the property and reside on the same lot because of the new definition. I'm not sure if that issue is sufficient, I would want to perhaps do additional research into the issue of condominium property regimes in, in the Ag land if, you know, if, if that's your concern. As I, if you, I mean, a TMK saying that it's by tax map key number versus on a separate lot. I'd want to look into that a bit more to see if there is much of a difference between the two as far as, you know, substantively, looking at the definition of "lot" in, in Chapter 19. So as of now I don't really have any thoughts on, on, on that. But if you could give me a bit more about what the problem is you believe that you might have with the current definition and why it may need to be more restrictive, then I could perhaps give a more clear opinion on, on that issue. As far as, as far as condominium property regimes in Ag land, I mean I wouldn't see any legal problems with your restriction. I'd want to, of course review the way that that's worded. But I could maybe discuss that more with you or, or get a bit more specific.

COUNCILMEMBER HOKAMA: Would it--I'm sorry to interrupt--would it make a difference if you had, you know, normally...well not, I shouldn't say normally. I've been made aware that there have been property regimes granted where let's say each multiple-parcels owners have equal interest and that's one way to administer it. What if they were regimes but one of the un-subdivided owners has the majority interest? Does it make a difference whether or not someone has 51 percent ownership and maybe one or two others have the remaining 49 versus all of them having equal 33 and one third interest of the property?

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MR. HOPPER: Well, you simply say in the definition here that, that it must be held in the name of the owner. So I would say and the Planning Department could give an opinion on this as well that an owner is somebody that has an ownership interest, any ownership interest. And if you want to address that to be more restrictive you, you could. You could say they have a majority ownership interest or have the permission of a majority of the property owners or all of the property owners as far as, you know, because you've, I mean you've in fact restricted lessees now from operating a bed and breakfast or from holding the permits. So, you know, you've got discretion in how you would define that. Right now I believe it states simply "owner". So if, if you're dealing with an owner of the property, that owner "A" can only have I believe, you know, one bed and breakfast, and "B" would need to reside on that, on that same property. So, I mean if you are a small-percentage owner, then I would not see a reason why you would not be able to apply for a bed and breakfast permit.

COUNCILMEMBER HOKAMA: Okay. Madam Chair, just one quick follow up please. From, from potential future taxation, is this an issue for Department of Finance? Either Mr. Teruya or our Deputy Director.

CHAIR BAISA: Mr. Teruya, if you could help us please. Or, Ms. Hayashi, you, leave it to Scott? Thank you.

COUNCILMEMBER HOKAMA: And I'm just, you know, we're not, I'm just talking about fair and equitable taxation treatment. Is this a potential issue or a non-issue for your division and the ability of the County to gather its fair share of revenue?

MR. TERUYA: Okay. Chair Hokama, first of all, could you restate the question? I wasn't following as...

COUNCILMEMBER HOKAMA: Ms. Johnson has proposed No. 4 as an amendment regarding property regimes.

MR. TERUYA: Okay.

COUNCILMEMBER HOKAMA: And your division is cast with real property taxation. So under these property regime parcels regarding the B&B is this any concern or issues that we would need to be made aware of now before we make a decision on whether or not we would like to incorporate this proposal in the legislation?

MR. TERUYA: Well, for us in, in...what I'm, what I'm getting at is, is you're saying that properties that are condominiumized are not --

VICE-CHAIR JOHNSON: In, in Ag land.

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MR. TERUYA: --in Ag land. I don't think that would be a problem for us to administer. Because our list would basically come from the Planning Department, so we just...no, I don't think we would have any problems with this language here.

COUNCILMEMBER HOKAMA: Okay. And is that the right term, "covered by", "not covered by property regimes"? Is there something?

MR. TERUYA: I would say. . .

COUNCILMEMBER HOKAMA: And again my, my experience is we need to try and be specific in the parameters, because it's my experience that someone will find a loophole and circumvent the policy.

VICE-CHAIR JOHNSON: Subject to.

MR. TERUYA: The recommendation probably would be subject to a condominium property regime.

COUNCILMEMBER HOKAMA: Okay. Thank you very much. Thank you, Chair.

CHAIR BAISA: Thank you very much, Member Hokama. Additional discussion on this? Member Johnson.

VICE-CHAIR JOHNSON: Yes. I think that clarifies the language, and the, the reason that I'm including it, 'cause I know it seems sort of bizarre I guess that you would include it. But what I have seen happen and not in all areas but in some areas is that the acceleration of development into agriculture lands has been made easier. Because when you can take a property that would, let's say it's five acres or two acres or whatever it is, and you condominium property regime it, you basically are finding a loophole in HRS 205 or at least the way the County is enforcing HRS 205. So it makes it easier for two separate families. One should be the person or the family that's farming the land. The second family should be either the farm worker or it should have some accessory use in support of the farming operation. But that's not the reality. But when you condominium property regime it, in some cases you've got two separate unrelated families maybe doing farming, maybe not. But they're both in some cases getting a homeowner exemption too, which makes it harder for a legitimate farmer who would be going out and he only gets one homeowner exemption. He's generally a legitimate farmer very...I can't even think of a legitimate farmer using a CPR. But I mean there could be some out there. But that's why I wanted it to be included because I think it's just one more area where if we can protect our farm land through measures like this, and we're not doing it actually in the Planning Committee with our legislation right now. I prefer to have this in. We can address it later on if it creates problems, but I think right now I, I just would ask for the support of the Members in including this.

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CHAIR BAISA: Okay, Members. Any more discussion on this issue? Otherwise, the Chair will call for the vote. . . .(change tape, start 3A). . . Yes, Mr. Alueta.

MR. ALUETA: Oh. Thank you, Madam Chair. Not specific to the amendment, it was just more on the comments from Councilmember Hokama regarding the property ownership. I just wanted him...that, that issue did come up as to whether if a person is a minority interest or a 1 percent interest we would still process the application, it doesn't matter. And we did, there was a discussion, I don't know if it was in the first or second Committee meeting that you had on this about having the applicant be the majority owner or the sole owner of the property. And that was batted around and we had no objections to that; however, there was concerns over kuleana lands on the, on the Hana side. I'm not sure if it was Councilmember Medeiros who brought it up or Ms. Johnson that brought it up, but that was an issue where you have parcels that 110 acres and you have 30 owners, and one of them have the, wanted to be able to do the B&B. And so they didn't want to restrict the ability of that minority owner to, to get the thing or even try to get approvals, I guess you could say from the rest of the family. 'Cause sometimes families don't talk to each other. So but that, but that was the, that's only for your discussion purposes.

CHAIR BAISA: Any additional discussion? If not, Chair will go. . .

MR. HOPPER: Madam Chair?

CHAIR BAISA: Yes.

MR. HOPPER: Just for the authority to, to make non-substantive changes, as written it's a bit iffy. It says "or" and then goes into the provided language. The language should probably be in a different position, probably, maybe at the beginning. Because right now it says the "or" should be right before Subsection C, I believe. It's a bit just awkward.

VICE-CHAIR JOHNSON: Oh, I see.

CHAIR BAISA: Okay. Let's fix. The wonders of technology. Okay.

MR. HOPPER: And, and to let, I wasn't necessarily suggesting you had to do that, that now. But just to let you know all the changes and amendments you're doing, we do review those and try to make them in as final form as possible so that when you do take action on the bill, when it's passed out of Committee you won't have to make many revisions at the full...or we won't have to make revisions before we would sign off.

CHAIR BAISA: Thank you very much. We might as well do 'em as we go. Okay, Members, all those in favor of the amendment, please say aye.

COUNCIL MEMBERS: Aye.

CHAIR BAISA: Opposed, no? The amendment is carried.

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VOTE: AYES: Councilmembers Hokama, Medeiros, and Molina, Vice-Chair Johnson, and Chair Baisa.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

ACTION: Recommending APPROVAL of amendment.

CHAIR BAISA: Now, and with a unanimous vote, the Chair would like to return to No. 1. I just want to make sure that everybody understands that if we leave this alone what we are essentially saying is that an application has to be accepted or completed prior to July 1 of 2009 which is not that far away from now, that's six, seven, eight months from now, and has been approved. So if they cannot meet this qualification, then there would be no window, because remember it's all of the criteria to exempt anybody that cannot meet the \$35,000 per year threshold. Now is that what we want to do? Member Medeiros.

COUNCILMEMBER MEDEIROS: It's my...thank you, Madam Chair. It's my understanding that in that particular section that the date certain is only that you apply by then. And that the process of getting your approval isn't subject to that date.

CHAIR BAISA: It says has been approved.

VICE-CHAIR JOHNSON: Approved.

COUNCILMEMBER MEDEIROS: Well, it has been approved but not by that date. Maybe you can ask the Director of the Planning or Corp. Counsel if that's the intent of his meaning?

CHAIR BAISA: Director Hunt.

MR. HUNT: The intent was that the July 1st deadline would only apply to accepted, accepting a completed application.

COUNCILMEMBER MEDEIROS: Right.

MR. HUNT: The approval could come subsequent to that.

COUNCILMEMBER MEDEIROS: Correct.

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VICE-CHAIR JOHNSON: Oh, okay.

MR. HUNT: And we can clarify that language.

CHAIR BAISA: I think we need to --

VICE-CHAIR JOHNSON: Yeah.

CHAIR BAISA: --clarify the way it's written, and we would like to take out the "has been approved" as a first change.

MR. HOPPER: You could take out "and has been approved" because at the very beginning it says that you meet 19.64.

VICE-CHAIR JOHNSON: Yeah.

MR. HOPPER: So it's, it's understood that you would have to, these are additional criteria to 19.64.

VICE-CHAIR JOHNSON: Yeah.

MR. HOPPER: So you still have to get approved.

CHAIR BAISA: Okay. But again the, the impact of this is that unless you apply prior and you have a completed application prior to July 1, then you would never be able to qualify without a \$35,000 annual income. Discussion, Members? The Chair has serious concerns about this. 'Cause actually what happens to anybody who wants to apply after that date? What if our, you know, numbers are lower than we think they will be? There's no provision for anybody to do it after that. Yes, Member Johnson.

VICE-CHAIR JOHNSON: You know I think this is one of the areas where if somebody starts experiencing a farming difficulty. Let's say that maybe they don't have a problem right now, but later on they have some crop failure or there's illness in the family. I think that I, I understand what the purpose and intent of this is, but I think that obviously if we haven't reached the caps yet, there may be people down the road that may want to do this. So I agree with you that the way it's being drafted right now, it's like if you don't get on the bandwagon now you're not going to make it at any future time, and I don't think that's what they, what we really want to do. I, I, you know, I just would look for suggestions from Corporation Counsel or from the Planning Department as to how we could look at that language so that at least the purpose and intent for the use of Ag land is not subverted but that it would provide an opportunity if someone who is currently farming but who has some kind of difficulty at a future date isn't precluded if they, if they do have this, you know, small operation but isn't precluded from applying. So do you have any suggestions, Mr. Hunt?

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MR. HUNT: If, if you open up the, the farm zone to any five acre parcel, then there's the concern that's been raised about undermining the farm zone, and commercial uses in the farm zone. So that's why we put the date on there. You could take the date off, you could replace it with not, not deemed farmable or, or have some kind of non-farm exception. You could extend the date, you could give it another year. But the intent was to acknowledge that there are farms out there and B&Bs that have been operating, but do we really want to just allow any five-acre parcel in the farm zone to have a B&B into the future?

VICE-CHAIR JOHNSON: Yeah.

MR. HUNT: And that's what we're trying to find a balance on.

VICE-CHAIR JOHNSON: Yeah. And I, and I understand that. I, you know, because this is not going to be a perfect solution, Madam Chair, I think we can revisit it. For the time being I think that as long as the language has changed and the application was accepted as being complete prior to July 1, 2009. I think that for the time being it probably is all right if there is a suggestion on part of any of the Members to actually go beyond that date, or if we hear from members in the audience that feel they need a little bit longer to submit an application. Hopefully, this will give them at least that six month window. If members feel they need a longer period of time I'm sure we're going to hear it in public testimony. But for the time being and for the sake of moving this forward I'll go along with it, with the changes that were just made.

CHAIR BAISA: As a, as a compromise, you know, we're talking about inserting into this bill a review in a year of how many applications we've gotten, how this bill is working out. I would be more comfortable if we gave it just a little bit more time. Knowing how the wheels of government work, I just don't see miracles happening in the next six months or eight months. So if we could kind of extend that date I'd be a lot more comfortable.

VICE-CHAIR JOHNSON: Madam Chair, I propose to amend "B-1" to state that an application was accepted as completed prior to December 1, 2009.

COUNCILMEMBER MOLINA: Second.

CHAIR BAISA: Discussion? That is, you know, one, one alternative. The other could be that, you know, we're asking for the application to be accepted as complete by the date we stick in there. We could also say that the property exists prior to that date. I don't really know, but I'm much happier with a longer time than I am with anything else, you know, than, than the way it was. As, and I'd like to see of course the second part put in the bill that we will review it in a...now let's think about this. When would we possibly be able to get this ordinance adopted? And then the year review? Say if we got it done by some miracle by the end of the year and I'm a believer in miracles, December 31st. So it would be December 31st of 2009. There would be a year in existence, we probably would not be

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able to review it right away, you know how it is with, we tend to take a little bit more time. So maybe a year and a few months would do it, it would give us a, a safety time. Yes, Member Johnson.

VICE-CHAIR JOHNSON: I have a question of Mr. Hunt. Because, assuming that this does move out of Committee and gets proper reading by Council and we get it out before the end of the year, do you see having difficulty with applications that you'll be receiving? And just, I'm not saying that you have to necessarily approve all of them, but that you'd receive them and say, yeah, you have all the information here that we're requesting. Do you think that December 1st is going to be a problem?

MR. HUNT: I think it will be a problem come November when people are submitting their applications to us. But hopefully...

VICE-CHAIR JOHNSON: Yeah. So...

MR. HUNT: Hopefully, we're giving people almost a year, I mean today's date it's over a year. The standards are pretty clear. It will be a challenge. We have to remember that there are also caps, so we're not going to approve every application that comes in.

VICE-CHAIR JOHNSON: But you, if, let's say all of a sudden you got a flood of applications or, you know, things go south with the economy and more and more people who are on farm land are struggling and they want to file applications. If you were to get a flood of applications and you couldn't process them, there would be nothing to prevent you from coming back to the Council saying I need a little bit more time on this section, I need a little bit of an extension.

MR. HUNT: Yeah. I think that's an option, and also I think it would be incumbent upon the Department to manage that workload and to prioritize it to some extent and say we've got a deadline coming up, we need to make sure that these applications get their due review.

VICE-CHAIR JOHNSON: Okay. But, but you feel, you feel comfortable at least that if that date isn't sufficient that you have the opportunity to return to the Council, make us aware that you're not able to process all the applications?

MR. HUNT: I'm not sure of the mechanics. I mean would that require an ordinance change that would have to go through the three Planning Commissions?

VICE-CHAIR JOHNSON: I, I, I don't, I mean...I'll ask Mr. Hopper. Because we'd just be amending a date, 'cause I'm assuming that this language was not in the first bill that we received from the Planning Commissions. Does this mean by adding in this language that we have to go back?

MR. HOPPER: Not, not for this one. This is in a section that was reviewed by the Commissions.

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VICE-CHAIR JOHNSON: Okay.

MR. HOPPER: You're dealing with the criteria that you need for Ag land. If subsequently you amended, there was another amendment to change this, let's say you adopted this December 1, '09 and then you decided you wanted to amend it again to make it December 1, 2010, then that would have to go through the Planning Commissions. 'Cause that would be a, a land use ordinance, you know, that would be completely separate from this bill.

VICE-CHAIR JOHNSON: Oh.

MR. HOPPER: And all, if you're making an amendment to Title 19 that's generally held to be an amendment to a land use ordinance.

VICE-CHAIR JOHNSON: Okay.

MR. HOPPER: So that would have to go to the Commissions. Right now it would not because this is already something that, this is with you right now. You can act on this bill right now, this has already been reviewed. If a year from now there's another bill, a new one, that would definitely have to go to the Commissions. So if, if there was going to be an idea to seek for, you know, an extension in the future, you would want to have sufficient time for it to be reviewed by the Planning Commissions. Of course this doesn't apply to Molokai by the way because they're, they, they're not going to allow anything in Ag. But it would have to be reviewed by all the Planning Commissions anyway.

VICE-CHAIR JOHNSON: Okay. If we inserted language to state that as completed prior to December 1, 2009 or as extended by the Council. Could we put in language where it opens the door to allow us extended by the Council per resolution?

MR. HOPPER: That's almost exactly I think what you have in the, the 280, 2.80B. Whether or not that type of, well, that resolution wouldn't be a land use ordinance. So that, that would be one way to deal with the situation I think. I've never dealt with a situation like that under Title 19. Clearly from 2.80B which is not a land use ordinance, that language is there and has been obviously acted upon in this Committee in fact. But as far as something, I would not see a problem at the outset, but that would be another thing I would have to review in conjunction with this whole ordinance, you know, before we signed off on it. But for now that would be, I think one way of being able to extend the time without going to the, the Commission. I don't see a problem at the outset but I would want to look at that a bit more just because it's a sort of an unprecedented situation.

VICE-CHAIR JOHNSON: Right. And, Madam Chair, then I would look at adding that caveat to No. 1, as Mr. Hopper has just outlined, that by opening the door and allowing us to not

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have to go back through the Planning Commission. You know that would be one way but as he said he's not sure if we can do that legitimately.

MR. HOPPER: I mean, yeah, I don't think it's necessarily a legal issue. You also want to see what sort of effect that would have on compliance by that date as well, and is there a time where if Council doesn't act by resolution it can no longer act by resolution, for example.

VICE-CHAIR JOHNSON: Okay.

MR. HOPPER: Maybe provided the Council pass a resolution prior to December 1, 2009. So you don't get into a lag period and then Council adopt a resolution later.

VICE-CHAIR JOHNSON: Then, Madam Chair, I'm just going to propose this on the fly if I can do this. I move to amend Item 1 to say an application was accepted as completed prior to December 1st, 2009 or a later date provided that the Council, provided that the Council does so by resolution.

CHAIR BAISA: Extends the date.

VICE-CHAIR JOHNSON: Extends the date by resolution.

COUNCILMEMBER MOLINA: Second for discussion.

CHAIR BAISA: Member Johnson...

VICE-CHAIR JOHNSON: You know as, that's because I'm not the attorney.

CHAIR BAISA: Right.

VICE-CHAIR JOHNSON: That's my way of I guess opening the door or being a placeholder for this particular item, since I didn't like the scenario that has to go back all, you know, that's very cumbersome. So because we don't know yet and Mr. Hunt doesn't know yet what he's going to experience as far as the implementation of any possible ordinance. I just feel that's, that's a placeholder as far as I'm concerned. Thank you.

CHAIR BAISA: The Chair would like to ask a favor and...or amend...to amend. Could we set that at December 31st? It's kind of cleaner, end of the year.

VICE-CHAIR JOHNSON: A friendly amendment I, you know, include the 31st in my date, if that's okay.

CHAIR BAISA: Thank you very much. Member Molina.

COUNCILMEMBER MOLINA: No objections.

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CHAIR BAISA: Okay. Now more discussion on this, on this item?

COUNCILMEMBER MEDEIROS: Madam Chair?

CHAIR BAISA: Yes, Member Medeiros.

COUNCILMEMBER MEDEIROS: Okay. Yeah. I know this is an amendment and if I want to have this Committee consider another date or a time duration do we wait until we are done with this amendment?

CHAIR BAISA: If you'd like to do that, or we can propose another amendment to the amendment.

VICE-CHAIR JOHNSON: We got an amendment.

CHAIR BAISA: We got an amendment. Shall we deal with this one right now? Any more?

COUNCILMEMBER MEDEIROS: And, and if I want to...

CHAIR BAISA: And if this fails you can propose another one. Or even if it passes you can do another one.

COUNCILMEMBER MEDEIROS: Okay. Yeah.

CHAIR BAISA: Okay.

COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair.

CHAIR BAISA: Okay. Yeah. We're still in the hammering out stage here. Okay. The amendment as it reads right now, an application was accepted and completed prior to December 31, 2009, or a later date, provided that the Council extends the date by resolution. Discussion? Member Hokama.

COUNCILMEMBER HOKAMA: It's just my personal position. Madam Chair, I don't like revising ordinances by resolution. If you don't like, if we need to amend the ordinance, then let's do it by, with an ordinance proposal.

CHAIR BAISA: Suggestion how we could reword that?

COUNCILMEMBER HOKAMA: You know at that point in time or prior to the point in time, if it's important enough, nothing prohibits the Department from introducing through the Mayor a bill for an ordinance to revise the current code or what would be the in, in that, at that point of time hopefully this proposal in the code.

CHAIR BAISA: Or a Council Member also from proposing.

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COUNCILMEMBER HOKAMA: That is also normal. But the Department will be able to have the information. They know what's the caps or limitations. They would know what is the current count on applications in or process, you know, whatnot that they could be the best informed regarding whether or not to consider a revision to the ordinance. I like it very clean and upfront. And for me you amend the ordinance with a bill for an ordinance, not a resolution. Thank you.

CHAIR BAISA: Thank you, Chair Hokama, that's very clear. Okay, Members, we have an amendment on the floor and you've heard the discussion. All those in favor of the amendment, please say aye.

VICE-CHAIR JOHNSON: Aye.

COUNCILMEMBER MEDEIROS: Aye.

COUNCILMEMBER MOLINA: Aye.

CHAIR BAISA: Opposed, no?

COUNCILMEMBER HOKAMA: No.

CHAIR BAISA: So we have four ayes and one no. Motion carries. And we certainly appreciate the Chair's advice, we may have to deal with it later.

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

NOES: Councilmember Hokama.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

ACTION: Recommending APPROVAL of amendment.

CHAIR BAISA: Okay. Any additional amendments to the language that is before us?

COUNCILMEMBER MEDEIROS: Madam Chair?

CHAIR BAISA: Yes.

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COUNCILMEMBER MEDEIROS: Yeah. I wanted to amend that same Subsection B-1 for consideration and my amendment would be just to remove the date and to make it one year after the effective adoption of the bill.

COUNCILMEMBER MOLINA: Second for discussion.

CHAIR BAISA: Member, we have a motion and a second. Member Medeiros.

COUNCILMEMBER MEDEIROS: And, and the reason for that is because we cannot predict or be certain when we're going to adopt the bill. If we set a date we may end up with, you know, three months, four months left. And I think one year effective date after the adoption of the bill would certainly give that applicants one year, and that would be, you know, my suggestion for discussion.

CHAIR BAISA: Members, any comments on the amendment? Of course it does kind of clarify the Chair's request. Thank you very much. Member Johnson.

VICE-CHAIR JOHNSON: Yeah. And, and that's fine, you know, I was trying to give a little bit of flexibility but I guess, you know, I'll support it. You know I, I still think that, Chair Hokama is right we should do it by ordinance, but by the same token if it does take us a while to get through this, one year it should be sufficient. Should, should that be something, Mr. Hunt, that you would have concern with, you know, one year from date of adoption of this ordinance?

MR. HUNT: No, I think it's good language.

VICE-CHAIR JOHNSON: Okay. All right. Then, then that's fine.

CHAIR BAISA: Wonderful. Any more comments? Yes, Mr. Hunt.

MR. HUNT: I think the word completed might be better if it just said complete, was accepted as complete.

CHAIR BAISA: Thank you very much. Member...Mr. Hopper?

MR. HOPPER: Not a Member. The, the concern I...

CHAIR BAISA: Member Hopper, you're beginning to feel like a Member. Go ahead.

MR. HOPPER: The, the one concern I'd have was is one year of this ordinance is effective date, your...this is going to appear in the code like that. And there is going, there's been multiple amendments to this, these sections of the code. Someone reading the code right now, it'll be very, it could be very difficult for them to understand that which ordinance you're referring to. You'd have to go back and do some research. I would still advise

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that a date would be more appropriate here. You could set it as a date just prior to passage of the ordinance. But if you're dealing with things such as effective date of the ordinance you can deal with that in other sections of the ordinance aside from the actual, or other sections of the bill, excuse me, that actually don't amend the ordinance itself. But if, if you were to look back at something like this at a, an ordinance language that's been amended several times, you wouldn't necessarily know exactly which ordinance you're talking about. That's one of the, the issues we sometimes deal with a lot. Just is, not to say that this is illegal, but it, it's, for ease of use I would recommend a date. And if you wanted to make it a year from the, the adoption that's fine. I would recommend you do that at the time that you pass the ordinance out on second reading. But that's, that's simply my opinion on the issue.

CHAIR BAISA: The Chair will add that to her list of things we have to do before we close up this bill. Okay. So as it stands and we heard from Corporation Counsel, we know that it's best we put a date in there before we end. As it stands, all those in favor, please say aye.

VICE-CHAIR JOHNSON: Aye.

COUNCILMEMBER MEDEIROS: Aye.

COUNCILMEMBER MOLINA: Aye.

CHAIR BAISA: Opposed, no?

COUNCILMEMBER HOKAMA: No.

CHAIR BAISA: Hearing just one no, the motion passes. Or did we not vote or did I not hear correctly? Should I do a roll call?

VICE-CHAIR JOHNSON: No.

COUNCILMEMBER MEDEIROS: Madam Chair?

CHAIR BAISA: You look puzzled, Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Yes, I do. You, the, the aye votes would be to --

CHAIR BAISA: To, to --

COUNCILMEMBER MEDEIROS: --pass?

CHAIR BAISA: --put it the way it was before. Mr. Raatz, let's go back...

COUNCILMEMBER MEDEIROS: The way I amended it?

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CHAIR BAISA: Yes, yes.

COUNCILMEMBER MEDEIROS: Right.

CHAIR BAISA: Let's do this again.

COUNCILMEMBER MEDEIROS: Okay.

CHAIR BAISA: I want to be very, very clear what we're voting on. Okay. That's your language that we're voting on.

COUNCILMEMBER MEDEIROS: Okay.

CHAIR BAISA: And we are aware that before the bill comes out of Committee, before we actually finally vote on it that we will have to add a date. We should probably add a date in there. Okay. Let's try again. All those in favor say aye.

VICE-CHAIR JOHNSON: Aye.

COUNCILMEMBER MEDEIROS: Aye.

COUNCILMEMBER MOLINA: Aye.

CHAIR BAISA: Opposed, no?

COUNCILMEMBER HOKAMA: No.

CHAIR BAISA: Okay. Four ayes and one no. Motion carries.

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

NOES: Councilmember Hokama.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

ACTION: Recommending APPROVAL of amendment.

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CHAIR BAISA: Okay. Well, Members, we are well past the time that we are, have to close up today. Chair regrets that we couldn't, you know, get more done but we did make progress today. I would just like to let you know that because we are anxious to complete this bill before the end of year, the Chair will be polling the Members. I would like to schedule a meeting on Thursday of next week if that is possible.

COUNCILMEMBER MEDEIROS: The 6th?

CHAIR BAISA: That will be November 6th, and we will be past the election, and hopefully we can try and focus on, on completing this. Chair will poll you for a meeting on November 6th at 9:00. In fact she's greedy enough to try to get a whole day if you all figure...all I need is a quorum. So we'll be polling you very soon to see if we can try and get another meeting to complete this ordinance. And I would like to thank my Members very, very much for being here this morning. You know we are in a very, very busy, busy time and I am thankful to my Members for being loyal to your commitment to get this work done. I really appreciate it. Member Molina.

COUNCILMEMBER MOLINA: Yeah. Thank you, Madam Chair. I just wanted to, for informational purposes if I could ask Staff, to date, including today, how many meetings have we had on this particular matter? I'm just curious.

CHAIR BAISA: Go ahead, Mr. Raatz.

MR. RAATZ: By Staff's count this is the 12th meeting on this item, PC-40.

COUNCILMEMBER MOLINA: Okay. Thank you, Mr. Raatz. Just a comment, Madam Chair. I'm hoping at our next meeting, whenever that will be, we can resolve the cap issue. And upon hearing the suggestion of a, I guess temporary or transitional permit I think it, being that we've already spent 12 meetings on this matter already, it sort of lends credence to that consideration. So anyway it's just some food for thought for our next meeting, Madam Chair.

CHAIR BAISA: I'd like to thank you, Member Molina. Yes, it's been a long, hard road. But you know what, you know, the records show that many people have tried to work on this bill before and that it's been a very, very difficult bill to deal with. And I think that if this Council can produce a B&B bill that at least we can live with and take a look at after a year, we have really accomplished something. So again add my sincere thanks to everybody who's worked so hard, the Staff, the representatives from Administration, thank you for staying with us, it's been tough. Thank you, Members. And I'd like to also thank the loyal people that come every meeting to listen and help us craft a bill that will be beneficial to our community. Member Hokama, announcement? Comment?

COUNCILMEMBER HOKAMA: Just maybe a little announcement or a combination of a comment. We did this past Council meeting for the community and public's information, referral of, to the Planning Commissions of all three islands considerations of how we

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may want to expand or improve the Rural zoning category. And I would ask that the community participate in the Commissions' public hearing process. And for a potentially...my comment for this, in conjunction with this meeting, Chair Baisa, is that potentially down the road for those current lands in Agriculture that may not be suitable for agriculture that in the future we may have appropriate Rural zoning of parameters that will have for consideration for more appropriate use including uses such as bed and breakfasts. So I just wish to state that . . . *(change tape, start 3B)*. . . there is another process going on regarding expansion of size and again consideration of what is the current and potential future permitted uses within the Rural zoning category. Thank you.

CHAIR BAISA: Thank you very much, Chair Hokama. All I can say is hallelujah! It's long overdue. And I would encourage everyone who's interested in this subject to participate at the Planning Commission because this will be very important. So, again, mahalo to everyone and the meeting is adjourned. . . . *(gavel)*. . .

ACTION: DEFER PENDING FURTHER DISCUSSION.

ADJOURN: 12:10 p.m.

APPROVED:


GLADYS C. BAISA, Chair
Planning Committee

pc:min:081028

Transcribed by: Daniel Schoenbeck

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CERTIFICATE

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

DATED the 17th day of November, 2008, in Pukalani, Hawaii



Daniel Schoenbeck