

Attachment A (DRAFT)

1. Should all new SFVRs be banned outside VDAs?

A. Straw vote [6 Yes/5 No]

B. Quick thoughts by stakeholders

- Limitation on new ones; keep some existing SFVRs
- Grandfathered ones will have attrition and impact economy
- Keep neighborhoods residential (4 times)
- Rely on regional plans (no blanket legislation for entire county)
- Need accurate data before decision making
- No blanket policy (looking at individual neighborhoods is important)
- Do not want to limit anyone's opportunities
- Revise VDAs; too restrictive to limit to VDAs
- Already out of balance
- Need to have fair grandfathering
- Limit new SFVRs to VDAs

C. Discussion

- Visitors are also purchasers and so their units should be in the VDAs
- What's best for Kauai is keeping residential areas residential; should support and uphold purposes of VDAs and halt the commercialization of residential neighborhoods; should not promote more non-conforming uses that further erode the residential zoning districts
- Kauai has 1 million visitors and 65,000 residents – strive for balance
- Regional plans are important, decisions need to be made on a neighborhood by neighborhood basis
- There are already problems enforcing regulations that apply to existing multi-family units; we need to keep this in mind as we consider regulations relating to SFVRs
- Concentration on decision making by individual neighborhoods doesn't allow for cumulative impact on island-wide basis
- Some former VR owners now live in their homes and they are now active community members; banning new SFVRs would result in a loss of jobs and have a significant economic impact on island
- VDAs are important to preserving community

- A lot has been learned through this process; VDAs do not fit in with current situation; need clearer picture of where we are now (in terms of visitor destinations)
- Police reports show higher crime rates in areas with transient people
- Neighborhood residents should decide what is best for their neighborhood
- Allow new SFVRs by use permit
- VDAs were established to protect residential areas
- Some SFVRs have been converted to timeshare units

D. Level of support for question: "I agree that all new SFVRs should be banned outside VDAs."

| | |
|-----------------------------|-----------|
| 1(Agree; unqualified "Yes") | 6 members |
| 2(Agree but . . .) | 0 members |
| 3(OK, can live with it) | 0 members |
| 4(Not OK, but won't block) | 1 member |
| 5(Don't agree, would block) | 6 members |

2. **Should there be a percentage cap on SFVRs outside VDAs?**

A. Straw vote [11 Yes/2 No]

B. Quick thoughts by stakeholders

- Percentage cap will have legal problems
- Have poor monitoring already, this is not a “doable” approach
- A ban would be clearer; if we choose to go with a percentage cap, then we should choose a low percentage cap
- A percentage cap would have to be converted into a “number” and that number/percentage would need to be reevaluated every few years
- Institute a percentage cap for the island, and apply it neighborhood by neighborhood (3 times)
- Allow neighborhoods to decide what percentage cap should apply in that neighborhood and do not require the cap to be the same in each neighborhood (3 times)
- Implement an island-wide limit/cap, and allow neighborhoods to choose a more restrictive limit
- Prefer ban but cap in some areas may be desirable
- Distinguish between areas
- Prefer ban, but cap may help to control
- Percentage cap could restore neighborhoods

C. Discussion

- Neighborhood must be defined, this is tricky
- Percentage cap would be difficult to administer
- How else to keep a balance? Any law is useless unless it can be enforced well
- North Shore is out of balance and cap would help

D. Level of support for question: “I agree that there should be a percentage cap on SFVRs outside VDAs.”

| | |
|-----------------------------|-----------|
| 1(Agree; unqualified “Yes”) | 8 members |
| 2(Agree but . . .) | 2 members |
| 3(OK, can live with it) | 2 members |
| 4(Not OK, but won’t block) | 1 member |
| 5(Don’t agree, would block) | 0 members |

3. **Assuming that SFVRs are allowed by permit, do you agree that SFVRs should be limited to a certain percentage in a given neighborhood? (neighborhood as opposed to island wide) (original question)**

A. Straw vote [10 Yes/2 No]

B. Quick thoughts by Stakeholders

- Neighborhood boundaries are not defined (what is a “neighborhood?”)
- Different neighborhoods can be evaluated separately based on data
- Neighborhoods should decide
- Prefer one percentage for entire island
- A percentage approach would raise legal questions
- Could utilize an island-wide percentage and allow each community to decide its own percentage as long as the island-wide percentage is not exceeded
- Different neighborhoods have different levels of desirability, therefore the level of concentration is not an issue in some neighborhoods and it is an important issue in other neighborhoods (that are closer to the ocean)
- Island wide cap would be applied to all neighborhoods
- It would be difficult for the Planning Department to administer if each neighborhood decided on its own what the cap should be (2 times)
- Implement an island-wide cap now, and in the future look at implementing different caps in different neighborhoods based on the regional plans
- There is a difference between regional plans and “neighborhoods”
- Prefer to have long term decisions set by neighborhoods which allows for public participation

C. Discussion

- Short term plan should be to start with an island-wide cap, and then later have neighborhood committees decide what is best for their neighborhood
- Keep it simple and look at each community and look at who makes up the community
- Some communities are more economically dependant on SFVRs than others; is there any “give” in an island-wide percentage?

- It would be easier for the Council to establish one percentage cap
- Even if we do establish a cap, the problem may not be solved (there may be some “underground” SFVRs)
- Cannot see how the planning department would be able to enact a percentage cap on a community-by-community basis
- Cap may restore balance in neighborhoods
- In the future, possible to view on a case-by-case basis and initiate a long term process through amendment.

D. Level of support for question: “Assuming that SFVRs are limited by a percentage cap, do you agree that it should be an island-wide cap?”

| | |
|------------------------------|-----------|
| 1(Agree; unqualified “Yes”) | 8 members |
| 2(Agree but . . .) | 0 members |
| 3(OK, can live with it) | 1 member |
| 4(Not OK, but won’t block) | 2 members |
| 5 (Don’t agree, would block) | 2 members |

Level of support for question: “Assuming that SFVRs are limited by a percentage cap, do you agree that it should differ from neighborhood to neighborhood?”

| | |
|-----------------------------|-----------|
| 1(Agree; unqualified “Yes”) | 7 members |
| 2(Agree but . . .) | 0 members |
| 3(OK, can live with it) | 2 members |
| 4(Not OK, but won’t block) | 3 member |
| 5(Don’t agree, would block) | 1 member |

4. **Assuming that SFVRs are allowed, and that there is consensus that new SFVRs should be limited to a certain percentage in a given neighborhood, what percentage should be allowed?**

A. Quick thoughts by stakeholders

- 0% (4 times)
- 10% (3 times)
- 15% (3 times)
- 20%
- 30%

(Average = 10.1%)

B. Discussion

- Difficult to state a number without more data
- Areas should balance out with a percentage cap
- There may be legal problems, existing SFVRs should be allowed to continue, and new SFVRs should be in VDAs to avoid problems
- Neighborhood residents should decide the percentage for their neighborhood and would like to see residents participate in the process
- If there are percentage cap limits, who would be using the SFVRs and would happen to these houses?
- Some areas are way out of balance, a lower percentage cap is better
- Areas close to the ocean are more desirable for SFVRs
- Cannot foresee an increase in SFVRs in “less” desirable areas (visitors want to be close to the ocean)

C. Level of support for question: “What should the island-wide cap be?”

| Percentage | 0% | 10% | 15% | 20% | 30% |
|-----------------------------|----|-----|-----|-----|-----|
| 1(Agree; unqualified “Yes”) | 5 | 4 | 0 | 4 | 1 |
| 2(Agree but . . .) | 0 | 1 | 0 | 1 | 1 |
| 3(OK, can live with it) | 0 | 5 | 7 | 0 | 3 |
| 4(Not OK, but won’t block) | 1 | 3 | 3 | 1 | 0 |
| 5(Don’t agree, would block) | 7 | 0 | 3 | 7 | 8 |

5. Assuming there is a cap on SFVRs outside VDAs, should new SFVRs be allowed by Lottery or Use Permit?

A. Straw vote for Lottery [4Yes/7 No]

B. Straw vote for Use Permit [8 Yes/4 No]

C. Quick Thoughts by stakeholders

- Lottery may not be a fair process
- Prefer over the counter permit process
- Prefer use permit process because it allows for public input (2 times)
- Lottery may be a more fair process
- Concerned that both processes may place an additional burden on the Planning Department
- Lottery would require prequalification
- Use permit is a planning tool and allows for public participation
- Lottery would need to be transparently run
- Use permit is a fair process because it is based on qualification and lottery is by luck
- Use permit is based on a first come first serve process
- Use permit process is preferable because it helps identify the cumulative impact

D. Discussion

- What standard would be used for granting a use permit? (i.e., how does it differ from a long term residential dwelling?)
(response: adequate parking)
- An applicant would have to be eligible for a lottery which would save Planning Department work.
- Basic requirements to enter into a lottery would be drafted. (2 times)
- Perhaps, the two processes could be combined where an applicant would complete the use permit process and then be eligible for the lottery.
- Prefer use permit because there is a concern for the cumulative impact of a lottery
- Problem with combining the processes when payments for upgrades to SFVRs are made and then the application is denied?
- One criteria is that the current law requires the fire department to inspect when a dwelling when it becomes a SFVR
- Before a use permit is granted an applicant may be required to make improvements (i.e., septic systems, water, etc.)

E. Level of support for question: “Assuming there is a cap on SFVRs outside VDAs, should new SFVRs be allowed by Lottery?”

| | |
|-----------------------------|-----------|
| 1(Agree; unqualified “Yes”) | 3 members |
| 2(Agree but . . .) | 0 members |
| 3(OK, can live with it) | 5 members |
| 4(Not OK, but won’t block) | 3 member |
| 5(Don’t agree, would block) | 2 members |

Level of support for question: “Assuming there is a cap on SFVRs outside VDAs, should new SFVRs be allowed by Use Permit?”

| | |
|-----------------------------|-----------|
| 1(Agree; unqualified “Yes”) | 5 members |
| 2(Agree but . . .) | 1 member |
| 3(OK, can live with it) | 5 members |
| 4(Not OK, but won’t block) | 1 member |
| 5(Don’t agree, would block) | 1 member |

6. **Assuming that grandfathering is established to address existing units, should it define “legal pre-existing use” to include timely payment (paid when due) of GET and TAT and compliance with all federal, state, and county laws? (formerly Question G-1)**

A. Straw vote [12Yes/0 No]

B. Quick thoughts by stakeholders

- How will compliance with federal, state and county laws be monitored (is monitoring for compliance doable?)
- Disappointed that nothing was done in the past and so timely payments would help to define which will qualify as a grandfathered SFVR
- Separate payment of GET and TAT from compliance with federal, state and county laws (4 times)
- Courts will ultimately determine what is a preexisting use.
- Concern whether the County has the authority to determine compliance of state and federal laws
- Only grandfather those who have paid GET and TAT taxes (2times)
- Following all laws is important for qualifying for grandfathering

C. Discussion

- To qualify for a grandfathered SFVR, applicant must have complied with applicable laws. (3 times)
- Would like to establish a moratorium of 6 months to prevent a rush “to grandfather” and to avoid even more nonconforming uses (2 times)
- The more SFVRs which are legal, the more GET and TAT will be received
- Concern for family homes that have not collected rent in the past and therefore did not pay GET and TAT when family and friends stayed at the unit would not qualify for grandfathering as a SFVR and thus would unfairly limit the applicant in the future
- Moratorium allows time for amending the Comprehensive Zoning Ordinance

D. Level of support for question: “Assuming that grandfathering is established to address existing units, should it define “legal pre-existing use” to include timely payment (paid when due) of GET and TAT and compliance with all federal, state, and county laws?”

| | |
|------------------------------|------------|
| 1(Agree; unqualified “Yes”) | 10 members |
| 2(Agree but . . .) | 2 members |
| 3(OK, can live with it) | 1 member |
| 4(Not OK, but won’t block) | 0 members |
| 5 (Don’t agree, would block) | 0 members |

7. **Assuming that grandfathering is established, what should be the time requirement for legal operation prior to passage of law in order to claim non-conforming status? (note: this refers to usage prior to passage of a law)**

A. Quick thoughts by stakeholders

- Upon the adoption of the ordinance (9 times)
- 20 years (3 times)
- 30+ days
- 1 month or proof of quarterly GET and TAT payment, at a minimum

B. Discussion

- A moratorium is important prior to the adoption of the ordinance
- What is the effective date for a SFVR to qualify for grandfathering?
- What evidence must be shown to legitimately qualify for grandfathering?
- Precedent is that if a SFVR is allowed today, it is grandfathered.
- City and County of Honolulu has adopted a 3 year period to qualify as a grandfathered SFVR.
- Should there be preference for those who have been paying taxes for X number of years?
- Per a county attorney's opinion, it is not taking if one use ceases and there are other uses available
- Some have purchased vacant lots with an understanding and intent to build a SFVR

8. **Under the current CZO, a “non-conforming use” will cease if not used at least one day in one year. Assuming that grandfathering is established, do you agree that there is a public policy interest in requiring active use for at least one-half year (180 days) in a year? (note: this refers to usage after passage of a law) (Formerly Question G-3)**

A. Straw vote [1Yes/10 No]

B. Quick thoughts by stakeholders

- One day a year is too little to be grandfathered
- We should be glad for limited use
- At least one day a year is good (7 times)
- Concerned about how to enforce any time requirement
- One-half year requirement is too much
- 60 days per year
- More than 30 days per year

C. Discussion

- The more strenuous the requirement, the greater the attrition may be
- Balance can be addressed by attrition

D. Level of support for question: “Under the current CZO, a “non-conforming use” will cease if not used at least one day in one year. Assuming that grandfathering is established, do you agree there is a public policy interest in requiring active use for the following amounts of time in one year?”

| | 1 day/year | 30+days | 60days | 80days |
|-----------------------------|------------|---------|--------|--------|
| 1(Agree; unqualified “Yes”) | 6 | 7 | 4 | 2 |
| 2(Agree but . . .) | 1 | 3 | 3 | 1 |
| 3(OK, can live with it) | 2 | 2 | 0 | 1 |
| 4(Not OK, but won’t block) | 3 | 0 | 4 | 1 |
| 5(Don’t agree, would block) | 1 | 1 | 1 | 8 |

9. **Assuming that grandfathering is established, do you agree that re-sale will cause loss of non-conforming status? (assuming that it is legally supported) (Formerly Question G-4)**

A. Straw vote [6Yes/5 No]

B. Quick thoughts by stakeholders

- New owner must apply for permit to operate a SFVR (2 times)
- Loss of grandfathering status through re-sale will help restore balance
- May be only way to reduce the number of grandfathered SFVRs and will provide consistency with North Shore plan
- Legal questions and challenges will be raised (3 times)
- There should be an exception for intra-family sales
- Government has oversight over density and use, but the county cannot limit the rights of someone to whom the unit is transferred (the right to have the SFVR runs with the property and not the owner); the owner can freely sell the property without restriction unless the owner violated the use for which it was allowed
- Agree that re-sale should cause loss in grandfathering only if it can be shown to be legal
- Loss of grandfathering due to resale is not philosophically right
- Attrition is a good way to address balance issues
- Use should stay with property, rather than ownership
- Not concerned with the legal issue
- Use runs with the person and not with the property
- Under the Comprehensive zoning ordinance, grandfather runs with the property

C. Discussion

- Even without the requirement, there still will be attrition
- There should be an exception for property which is transferred through probate and intra-family transfers.
- An owner may have made a significant investment in a SFVR and losing the ability to use the property as a SFVR would be a taking
- Can we put time limits on grandfathering as well? Is it fair to have two classes of entitlement? (grandfathered SFVRs and new SFVRs)
- Existing case law limits grandfathering (as opposed to regulation)
- Grandfathering law is to property not owner

D. Level of support for the question: “Assuming that grandfathering is established and it is legally supported, do you agree that re-sale will cause loss of non-conforming status?”

| | |
|-----------------------------|-----------|
| 1(Agree; unqualified “Yes”) | 7 members |
| 2(Agree but . . .) | 0 members |
| 3(OK, can live with it) | 1 member |
| 4(Not OK, but won’t block) | 0 members |
| 5(Don’t agree, would block) | 5 members |

Level of support for the question: “Assuming that grandfathering is I established and it is not legally supported, do you agree that re-sale will cause loss of non-conforming status?”

| | |
|------------------------------|-----------|
| 1(Agree; unqualified “Yes”) | 1 member |
| 2(Agree but . . .) | 1 member |
| 3(OK, can live with it) | 0 members |
| 4(Not OK, but won’t block) | 0 members |
| 5 (Don’t agree, would block) | 7 members |