

MINUTES

PLANNING COMMITTEE

January 4, 2017

A meeting of the Planning Committee of the County of Kaua'i, State of Hawai'i, was called to order by Mason K. Chock, Chair, at the Council Chambers, 4396 Rice Street, Suite 201, Lihu'e, Kaua'i, on Wednesday, January 4, 2017, at 1:43 p.m., after which the following Members answered the call of the roll:

Honorable Arthur Brun
Honorable Ross Kagawa
Honorable Derek S.K. Kawakami
Honorable JoAnn A. Yukimura (*present at 1:51 p.m.*)
Honorable Mason K. Chock
Honorable Arryl Kaneshiro, Ex-Officio Member (*present at 1:44 p.m.*)

Excused: Honorable Mel Rapozo, Ex-Officio Member

Minutes of the December 7, 2016 Planning Committee Meeting.

Upon motion duly made by Councilmember Kagawa, seconded by Councilmember Brun, and carried by a vote of 4:0:1 (*Councilmember Yukimura was excused*), Minutes of the December 7, 2016 Planning Committee Meeting was approved.

The Committee proceeded on its agenda item as follows:

Bill No. 2627, Draft 3 A BILL FOR AN ORDINANCE TO AMEND CHAPTER 10, KAUAI COUNTY CODE 1987, AS AMENDED, BY ADDING A NEW ARTICLE 5B, RELATING TO THE LIHU'E PLANNING DISTRICT (*County of Kaua'i, Applicant*) **(This item was Deferred to April 5, 2017.)**

(Councilmember Kaneshiro was noted as present.)

Committee Chair Chock: Members, I am actually going to ask for a deferral on this item. This was deferred previously a few months back. It was in the interest of this Council to actually look at approaching the Additional Rental Unit (ARU) bill from an island wide standpoint, so our Planning Department has been tasked with that. They have asked for a continuance of time on this so that they can get the figures that we are looking for together. I think we are looking to defer this to April 5th. Is that correct? Is that what we have? Okay. I just want to make sure that we have the right date. Are there any questions on this item, Members? It

was a long time. No? Okay. Is there any public testimony on this item? Please, we want to hear from you.

There being no objections, the rules were suspended to take public testimony.

ALLISON S. ARAKAKI, Council Services Assistant: We have one (1) registered speaker.

Committee Chair Chock: I am sorry. Hold on.

Ms. Arakaki: Ken Taylor.

Committee Chair Chock: Let us have Ken first, since he is registered. Please try and register to speak.

KEN TAYLOR: Committee Chair Chock and Members of the Council, Ken Taylor. I have a few concerns, primarily on page 3, the third paragraph down, item (1). "For sewerred areas, the availability and capability of a public sewer system shall be confirmed in writing..." Then, it goes on to say "The availability of a private sewer system or an individual wastewater system shall be confirmed in writing by the Department of Health." But in many cases, existing septic systems are not adequate to take on a second unit and yet, there is no discussion here in requiring some testing to see whether or not the existing system is adequate to take on another unit. I think that should be included. Then number two, the availability of water. It goes on to talk about the things there, but I think it should also be required that the new unit, as well as the existing unit, be fitted with low-flow fixtures to conserve water. I think that is an important aspect, and I also believe that the new unit should be required to have a water meter.

(Councilmember Yukimura was noted as present.)

Mr. Taylor: I say that because as I understand it, the charges today on the water meter are primarily to collect money to help maintain the existing system. As a single-family homeowner, I have to pay the meter fee. Why should this unit not have to pay that same fee every month? I do not think it is right. I think everybody should pay the same fees, it should be included, and all these units have a new water meter. Maybe waive the cost of the meter, but I do not even know about that because again, the Water Department has borrowed one hundred thousand dollars (\$100,000) to upgrade the existing systems and we have to keep after that.

Committee Chair Chock: Okay.

Mr. Taylor: It is only fair that all of these systems...

Committee Chair Chock: Thank you, Ken.

Mr. Taylor: ...pay those fees. I will be back.

Committee Chair Chock: Okay, perfect. I will ask Felicia to come up next.

FELICIA COWDEN: Felicia Cowden. I definitely came to see the presentation as well, but broad-brushstrokes on the idea that it is not fully fixed out. I support it. I want to see that infrastructure can work, but I think that housing is a crisis and it seems that when it is a little bit of small housing, adding density to where we already places. It is most likely going to be people within the families or the circles that is there, and I think it is one (1) of the most important things. I was really happy to hear you folks set the goal of five hundred (500) houses per year at the Inauguration Meeting where the intent is to help people who are without housing, be able to have housing. I think this is a good step in that direction. As somebody who works with youth, I would say that probably half of my students that I have had have been close to hidden homeless and they are on someone's couch or struggling someplace. I think it is a really vulnerable population. It is hard to rent a place when you have children. It is harder than having a dog, especially if you have a little boy. So, I am hoping that this type of perspective is going to work. I like it. I know it needs to be massaged. It sounds like we will hear about that in April, so thumbs up. I wanted to listen to the details. Thank you.

Committee Chair Chock: Thank you. Would anyone like to testify? Mr. Sheehan? No? Chad? If not, I am going to ask Mr. Taylor to come back up for his additional three (3) minutes.

Mr. Taylor: Again, Ken Taylor. As I was saying, the meter fees have to do with the cost of upgrading the system to be adequate to take on this new development and it should only be fair that they pay that fee. The Water Department has borrowed one hundred million dollars (\$100,000,000), they are going to do another one hundred million dollars (\$100,000,000), and those fees get passed on to all of us. All of the new developments should be paying for their activity. I think it is important that you take a look at the water issues as well as wastewater, and figure out how they can do a test to make sure that the existing septic system is adequate to take on another unit. Thank you.

Committee Chair Chock: Thank you. Would anyone else like to testify? Please come up, Mr. Deal.

CHAD DEAL, Interim Government Affairs Director, Kaua'i Board of Realtors: Hello, Committee. Chad Deal. I am the Interim Government Affairs Director for the Kaua'i Board of Realtors. I want to thank you very much for introducing the Bill. We look forward to working with Council and also with the Planning Department in massaging the Bill, as Felicia said. We hope that this is a great idea for our County residents and I look forward to seeing the passage in the future. We look forward to working with you in any way that we can. Thank you very much for the opportunity.

Committee Chair Chock: Thank you. Anyone else? If not, Members, do you have any questions for the Planning Department? Councilmember Yukimura, do you have a question? Ka'āina, can you come up? Councilmember Yukimura, you have the floor.

Councilmember Yukimura: Thank you.

KA'ĀINA S. HULL, Deputy Planning Director: Good afternoon, Committee Chair Chock, Members of the Council. Happy New Year. Ka'āina Hull, on behalf of the Planning Department.

Councilmember Yukimura: Good afternoon, Ka'āina. In this request for a deferral you said that the purpose of the deferral was to allow the Planning Department additional time to meet with members and associations of groups of various communities to determine if there is support for an island wide Additional Rental Unit Ordinance. Is the community sentiment the only criterion that the Planning Commission or the Planning Department will be using in terms of whether to recommend this Bill for approval or not?

Mr. Hull: I do not think that would be a fair statement to say that it is the only thing we would be relying on. We will be looking at other things, just overall housing needs, and meeting with the Housing Agency further on the issue. But meeting with these community associations and various stakeholders just gives us an idea of the temperature out there. We felt it would be prudent to meet with these various groups that are willing to meet with us and sit down and talk it out to see what their concerns might be overarching before we introduce such a bill.

Councilmember Yukimura: What about the General Plan and Multimodal Land Use Transportation Plan goals and policies? Are you going to be looking to see whether this Bill is aligned with those policies? There is a lot of concern that no matter what the General Plan says, that we have not been implementing the General Plan policies. Will you be vetting this Bill? It is kind of a single-purpose bill. We need more housing, therefore, we should allow more housing everywhere. But as you know, we have other General Plan, Multimodal Land Use Transportation Plan, and maybe there are some other plans that have other goals and policies. Are you going to be vetting this proposed Bill against those goals...

Mr. Hull: Definitely.

Councilmember Yukimura: ...and policies as well?

Mr. Hull: In particular, if we get to that juncture where we are looking at proposing a bill...because another option could be there could be vast amounts of opposition to it as well as we could have further meetings with the Housing Agency that say it may not appropriate, and we may decide indeed, then come back to you folks that an island wide initiative may not be appropriate. We are still vetting that issue, but should we come to the juncture where it looks like it may be appropriate, any analysis that goes to the Planning Commission and ultimately comes up to you folks, will be waived most certainly against the General Plan and the Multimodal Land Use Transportation Plan.

Councilmember Yukimura: Okay because really, the Planning Department is the key agency that advocates for the policies of the General Plan and has expertise in planning and planning policies. I do not know if you can rely on the

community to do it, although they have been the ones that have been advocating for enforcement of General Plan policies, but it really is the Planning Department whose *kuleana* it is.

Mr. Hull: Yes, and that is why at the end of the day, we are going to have to take all of that into account and decide whether or not to move forward. I think in looking internally at the various policy platforms that we have as well as policy platforms that are being developed as we speak in the General Plan update process and what the temperature of the community is, we kind of have to weigh all of those to decide whether or not it is appropriate to move forward, from our end at least.

Councilmember Yukimura: Okay. Very good. Thank you.

Committee Chair Chock: Can you remind me, if we get to an island wide approach, will we be introducing a new bill? Is that correct?

Mr. Hull: Yes, an island wide approach would need a new introduction. Should there be consensus to move forward on an island wide approach, there are two (2) avenues. It would either be to amend the Comprehensive Zoning Ordinance (CZO) to adopt this new entitlement within the CZO, or to individually go into the various development plans of the geographical regions of Kaua'i to update those. There are those two (2) avenues, but at this time, we are still trying to determine whether or not it is appropriate.

Committee Chair Chock: Okay. Thank you. Are there any further questions? Councilmember Kagawa.

Councilmember Kagawa: Thank you, Committee Chair Chock. Ka'āina, much has been said about the Līhu'e Community Plan recommending that this type of ordinance be adopted to solve some of the rental shortages or housing shortages out there in the community. I am kind of curious to know if you have names of people that participated in that.

Mr. Hull: In the Līhu'e Community Plan?

Councilmember Kagawa: Yes.

Mr. Hull: I do not have it off the top of my head, but we can definitely get you that.

Councilmember Kagawa: If you could provide me with that, please. The reason why I want it is because sometimes I believe the voice of the community is not fully represented when these decisions are made. I will bring up one (1) example, Waikomo Road, where the Kōloa Community Association supported it. When we had the Bill before us to implement the one-way traffic on Waikomo Road, we were met with strong opposition from, I would say, the majority of residents. For that reason, I would like to see the names of those people to satisfy myself as to if we had a good representation of the Līhu'e community involved.

Mr. Hull: Definitely.

Councilmember Kagawa: Thank you.

Committee Chair Chock: Are there any other questions? Ka'aina, if you could include the organizations that are in support of it as well or were included in the process rather. I think you folks went through an actual...

Mr. Hull: For the Lihu'e Community Plan?

Committee Chair Chock: Yes.

Mr. Hull: I can look back at that, yes.

Committee Chair Chock: Thank you. Councilmember Yukimura.

Councilmember Yukimura: Another question is in meeting with these groups, it seems to me that it might be useful to vet these against the General Plan so you can tell these groups how they fit or do not fit with the policies of the General Plan because they may change their position if they understand the evaluation of that.

Mr. Hull: That is a fair point.

Councilmember Yukimura: All of us would like to be educated on that score. Thank you.

Committee Chair Chock: Thank you. If no further questions...

Councilmember Kagawa: I just have one (1) more question.

Committee Chair Chock: Go ahead.

Councilmember Kagawa: Also, one (1) of the residents communicated to me when we were first considering this Bill as to the legality of only picking Lihu'e to have this, I would say, huge benefit only for the Lihu'e district because as we all know, the ten thousand (10,000) square foot minimum requirement to have an 'ohana unit has been in place for many years. I think I would say the early 1980s and it is such a huge change. The person who lives out in the west side said, "Hey, how can you folks only do it for Lihu'e? That is not fair. I pay the same amount of property taxes. Why will I not have that same entitlement to build a house for my family?" Can you check if there is any legal standing as to the citizen's complaint as far as legality of passing such a huge entitlement to a specific district?

Mr. Hull: Yes, we will work with the Office of the County Attorney. Just on a soft note, community plans are often amended and vary from geographical area to geographical area. I would say the most different one that gave a lot more entitlements recently was the recent adoption of South Kaua'i Community Plan that specifically gives certain regions of South Kaua'i a bit more of...I do not want to say entitlement process, but it changed the standards under

which they are reviewed and therefore, allows for greater usages. So you see that happening within community plans here on Kaua'i and throughout the State of Hawai'i, but as far as a full legal read, we can work with the Office of the County Attorney.

Committee Chair Chock: Councilmember Yukimura.

Councilmember Yukimura: Certainly incentives for growth in the places where you want growth is a very common planning tool.

Mr. Hull: Yes.

Councilmember Yukimura: And I think this would be in the rubric of an incentive.

Committee Chair Chock: Councilmember Kaneshiro.

Councilmember Kaneshiro: I am not on the Committee, but I think in the last meetings, it was not only looking at an island wide policy, but also as you go out to the communities, looking at still limiting the size of the units because to some extent it is like we are trying to encourage housing, but we are only going to limit it to a certain size. I do not know if it makes sense or not for a certain homeowner. That might be a barrier from creating additional housing units, having a size limit. So I do not know if you folks can get information on that.

Mr. Hull: All I can say to this, Councilmember Kaneshiro, is that in many of the discussions with stakeholders, people involved, some of the realtors, or the contractors, or people that are just stakeholders in development processes, there was some concern over a certain amount of issues within the Līhu'e proposal. To somewhat simplify it and also to make it a little bit more accessible as well as just to pare it down, the Department has been submitting a much more simpler version that kind of frees up to a certain degree, a little bit more than was proposed in the Līhu'e Community Plan. That is what we have been submitting to people for their read and their input to see if they have any concerns about that in particular, about limiting size in certain areas, and so on and so forth. But if any of you folks have a desire to see what we are submitting out as far as a soft read from these associations and individuals, we can get that to you as well. It is somewhat different and we are not doing it facetiously to say, "Let us do something different." It is just from the input that we have had, let us try and make it as readily accessible to these associations and individuals as they read it. If any of you desire it, we can E-mail that over to you folks.

Councilmember Kaneshiro: Thank you. I am thinking that maybe a family had a 3-bedroom, 2-bathroom house, all of their kids off are off to college, trying to raise their own family, and now you only say have a husband and wife living in the house and are able to convert it, but the additional bedrooms, bathroom, and adding a kitchen is going to bigger than the size, then you pretty much eliminated an option for a house to be converted into an additional unit.

(Councilmember Brun was noted as not present.)

Councilmember Kaneshiro: So there are just those types of considerations.

Mr. Hull: Definitely.

Councilmember Kaneshiro: Thank you.

Committee Chair Chock: Are there any further questions?

Councilmember Kagawa: I have a final question. Thank you, Committee Chair Chock. I just look at the list, so I do not need the working group list from you. I just saw it and I am pretty impressed with the members who were on the list. My question is, did the Planning Department and staff communicate to the working group, who probably all did not know the full gamut of how much illegal rental units are already out there, especially Puhī and Hanamā'ulu, and convey to the working group that these people that are already out there?

(Councilmember Brun was noted as present.)

Councilmember Kagawa: Eddie Sarita was on the committee as well, and he has a lot of knowledge about the problems going on from 1984. I read the minutes from Eddie, but the difference in treatment that should this Bill pass, the new people who want to put a unit on a lot that is five thousand (5,000) square foot or less will have to pay a huge water hook-up fee. For the people that are doing it illegally or have been allowed to do it illegally without the County doing anything about it, they will not have to pay anything because they are already set-up. Did they convey that this Bill will say that accepting illegality of others who did it prior to this ordinance is going to be acceptable? Is that the way we want to treat it or do we want to address illegal rentals without affecting this Bill? Are the illegal rentals going to be a concern or are we just going to ignore it going forward?

Mr. Hull: It depends, Councilmember Kagawa, because while there are illegal rentals across the island and particularly, you can point to a fair amount here in Līhu'e, the Department does not necessarily or would not advocate for additional resources or to prioritize going after these illegal rentals because quite frankly, at the end of the day, these illegal rentals are a consequence of the housing crisis that we are in today, that people have no other choice, but to somewhat falsely apply for say, a storage unit in their garage. As soon as they get that zoning permit, they converted it to a kitchen and a dwelling unit. Now, if we are made aware of such a unit, we are required to follow the "T" of the law and issue them a violation notice, but we not actively out there going and trying to shut these people down because like I said, it is a consequence of the housing crisis we are in.

Councilmember Kagawa: I understand, Ka'āina, but we have a housing consequence now. Why should anyone in the Līhu'e district do it legally? They have the same excuse as somebody who do it thirty (30) or forty (40) years ago. What is going to be the difference? You might as well do it illegally if you are saying illegal is okay. We still have a housing crisis.

Mr. Hull: I would not characterize it as saying that illegal is okay. We want individuals to follow the letter of law and there are individuals out there that indeed desire to follow the letter of the law, and to provide them that opportunity to provide housing be it for a renter, be it for *kūpuna*, or be it for their children returning home, I think that avenue should be provided. How we move forward on addressing bringing those that are in violation right now with illegal dwellings, it definitely goes to the fact that there are additional fees, so why someone would come in and make themselves legal?

Councilmember Kagawa: They have the same excuse. They have the same excuse and that is why I am kind of happy that we are just taking our time and trying to do it right, and communicate all of the issues that are out there. When we arrive at an end decision, at least we acknowledge that there are some problems from the past that still have not been cured. I know we are trying to solve a problem, but sometimes when you move too fast, you create more problems. I just want to try and prevent as much problems going forward.

Mr. Hull: Definitely.

Councilmember Kagawa: Thank you for your answers.

Committee Chair Chock: Thank you. Are there any other questions?
Thank you, Ka'āina. I appreciate it.

Mr. Hull: Thank you, Committee.

There being no objections, the meeting was called back to order, and proceeded as follows:

Committee Chair Chock: Is there any further discussion before we call for the deferral? Ka'āina, you do not have to come back up, but I would like to see the iteration that is moving forward just to keep in touch with its direction. I appreciate it. I will only say I think it is a fine balancing act that we need to try and walk here in trying to get not only the housing that we need, but to curb the speculative as well as the illegal dwellings we are talking about. I look forward to it. I was hoping that we be able to get this back on and look at an island wide approach sooner, but with budget around the corner, I understand this might be a difficult thing to do. I hope that we have a thorough outreach to the community at this round as well.
Councilmember Yukimura.

Councilmember Yukimura: I just also wanted to reiterate and emphasize the need for a clear analysis of how this Bill would be integrated and aligned with our planning policies. I think we have to do that with every action we take on the CZO, otherwise, we either go counter to or we do not implement the General Plan.
Thank you.

Committee Chair Chock: Thank you.

Councilmember Kagawa: My final comment is that we live in a Country of laws and for me sitting here, I think my most important duty is to create fairness for everybody. While I do highly concern myself with trying to fix the housing problem, I also want to make sure that in making every decision I make, that fairness for all, a level-playing field, is the way I want to achieve the end result. So, that is where some of my concerns come from, but I am very appreciative of the Planning Department and the work that they have done because they are trying to fix a problem. I think I want to make sure that our Council makes sure that we try to be the referee and make sure that as much as we can in working with the Administration in fixing the problem, we make sure that we keep it at a level-playing field as much as possible. Thank you. Councilmember Yukimura.

Councilmember Yukimura: I want to say, I do not see anything wrong with trying to make something illegal, legal, and to bring into compliance so that we can have more legal structures. I think then they would become eligible for Department of Housing and Urban Development (HUD) funding and all kinds of things. So, if there is a way we can help people become legal, I think that is a good thing, in fact, the law is making something that is illegal right now, legal. In fact, this whole Bill is trying to change the law so that we can have more housing. Now, there is this principle, or this assumption, or underlying theory if you make more available, you will have more affordable housing. That may be true to a certain extent, but we have to also remember the huge secondary-home market and the pressures for illegal vacation rentals and how we have legalized any rental to become a vacation rental within Visitor Destination Areas. If you look at all of these different strains of trends or momentum, we have to kind of be aware of what the big-picture is that we are creating.

Committee Chair Chock: Thank you. If there is more discussion, I will entertain a motion to defer at this time.

Councilmember Kagawa moved to defer Bill No. 2627, Draft 3 to April 5, 2017, seconded by Councilmember Yukimura, and unanimously carried.

Committee Chair Chock: Motion passes.

The Committee proceeded on its agenda item, as shown in the following Committee Report, which is incorporated herein by reference:

CR-PL 2017-01: on Bill No. 2634 A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8, KAUA'I COUNTY CODE 1987, AS AMENDED, TO ALLOW MULTIPLE FAMILY DWELLING UNITS IN ALL RESIDENTIAL ZONING DISTRICTS (*Kaua'i County Council, Applicant*) **(Approved.)**

There being no further business, the meeting was adjourned at 2:42 p.m.

Respectfully submitted,

Allison S. Arakaki

Allison S. Arakaki
Council Services Assistant I

APPROVED at the Committee Meeting held on January 19, 2017:



MASON K. CHOCK, PL Committee